(Decision No. 615)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of The Motor Transportation Company for a Certificate of Public Convenience and Necessity to Carry on the Business of Transporting Freight between Grand Junction and Montrose, Colorado, and Intervening Points, and to Carry on the Business of Transporting Passengers, Express and Freight between Grand Junction, Delta, Montrose, Hotchkiss, Cedaredge, Paonia and Intervening Points.	)	APPLICATION NO. 236.

- - - - - -

June 15, 1923.

- - - - - -

Appearances: For the Applicant, The Motor Transportation Company, Messrs. Burgess & Bothwell, Grand Junction, Colorado; for Protestants, Joseph H. Young, Receiver of The Denver and Rio Grande Western Railroad Company and The American Railway Express Company, Thomas R. Woodrow, Denver, Colorado.

S T A T E M E N T

By the Commission:

The application herein was filed with this Commission January 13, 1923, and was set down for hearing and was heard at the City Hall, Grand Junction, Colorado, Thursday, April 19, 1923.

The Motor Transportation Company is a corporation and has filed with the Commission a certified copy of its articles of incorporation. It has also filed the required consent, permit, or other authority, showing that The Motor Transportation Company, operating what is called "The White Bus Line," has complied with all the ordinances, rules and regulations of all cities and towns to, through, and from which it proposes to operate and has the consent from said places for such operation.

That part of the application to and from Cedaredge not being in competition with a railway, and consequently not under the jurisdiction of this Commission, will be ignored in the decision in this case.

The evidence in this case was quite voluminous, there being ten witnesses for the applicant and six for the protestants. This applicant was granted a Certificate of Public Convenience and Necessity about a year ago for carrying passengers and express between Grand Junction, in Mesa County, and Montrose in Montrose County, Colorado, and intervening points, which includes the town of Whitewater and the cities of Delta and Olathe. The present application enlarges the scope of the business to be done by The Motor Transportation Company so as to include the carrying of passengers, freight and express between Grand Junction, Montrose and Paonia and intermediate points.

The evidence in this case for the applicant was produced by parties who actually use the service and also by the Mayor of Paonia, the president of the Delta County Chamber of Commerce and others. It is but fair to state that while the auto bus lines, which are now operating between the points involved, the evidence in this and other cases shows positively that the preponderance of tonnage out of the various local communities is moved, and must be moved by rail. To illustrate, there are many thousands of carloads moved yearly of fruits, grains, stock, coal, potatoes, etc. from the localities embraced within the operations of this applicant. The testimony in this proceeding shows that there are now, and have been for two or three years, parties operating auto bus lines within this field hauling passengers, freight and express and exercising the functions of public utilities without license to do so from the constituted state authorities, and in utter disregard and violation of the statutes of Colorado. So far as the railroads are concerned, it doesn't seem to make any financial difference to them whether an applicant is granted a certificate of "Public Convenience and Necessity" or not, as many busses are being run in almost all parts of the State in competition with the railways without any pretense of having complied with the Public Utilities Act.

Unquestionably there are many places in Colorado where, on account of infrequent train service, it would be deemed a convenience, and possibly

a necessity, to have auto service to meet the requirements of the people for local service. Looking at this question, however, from a broad, practical standpoint, the railways are undoubtedly a necessity and indispensable for the moving of the products of the mine, mill, farm, orchard and of the livestock industries to the distant markets. If this is true, and it is undisputed and unchallenged up to the present time, then the taking away of the revenue from the railroads, by the local bus lines, may be the undoing of the railroads and make them unable to operate. If this should happen it would be a calamity to the State and then it would appear that the people, by insisting on the operation of bus lines, had ruthlessly and thoughtlessly thrown away the substance for the shadow.

It was hoped that the last session of the Colorado legislature would enact a comprehensive law regulating auto busses, operated for hire, but nothing was done. The principal stumbling block seemed to be that a law broad enough to embody the necessary safeguards would prevent the agriculturist from hiring unlicensed vehicles for the transportation of his crops to market, or to where they could be transported by rail. This and other features of the transportation problem were "hard nuts to crack" for the law making body, many of the legislators claiming a law to meet the exigencies of the case could not be enforced until suitable constitutional amendments were enacted.

The railroads of this State are wont to refer to the taxes paid by them in the various counties for general, and especially for county and state road purposes. The Commission has repeatedly held that this evidence is immaterial and irrelevant in regard to cases where certificates of Public Convenience and Necessity are sought and can not, therefore, be considered in such cases. The only value such testimony could have would be in an economic sense. It is interesting to note, however, in connection with this application that one of the protestants, the Denver and Rio Grande Western Railroad, paid in taxes in 1922 in Mesa, Montrose and Delta Counties, $181,000.00, and of this total there was paid into the road fund of these three counties $33,000.00. This the protestants claim is unfair in that their competitors, the auto busses, do not in many counties in which they operate pay one cent of taxes. Of course,

this results in many instances in the auto bus companies reaping where they have not sown, and presents the spectacle of railways being heavily taxed to help build and maintain roads they do not use, but over which their competitors, the auto bus companies, operate in many counties absolutely tax free. These are matters over which this Commission exercises and has no control whatever, and are referred to only to show the inequalities and grotesqueness that enter into the transportation problems as between the railways of Colorado and the present day motor trucks.

It is shown that during the year 1922 The Motor Transportation Company carried between Grand Junction and Montrose 7,603 passengers. The receipts therefrom, including revenue from express shipments, was about $17,000.00; the fare charged is as follows: Grand Junction to Delta, $2.75; to Olathe, $3.25; to Montrose, $3.75; Delta to Montrose, $1.25; Delta to Hotchkiss, $1.25; Delta to Paonia, $1.75; Delta to Austin, 75 cents; Paonia to Hotchkiss, 75 cents; Hotchkiss to Austin, $1.00. These fares were and are higher in every instance than those charged by the railroad company. This company also hauls hand baggage free, but makes a charge of $1.00 for trunks weighing 150 pounds and excess for all over 150 pounds.

Regarding the freight proposition, this applicant estimates there will be available for hauling from 15 to 20 tons of freight each day and they propose to operate a daily, except Sunday, service the year around for the haulage of passengers, freight and express between Grand Junction, Whitewater, Kahnah Creek, Olathe, Delta, Montrose, Hotchkiss, Paonia and other intervening points. They have at present five cars, four seven passenger and one twelve passenger car. They operate three of these daily but hold two in reserve to take care of their peak business and to provide for other contingencies. It was testified too that this company had no accidents during the past year, and that they carry $10,000.00 liability insurance for each car used in its passenger and express business. This company proposes to put in the freight service five or six trucks of from two to three tons each capacity, and that their charges will be somewhat higher than correspond-

ing railroad charges for all classes of freight.

Touching on the convenience and necessity for truck haulage, Edward Mohannah, a merchant of Whitewater, testified that if trucks were not allowed to operate as common carriers, then in that case he would be compelled to buy a truck and operate same for his own convenience. He also averred that the railroad only furnished a tri-weekly local freight service and that when he wished to ship a carload he had to go twelve miles to Grand Junction to bill the car out; that the rail service was poor, and that frequently his freight was carried by and sometimes put off at Delta, and that it has lain there sometimes two weeks before being returned to him.

H. A. Forcum, Mayor of Paonia, engaged in the wholesale fruit business, testified that his association shipped out from 100 to 150 carloads of fruit per year by rail; that it was a convenience and necessity to have the auto truck to ship cherries and apricots to the canning factories at Delta and Grand Junction, and that if it were not for the trucks the larger portion of these crops could not be handled to advantage. He also affirmed that local freight shipments by rail from Grand Junction to Paonia take ordinarily from three to ten days for a distance of only 85 miles, while those shipped by truck are usually received in one day and never exceed two days.

In relation to the passenger bus service, Mr. Forcum testified that by using this service he could leave Paonia at 8:00 o'clock A. M. and go to Delta, the county seat, and return at noon; or he could leave Paonia at 1:00 o'clock P. M. and go to Delta and return to his home at 4:30 P. M.; whereas if he used the train service it would practically take the entire day to make the same trip as he could not return until 5:18 P. M. This witness' testimony also showed that the bus line was more of a convenience than a necessity, but that taking the two together he would say it was a convenience and a necessity. He also showed that the express by auto was superior to that furnished by rail, and related an experience of shipping

ice cream from Montrose to Paonia by The American Railway Express Company for a Masonic banquet. The train should have been in Paonia at 5:18 P. M. The banquet was held at 7:00 P. M. and the train did not arrive until 9:15 P. M., and the ice cream was delivered the morning of the following day. It was also shown that express service twice each day by auto bus, in each direction, was far superior to that afforded by rail in that it was picked up at the doors of consignors and delivered at doors of consignees twice each day regularly.

H. W. Robinson, President of the Delta County Chamber of Commerce, testified that there was a necessity for quick service for the carrying of both freight and passengers between Grand Junction, Delta, Montrose and Paonia, and that the merchants of Delta absolutely depend on the truck service. Mr. Robinson went so far as to say that if the railroads were to cease handling less than carload business, the trucks would be satisfactory as far as handling local freight is concerned. He also averred the express and freight service afforded by rail was inferior to that furnished by trucks, and that the adequacy of the service of The American Railway Express Company was not sufficient to meet the business interests of Delta. He also said that it was the desire of the merchants of Delta that a certificate be granted the applicant herein for hauling freight, as it was necessary that the local business houses have the convenience of the automobile truck between Grand Junction, Delta, Montrose, Paonia and intervening points.

The applicant, Mr. DeMerschman, testified that there was no station agency on the line of the Denver and Rio Grande Western Railroad between Grand Junction and Delta, a distance of 51 miles, and that if one wished to bill out their goods it would be necessary to take same to either Delta or Grand Junction. Also if they were receiving freight by rail they would be compelled to go to same places to receive it, with the exception that they could get same at Whitewater, but there would be no agent there to care for shipments and no facilities to find out whether it had arrived.

H. D. Rose, ice cream and soda water manufacturer of Montrose, testified he could get quicker and more dependable service and that his customers got their ice cream in better shape over the White Bus Line than they did over The American Railway Express Company line. He also said: "Any service that is a genuine convenience is a necessity to business, and the White Bus Line has been a decided convenience to me and my customers."

F. E. Spencer, of The Olathe Mercantile Company, Inc., carrying dry goods, notions, furnishings, shoes and hardware, and also C. E. Goddard, representing the Independent Lumber Company of Hotchkiss, each testified as to the advantages of the bus line, both as to its convenience and necessity as a carrier of freight.

Respecting the situation as to the application covering the transportation of passengers, within the scope of the certificate asked for, a great deal of evidence was submitted showing how the convenience and necessity to the traveling public would be met by allowance of said certificate. To illustrate, the auto stage leaves Grand Junction at 8:00 A. M. for Delta, Hotchkiss, Paonia, Olathe and Montrose. It gets to Delta at 10:00 A. M., when a transfer is made to the Paonia bus and the passengers arrive at the latter place at 11:45 A. M., thus consuming but three hours and forty-five minutes for the trip. To make this same one way trip using the Denver and Rio Grande Western Railroad, one would leave Grand Junction at 9:35 A. M., arrive at Delta at 11:40, wait at Delta until 3:24 P. M. and arrive at Paonia at 5:18 P. M. It will be seen by this that the waiting period at Delta is three hours and forty-four minutes, and the entire time consumed from Grand Junction to Paonia by train is seven hours and forty-three minutes.

A passenger taking the White Bus Line to make the aforesaid trip would leave Grand Junction at 8:00 o'clock A. M., arrive at Delta at 10:00 A. M., and get to his destination at Paonia at 11:45 A. M., thus consuming but three hours and forty-five minutes, or only one minute more than is used by the trains waiting period at Delta. In other words, the auto bus makes the trip, Grand Junction to Paonia, in just about one-half the time it takes by train.

Again, if a passenger wishes to make a round trip by train from Paonia or Hotchkiss to Grand Junction, or vice versa, it will take him two days, and even at this he would arrive at Paonia at 5:30 P. M., and in the reverse direction at Grand Junction at 5:35 P. M. and almost too late to transact any kind of business the same day, and besides making it necessary to stay over night and pay hotel bill in addition to railway fare. Service such as this is, of course, very slow and often expensive and very inconvenient. The evidence in this case shows that if a traveler wishes to go by auto bus from Paonia or Hotchkiss to Grand Junction he can leave Paonia at 8:00 o'clock A. M. and go by way of Delta and intervening points, and arrive at Grand Junction at 11:40 A. M. He can then transact business and leave again for Paonia at 12:45 P. M. and arrive at Paonia at 4:45 P. M., thus using but eight hours and forty-five minutes for the round trip, and this including a one hour and five minutes stop at Grand Junction, or but forty-four minutes more time by auto for the round trip than is taken for the one way trip by rail from Paonia to Grand Junction.

After carefully examining the evidence given in this case, the Commission is of the opinion that a preponderance of the evidence sustains the contentions of the applicant herein, and the Commission finds that the present and future public convenience and necessity requires and will require the operation of The Motor Transportation Company to carry on the business of transporting freight between Grand Junction and Montrose, Colorado, and intervening points, and to carry on the business of transporting passengers, express, baggage and freight between Grand Junction, Delta, Montrose, Hotchkiss, Paonia and intervening points, and will issue its order in conformity therewith.

O R D E R

IT IS THEREFORE ORDERED, That the application of The Motor Transportation Company for a certificate of Public Convenience and Necessity for

the operation of a motor bus line for the carrying of passengers, freight baggage and express between Grand Junction, Delta, Montrose, Paonia and intervening points, be, and the same is hereby, granted and this shall be its authority for said operation.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 15th day of June, A. D., 1923.

(Decision No 616)

MAKE NO COPY

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

The Chamber of Commerce of Greeley, et al., Complainants, v. Union Pacific Railroad Company, et al., Defendants.	CASE NO. 244
The Continental Investment Company, a corporation, et al., Complainants, v. Union Pacific Railroad Company, et al., Defendants.	CASE NO. 250
The North Park Coal Company, et al., Interveners.	

(June 18, 1923)

SUPPLEMENTAL ORDER

WHEREAS, By the decision and order in the above entitled causes, rendered herein June 4, 1923, it has been made to appear to the Commission that the relationship of certain rates therein found to be reasonable and non-prejudicial to destinations on the Missouri Pacific Railroad from the Walsenburg-Canon City and Trinidad Districts, as announced in said order and decision at the top of page 9 of the printed report thereof, are in error with respect to the proper relationships that had been in said order and decision announced as being reasonable and just to destinations for similar distances from the Walsenburg-Canon City-Trinidad Districts to destinations similarly situated on the lines of other carriers, in that the rate from the Walsenburg-Canon City District to Nepesta and destinations between Pueblo and Nepesta is given as $1.76 per ton and to same destinations from Trinidad $2.00 per ton; and,

WHEREAS, By reason of such error, the rates as so announced in said order and decision do not bear the proper relationship to rates for similar distances to similar destinations, as in said decision and order announced; and,

WHEREAS, Upon further consideration of the aforesaid decision and order it is apparent that unless the same be modified in certain particulars, as hereinafter set forth, the long and short haul provisions of the Colorado statute will necessarily be violated, the Commission does hereby, upon its own motion, issue this supplemental order in modification and correction of the original order herein in the particulars above designated.

IT IS THEREFORE HEREBY ORDERED, That the rates on coal other than nut, slack and pea from the Walsenburg-Canon City District to destinations on the Missouri Pacific Railroad between Pueblo to and including Sugar City, are hereby found to be just and reasonable and non-discriminatory that do not exceed $2.00 per ton of two thousand pounds; and that the rate on coal from the Trinidad District to the same destinations is hereby fixed at 25 cents over the Walsenburg-Canon City rate, or $2.25 per ton of two thousand pounds.

IT IS FURTHER ORDERED, That the differential of $1.00 per ton fixed by the Commission in its order of June 4, 1923, from the Cameo-Palisade District and the Crested Butte-Baldwin District, and of $1.25 a ton from the Bowie-Somerset District higher than the rates from the Walsenburg District to destinations in Colorado on the lines of the Missouri Pacific Railroad and the Atchison, Topeka and Santa Fe Railway east of Pueblo, and on the line of the Chicago, Rock Island and Pacific Railway east of Colorado Springs, be, and the same is hereby, modified so as to apply only when the rates on lump coal from the Walsenburg-Canon City District are $2.75 per ton or in excess thereof.

IT IS FURTHER ORDERED, That the differential of 50 cents per ton on anthracite over bituminous lump coal from the Crested Butte District be, and the same is hereby, modified as follows:

(a) The differential of 50 cents per ton on anthracite over the bituminous lump coal rate be, and the same is hereby, ordered to apply to destinations on the lines of the Missouri Pacific Railroad and the Atchison, Topeka and Santa Fe Railway east of Pueblo, Colorado, only where the rates from said Crested Butte District on bituminous lump coal are $3.00 per ton or in excess thereof.

(b) The differential of 50 cents per ton on anthracite over bituminous lump coal rate be, and the same is hereby, ordered to apply to destinations on the lines of the Chicago, Rock Island and Pacific Railway east of Colorado Springs, Colorado, only when the rate from the Crested Butte District on bituminous lump coal is $3.50 per ton or in excess thereof.

The Commission finds, and it is hereby further ordered, that the rates designated in the foregoing supplemental order are just and reasonable rates in the transportation service involved.

IT IS FURTHER ORDERED, That the defendants affected by the foregoing supplemental order be, and they are hereby, required to file supplemental tariffs in accordance herewith to become effective on the date established by the original order herein as the effective date thereof, to-wit: June 19, 1923.

IT IS FURTHER ORDERED, That the decision and order issued herein on June 4, 1923, be, and the same is hereby, modified to the extent hereinabove in this supplemental order set forth.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 18th day of June, 1923.

PUC-5

(Decision No. 617)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of)
The Colorado Motor Way, Inc., for a) AMENDED APPLICATION NO. 191
certificate of public convenience)
and necessity.)

June 19, 1923.

Appearances: Halsted L. Ritter and P. M. Clark, of Denver, for Applicant; Thomas R. Woodrow, for The Denver and Rio Grande Western Railroad Company; E. G. Knowles, for the Union Pacific Railroad Company; J.Q. Dier, for The Colorado and Southern Railway Company; Erl H. Ellis, for the Atchison, Topeka & Santa Fe Railway Company, Protestants.

S T A T E M E N T

By the Commission:

A hearing in the above application was duly held at the Hearing Room of the Commission, State Office Building, Denver, Colorado, on April 23 and 24, 1923, at the conclusion of which, time and twenty days were given applicant to file its brief in support of its application and a like time was given the protestants to file an answer brief.

Applicant filed its brief on May 14, 1923; and thereafter, on June 13, 1923, protestants filed a motion to dismiss the application upon the ground, as set forth in the motion, that applicant had not complied with the requirements of sub-division (a) of Section 35 and sub-division (c) of the same section.

Thereupon, by agreement between the interested parties and the Commission, the motion was set down for argument at the Hearing Room of the Commission for Monday, June 18, 1923, when counsel for applicant and protestants were duly heard.

Sub-division (a) of section 35 of the Act provides, that no public utility shall commence operation before first having obtained a

certificate of public convenience and necessity from this Commission. The motion sets forth that the applicant has, as shown by the files and evidence herein, been operating for a considerable time over certain of the routes described in the petition, and that it is thereby violating the terms of the public utilities law. At the argument this branch of the motion was not alluded to, but the Commission desires to announce once and for all its conclusion with respect to one who begins the operation of a public utility without first having complied with said sub-division (a) of section 35 of the Act. It has been announced several times heretofore, when this matter has been made the subject of consideration, that one who engages in the operation of a public utility in violation of sub-division (a) of said section 35, does so at his peril; and that upon making application for the certificate, the mere fact that he has so engaged is not even relevant or material; and that if the Commission denies his application for the certificate, it is then that he is violating the law, and may be proceeded against for such violation.

The argument of counsel had entirely to do with the consideration of the terms of sub-division (c) of section 35 of the Act, which provides, inter alia, 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, franchise, permit, ordinance, vote, or other authority of the proper county, city and county, municipal or other public authority."

The motion is grounded upon the alleged fact that applicant had made no showing of such required consent, permit or authority from any county or city or town and county through which it operates and proposes to operate.

Applicant, at the hearing and subsequent thereto, has filed in the office of the Commission what may be termed a certificate from the following towns and cities: Fort Lupton, Greeley, Brighton, La Salle, Evans, Gilcrest and Platteville, with respect to the towns to the north of Denver; and La Junta, Canon City, Monument, Palmer Lake, Castle Rock, Fountain,

Florence, Fowler, Rocky Ford, Manzanola and Swink, of the towns to the south of Denver; all of which are under the hand and seal of the mayor or clerk of each of said towns or cities, and are to the effect that said city or town does not require a license or franchise for the operation of passenger busses through the limits of said city or town and is privileged to load or unload passenger busses within its limits.

As to the City of Denver, applicant filed, on May 10, 1923, a certificate signed by James A. Marsh, Attorney for the City and County of Denver, to the effect that he had examined the method of applicant's transaction of its business in the City of Denver and that it was complying with the provisions of the charter and ordinances of said City and County of Denver with respect thereto.

Applicant filed on June 13, 1923, a certificate signed by Benjamin F. Koperlik, City Attorney, with the approval of John M. Jackson, President of the Council, of Pueblo, to the effect that said city had no ordinances applicable to busses being operated by applicant therein and therethrough and that it was privileged so to do for the purpose of taking on and discharging passengers from and to points outside of Pueblo.

As to Colorado Springs, the general manager of applicant company testified to the effect that applicant had been licensed to operate its busses in that city, and had paid license fees therefor until sometime in July, 1923, upon five busses.

The above are the salient facts upon which the motion was founded and the argument of counsel predicated. Counsel for protestants, in the interpretation of the requirements of sub-division (c) of section 35, took the position that every applicant for a certificate must file an affirmative consent or permit or some affirmative action of the municipal authorities through which bus lines are operated, and that the mere filing of a certificate from the municipal authority that no permit or consent or other authority was required by the existing ordinances was not sufficient to vest the Commission with jurisdiction to issue a certificate for the operation of bus lines

through the limits of such municipalities. Counsel for the Santa Fe, however, took a somewhat different position in that he was inclined to the belief that such certificates were prima facie evidence of the non-existence of any required consent of any such municipality; but that as to charter cities or so-called "Home Rule Cities" through which applicant proposed to operate, the Commission had no jurisdiction in such cities in any event as, under the decision of our Supreme Court in the case of Denver vs. Mountain States T. & T. Co., et al, 67 Colo. 225, 184 Pac. 604, P.U.R. 1920-A 238, the Commission was divested of all jurisdiction for the regulation of public utilities operating in such "Home Rule Cities" because Article 20, of the Colorado Constitution as amended in 1912, vested such jurisdiction in the local authority.

Counsel for applicant argued that the provisions of sub-division (c) of section 35 were plainly to the effect that it was a matter in the discretion of the Commission as to what the Commission should require to be shown by an applicant who proposed to operate bus lines to, in and through municipalities within this State; and that a certificate from a town or city official who is presumed to know the fact that a city or town had no ordinance or rule requiring any permission, consent, franchise, etc. from such city or town, was all that sub-division (c) required, and should satisfy the requirements of the law that vests such matter in the discretion of the Commission.

Without unduly prolonging this decision and order, the Commission has heretofore repeatedly held that the filing by an applicant for a certificate of public convenience and necessity of a certificate from a municipal authority that it did not require from such applicant any affirmative action in the way of consent, permit, or otherwise, was all that the Commission could reasonably require and was in satisfaction of the requirements of said sub-division (c) of Section 35.

To hold that the legislative intent of sub-division (c) was to require an affirmative showing that each town and city must affirmatively give its consent or permit to the operation of a motor bus line through its municipal limits, would be, in effect, to nullify the statute, as such a method

of procedure would be almost impossible of procurement. It would enable any one town or city to block the operation of a transportation bus line even if the public convenience and necessity required such operation in the judgment of the Commission upon the facts in evidence. Such an interpretation is not a reasonable one, and the Commission feels that it ought not request an unreasonable requirement of an applicant for a certificate.

To go further, when an applicant files a certificate under the hand and seal of a proper official of a municipality that under its ordinances, rules or charter the affirmative consent of such municipality is not required to be obtained by an applicant, such showing will be all that the Commission will require to be shown by an applicant under the terms of said sub-division (c), section 35, of the Act.

With respect to the charter or "Home Rule" cities, it will be observed that the decision in the Telephone case, supra, involved merely the establishment of rates in such home rule city and that that decision goes no further than to say that only such functions of a utility as are purely of local and municipal concern are without the jurisdiction of the Commission and are vested in the local authorities. Whether or not the operation of a motor bus line as a means of transportation into and through a home rule city carrying passengers from town to town is a matter of local concern, may well be doubted; at any rate, the court of last resort has not passed upon that phase of the question in the Telephone and Telegraph case, above cited.

With respect to the certificates filed and the statements of the respective city attorneys of Denver and Pueblo, the Commission finds and holds that they are prima facie evidence that applicant has fulfilled the requirements of sub-division (c) of Section 35 of the Act. With respect to the testimony of witness Huntington that applicant had paid license fees in Colorado Springs for the operation of five busses, the Commission finds and holds that oral testimony of the alleged fact is not sufficient to meet the requirements of the statute, and that applicant must file with the Commission some written evidence of that fact as it pertains to Colorado Springs, and some written

evidence of any other town or city through which it operates aside from those already on file, in the event that the Commission ultimately finds that the evidence entitles the applicant to a certificate of public convenience and necessity, upon final consideration and determination of its application.

ORDER

IT IS, THEREFORE, ORDERED, That the motion to dismiss the application filed by protestants June 13, 1923, 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 June, 1923.

(Decision No. 618)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of the Board of County Commissioners of Saguache County for the opening of a public highway over the right-of-way and track of The Denver and Rio Grande Western Railroad Company at Mile Post 265 plus 2052 feet, in Section 16, T. 48 N., R. 4 E., near Crookton, Colorado.

APPLICATION NO. 225

June 28, 1923

STATEMENT

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Saguache County, in compliance with Section 29 of the Public Utilities Act as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track of the Denver and Rio Grande Western Railroad at mile post 265 plus 2052 feet, in Section 16, Township 48 North, Range 4 East, near Crookton, Colorado.

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's Railway Engineer, in company with a representative of the railroad company and Mr. Edward Clark, County Commissioner of Saguache County, on May 2, 1922. The Engineer's report to the Commission recommends that the crossing be opened under certain terms and conditions. He states that the view of approaching trains from the east is somewhat obstructed when the crossing is approached from the north by a dense growth of willows close to the right-of-way. This matter was taken up with Mr. Clark at the time he viewed the crossing, and he agreed that the county would bear the expense of having the willows removed.

On November 1, 1922, this Commission was in receipt of a protest to the establishment of this crossing by the Denver and Rio Grande Western Railroad Company through Mr. E. N. Clark, its General Attorney. On June 9, 1923, this Commission was in receipt of a letter from Mr. Clark, in which he states:

"I beg to advise you that, if the County Commissioners will, at the county's expense, remove these willows and keep them cut in the future so as not to obstruct the view, The Denver and Rio Grande Western Railroad Company will withdraw its objection to the application and consent to the entry of an order by your Commission providing for the crossing on the usual terms." The County Commissioners of Saguache County having consented to the terms and conditions as herein provided, and The Denver and Rio Grande Western Railroad Company being fully advised of these matters and no objections having been filed, the Commission will, therefore, issue its order granting permission for the establishment of the crossing as requested.

O R D E R

IT IS, THEREFORE, ORDERED, That in compliance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway at grade be, and the same is, hereby permitted to be opened and established over the main line track of the Denver and Rio Grande Western Railroad at mile post 265 plus 2052 feet, in Section 16, Township 48 North, Range 4 East, near Crookton, Colorado; conditioned, however, that prior to the opening of said crossing to public travel it shall be constructed in accordance with plans and specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo., P.U.C. 128.

IT IS FURTHER ORDERED, That prior to the opening of said crossing the County Commissioners of Saguache County shall cut all willows to the north and east of this crossing that is necessary in order that a good view of approaching trains may be had.

IT IS FURTHER ORDERED, That the County Commissioners of Saguache County shall bear the expense of cutting any willows which may in the future obstruct the view of approaching trains at this crossing and as may be determined by the Engineer for this Commission.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway at the crossing, including the necessary

drainage therefor, be borne by Saguache County, and that all other expense in the matter of installation and maintenance of said crossing not herein otherwise provided for, shall be borne by respondent, The Denver and Rio Grande Western Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Frank E. Hall Ernman,

By H. L. Lamon

Commissioners.

Dated at Denver, Colorado,
this 28th day of June, 1923.

(Decision No. 619)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the Town of Antonito, Colorado, for the Opening of a Public Highway at Grade Over the Tracks and Right-of-Way of the Durango Branch of the Denver and Rio Grande Western Railroad on Second Avenue in the Town of Antonito, Colorado.

APPLICATION NO. 232.

- - - - - -
June 28, 1923.
- - - - - -

Appearances: Culver A. Green, Conejos, Colorado, for the Town of Antonito, Complainant; Thomas R. Woodrow, Denver, Colorado, for The Denver and Rio Grande Western Railroad Company, Defendant.

S T A T E M E N T

By the Commission:

This matter comes before the Commission upon an application filed in this office December 18, 1922, by the town of Antonito for the opening of a public highway at grade over the Durango branch of the Denver and Rio Grande Western Railroad on Second Avenue in the town of Antonito.

The principal reason for the town authorities requesting this crossing is in order that state highway No. 16 may have a direct route through the town, thence continuing to the south. The application further states that the present route is circuitous, using the crossing on Third Avenue, and that this crossing is considered by the board extremely dangerous on account of the view in both directions being obscured by cars on sidings of said railroad company and by buildings, and that this crossing on Third Avenue is not a through crossing but is blocked on the east side by the railroad company's cement platform, side tracks and buildings, necessitating winding about through said railroad company's right-of-way through which no road is maintained by either the railroad company or others, thereby causing the traveling public to assume very dangerous risk and great inconvenience by being compelled to use this passage on Third Avenue.

On December 19, 1922, a copy of this application was served upon the defendant railroad company, and on December 28, 1922, the railroad filed its answer with this Commission, wherein it objects and states that there is no public necessity for an additional crossing over said railroad right-of-way and tracks in said town of Antonito, inasmuch as the necessities of the public are now amply provided for by crossings which exist and are used by the public; and further objects on the ground that the crossing on Second Avenue would be dangerous, and that to install a crossing on Second Avenue in addition to the one now on Third Avenue would diminish the capacity of the present sidings and would be an unnecessary burden upon said Denver and Rio Grande Western Railroad Company.

On notice to all parties concerned, the matter was set down for hearing by the Commission on Saturday, March 3, 1923, 10:00 o'clock A. M., at Antonito, and was heard on said day at 4:00 o'clock P. M. at the office of Attorney Scott at Antonito, Colorado, by Commissioner Haldermsn. Prior to the hearing Commissioner Haldermsn, in company with the Commission's Railway Engineer, members of the Board of Trustees of said town, the superintendent and other officials of said railroad company, and others, viewed the site of the present and the proposed crossings.

Present Third Avenue Crossing

The route for through travel on state highway No. 16 should be remedied and the present winding road through the railroad yard should be abandoned. It is quite evident from the testimony of nearly all the witnesses that the view of approaching trains, together with the uncertainty of their movement in the vicinity of the depot, causes the present Third Avenue crossing to be a dangerous one. Furthermore, from this crossing on Third Avenue to the present crossing of the Santa Fe branch track on Second Avenue, the highway winds through the right-of-way of The Denver and Rio Grande Western Railroad Company with dangerous turns, and neither the town, county nor state has jurisdiction to maintain or keep this road in proper condition for public travel. All witnesses testified that this crossing on Third Avenue was generally blocked by the passenger trains of defendant.

In view of the above facts and the further testimony of witnesses that the crossing is frequently obstructed by freight trains, the Commission is of the opinion that this crossing, together with its present route to the Second Avenue crossing of the Santa Fe branch track, is dangerous to public travel and should be abolished.

Sidewalk between Third and Fourth Avenues for Pedestrians Traveling to Depot

By some amicable agreement between the town of Antonito and The Denver and Rio Grande Western Railroad Company, a sidewalk has been constructed from Fourth Avenue to a point midway between Fourth and Third Avenues and thence across the Durango tracks to the depot platform. By means of this sidewalk convenient access for passengers is had to the depot. It appears from the testimony of witnesses for the applicant and observation made by the Commission's Railway Engineer, that this passage is sometimes blocked by passenger trains in order to clear the Third Avenue crossing. It is apparent that if this Third Avenue crossing is abolished this pedestrian crossing can and must be opened for travel except only for such time as is needed for the passage of trains. To accomplish this, it may be necessary to extend the present depot platform somewhat farther to the south.

Crossing on Second Avenue as Requested in this Application

If the present Third Avenue crossing is abolished it is necessary that a crossing be opened at some more desirable location to establish a connection for through vehicular travel to and from the south, and also for access to the freight and passenger depot of the Denver and Rio Grande Western Railroad. It was the unanimous opinion of all witnesses for the applicant and of the Railway Engineer for the Commission, that the proposed crossing on Second Avenue would be less dangerous than the present crossing. The view of approaching trains is much better. It would eliminate the dangerous condition between the crossing of the Durango branch and the crossing of the Santa Fe branch by making a straight and through line of travel. It would improve the present Second Avenue crossing of the Santa Fe branch by eliminating the present turn and substituting therefor a direct right angle approach, thus affording a much better view of approaching trains. It

would establish a through route for vehicular travel to and from the south not having business at the depot or freight house, and by its establishment as a public highway would enable the town of Antonito to provide and maintain a better roadway for public travel.

Witnesses for the defendant testified that in their opinion this crossing would be more dangerous than the present Third Avenue crossing on account of its greater distance from the depot and the consequent increased speed of trains. Inasmuch as this distance is less than four hundred feet, it does not appear to the Commission that this objection is serious nor one that can not be remedied by using due precaution after the proposed crossing has been established. These witnesses also protested on account of the fact that this crossing was through the railroad yard and would limit their yard capacity, and furthermore would be dangerous on account of cars stored in their yard which would obstruct the view of approaching trains. The first of these objections is met by the fact that the yard space to be occupied by the Second Avenue crossing is equalized by the yard space relinquished by the closing of the Third Avenue crossing. The second objection is met in the same way, that like conditions exist as to the crossing of the yard at both places. The Commission realizes the great danger of crossings where more than one track is crossed, and authorizes such crossings only when no other reasonable site is available. When such crossings must, of necessity, be established, it will so order only upon condition that no cars be left standing on any track crossed at a distance less than seventy-five feet from the center line of such crossing.

Many witnesses for the applicant testified that in their opinion the crossing on Third Avenue should be left open and the crossing on Second Avenue be established, stating that if the Third Avenue crossing were closed it would be an inconvenience for vehicles to reach the passenger and freight depots. The Commission has considered this inconvenience and realizes there will be some dissatisfaction on this matter. It, however, is firmly of the opinion that this inconvenience is fully justified in the matter of safety to the traveling public and economy in the operation of railroad traffic. In these days of motor travel the inconvenience in reaching the depots is

comparatively slight.

The issues involved are whether or not the crossing on Second Avenue should be opened, and if opened to public travel as to whether or not public safety demands that only one crossing be established in this vicinity, in which event the Third Avenue crossing should be closed. This Commission was given jurisdiction over these matters under Section 29 of the Public Utilities Act, as amended April 16, 1917, "to the end, intent and purpose that accidents may be prevented and the safety of the public promoted." It does not seem proper that the Third Avenue crossing, which was testified by nearly all witnesses as being dangerous, should remain open if some other more desirable and safe crossing can be used for the convenience and necessity of the traveling public.

In view of the above facts it will, therefore, be ordered that the present crossing at the foot of Third Avenue be closed, and that Second Avenue be opened for public travel across the tracks and right-of-way of The Denver and Rio Grande Western Railroad Company under the terms and conditions hereinafter in the order set forth.

O R D E R

IT IS THEREFORE ORDERED, In accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, that a public highway at grade be, and the same is hereby, permitted to be opened and established over the tracks and right-of-way of The Denver and Rio Grande Western Railroad Company on Second Avenue in the town of Antonito, Colorado; conditioned, however, that prior to the opening of said crossing to public travel it shall be constructed in accordance with plans and specifications 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 construction and maintenance of grading the roadway on Second Avenue across the right-of-way of The Denver and Rio Grande Western Railroad Company, including the necessary drainage therefor, be borne by the town of Antonito, and that all other expense in the matter of installation and maintenance of said crossing as herein pro-

vided shall be borne by the respondent, The Denver and Rio Grande Western Railroad Company.

IT IS FURTHER ORDERED, That as soon as Second Avenue is established and opened for public travel, the crossing at the feet of Third Avenue is hereby abolished and closed to public travel.

IT IS FURTHER ORDERED, That cars or other rolling stock of the railroad company shall not be allowed to remain on any track crossed at a distance less than seventy-five feet from the center line of said Second Avenue crossing.

IT IS FURTHER ORDERED, That the sidewalk for pedestrian travel from the town of Antonito to the depot leading from Fourth Avenue and crossing the Durango branch of the Denver and Rio Grande Western Railroad tracks approximately midway between Fourth and Third Avenues must be kept open for travel excepting only at such time as railroad trains are passing over the same.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 28th day of June, 1923.

(Decision No. 620)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the Board of County Commissioners of Saguache County for the Opening of a Public Highway at Grade Over the Right-of-Way and Track of The Denver and Rio Grande Western Railroad Company at Mile Post 258 Plus 516 Feet Near Sargent, Colorado.

APPLICATION NO. 226

- - - - - -
June 29, 1923.
- - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Saguache County in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track of the Denver and Rio Grande Western Railroad at Mile Post 258 plus 516 feet, near Sargent, Colorado, filed September 22, 1922.

Upon receipt of the above application a copy was served upon The Denver and Rio Grande Western Railroad Company, through E. N. Clark, its General Attorney, and on November 1, 1922, the Commission received its answer wherein it states, "that the establishment and use of a crossing at the point described in said application would result in great danger to employes and passengers on trains and to the general public using said road crossing, for the reason that persons crossing the track of the railroad company at said point would have a view of trains approaching from the east for a distance of approximately 350 feet, which distance is not sufficient for safe use and operation of said crossing. That there is an available location for a highway crossing over the railroad track at Mile Post 258 plus 896 feet where a clear and unobstructed view to the east for a distance of 600 feet may be obtained by persons crossing the track at said point."

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's Railway Engineer, in company with a representative of the railroad company and Mr. Edward Clark, County Commissioner of Saguache County, on May 2, 1923. The Railway Engineer's report to the Commission states, "it appears that this crossing is now in use and established before the application for the same has been approved by this office. The objection made by the attorney for The Denver and Rio Grande Western Railroad Company appears to me to be entirely justified. I am quite of the opinion that this crossing should be moved about 400 feet farther west to a point spoken of as an available location for a highway crossing in the protest filed by The Denver and Rio Grande Western Railroad Company."

It is to be regretted that the railroad company allowed this crossing to be used prior to the time permission had been obtained from this office for its establishment. As is noted in this case, this practice causes misunderstandings, incurs unnecessary expense and must be discontinued.

On May 2, 1923, Mr. Clark, in discussing the matter of the location of the proposed highway, agreed with the Railway Engineer of the Commission that the county would consent to the change in location as suggested by The Denver and Rio Grande Western Railroad Company.

On June 27, 1923, the Commission received a letter from Mr. John I. Palmer, County Attorney of Saguache County, wherein he states that the Board of County Commissioners of Saguache County approves the suggestions made by the Commission's Railway Engineer, Mr. C. D. Vail.

The County Commissioners of Saguache County having consented to the terms and conditions as hereinafter provided and The Denver and Rio Grande Western Railroad Company being fully advised of these matters, and no objections having been filed, the Commission will, therefore, issue its order granting permission for the establishment of the crossing at a point 380 feet west of the location designated in this application.

O R D E R

IT IS THEREFORE ORDERED, That in compliance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway at grade be, and the same is hereby, permitted to be opened and established over the main line track of The Denver and Rio Grande Western Railroad Company at Mile Post 258 plus 896 feet, in Saguache County near Sargent, Colorado; conditioned, however, that prior to the opening of said crossing to public travel it shall be constructed in accordance with plans and specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway at the crossing, including the necessary drainage therefor, be borne by Saguache County, and that all other expense in the matter of installation and maintenance of said crossing as herein provided be borne by respondent, The Denver and Rio Grande Western Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of June, 1923.

(Decision No. 621)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of John J. Mullen for permission to construct a local telephone system in the country surrounding Conifer, Colorado.

APPLICATION NO. 257

June 28, 1923

S T A T E M E N T

By the Commission:

This is an application for a certificate of convenience and necessity for the construction of a local telephone system in the country surrounding Conifer, Colorado, filed with the Commission June 2, 1923, by John J. Mullen, of Conifer, Colorado.

After due notice to all parties concerned, the matter was set for hearing June 28, 1923, at the Hearing Room of the Commission, at 10:00 o'clock A. M.

On June 28, 1923, applicant filed his motion to dismiss.

O R D E R

IT IS, THEREFORE, ORDERED, That the above application be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall

Commissioners.

Dated at Denver, Colorado,
this 28th day of June, 1923.

(Decision No. 6221)

PUC-14

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of)
Lewis J. Funk for a Certificate of)
Public Convenience and Necessity for) APPLICATION NO. 158.
the Operation of a Passenger and)
Freight Line in Mesa County, Colorado.)

- - - - -
July 2, 1923.
- - - - -

Appearances: For the Applicant, Lewis J. Funk, S. W. Heckman, Grand Junction, Colorado; for Protestant, Joseph H. Young, Receiver of The Denver & Rio Grande Western Railroad Company, Thomas R. Woodrow, Denver, Colorado.

S T A T E M E N T

By the Commission:

The application herein was filed with this Commission January 26, 1922. All interested parties were notified and this case was set down for hearing and was heard at the City Hall, Grand Junction, Colorado, Thursday, April 19, 1923. At the beginning of this proceeding the applicant asked leave to amend his application by striking out the reference to shipments of both freight and express, thus confining the business of the applicant to the transportation of passengers in both directions between Grand Junction and Palisade and intervening points.

The testimony shows that the applicant has been operating for almost four years over the route in which he is now seeking a certificate. The evidence shows the district between Grand Junction and Palisade to be almost exclusively a fruit growing district, and that the land is divided into small tracts and contains a population of about three thousand people. It was also contended that those living between Palisade and Clifton and those between Grand Junction and Clifton, were it not for the auto bus line would be compelled many times to walk to either Grand Junction or Palisade to take a train for their destination.

The testimony shows that the protestant railroad company operates three passenger trains each way daily between the points involved. However, No. 2 eastbound, and No. 1 westbound have no regular stops for the pickup of passengers at Palisade, thus leaving but two passenger trains available each way daily from this point. Westbound No. 3 stops at Palisade at 8:55 A. M.; No. 15 westbound stops at same point at 1:55 P. M. Eastbound No. 16 leaves Grand Junction at 1:20 P. M. and stops at Palisade at 1:55 P. M., while No. 4 leaves Grand Junction at 7:05 P. M. and stops at Palisade at 7:28 P. M.

The applicant now makes three round trips each week day and one round trip on Sunday afternoon with a seven passenger Hudson car. He has a five passenger car in reserve and also a twelve passenger car which is used in the fruit harvest season to take care of the constantly shifting of harvest hands from one locality to another, which is considered as being almost an absolute necessity.

The auto bus leaves Grand Junction at 7:30 A. M., arrives at Palisade at 8:15, leaves Palisade at 8:30 and arrives at Grand Junction at 9:15 A. M. On the second trip the bus leaves Grand Junction at 10:45 A. M., arrives at Palisade at 11:30 A. M., and again leaves Palisade at 1:00 P. M. and arrives in Grand Junction at 1:45 P. M. The third trip the bus leaves Grand Junction at 4:30 P. M. and arrives at Palisade at 5:15 and leaves again at 5:30 and arrives at Grand Junction at 6:15 P. M. In rendering this service this applicant picks up and discharges passengers at any and all points along the route, which is a decided convenience. The fare, Grand Junction to Palisade, is 75 cents; for round trip, $1.25; between Grand Junction and Clifton and between Clifton and Palisade the fare is 40 cents one way, and round trip is 75 cents.

Besides the great convenience and necessity shown for the haulage of passengers, the testimony also shows that the operation of the auto bus is a great convenience in furnishing a medium for the delivery to the people along this route of the Grand Junction Morning News and the Daily Sentinel, an afternoon paper. By using the auto service, the Morning News is delivered

at Fruitvale, Highland Park, Clifton, Bridges Switch, Mt. Lincoln and Palisade. This service is performed for all the localities by 8:45 A.M., daily, excepting Sunday.

Depending on the train service, the morning paper could not leave Grand Junction until 1:20 P. M., and the afternoon papers would not be delivered in the smaller places at all, and not in Palisade until 7:28 in the evening, which would almost entirely preclude the reading of the local daily papers on the day of publication.

Frank H. Reeds, city editor of the Grand Junction Sentinel, testified that he had nine newspaper routes between Grand Junction and Palisade, with a circulation of from 700 to 750 copies. This paper goes to press at 4:00 P. M. and at 4:15 P. M. the first papers printed are delivered to the auto bus and they in turn are delivered to the numerous carriers along the route, the last delivery being made at Palisade at 5:15 P. M., which gives the three thousand people adjacent to this route practically the same service and opportunity to read the news of the day as is enjoyed by the people of Grand Junction.

From the evidence in this case, this Commission finds that public convenience and necessity requires and will require the operation of an auto bus line between Grand Junction and Palisade and intermediate points for the carrying of passengers to and from said points, and will issue its order to within applicant in conformity with the findings herein.

O R D E R

IT IS THEREFORE ORDERED, That the application of Lewis J. Funk for a Certificate of Public Convenience and Necessity for the operation of a motor bus line for the transportation of passengers between Grand Junction and Palisade, and vice versa, be, and the same is hereby, granted, and this shall be considered and is his certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Emeritus.

W. D. Lawson

Commissioners.

Dated at Denver, Colorado,
this 2nd day of July, 1923.

(Decision No. 623)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of The Maybell Telephone Company for a Certificate of Public Convenience and Necessity authorizing the Construction of Telephone Lines.

APPLICATION NO. 195

(July 5, 1923)

STATEMENT

By the Commission:

This is an application for a certificate of convenience and necessity for the construction of additional pole lines of The Maybell Telephone Company in Moffat and Rio Blanco Counties, filed with the Commission May 24, 1922, by Frank Ellis of Maybell, Moffat County, Colorado.

After due notice to all parties concerned, the matter was set for hearing July 13, 1923, at 10:00 o'clock A.M., at Craig, Colorado.

On July 3 the Commission received a letter signed by John B. Wills and W. B. Pleasant stating that they were the present owners of The Maybell Telephone Company and did not wish to follow up the application made by Frank Ellis, who had not been connected with the Company for several months, and asked that said application be dismissed.

ORDER

IT IS THEREFORE ORDERED, That the above application be, and the same is, hereby dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Frank E. Hall
Commissioners.

Dated at Denver, Colorado,
this 5th day of July, 1923.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of)
The Colorado Motor Way, Inc., for a)
certificate of public convenience)
and necessity.)

APPLICATION NO. 191

July 17, 1923

ORDER

WHEREAS, at a hearing herein held June 18, 1923 upon motion to dismiss, filed by respondents, for failure of applicant to complete its showing with reference to having received the required consent, or permit, of the municipalities through which it seeks to operate, or, in lieu thereof, of the absence of any such requirement; and,

WHEREAS, upon said occasion, the motion to dismiss was denied and applicant given permission to complete the filing of such showing as may be desired; and,

WHEREAS, on June 28, 1923, respondents herein, Atchison, Topeka and Santa Fe Railway Company, The Colorado and Southern Railway Company, Joseph H. Young, Receiver of The Denver and Rio Grande Western Railroad Company, and Union Pacific Railroad Company, filed their respective motions for leave to introduce further evidence upon completion of such showing so permitted filed herein by applicant as above set forth; and,

WHEREAS, on July 16, 1923, applicant filed further showings as to the towns and cities of Windsor, Colorado Springs, Fort Collins, Timnath, Eaton, Ault, Pierce, and Nunn, Colorado; and, upon the same day, applicant withdrew its application to operate in the town of Littleton, Colorado, the copies thereof having been served upon respondents.

IT IS, THEREFORE, ORDERED, That the motion of respondents for leave to introduce further evidence be granted, and that the matters involv-

ed herein be set down for further hearing at the Hearing Room of the Commission, State Office Building, Denver, Colorado, at 10 o'clock A. M., Monday, July 23, 1923;

That, at such hearing, respondents herein and applicant may submit such further evidence as may be desired touching and concerning the question of the consent, or permit, or the absence thereof, of the various municipalities through which applicant seeks a certificate of public convenience and necessity to operate.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 17th day of July, 1923.

(Decision No. 625)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of The Mercantile Service Corporation, Complainant, vs. American Railway Express Company, Defendant.	)	CASE NO. 256
The Pueblo Ice Cream Company, Polar Ice Cream & Supply Company, Complainants, vs. American Railway Express Company, Defendant.	)	CASE NO. 255

ORDER DENYING APPLICATION FOR REHEARING

(July 20, 1923)

Appearances:
For the Complainant, R. L. Ellis, Esq., Pueblo, Colo.
For the Defendant, J. H. Mooers, 49 Broadway, New York.

Interveners:
The Colorado & Southern Railway Company by Messrs. E. E. Whitted and J. Q. Dier; for The Denver & Rio Grande Western Railroad System, E. N. Clark and Thos. R. Woodrow; for The Chicago, Rock Island & Pacific Railway Company, William V. Hodges and D. Edgar Wilson; for the Atchison, Topeka & Santa Fe Railway Company, Erl H. Ellis; for the Union Pacific Railroad Company, E. G. Knowles.

S T A T E M E N T

By the Commission:

On December 6, 1922, the Commission entered its decision No. 577 in Case No. 256, ordering the defendant, American Railway Express Company, to restore the bread rates in effect in Colorado immediately previous to the 26 per centum increase allowed under Colorado P.U.C. Application No. 94, of November 3, 1920, from Denver, Colorado Springs and Pueblo to all points in Colorado reached by said Express Company; said rates to become effective December 15, 1922.

In Case No. 255, decision No. 578, the Commission entered its order requiring the defendant express company to restore the rates on ice cream to the basis in effect in Colorado immediately previous to the 26 per centum increase allowed under Colorado P.U.C. Application No. 94 of November 3, 1920, from Pueblo to all points in Colorado reached by said American Railway Express Company. It was also further ordered that the American Railway Express Company's tariff should provide for a reduction of five cents under its regular tariffs where the Express Company did not provide delivery service for empty ice cream containers. This order was also made effective December 15, 1922.

After the issuance of aforesaid orders, Nos. 577 and 578, on representations of the carrier company that it would be impossible to file tariffs in harmony therewith within the time named, the Commission thereupon in its supplemental orders Nos. 579 and 580 extended the time for the filing and taking effect of said orders from December 15, 1922, to January 1, 1923.

December 16, 1922, an application for rehearing in Cases Nos. 255 and 256 was filed with the Commission by the American Railway Express Company through its attorney, J. H. Mooers.

December 19, 1922, The Colorado & Southern Railway Company and The Denver & Rio Grande Western Railroad Company, Interveners, presented their petition for rehearing in Case No. 255 and presented four paragraphs of reasons therefor. December 28, 1922, The Chicago, Rock Island & Pacific Railway Company also presented its petition of intervention and petition for rehearing, through its attorneys William V. Hodges and D. Edgar Wilson.

The applications for rehearing in Cases Nos. 255 and 256 were set down for hearing, and all parties thereto were notified and arguments were heard at the hearing room of the Commission, State Office Building, Denver, Colorado, Thursday, December 28, 1922. At this time Erl H. Ellis, representing The Atchison, Topeka & Santa Fe Railway Company, and E. G. Knowles, appearing for the Union Pacific Railroad Company, and D. Edgar Wilson, on

behalf of The Chicago, Rock Island & Pacific Railway Company were allowed to intervene, and said interveners for and on behalf of the roads represented adopted the petitions filed by the American Railway Express Company, The Colorado & Southern Railway Company and The Denver & Rio Grande Western Railroad System in Cases Nos. 255 and 256.

In addition to oral arguments, that went more particularly to holding in abeyance the effective date of the Commission's order until after the general express rates hearings then being conducted by the Interstate Commerce Commission, there was introduced by Mr. Gallaher for defendant two exhibits. These had been introduced in I.C.C. Docket 13930 and were introduced in Cases Nos. 255 and 256 as defendants' and interveners' exhibits 1 and 2, being Express Rates 1922, showing results of operations and analysis of traffic.

The complainants in Cases Nos. 255 and 256 filed a petition asking for immediate denial of a rehearing, and alleged as follows in respect to both cases:

> "The railroad earnings from express business for the first three months of 1923, as compared to same months in 1922 and 1921, show an increase of 57.9% over 1922, and 85.8% over 1921. The earnings for the three months period, by authority of Interstate Commerce Commission reports of 1921, were $18,883,711; 1922, $22,218,879; 1923, $35,089,299.
>
> "In Express Rates 1922, Docket 13930, U. G. Powell of Nebraska submitted exhibit No. 191. On page 10 of this exhibit it is shown that the eastern district is not paying expenses; the southern district is doing but little better; while the western district, or the district in which Colorado is situated, is not only paying its expenses but is helping the eastern and southern districts to pay their expenses. The percentage of the rate for the twelve months period in 1922, as shown in Mr. Powell's exhibit, is as follows:
>
> | | |
> |---|---|
> | Eastern district | 3.287 cr |
> | Southern district | 3.781 |
> | Western district | 10.881 |
>
> "Arizona, Nevada, Idaho, Utah and Montana never did permit the 26% advance to become effective, while the State of Nebraska, on June 15, 1921, reduced the rates on bread, butter, eggs, fresh and green fruit, berries, green vegetables, meats, fresh and cured, poultry, fish and ice cream. Colorado is almost surrounded by states which either did not permit the 26% advance and which had never been required to make the 26% advance by the Interstate Commerce Commission, although that body had power to do so, or which have ordered reduced express rates on bread and ice cream since the effective date of the 26% advance.

"The railroads of the United States for the month of April, 1923, report the largest business in the history of the railroads, and the past five months in 1923 have been rated by the railroads as equal to that of any other like period in the history of railroading.

"The condition of the baking companies in Colorado, under the present express rates, is gradually growing worse, which is shown by the following statement which shows the number of shipments and pounds of bread shipped to Colorado points from both Denver and Pueblo:"

The Sunville Baking Company, of Pueblo, Colorado, in the month of September, 1920, made 2233 shipments weighing 153323 lbs. This same company, during the month of February, 1923, made 1291 shipments which aggregated but 83399 lbs., or only 54.3% of the amount shipped in September, 1920.

The Purity Bread Company, of Pueblo, Colorado, in the month of September, 1920, made 1977 shipments aggregating 127378 lbs. For the month of February, 1923, this company made 738 shipments totaling 39352 lbs., or only 30.9% of the month of September, 1920.

The Denver Bread Company for the month of September, 1920, made 456 shipments totaling 26612 lbs., while in the month of February, 1923, it made but 363 consignments totaling 19005 lbs., or 71.4% of what it shipped in September, 1920.

Further illustrating the great falling off in the bread shipments that has taken place, is shown by the Western Bread Company, of Denver, Colorado. This company in the month of September, 1920, made 416 shipments totaling 21597 lbs., while for the month of February, 1923, it made but 130 shipments totaling 5573 lbs., showing a falling off of 74.2%.

One of the express rates hearings for this district, including Zones 3 and 4, was held in Denver, Colorado, March 15, 1923, and the last hearing held by the Interstate Commerce Commission was in Washington, D.C., April 9, 1923.

No new or important evidence or fact has been presented in either of these cases by the defendant that was not before the Commission in the original hearing, the defendant relying almost wholly upon the theory that the Commission's order should be held in abeyance until after the express rates had been passed upon by the Interstate Commerce Commission.

The Commission has held its order in these cases inoperative since December 15, 1922, to the great losing of the complainants' business interests, in hopes that a decision in the general rates case No. 13930 before the Interstate Commerce Commission would be rendered at an early date. This, of course, has not been done, and owing to the magnitude of the case, involv-

ing as it does all express rates in the United States, it seems unreasonable to expect a decision before the lapse of a year or more.

After a careful study of all the evidence in these cases, and being fully advised in the premises, the Commission deems it unwise and unjust to the complainants herein to withhold its decision longer.

After considering all matters presented and carefully reviewing the testimony in the original hearing, the Commission is of the opinion there is no valid reason why Cases Nos. 255 and 256 should be reopened and in consequence of which a rehearing of the aforesaid cases will be denied.

O R D E R

IT IS THEREFORE ORDERED, by the Commission, that the "Application for Rehearing" by the defendant, American Railway Express Company, and the interveners hereto, in cases numbered 255 and 256, be and the same is hereby denied.

IT IS FURTHER ORDERED, That the defendant carrier, American Railway Express Company, shall file with this Commission its amended tariffs on or before August 4, 1923, on ice cream and ice cream containers, as ordered in Case No. 255 and decision No. 578 of this Commission, under date of December 6, 1922.

IT IS FURTHER ORDERED, That the defendant carrier, American Railway Express Company, be, and is hereby, ordered to file with this Commission on or before August 4, 1923, its amended tariffs on bread in accordance with this Commission's order No. 577, in Case No. 256, which said order was of the 6th day of December, 1922.

IT IS FURTHER ORDERED, That the reduced rates ordered in both cases, namely 255 and 256, under orders numbered 577 and 578, shall become effective August 4, 1923.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 20th day of July, A. D. 1923.

(Decision No. 626)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of the Board of County Commissioners of Chaffee County, Colorado, for the changing of two public highways over the right-of-way and track of the Denver and Rio Grande Western Railroad in Sections 28 and 33, T. 49 N., R. 8 E.

APPLICATION NO. 204

July 23, 1923

S T A T E M E N T

By the Commission:

This matter comes before the Commission in Application No. 204 filed in this office on July 5, 1922, by Thomas A. Nevens, Attorney for the Board of County Commissioners of Chaffee County, for the changing of two public highway crossings over the right-of-way and track of The Denver and Rio Grande Western Railroad Company in Sections 28 and 33, Township 49 North, Range 8 East, Chaffee County, Colorado.

This application was referred to Mr. E. N. Clark, General Solicitor for The Denver and Rio Grande Western Railroad Company, on July 11, 1922, and on July 28 the railroad company, through Mr. Clark, advised the Commission that it had no objection to the changing of the location of these crossings under certain terms and conditions. On September 14 this Commission received a letter from said Thomas A. Nevens, wherein he requests that the order of the Commission be held up for the present, in view of the fact that a change in the location of the highway may entirely eliminate both of these crossings. On July 4, 1923, said Thomas A. Nevens informed this Commission that Application No. 204 may be dismissed on the confirmation by the highway department of his information that the location of the highway had been changed, eliminating both of these crossings referred to in Application No. 204. On July 17, 1923, Mr. Ernest Montgomery, Division Engineer of the

State Highway Department, Colorado Springs, Colorado, informed the Commission that these crossings had been eliminated by re-location of the state highway.

O R D E R

IT IS THEREFORE ORDERED, That the application made in this case be withdrawn, and that this case be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 23rd day of July, 1923.

(Decision No. 627)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the matter of the Application of the Board of County Commissioners of Chaffee County for the opening of a public highway crossing at grade over the Right-of-Way and Track of The Denver and Rio Grande Western Railroad System on its narrow gauge line, at a point where the section line of Sections 1 and 2, T 49 N, R 8 E, New Mexico Principal Meridian, intersects said railroad track in Chaffee County, Colorado.

APPLICATION NO. 259.

(July 23, 1923)

STATEMENT

By the Commission:

This proceeding arises out of the application of the Board of County Commissioners of Chaffee County, in compliance with Section 29 of the Public Utilities Act as amended April 16, 1917, 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 System, at a point where the section line of Sections 1 and 2, Township 49 North, Range 8 East, intersects said railroad track in Chaffee County, Colorado.

On July 18, 1923, Mr. M. N. Lines, Assistant Railway Engineer for this Commission, inspected the site of the crossing and reports that there are no obstructions of any character on either side of the proposed crossing and that the crossing is necessary as an outlet for people living on either side of the track in this vicinity.

On July 11, this Commission was in receipt of a letter from Mr. E. N. Clark, General Attorney for The Denver and Rio Grande Western Railroad System, wherein he states: "I beg to advise you that the Receiver of the Railroad Company does not desire to interpose any objection to the establishment of this crossing on the usual terms and conditions."

The County Commissioners of Chaffee County and The Denver and Rio Grande Western Railroad System being fully advised of these matters and having consented to the terms and conditions as hereinafter made in the order, and no objections having been filed, the Commission will, therefore, issue its order granting permission for the establishment of the crossing as herein requested.

O R D E R

IT IS THEREFORE ORDERED, in accordance with Section 29 of the Public Utilities Act of the State of Colorado 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 the main line track and right-of-way of The Denver and Rio Grande Western Railroad System, at a point where the section line between Sections 1 and 2, Township 49 North, Range 8 East, New Mexico Principal Meridian, intersects said main line track in Chaffee 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 construction and maintenance of grading the highway at the crossing, including the necessary drainage therefor, be borne by Chaffee County, and that all other expense in the matter of installation and maintenance of said crossing, as herein provided, shall be borne by the respondent, The Denver and Rio Grande Western Railroad System.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 23rd day of July, 1923.

(Decision No. 628)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of the Board of County Commissioners of Logan County for the opening of a public highway crossing at grade over the right-of-way and track of the Chicago, Burlington and Quincy Railroad at a point 1050 feet southwesterly along said track from the point where the section line between Sections 1 and 12, Township 8 North, Range 51 West intersects said track in Logan County, Colorado.	APPLICATION NO. 265

July 31, 1923

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 Logan County, Colorado, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track and right-of-way of the Chicago, Burlington and Quincy Railroad at a point 1050 feet southwesterly along said track from the point where the section line between Sections 1 and 12, Township 8 North, Range 51 West intersects said track, being in the Northeast Quarter of the Northwest Quarter of Section 12, Township 8 North, Range 51 West and about one-half mile west of Galien station on said railroad in Logan County, Colorado.

In the fall of 1922, the Railway Engineer for this Commission, together with Mr. Holterf, Superintendent of the Chicago, Burlington and Quincy Railroad, and Mr. Alfred, then Chairman of the Board of County Commissioners of Logan County, looked over the situation on the ground and decided that the above was the proper location for a crossing of the proposed county road.

Upon receipt of this application, a copy of same was sent to Mr. E. E. Whitted, General Attorney for the Chicago, Burlington and Quincy

Railroad Company; and, on July 31, 1923, answer of the Chicago, Burlington and Quincy Railroad Company was received, which is as follows:

"Comes now the Chicago, Burlington and Quincy Railroad Company and for its answer in the above entitled matter says: That it has no objection to the installment of a highway crossing over its railroad and right-of-way at the place designated in said application; and hereby consents to the entry by the Commission of the order prayed for in said application, provided the Commission shall include in such order the usual conditions imposed by it in such cases to-wit: That the expense of construction and maintenance of the roadway at such crossing, including the necessary drainage therefor, be borne by Logan County.

"Dated this 30th day of July, A. D. 1923.

"CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,

By E. E. WHITTED

J. Q. DICE

J. L. RICE

Its Attorneys."

The County Commissioners of Logan County and the Chicago, Burlington and Quincy Railroad Company being fully advised of these matters and having consented to the terms and conditions as hereinafter made in the order and no objections having been filed, the Commission will, therefore, issue its order granting permission for the establishment of the crossing as herein requested.

O R D E R

IT IS, THEREFORE, ORDERED, In accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, that a public highway at grade be, and the same is hereby, permitted to be opened and established over the main line track and right-of-way of the Chicago, Burlington and Quincy Railroad at a point 1050 feet southwesterly along said track from the point where the section line between Sections 1 and 12, Township 8 North, Range 51 West intersects said track, being in the Northeast Quarter of the Northwest Quarter of Section 12, Township 8 North, Range 51 West and about one-half mile west of Galien station on said railroad in Logan 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 Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the highway at the crossing, including the necessary drainage therefor, be borne by Logan County; and that all other expense in the matter of installation and maintenance of said crossing as herein provided shall be borne by the respondent, the Chicago, Burlington and Quincy Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Ernest,

Commissioners.

Dated at Denver, Colorado,
this 31st day of July, A.D. 1923.

(Decision No. 629)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of the State Highway Department of Colorado for the changing of the location of a public highway now at grade for an overhead crossing on the Lake City branch of The Denver and Rio Grande Western Railroad System, near Sapinero in Gunnison County, Colorado.

APPLICATION NO. 261

July 31, 1925

STATEMENT

By the Commission:

This proceeding arises out of the application of the State Highway Department of Colorado in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the changing of the location of a grade crossing at Mile Post 514 plus 4840 feet to an overhead crossing of said railroad at Mile Post 514 plus 5050 feet, near Sapinero in Gunnison County, Colorado.

On July 21 this matter was submitted to Mr. J. G. Gwyn, Chief Engineer of The Denver and Rio Grande Western Railroad System, as to whether or not any objection would be made by the railroad company. On July 24 a letter was received from Mr. Gwyn wherein he states: "The establishment of the new crossing is entirely satisfactory to the Railroad Company, and it is taken for granted that upon its installation the existing grade crossing will be abandoned. I am also assuming that it is not the intention of the Highway Department to assess the Railroad Company for any part of the expense connected with the change of crossing."

The matter of expense was taken up with the Highway Department, and it is understood that the entire expense of this change will be borne by them. Inasmuch as an amicable agreement has been entered into between the parties in interest, no order will be entered relative to the cost of construction of this overhead crossing.

The State Highway Department of Colorado and The Denver and Rio Grande Western Railroad System being fully advised of these matters and having consented to the terms and conditions hereinafter made in the order, and no objections having been filed, the Commission will, therefore, issue its order granting permission for this change in location and character of crossing, as heretofore mentioned.

O R D E R

IT IS, THEREFORE, ORDERED, In accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, that an overhead crossing at Mile Post 314 plus 5050 feet be, and the same is hereby, permitted to be established over the right-of-way and track on the Lake City branch of The Denver and Rio Grande Western Railroad System, near Sapinero, Gunnison County, Colorado.

IT IS FURTHER ORDERED, That, as soon as the overhead crossing heretofore referred to is constructed and opened to travel, the existing grade crossing at Mile Post 314 plus 4840 feet on the Lake City branch of The Denver and Rio Grande Western Railroad System may be closed to travel.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Paul E. Hall Dennan

Commissioners.

Dated at Denver, Colorado,
this 31st day of July, 1923.

(Decision No. 630)

Before the Public Utilities Commission
of the State of Colorado.

The Town of Oak Creek, Plaintiff,	
vs.	Case No. 257.
The Oak Creek Service Company, Defendant.	

****

July 31, 1923.

****

Appearances:

Robert A. Walker, of Steamboat Springs, and
E. W. Merlin, of Oak Creek, for plaintiff;
M. Williams, of Oak Creek, for defendant.

STATEMENT

By the Commission:

On May 11, 1922, the plaintiff filed its petition with the Commission, wherein it complained of the rates charged by defendant for electric energy furnished to the plaintiff town and its inhabitants.

The gist of the complaint made by petitioner is that originally the franchise was granted to one John Sharp, for the establishment of an electric light plant or facility in said town, at and for the prices to be charged under the franchise, which was granted in July, 1911; that thereafter said franchise was transferred to The Oak Creek Service Company, which continued to furnish electrical energy for said town and its inhabitants at the rates specified in the ordinance granting said franchise, of 10 cents per K. W. H. for residence and business lighting, with a discount of ten per cent for prompt

payment, and with a minimum monthly guarantee of $1.50 per meter per month; that in October, 1918, application was made to this Commission by The Oak Creek Service Company for permission to increase the rates for said electric energy to 15 cents per K. W. H. for residence and business lighting, with a discount of ten per cent of all bills paid on or before the 10th day of the month following the delivery of the service; there also seems to have been entered into an agreement for street lighting at that time, whereby the town paid $5.50 per month, each, for ornamental pole lighting, but this service seems not to have been filed with the Commission, though having been in existence since 1918.

The basis of the petition of plaintiff seeking reduction, is that lower costs of material, of fuel, of labor, and, in short, of general expenses incurred and to be incurred by the Service Company in the furnishing of such electric energy to the town and its inhabitants has been greatly reduced, and it thereby asks that the Commission investigate and enter its order restoring a rate of 10 cents per K. W. H., as originally provided for in the franchise granted to the predecessor of the present Oak Creek Service Company.

A copy of the petition was served upon the Service Company, which on June 3, 1922, filed a general denial of the allegations of the complaint or petition.

Thereafter, the Auditor and Statistician for the Commission made an examination of the records and accounts of the defendant company, which at the hearing was introduced in evidence as the Commission's Exhibit 1.

Oak Creek is situate in Routt County, on the line of the Denver and Salt Lake Railroad, 195 miles northwest of Denver beyond the Continental Divide, and at an altitude of 7400 feet. By reason of climatic conditions, and other circumstances, a hearing of the case was delayed by the Commission until June 20, 1923, and upon the Commission's motion continued to July 11th, 1923, at Oak Creek, Colorado, all parties in interest having been duly notified thereof.

At the hearing the only evidence submitted by any one, aside from the testimony offered by the General Manager of the Oak Creek Service Company, was the Commission's Exhibit 1, being the report of its Auditor and Statistician, hereinbefore referred to. That report is under date of October 2, 1922, and embraces the operation of the Company for the first eight months of 1922, and also, by comparison, sets forth the transactions and status of the Company during the calendar years 1920 and 1921; and also a comparative statement of the operating revenues and expenses of the Company for the first eight months of 1920, 1921 and 1922.

From Exhibit 1 it is made to appear that during the eight months period of 1922, the Company operated at a deficit of $634.69, as compared with an operating credit of $1771.33 in 1921,and $1874.90 in 1920, but it is explained therein that increased service of necessity required an additional shift for the operation of the property, thereby increasing the labor cost as well as the coal consumption. Activity in rehabilitating the property on account of deferred maintenance is also an item of operating cost, while taxes have increased approximately one hundred per cent in 1922 over 1920, and a slight decrease in the operating revenues for the first eight months of 1922 as compared with the other two years, accounts for the deficit in 1922. The report of the Auditor also indicates that

the item of taxes and insurance on the plant for the entire year 1922 had been charged against the eight months operation specified in his report, and that if an adjustment of these items were applied for the entire calendar year of 1922 the deficit or net loss from operation would be reduced from $634.69 to $315.84.

The witness for the defendant company, Mr. Williams, its General Manager and principal owner, testified, in substance, that when he took hold of the property in 1921 the service being furnished was inadequate, on account of lack of generating equipment; that he had installed another unit at an expense of approximately $3,000.00, and otherwise improved the system, so that he was then and now equipped to and was giving adequate and efficient service to the town and its inhabitants.

The Commission took occasion to inspect the property of the Oak Creek Service Company, and from such inspection does not hesitate to state that it compares very favorably with any like equipment for the purpose in the State in a town of a similar size. Oak Creek is a coal mining camp, and has a population of about twelve hundred. No complaint was brought before the Commission as to the service being rendered, as to the quality of the lights, or for that matter, as to the alleged excessive charge being made therefor. The only complaint that was brought to the attention of the Commission was that the defendant company did not serve and was not proposing to serve a day current for electrical uses except for a few hours each Wednesday morning. While it is not in the province of the Commission to order the

establishment of a new service, it was suggested by the Commission that the installation of a day current for two days in the week as an experiment would be advisable, and perhaps in time would so develop business as to justify the Company in rendering day current more often than two days a week.

The report of the Auditor, Exhibit 1, includes a comparative statement of production costs, rates, etc., of three other electric plants in this State of towns approximately the same size and importance as Oak Creek. They are The Intermountain R. L. & P. Company at Las Animas, Colorado, The Montezuma Electric Company at Mancos, Colorado, and the municipal owned plant at Yuma, Colorado, for the year 1921, comparing each with the operations of the Oak Creek Service Company for the eight months period of 1922, January to August, inclusive. The production cost per K. W. H. generated in the four plants is shown to be:

Las Animas,	05.49
Mancos,	12.52
Yuma,	06.92
Oak Creek,	07.49

while the fuel cost per K. W. H. generated is shown to be:

Las Animas,	03.28
Mancos,	03.45
Yuma,	04.66
Oak Creek,	02.55.

The rates for domestic lighting are 15 cents per K. W. H. at Las Animas and Oak Creek, 16 cents at Mancos and 16 cents at Yuma for the first 20 K. W. H., with a descending scale of each 20 K. W. H. thereafter used up to a hundred K. W. H., which then is fixed at 11 cents. The street lighting service is comparable and in favor of Oak Creek; while other matters vary somewhat, owing to conditions existent at each particular town, but, generally

speaking, the comparisons are not to the disadvantage of the Oak Creek Service Company.

While fuel costs are somewhat lower in Oak Creek than in the other communities, owing to its close proximity to coal mines, which is somewhat reflected in the fuel cost per K. W. H. generated, as above shown, there was no testimony that other items of cost had been materially reduced. It was in evidence that the management had employed, and of necessity, an additional engineer, in order to maintain the standard of efficiency that is now being enjoyed by the residents of Oak Creek in this electric service.

From the testimony introduced the Commission is quite satisfied that Oak Creek has no legitimate complaint to make of the rates in effect, and particularly in view of the efficiency of the service being rendered by the defendant. In comparison with similar communities in this State, the Service Company is rendering a character of service for electrical uses in excess of that usually enjoyed by a community of that size, and at as low a rate as is enjoyed by any similar community. When conditions change, if ever, that lower costs will justify a lower rate, the plaintiff is not barred from renewing its application for a reduction of rates, but under the conditions and circumstances now prevailing, and in view of the lack of testimony, and the showing made by the Auditor in his report to the Commission, no injustice is being suffered on account of rates or service by the citizens and inhabitants of Oak Creek. It becomes the duty of the Commission, therefore, to deny the prayer of the petition.

O R D E R

IT IS THEREFORE ORDERED, that the prayer of the petition of the plaintiff be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

(SEAL)

Grant E. Halderman

Tully Scott

Commissioners.

Dated, Denver, Colorado,

July 31, 1923.

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. 631)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of The Custer County Electric Company for a certificate of public convenience and necessity for the construction of its new electric system and exercise of franchise rights.

APPLICATION NO. 262

- - - - - -
August 3, 1923.
- - - - - -

S T A T E M E N T

By the Commission:

Under date of July 17, 1923, The Custer County Electric Company of Westcliffe, Colorado, by J. Nelson Truitt, its attorney, made application to this Commission for a certificate of public convenience and necessity for the construction of a power transmission line from Ilse to Westcliffe, Colorado, for the purpose of supplying the town of Westcliffe and the inhabitants thereof, and persons and firms along said transmission line, with electric energy for lighting and power purposes. The power so distributed is to be purchased from the Southern Colorado Power Company at Ilse, Colorado, and the applicant will acquire the ownership of such part of the electric system of The Custer Water and Power Company as may be necessary by it for the proper conduct of its business. With this application was also filed a certified copy of the articles of incorporation under the laws of the State of Colorado, and applicant also filed a certified copy of a franchise granted it by said town.

Under date of July 17, 1923, a copy of the application was transmitted to the Mayor of Westcliffe with instructions to indicate within ten days the attitude of the town regarding the same.

On July 30, 1923, this Commission was in receipt of a letter from Mr. C. F. Harris, Mayor of Westcliffe, stating that the town had no objections to the application being granted. Under date of July 24, 1923, The

Custer Water and Power Company, by its Manager, Geo. A. Bachelor, asked for instructions regarding the cancelling of the rate tariffs of the last named company, together with instructions for the filing of the tariffs of The Custer County Electric Company, the applicant in this case. The instructions given were for the two companies to join in compliance with this Commission's General Order No. 22 in the cancellation and adoption, respectively, of the tariffs of The Custer Water and Power Company.

IT NOW APPEARING, That the applicant in this case having complied with the law and the rules and regulations of the Commission, and it further appearing that the applicant will not be in competition with any other utility of like character in any of the territory in which the certificate is prayed for; and,

IT FURTHER APPEARING, That the applicant will operate in the town of Westcliffe under a franchise granted by said town, and that a formal hearing in this matter would not bring forth any additional facts not now before the Commission, and would also cause unnecessary expense to the applicant and the Commission, the prayer of the petition will be granted.

O R D E R

IT IS THEREFORE ORDERED, That the application of The Custer County Electric Company for a certificate of public convenience and necessity to operate an electric system in the town of Westcliffe and a transmission system from the town of Westcliffe to the town of Ilse, Colorado, be, and the same is hereby, granted, and this order shall be deemed a certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 3rd day of August, 1923.

(Decision No. 632)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of The Custer Water and Power Company for permission to cease operation of the Electric Plant and System in the town of Westcliffe, Colorado, on December 31, 1922, and to remove all of said plant and electric system in the town of Westcliffe.

APPLICATION NO. 230

(August 3, 1923)

STATEMENT

By the Commission:

On November 6, 1922, The Custer Water and Power Company, by its Manager, Geo. A. Bachelor, made application to the Commission to abandon service in the town of Westcliffe, Colorado. Permission was also asked to remove all of said plant and electric system in the town of Westcliffe, and dispose of same. Continued loss in operation was the reason stated for making the application.

A copy of said application was served on the Mayor of the town of Westcliffe, and under date of November 9, 1922, the town through its Mayor, L. H. Schoolfield, asked that time be granted the town to investigate this matter on its merits.

Since this application was filed The Custer County Electric Company has made application to this Commission for a certificate of convenience and necessity for the operation of an electric system in the town of Westcliffe, and in its said application it states that it has acquired the rights and interests of The Custer Water and Power Company, the applicant in this case; and,

That for this reason and the further fact that The Custer Water and Power Company, through its Manager Geo. A. Bachelor, on July 27, 1923,

has asked permission to withdraw its application for abandonment.

O R D E R

IT IS THEREFORE ORDERED, That the application of The Custer Water and Power Company to withdraw its application of abandonment be, and is hereby, granted.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hall

Commissioners.

Dated at Denver, Colorado,
this 3rd day of August, 1923.

(Decision No. 633)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of)
The Trinidad Electric Transmission)
Railway and Gas Company for Permis-)
sion to Temporarily Suspend Opera-)
tion of its Cokedale Line.)

APPLICATION NO. 243.

- - - - - - -
August 15, 1923.
- - - - - - -

O R D E R

WHEREAS, It has been made to appear to the Commission by the verified petition of The Trinidad Electric Transmission Railway and Gas Company, of Trinidad, Colorado, filed August 14, 1923, that by reason of heavy rain storms in the nature of cloudbursts occurring on August 7 and August 11 some of the track and bridges of the company's interurban electric line operated on its Cokedale branch were damaged and otherwise impaired for the safe operation of its electric cars thereover; and,

WHEREAS, In and by said verified petition it is made to appear that to restore the tracks and bridges on its Cokedale branch so damaged and impaired by the rains aforesaid will involve an expenditure by the company of a minimum of $3,000.00, and to make the track and bridges permanently safe a sum considerably in excess of that; and,

WHEREAS, Said applicant has pending before this Commission its application for abandonment and cessation of operation of its interurban lines, and the hearing thereon has been had and briefs filed but that the Commission has not as yet rendered its decision and order in said application, and by reason thereof it would seem to be inequitable and unjust that applicant should incur the expense of rebuilding its tracks and culverts and bridges until and unless the application for abandonment is denied; and,

WHEREAS, A decision and order in said application for abandonment and cessation of service will soon be entered herein;

NOW, THEREFORE, IT IS HEREBY ORDERED, That the prayer of the supplemental petition filed herein August 14, 1923, be granted, and that applicant, The Trinidad Electric Transmission Railway and Gas Company be, and it is hereby, authorized and granted the right and privilege of suspending its service over its Cokedale line from Haller Junction to Cokedale, pending the further order of this Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 15th day of August, 1923.

(Decision No. 634)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of)
Monte Vista for the Opening of)
Washington and Farraday Streets Across) APPLICATION NO. 228.
the Tracks and Right-of-Way of the)
Denver and Rio Grande Western Railroad)
in the City of Monte Vista, Colorado.)

- - - - - - -
August 20, 1923.
- - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the City of Monte Vista in compliance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, for the opening of Washington and Farraday Streets across the tracks and right-of-way of the Denver and Rio Grande Western Railroad in the City of Monte Vista, Rio Grande County, Colorado.

The above application was filed in this office on October 19, 1922, and on the same date a copy of said application was served on said railroad company.

On October 25, 1922, this office received the answer and protest of said railroad, wherein it questions the authority of this Commission to establish these crossings prior to an easement or right-of-way having been obtained by said city. The answer further states, "that public interest and necessity do not require the establishment of a street or highway crossing at the points referred to in said application."

On notice to all parties concerned the matter was set down by the Commission for hearing on Friday, March 2, 1923, at 10:00 o'clock A. M., at Monte Vista, Colorado, and the same was heard on said day at said time in the City Hall at Monte Vista, Colorado.

General Description

The City of Monte Vista is located on the Denver and Rio Grande Western Railroad in the County of Rio Grande, State of Colorado, on a standard gauge line running from Alamosa to Creede. This main line track extends in a northwesterly direction through the city and between Farraday Street on the east and the "Gun Barrel" road on the west, crosses, or would cross if opened, twelve streets. Eight of the streets intersect east of the depot and four to the west. Seven of these streets, four to the east and three to the west of the depot, are now open to public travel. The streets east of the depot serve the residence section of the city and those to the west serve the business section. The crossings in the residence section cross only the main line track, while all streets west, including Washington Street projected, are crossed by one or more sidings or spurs in addition to the main line track.

Street Crossings West of Depot

As heretofore stated, the business section of the city is west of the depot. The first street west of the depot is Jefferson Street, which is now an existing crossing. In addition to the main line track it crosses the west end of a siding which extends eastward. This crossing did not enter into the present hearing only as showing the number of existing crossings.

The second street west of the depot is Adams Street, sometimes referred to as the Clark's Crossing, which is now an existing crossing. In addition to the main line track this street crosses a siding a few feet north of the main line. As this crossing is approached by vehicles from the south the view is good, but from the north the view is obstructed by buildings and further made dangerous by the crossing of the siding just before reaching the main line track.

The third street west of the depot is Washington Street as applied for in this application. In addition to the main line track this street, if extended, would cross a spur south of said main line track leading to the lumber yards, warehouses and reaching the south side of the Monte Vista Milling & Elevator Company's building west of the "Gun Barrel" road. This

street would also cross the same siding as crossed on Adams Street, just north of the main line track. Lumber yards to the south of this proposed crossing and coal bins on the north would obstruct the view of approaching trains. This fact, taking into consideration the number of tracks to be crossed, would make the proposed crossing a dangerous one to public travel.

Washington Street is now opened both to the north and south from the right-of-way of The Denver and Rio Grande Western Railroad Company. On the north this road on Washington Street extends on the right-of-way and branches to the east and crosses the track at Adams Street crossing. It also branches to the west and crosses the track on the "Gun Barrel" road. South of the track and about half way between First Avenue and the railroad company's right-of-way, a road branches to the east and crosses the Adams Street crossing. There is also a branch to the west from this street to the "Gun Barrel" road, but at present is not being used to any extent because of the fact that at the time of this hearing there was no bridge for vehicles over the Lariat Ditch on Washington Street.

The fourth street west of the depot, being the last west crossing in the city limits, is Broadway, more generally known as the "Gun Barrel" road. This is an existing crossing and the main thoroughfare for nearly all of the farmers living north of Monte Vista. In addition to the main line track this street crosses two spurs to the south of said main line track, one reaching to the south side and one to the north side of the Monte Vista Milling & Elevator Company's building located on the west side of this street. The view of trains is somewhat obstructed by buildings, making this crossing none too safe.

Business District

The principal stores of the city are located on First Avenue between the depot and the "Gun Barrel" road or on cross streets in close proximity to First Avenue. In addition to this a number of business houses have been established north of the tracks between the "Gun Barrel" road and Washington Street.

Commission's Authority

The increased hazard at railroad crossings, due to the more common use of automobiles, became quite noticeable about 1917. This fact was brought to the attention of the legislature, and, realizing that the local government could not protect the safety of the traveling public inasmuch as it had no jurisdiction over the railroads, on April 16, 1917, the legislature amended the Public Utilities Act by the insertion of Section 29. If existing crossings needed protection, it was evident that new crossings meant additional hazard. Great care should be exercised in their establishment. Consequently, jurisdiction as to where and how new crossings were to be installed was invested in this Commission.

Furthermore, if crossings were to be safeguarded and new crossings were to be installed, the expense to the railroads incident thereto would be passed to the public using the railroads, and here again this became a matter of public interest. Section 29 delegates to this Commission the authority "to determine, order and prescribe the terms and conditions of installation and operation and protection of all such crossings which may now or hereafter be constructed."

The question for this Commission to decide in the exercise of the police power of the State, is whether or not public necessity and convenience demand that a crossing be opened on Washington and Farraday Streets, giving due consideration to additional hazards and expense imposed upon train operations of The Denver and Rio Grande Western Railroad Company, and bearing in mind that this authority was invested in this Commission "to the end, intent and purpose that accidents may be prevented and the safety of the public promoted."

Witness for Applicant

Testimony of witnesses for the applicant tended to show, first, that public necessity and convenience demanded that this crossing be opened in order that public travel might divert from the "Gun Barrel" road some two or three blocks north of the tracks and by preference use Washington Street; second, that if a fire well were located on Washington Street just north of

the Denver and Rio Grande Western right-of-way it could not be reached from the present crossing via Adams Street or "Gun Barrel" road without a considerable loss of time; third, that the opening of Washington Street would be of great personal benefit to business property for a block or two each side of the proposed crossing.

Public Necessity and Convenience

It is apparent that nearly all of the travel from the north of Monte Vista reaches the city via the "Gun Barrel" road. This is the principal traffic which it is presumed would use Washington Street if opened. At present this traffic either comes direct to First Avenue or diverts north of the track and uses the Adams Street crossing. Several witnesses testified to a congestion of traffic on the "Gun Barrel" road from the crossing to First Avenue. It appears to the Commission that there can be no great congestion of traffic on the "Gun Barrel" road beyond a point where, if necessary, it may divert and use two routes. Furthermore, it does not seem a necessity to provide three crossings to care for this travel originating or destined to one route.

Several witnesses testified that the present condition does not give them an outlet, and that on account of Washington Street being closed patrons are compelled to use circuitous routes. The principal witness who testified in this respect was Mr. Lilley, whose mill is located just north of the right-of-way of the Denver and Rio Grande Western Railroad, and Mr. Wood, whose department store is located on First Avenue and Washington Street. Patrons of Mr. Lilley's mill, if destined to Adams Street or points on First Avenue east of Adams Street, are not affected. If these patrons desire to do business on First Avenue between Adams Street and the "Gun Barrel" road, the maximum inconvenience would be an additional travel of two blocks. In these days of auto travel, going at a speed of ten miles an hour, this inconvenience would mean one minute delay.

Fire Well North of Tracks

Witnesses testified that it is proposed to locate a fire well just north of the right-of-way of the Denver and Rio Grande Western Railroad on Washington Street for the protection of lumber yards and business houses in

that vicinity. It was testified that unless Washington Street were opened the delay to reach this well from the fire station on First Avenue would be very serious. The actual saving in distance over the Adams Street crossing would be one block and over the "Gun Barrel" crossing two blocks. On the basis of a speed of the fire apparatus of twenty miles per hour, this would mean a delay of fourteen seconds via the Adams Street crossing and twenty-seven seconds via the "Gun Barrel" road. It does not appear to the Commission that this saving justifies the opening of Washington Street. Furthermore, at the time of the hearing, no definite action had been taken relative to the exact location or the establishment of this proposed fire well.

Benefit to Persons & Property

It was testified, and will be admitted, that to open Washington Street would benefit property owners on this street in close proximity to this crossing. Those particularly affected are located between First Avenue and the Denver and Rio Grande Western right-of-way. As against this benefit to be derived by these property owners is to be considered the increased hazard and expense of the railroad company in the operation of its train service and the confiscation of a portion of their yard facilities. It can not be said that these property owners have been deprived of any of their rights heretofore enjoyed because Washington Street was closed at the time these properties were secured by their present owners or tenants. While private property may, on some occasions, be enhanced by the opening of a public highway, it is in no sense a just reason for so doing and should not be considered in matters affecting the public interest.

It appears to the Commission that the condition existing on Washington Street between First Avenue and the railroad right-of-way can best be relieved if the city would open a street along the north end of Block 1, from Washington Street to the "Gun Barrel" road.

This suggestion is in line with a recent decision, in Application No. 7407, of the California Railroad Commission, decided December 29, 1922, wherein it states: "Part of the need for a crossing at Fourth Avenue would be relieved if the city would extend Seventh Avenue south to a connection

with the paved state highway near the city limits where the highway crosses from the east side of the track." The application to open Fourth Avenue in this case was denied.

In the discussion of this same application by the California Railroad Commission, with special reference to the establishment of a crossing regarding the saving of extra haul, says: "Against the additional hazard and interruption of train operation incident to opening another crossing at Fourth Avenue through the railroad yards is considerable public convenience to be considered." It then speaks of a saving in distance to be had on various hauls, varying from two to five blocks, by the opening of Fourth Avenue, and finally says: "We conclude, from the facts shown above, that the public convenience shown does not offset the hazard to the public safety and interference with rail traffic shown."

In many respects this case is very similar to the one in hand. The present day use of the automobile has materially decreased the convenience when the matter of an extra haul or distance is to be considered, and greatly increased the hazard when new crossings are being considered, especially when, as in this case, the street to be opened is through a railroad yard crossing three tracks and where the view of approaching trains will be obstructed in several directions by buildings.

Witness for Protestant

Witnesses for the protestant stated that to open Washington Street would seriously interfere with train operations, reduce the loading and warehouse capacity of their yards in Monte Vista and increase their hazard by creating an additional dangerous crossing. In their testimony they implied that if Washington Street were opened to public travel it might, of necessity, compel them to abandon certain tracks in that vicinity and relocate them elsewhere. Switching operations would be seriously affected, owing to the number of crossings to be protected.

Testimony of the Railway Engineer
of the Public Utilities Commission

The Railway Engineer for this Commission testified that he investigated this matter a few years ago and also at recent date. He stated that in

his opinion the opening of this crossing would benefit certain property owners, to the great inconvenience and expense of the railroad company; that no great convenience to the traveling public would be gained by its opening; that it is contrary to public safety to open crossings unless real necessity exists, and that no public crossing should be opened through a railroad yard if other crossing can reasonably be used in that vicinity.

While the desire for this public crossing may be more or less unanimous in the City of Monte Vista, its establishment is a matter of public concern. No public necessity has been shown. Some private interests will be benefitted. The railroad company will be put to an additional expense and hazard in their operations. The greatest possible inconvenience shown is an additional vehicular travel of two blocks, and this only in exceptional cases.

In view of the above facts and in the interest of public safety, the crossing on Washington Street will be denied.

Farraday Street Crossing

The testimony shows that this crossing, if opened, would benefit one witness, Mr. John A. Cornish, who resides just south of the track on Farraday Street. He has access to a crossing one block west; that at most he may be inconvenienced by traveling two blocks additional, providing he has business directly north or east of his residence.

The Railway Engineer for the Commission testified that the opening of highways across railroad tracks were not considered public crossings when serving but one or two persons. The testimony also disclosed the fact that Farraday Street was not opened for a considerable distance south of the track.

Inasmuch as the testimony does not show any public necessity or convenience, the application to open Farraday Street will be denied.

O R D E R

IT IS THEREFORE ORDERED, That the application herein for the opening of Washington and Farraday Streets in the City of Monte Vista, Rio Grande

County, Colorado, be, and the same is hereby, denied, and the application therefor filed herein be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Dennan,

W. D. Lamson

Commissioners.

Dated at Denver, Colorado,
this 20th day of August, 1923.

(Decision No. 635)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of the Board of County Commissioners of Logan County for the opening of a public highway crossing at grade over the right-of-way and track of the Chicago, Burlington & Quincy Railroad at a point 1050 feet southwesterly along said track from the point where the section line between Sections 1 and 12, Township 8 North, Range 51 West intersects said track in Logan County, Colorado.

APPLICATION NO. 263

SUPPLEMENTAL ORDER

(August 21, 1923)

STATEMENT

By the Commission:

It having come to the attention of the Commission that an error exists in the description of the location of the crossing as herein applied for; and

That this description should read "at a point 600 feet southwesterly" instead of "at a point 1050 feet southwesterly, etc." as shown in the original order in this case;

The Commission will, therefore, issue this supplemental order that this error may be corrected.

ORDER

IT IS THEREFORE ORDERED, In accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, that a public highway at grade be, and the same is, hereby permitted to be opened and established over the main line track and right-of-way of the Chicago, Burlington & Quincy Railroad at a point 600 feet southwesterly along said track from the point where the section line between

Sections 1 and 12, Township 8 North, Range 51 West intersects said track, being in the Northeast Quarter of the Northeast Quarter of Section 12, Township 8 North, Range 51 West and about one-half mile west of Galien station on said railroad in Logan 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 Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the highway at the crossing, including the necessary drainage therefor, be borne by Logan County, and that all other expense in the matter of installation and maintenance of said crossing as herein provided shall be borne by respondent, Chicago, Burlington & Quincy Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hall

By J. D. Armon

Commissioners.

Dated at Denver, Colorado,
this 21st day of August, 1923.

(Decision No. 636)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of)
R. J. Bryce, Dr. E. E. Johnson,)
J. W. Bozman, and Arthur W. Cowling) APPLICATION NO. 268.
for the Cortez Light & Power Company.)

- - - - - - -
August 23, 1923.
- - - - - - -

S T A T E M E N T

By the Commission:

Under date of July 30, 1923, Messrs. R. J. Bryce, Dr. E. E. Johnson, J. W. Bozman and Arthur W. Cowling, a co-partnership, made application to this Commission for a certificate of public convenience and necessity for the construction of an electric light plant and the necessary distribution lines for the furnishing of electric light and power to the Town of Cortez and the inhabitants thereof, under the name of the Cortez Light and Power Company. The application shows that the Town of Cortez is not now being served with electric light and power and has not had such service in the past. With the application was also filed a certified copy of a franchise granted by the Town of Cortez to the applicants, together with the affidavit of publication as required by law.

On July 31 a copy of the application was transmitted to the Mayor of Cortez with instructions to indicate within ten days the attitude of the town regarding the same. Under date of August 9 this Commission was in receipt of a letter from the Town Clerk of Cortez stating that the applicants had been granted a franchise, and that the inhabitants of the town were well pleased that the proposed plant and distribution system was to be constructed.

With the application was submitted a map of the Town of Cortez showing the proposed distribution system and plant location.

It now appearing that the applicants in this case having complied with the law and the rules and regulations of the Commission, and it further appearing that the applicants will not be in competition with any other utility of like character in any of the territory in which the certificate is prayed for; and it further appearing that the applicant will operate in the Town of Cortez under a franchise granted by said town and that a formal hearing in this matter would not bring forth any additional facts not now before the Commission, and would also cause unnecessary expense to the applicants and the Commission, the prayer of the petition will be granted.

O R D E R

IT IS THEREFORE ORDERED, That the application of the Cortez Light & Power Company for a certificate of public convenience and necessity to operate an electric system in the Town of Cortez be, and the same is hereby, granted, and this order shall be deemed a certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 23rd day of August, 1923.

(Decision No. 637)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the Board of County Commissioners of Costilla County, Colorado, for the Opening of a Public Highway Over the Right-of-Way and Track of The Denver and Rio Grande Western Railroad Company at a Point Where the Section Line between Sections 16 and 17, Township 30 South, Range 73 West Intersects Said Main Line Track in Costilla County, Colorado.

APPLICATION NO. 269.

- - - - - - - -
August 24, 1923.
- - - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Costilla County in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, 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 on the section line between Sections 16 and 17, Township 30 South, Range 73 West, being about two miles west of Blanca Station in Costilla County, Colorado.

This application was filed with the Commission August 13, 1923, and on the same date a copy of same was sent to Mr. E. N. Clark, General Solicitor, The Denver and Rio Grande Western Railroad Company. On August 21 the Commission was in receipt of a letter from Mr. E. N. Clark, wherein he states: "I beg to advise you that the railroad company desires to offer no objection to the establishment of this crossing upon the usual terms and conditions." The Railway Engineer for the Commission, being familiar with the location of the proposed crossing, states that there is no physical objection and recommends its opening.

The County Commissioners of Costilla County and The Denver and Rio Grande Western Railroad Company after being fully advised of these matters

and having consented to the terms and conditions as herein stated, and no objections having been filed, the Commission will, therefore, issue its order granting permission for the establishment of the crossing as herein requested.

O R D E R

IT IS THEREFORE ORDERED, That in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway at grade be, and the same is hereby, permitted to be opened and established over the main line track and right-of-way of The Denver and Rio Grande Western Railroad Company on the section line between Sections 16 and 17, Township 30 South, Range 73 West of the 6th Principal Meridian in Costilla 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 prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway at the crossing, including the necessary drainage therefor, be borne by Costilla County, and that all other expense in the matter of installation and maintenance of said crossing as herein provided 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 24th day of August, 1923.

(Decision No.638)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In re Rule 18 Regulating the Heating Value of Gas for All Privately Owned and Municipally Owned Gas Utilities Operating Within the State of Colorado.

CASE NO. 84
SUPPLEMENTAL ORDER

Submitted June 30, 1923. Decided August 29, 1923.

STATEMENT

By the Commission:

On June 30, 1923, a proposed revision of Rule 18 together with a statement of the reasons for making the revision was considered by the Commission. July 18, 1923, a copy of the proposed revision and the statement considered by the Commission was mailed to all gas utilities operating within the State of Colorado, and objections, criticisms and suggestions invited. Letters were received in reply from all of the gas utilities.

On August 24, 1923, the Commission gave further consideration to the proposed rule and examined the replies received from the gas utilities. Without exception these replies were commendatory and did not offer objection or suggestion. After this examination, the Commission has decided to adopt the proposed Rule 18.

O R D E R

IT IS THEREFORE ORDERED, That the following Rule 18, regulating the Heating Value of Gas, is hereby declared to be reasonable and shall be observed and followed by all gas utilities, including municipally owned or operated gas utilities operating within the State of Colorado.

IT IS FURTHER ORDERED, That the present Rule 18 shall be stricken from the Rules Regulating Service of Gas, Electric and Water Utilities, effective January 1, 1917.

IT IS FURTHER ORDERED, That this order shall take effect on the 1st day of October, 1923, and shall continue in force until suspended,

modified or set aside by this Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Holderman,

H. D. Hanson

Commissioners.

Dated at Denver, Colorado,
this 29th day of August, 1923.

RULE 18

Heating Value of Gas:- Each utility supplying gas for domestic or commercial purposes shall establish and maintain a standard heating value for its product, which standard shall be the monthly average total heating value of the gas as delivered to consumers at any point within one mile of the manufacturing plant or center of distribution.

This standard heating value shall be that value which, from its experience, the utility finds it most practical, economical and efficient to manufacture and to supply to its consumers to their satisfaction. The utility shall be prepared to justify the standard it adopts before the Commission by such pertinent facts as may be required. The utility shall declare this standard expressed in B.t.u. per cubic foot as a part of its schedule of rates on file with the Commission.

The utility shall maintain the heating value of the gas with as little deviation as is practicable and such deviation is limited to the range of 5% above to 5% below the standard adopted.

To obtain the monthly average heating value of gas, the results of all tests of heating value made on any day shall be averaged, giving the average total heating value for that day. The monthly average total heating value shall be the average of all such daily averages taken during the calendar month. It is understood that all records and statements are based on tests made under standard conditions, i.e., at 60 degrees Fahrenheit and under a pressure of 30 inches of mercury.

Proper adjustment of consumer's devices to the heating value in use is incumbent upon the utility. Records and tests showing uniformity of heating value in compliance with the above; uniformity of gas pressure, and reasonable effort in the matter of adjustment and systematic inspection of consumer's appliances shall be considered as sufficient proof of good service insofar as applicable.

(Decision No. 639)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of The Trinidad Electric Transmission Railway and Gas Company to Abandon and Take Up Certain Portions of its Railway Lines and to Cease All Operations as a Common Carrier of Passengers, Freight, Mail and Express.

APPLICATION NO. 243.

- - - - - - -
August 31, 1923.
- - - - - - -

Appearances: James McKeough, of Trinidad, and E. E. Whitted, of Denver, for applicant; John N. Mabry for protestant, the City of Trinidad; William E. Inglis for protestant, The Trinidad-Las Animas County Chamber of Commerce.

S T A T E M E N T

By the Commission:

On April 2, 1923, applicant, The Trinidad Electric Transmission Railway and Gas Company, filed its petition with the Commission wherein is set forth that it is a domestic corporation and owns, among other properties, a street railway line in the city of Trinidad, Colorado, and an interurban line extending between Trinidad and Cokedale and between Trinidad, Sopris and Starkville, three towns in the vicinity of Trinidad, and operating a line of street railway within the city of Trinidad proper and the interurban lines between the above named points.

The petition further sets forth that although petitioner has practiced the utmost economy in the operation of its said street railway and interurban lines during the past ten years, it has not been possible to make its railway operations earn operating expenses; that for the year 1922 operating expenses exceeded operating revenues by more than $24,000.00, and that there is not now, nor any probability of there being in the future, sufficient traffic over its lines of street railway or interurban lines to pay its operating expenses. The petition further recites that on account of good roads having been built between Trinidad and the communities contiguous

to it, automobile service is maintained by different persons that results in competition which the railway is unable to meet; and it prays that it be allowed to abandon its street railway line in the city of Trinidad as well as its interurban service and withdraw from the public service as a common carrier.

Upon the application being received, copies thereof were served on the municipality of Trinidad and the civic organization of Trinidad, with the result that on April 30 the Chamber of Commerce filed its answer to the application and on May 4 the city of Trinidad filed its answer. The answers are in substance identical, alleging the inconvenience and hardship to be suffered by the interurban communities and by the city of Trinidad and its inhabitants were the abandonment and cessation of service permitted; that the city of Trinidad will suffer great loss of business thereby in the deprivation of trade coming to Trinidad over the interurban lines of applicant, and that patronage of said service is sufficient under reasonable, proper and efficient management to show a profit to justify the continuance thereof.

In addition to the matters hereinabove alleged by way of answer by the city of Trinidad and the Chamber of Commerce, the city pleads an additional defense in the matter of it being the duty of the applicant to continue the operation of its urban and interurban service, by reason of the conditions of the franchise granted to it by the City Council of Trinidad for a term of fifty years for the exclusive right to maintain and operate within the city of Trinidad a street railway system, which period of time has not yet expired; and that the city of Trinidad is engaged in the preparation for paving certain streets in the city of Trinidad which includes streets along which the tracks of applicant run, and that the conditions of the franchise before mentioned provide that applicant shall stand the expense of paving between the rails and two feet on each side thereof along said railway; that if petitioner is permitted to abandon its line the city will suffer an irreparable loss contrary to the terms of the original franchise granted to applicant. Other matters are plead by way of defense, but the above constitute the salient factors relied upon by protestants in opposition to the application for abandonment.

Upon notice to all parties in interest, the above cause was set for hearing at the City Hall, Trinidad, Colorado, on May 22, 1923, where the matter was duly heard, and upon application of protestant city of Trinidad, further hearing of said matter was continued to the same place at 9:30 A. M., July 3, 1923, where the hearing was concluded.

At the conclusion of the hearing on July 3, 1923, time was fixed within which the respective parties should file briefs, and on July 11 the brief of applicant was duly filed. Thereafter protestant city of Trinidad was notified of its time within which to file brief, which was extended to August 6, 1923. No brief having been filed by protestant city by that date, it was notified to file its brief within the week of August 6; but no brief has as yet been filed by the city of Trinidad nor, for that matter, has any statement of the delay been given, so that the Commission is proceeding to a determination of the matters involved herein on the theory that the city of Trinidad does not desire to file a brief in the matter.

Applicant has sought to abandon portions of its line heretofore, the first involving a short part of its track within the city of Trinidad, filed May 10, 1920, decided September 8, 1920, Decision No. 360, Application No. 85, reported in P.U.R. 1920-F, page 707. In that proceeding permission to abandon was denied, applicant being required to continue its operation at a higher rate of fare in an attempt to earn its operating expenses.

The result of that experiment was that the applicant again filed its petition on November 17, 1921, whereby it sought permission to abandon the major portion of its urban lines of street railway, which was decided February 8, 1922, Decision No. 512, Application No. 152, reported in P.U.R. 1922-C, page 299, the outcome being that permission for the abandonment of the lines of the urban tracks as prayed for was granted.

In both of the prior applications, and particularly in the latter application, the same matters were alleged as reasons for the relief as is alleged in the present application; that is, that the operation of the railway system in Trinidad was being rendered at a substantial loss. In the two proceedings substantially the same defenses were alleged as the defenses that are set forth in the answers in this proceeding. Those defenses were disposed of in the decision last above cited in P.U.R. 1922-C, page 299,

et seq., so that they need not be reiterated here. This leaves, as a practical matter, the only question to be decided now whether or not the remaining part of the urban lines and the operation of the interurban lines are being operated at a substantial loss as is alleged by the petitioner herein, and to determine if there is reasonable cause for the hope and belief that conditions will so improve as that the applicant may reasonably expect its street railway and interurban service to be self-sustaining.

The Auditor and Statistician for the Commission was assigned to make an investigation and report of the financial condition of the railway department of applicant, which he proceeded to do and completed same on May 16, 1923. The Auditor's report is quite thorough and complete, and was introduced in evidence as the Commission's Exhibit A. In addition to the Auditor's report, the General Manager and other officials of the applicant testified as to the loss being incurred by the applicant in the operation of its railway, which substantiated the report of the Auditor. For the purpose of this decision, however, the report submitted by the Auditor of the Commission will be used as a basis for the financial results of this railway operation, inasmuch as it is made by an officer of the Commission in the line of duty and without bias or prejudice. That report shows on pages 14 and 15 a comparison of the revenues and expenses of the railway department of applicant covering a number of years. On page 14 the comparison is from 1912 to 1922, both inclusive. It shows that, beginning with the year 1915 up to and including the year 1922, operations of applicant were being conducted at a loss from $3,000 minimum to $24,000 maximum per year, that of 1922 being the largest, $24,660.45, and for the ten year period showing a net loss from railway operations of $68,103.60. The comparative statement on page 15 of the Commission's Exhibit A comprises the years 1919, 1920, 1921 and 1922, and the losses suffered in those four years as being $8,990.57, $4,513.84, $16,978.40 and $24,660.45, respectively, and the showing is made that the operating loss for 1922 was increased by reason of larger operating expenses in that year than either of the three

years, particularly with the items of maintenance of way and structures and equipment, while suffering a marked decrease in earnings. The passenger revenue earnings for 1922 were $27,851 as compared with $40,414 in 1921, $48,224 in 1920, and $44,674 in 1919, and the total operating revenues for 1922 being $36,374.98 as compared with $46,311.38 in 1921, $60,363.83 in 1920 and $50,670.20 in 1919.

Without further attempt to analyze the showing made in the Auditor's report to the Commission and further consideration of the testimony and exhibits offered and received in evidence from the applicant, it is readily apparent therefrom, and the Commission finds, that the railway department of the applicant has been operating at a loss for the period 1915 to 1922, both inclusive, and that the operating deficits from said railway operation have steadily increased until the maximum of practically $2,000 a month was reached in 1922, the somewhat larger deficit being occasioned by deferred maintenance that was corrected in the year 1922, and the decreased revenues received during the calendar year 1922 as hereinabove set forth.

So far as the separate defense plead by the city of Trinidad, that because the predecessor of applicant had received a franchise from the city wherein and in consideration thereof it agreed to maintain the street railway operation for the term of the franchise, that same defense was, as before stated, interposed in Application No. 152, decided February 8, 1922, above referred to, P.U.R. 1922-C, page 299. In that decision this language was used:

> "While it may be true that there was an understanding or agreement entered into by the promoters of the original street railway lines, now owned and being operated by applicant company, with the citizens and inhabitants of Trinidad that such operation should be continued for a term of years, and that on the faith of such agreement the franchises were granted and perhaps even contributions of money or property may have been made to the original constructing company, this was done, if done at all, long prior to the period of regulation by the state through its agency, and it is uniformly held that a contract or franchise granted is entered into or given in contemplation and subject to the power of the state to regulate at such time as that agency shall have been called into existence." P.U.R. 1920-C, page 306-7. Denver & South Platte R. Co. v. Englewood, 62 Colo. 229, 161 Pac. 151, P.U.R. 1916-E, 134, 4 A.L.R. 956, 4 Colo. P.U.C. 197.

With reference to the issue of economical and efficient management, suffice it to say that the Auditor for the Commission testified that he had made a study of the cost of operation per car mile of applicant for the years 1920, 1921 and 1922, and that the operating expenses for the three years were .2852 for 1920, .2811 for 1921, and .45954 for 1922. He further testified that he had made a comparative statement of the average operating expense per car mile of other street railway systems in Colorado comparable to the street railway system of applicant, such companies being The Southern Colorado Power Company, Pueblo, The Colorado Springs and Interurban Railway Company, The Denver and Crown Hill Railway Company, The Denver and South Platte Railway Company, The Denver Tramway Company and The Western Light and Power Company of Boulder; that the average cost of operation per car mile for these six companies was for 1920 .3112, for 1921 .2849 and for 1922 .2821 per car mile; that the car mile expense for applicant's cars of .45954 was largely due to the reduction of car miles in the year 1922 of applicant's system, the car mileage of applicant's lines in 1921 being 208,371 as against 126,849 car miles in 1922.

Abstract of record pages 153-154-155.

From the above testimony and showing it would appear that the car mile expense of operation of applicant company compares not unfavorably with that of the average car mile expense of operation of other comparable street car systems in Colorado.

It should be noted here that at the hearing applicant asked leave to amend its application to include the abandonment of all its operated lines, both urban and interurban, as the same now exist and to withdraw as a common carrier from the public service, which amendment was duly allowed.

From the testimony submitted it is quite apparent to the Commission that one reason, and a serious one, that has interfered with the revenue possibilities of applicant's street railway system, and particularly its interurban system, is the prevalence of automobile competition to the coal camps from Trinidad that are and have been served by the interurban lines of applicant. The evidence establishes that numbers of flivvers or jitneys are prevalent upon the streets of Trinidad at all hours of the day and up to

late hours of the night that solicit and transact the business of carrying passengers from Trinidad to the coal camps involved and vice versa for a consideration, and at approximately the same rate of fare as is charged by the street railway. The jitney service affords an attractive method of conveyance to people who thereby may come and go as and when they please without any reference to a fixed schedule. These jitneys are licensed, presumably, for a nominal sum to operate within the city of Trinidad. They have no expense of roadway or right-of-way to maintain, and hence are enabled to successfully compete with the street railway system which must maintain its right-of-way, road bed, track and equipment at its own expense. The era of the automobile is here and here to stay, but the public desiring the use of short haul transportation by steam or electric methods of transportation must awake to the fact that it can not have both, particularly in regions of the country so sparsely settled, comparatively, as are the communities in Colorado; and if the automobile method of transportation is the thing desired for the convenience and pleasure of the people they can not reasonably expect that the electric and other usual forms of transportation will be continued at a monetary loss.

Without further elaboration of the subject, it is quite apparent that the patronage offered to the street railway and interurban lines of applicant company is not, has not been for the past eight years, and in all human probability will not be in the future, sufficient to pay even the operating expenses of such street railway system, to say nothing of depreciation and other items that are properly chargeable to such an operation, and the Commission so finds and an order will, therefore, be entered in accordance with the prayer of applicant's petition as amended at the hearing.

O R D E R

IT IS THEREFORE ORDERED, That applicant, The Trinidad Electric Transmission Railway and Gas Company, be, and it is hereby, permitted and allowed to abandon and cease the operation of its street railway line in the city of Trinidad and its interurban lines from the city of Trinidad

to the towns of Cokedale, Sopris and Starkville from and after September 15, 1923, upon the posting of notices to that effect in its cars and stations at least ten days prior to said September 15, 1923, and by publication of notice to such effect in newspapers of general circulation published in the city of Trinidad and in said towns of Cokedale, Sopris and Starkville, if any there be.

IT IS FURTHER ORDERED, That after the cessation of operation as is herein permitted and allowed, the said applicant be, and it is hereby, permitted to withdraw its schedules on file with this Commission pertaining to its activities as a common carrier, and thereafter to cease functioning as a common carrier of persons or property.

IT IS FURTHER ORDERED, That proof of the compliance with this order shall be made by applicant company with reference to the posting and publication of notices by or before the 15th day of September, 1923.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall

H. L. Lamson

Jeremy Ott

Commissioners.

Dated at Denver, Colorado,
this 31st day of August, 1923.

(Decision No. 6391)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of The Denver and Rio Grande Western Railroad System to discontinue, on and after August 31, 1923, operation of its Suburban Service between Denver, Fort Logan and Littleton, Colorado.

APPLICATION NO. 270

(August 30, 1923)

APPEARANCES:

Thos. R. Woodrow, for applicant, The Denver and Rio Grande Western Railroad System;
Joel E. Stone, for protestants, residents and citizens of Littleton, Fort Logan and Sheridan;
Harry Dickinson, for protestant, Transportation Bureau of the Denver Civic and Commercial Association;
Ex-Gov. E. M. Ammons, for protestant, The Denver Civic and Commercial Association;
Colonel Wm. S. Mapes, for protestant, Fort Logan Army Post;
John T. Bottom, for protestant, The Loretta Heights College and Academy.

STATEMENT

By the Commission:

On July 30, 1923, applicant, The Denver and Rio Grande Western Railroad System, through its Superintendent of Transportation, filed notice with the Commission, as required under the Commission's General Order No. 34, of its intention to discontinue, on and after August 31, 1923, the operation of its suburban service between Denver, Fort Logan and Littleton, being its suburban trains between said points known as Nos. 31, 32, 33, 34, 35, 36, 37 and 38, and commonly known as "Uncle Sam," and gave as reason therefor that decreased earnings resulted in operation of said suburban trains at a substantial loss to applicant; that applicant had used every effort to stimulate travel on these suburban trains but that because of (a) small number of soldiers located at Fort Logan at this time, (b) increased travel by automobile, (c) use of jitney service between Fort Logan

and Englewood, where connection is made with electric line operated between Littleton and Denver, (d) use of electric line between Littleton and Denver by residents of Littleton and vicinity, that the earnings of the service had decreased with the natural result of increase of operating losses.

Under the provisions of General Order No. 34, a utility desiring to curtail or abandon its service to the public is required to give notice to the Commission of thirty days, and also to the public, by posting notices of its proposed change in service at least fifteen days before the proposed effective date thereof. In consequence of this requirement, protests and objections were filed by various individuals, associations and organizations of the communities affected.

On August 14, 1923, the Commission issued its notice of hearing in the above matter to be held at the Hearing Room of the Commission, State Office Building, on Monday, August 27, 1923, at 10:00 o'clock A.M., at which time and place the hearing was held.

Exhibits by applicant establish the following facts: That the distance from Denver to Littleton is 10.4 miles; that Fort Logan is distant from Littleton approximately 3 miles and is served by this suburban train service by a branch leading from the main line at Military Junction to Fort Logan, thence Fort Logan to Littleton, alternating in this wye arrangement so that both Fort Logan and Littleton are served in this suburban service. Two or three stops are made between Denver and Fort Logan and Littleton, the more important of which are Burnham, Overland Park and Petersburg, though the evidence did not disclose that the travel from either of these three points was of much moment. Applicant's suburban service, as at present arranged under a schedule which was established January 9, 1923, is as follows:

Lv. Denver	6:30 A.M.	11:45 A.M.	3:40 P.M.	5:45 P.M.
Ar. Ft. Logan	6:58 A.M.	12:33 P.M.	4:10 P.M.	6:24 P.M.
Ar. Littleton	7:10 A.M.	12:12 P.M.	4:25 P.M.	6:10 P.M.
Lv. Littleton	7:15 A.M.	12:20 P.M.	4:30 P.M.	6:15 P.M.
Lv. Ft. Logan	6:59 A.M.	12:35 P.M.	4:11 P.M.	6:25 P.M.
Ar. Denver	7:40 A.M.	1:05 P.M.	4:55 P.M.	6:55 P.M.

In addition to the above suburban service, applicant operates its main line trains serving Littleton, leaving Denver 7:45 A.M., 12:40 P.M.

and 7:10 P.M. southbound, and northbound leaving Littleton 7:23 A.M., 10:50 A.M. and 4:05 P.M.; and also that two Santa Fe trains in either direction serve Littleton, leaving Denver 3:00 P.M. and 9:45 P.M. southbound, and northbound leaving Littleton 11:40 A.M. and 8:47 P.M. In addition to this suburban and main line train service, applicant established the fact that so far as Littleton is concerned it had opportunity of being served by an electric line known as The Denver and South Platte Railway, operating between Littleton and Englewood where connection is made with The Denver Tramway street car system, and that said electric service was operated beginning at 6:35 in the morning with hourly service up until 4:00 o'clock in the afternoon and half-hourly service thereafter up to 6:00 o'clock, in either direction. Hence the contention of applicant is that the elimination of the suburban service above outlined would not seriously inconvenience the public nor the communities affected.

Applicant offered in evidence its Exhibit 4, which was a statement of the passengers handled, passenger earnings per month, passengers carried by train, average earnings per train per trip, train miles, average earnings per train miles, and average earnings per passenger per train mile on its Denver to Fort Logan and Littleton suburban service for the four years 1919, 1920, 1921, 1922, and for the first seven months of 1923, January to July, inclusive. By that exhibit it is made to appear that in 1919 the total earnings of this service amounted to $12,378.69; in 1920, $11,611.18; in 1921, $7,424.36; 1922, $4,984.81 and for the first seven months of 1923, $4,286.85. The average earnings per train per trip for the periods indicated, as shown by said exhibit, was $4.17 in 1919, $4.14 in 1920, $2.64 in 1921, $1.77 in 1922, and the seven months' period $2.78. Total number of passengers carried 56,497 in 1919, 52,796 in 1920, 34,773 in 1921, 26,151 in 1922 and 24,793 in the seven months' period 1923. Applicant's Exhibit 5 embraced the daily operation and maintenance expense of this Denver, Littleton and Fort Logan suburban service, and established the fact that the total operation and maintenance per day of this suburban service, as detailed in said exhibit, amounted to $99.69, which is approximately $2,800

operating expense per month, this suburban service not being operated on Sundays. By the showing of Exhibit 4, the average monthly earning for 1919 was approximately $1,031 and decreased each year to 1922 when it amounted to but about $415 per month, while in the seven months of 1923 it increased to approximately $615 per month, all, however, showing a loss to the railroad incurred by the operation of this suburban service of approximately $2,000 per month for the periods given.

The testimony of the Passenger Traffic Manager of applicant disclosed that this suburban service was established in January, 1889, and has been continuously operated since that time, a period in excess of thirty-four years. There was no testimony as to the result of its operation prior to the period of the world war, and during the war period no testimony was submitted for the reason that that period would be an unfair test, inasmuch as very great activity at Fort Logan stimulated the business of the suburban train service to an abnormal extent, so that the period 1919 to, and including, the seven months of 1923, was chosen. This witness gave as a reason for not having made an earlier application to discontinue the service was a matter of sentiment, as the railroad very much disliked to discontinue a service that had been established for so long a time.

On the part of protestants, it was sought to be established that the suburban service had not been arranged upon a satisfactory schedule, at least not in recent years, until the establishment of the present schedule in January, 1923, since which time all united in saying that the suburban service was of the most excellent character. There was no satisfactory evidence of any extensive jitney service between either Denver and Littleton or Englewood and Fort Logan, nor was the evidence submitted with reference to the service between Littleton and Denver via the electric line to Englewood, thence tramway system into the city, that such service was either convenient or practical for the purely suburban traffic. A suburban traffic is such a traffic as uses the service daily and has for its object quickness and punctuality. It is a service in a class by itself. Under the present schedule passengers are landed from Littleton or Fort Logan into

Denver in less than thirty minutes punctually and quickly, while on the electric tramway lines more than an hour must be consumed and ofttimes under crowded and worrisome conditions. It must be borne in mind too that, when and if this suburban service is discontinued, the Military Post of Fort Logan and its environs are left entirely without passenger train service nearer than Littleton, some three miles distant, and that not a suburban service.

The testimony submitted by Colonel Mapes, Commandant of the Military Post of Fort Logan, is of a great importance in the determination of this application. His testimony in effect was that, if the Military Post was left without some reliable transportation service into Denver, the danger of the abandonment and removal of the Post from Colorado was gravely imminent; that he had reliable information from the War Department that the number of officers and men at Fort Logan would soon be increased to more than double its present population; that he was confident such a result would be the condition within the next few months, if not sooner, and finally that, if this suburban service were eliminated, no such result would be authorized by the War Department and that, under the existing train schedules and service rendered, the Military Department was greatly pleased and he hoped in the interest of the Post and of the people generally that some arrangement could be worked out whereby a reasonably good suburban service could be maintained. The witness further stated that he had no knowledge of any jitney service afforded except in a very limited degree; that the roads leading to Fort Logan were usually in bad condition; and that the elimination of this suburban train service would be a calamity to the Military Post. Testimony of other witnesses produced by protestants was to the effect, in a general sense, of the calamities that would likely follow in the trend of the permanent abandonment of this suburban service to the communities affected, and particularly to the Military Post of Fort Logan. So far as the Rio Grande and Santa Fe main line trains are concerned, they do not take the place of suburban service and make no stops between Littleton and Denver. The only train that could be utilized by

the early Fort Logan and Littleton commuters is Rio Grande train No. 16, and the testimony is that that train is ofttimes irregular in its schedule, and that southbound main line trains do not run to convenience the suburban patrons of the road.

It will be noted from applicant's Exhibit 4, that the revenues from this suburban train service and the number of passengers carried gradually decreased from 1919 to, and including, 1922, but that in the seven months' period of 1923 there was a slight increase, both of revenue and number of passengers carried, as compared with the past two years. The Commission is loath to permit the discontinuance of this suburban service at this particular time under all the circumstances disclosed at the hearing, and at the same time it realizes that applicant should not be required, and can not legally be required, to continue indefinitely a service to the public that the public does not reasonably support and maintain. As has been stated, the present schedule became effective January 9, 1923, and patronage has shown a slight increase over the prior two years at least, and due to the fact that patrons who were dissatisfied as to the character of the service heretofore rendered, required time to readjust themselves to a renewed use of this service, it would seem fair to say that no more than seven months has elapsed since this satisfactory schedule and service has been rendered. It also seems fair to say that the people of Fort Logan, Littleton and other suburban points reached by this service have not, perhaps, heretofore given the patronage of this suburban service that degree of serious consideration that it deserves. If they must use their automobiles or patronize others for compensation or for convenience, then it must follow that the suburban service will of necessity be lost to them. This Commission has, in three instances at least, in the past few years, required a transportation utility to exhaust every reasonable effort to make the service rendered self-sustaining before permission to discontinue and abandon will be given.

Re Durango Ry. & Realty Co.,
P.U.R. 1920-B, 505
Re Trinidad Elec. Trans. Ry.
P.U.R. 1920-F, 707-714
Re Denver, Boulder & W. Ry. Co.,
P.U.R. 1921-B, 607

So far as the rates, both single, round trip and commutation are concerned, the fairness and reasonableness of such rates are not brought into question in this proceeding, but on the contrary are shown to be as low, and, in some instances, lower than suburban rates given out of Chicago by the Illinois Central and Chicago Northwestern where the volume of traffic is very, very much greater than in the instant case. To sum the situation all up, in view of the facts and circumstances testified to at the hearing, the Commission feels that it will not work a very much greater hardship upon the rail carrier than has heretofore been voluntarily incurred by it, in denying permission for the abandonment of this service at the present time, in the hope that, after a further period of six months, either the people affected will realize the importance of patronizing this service much more extensively, or that the operating department of the rail carrier may devise some plan whereby, by motor car or otherwise, this suburban service may be rendered at much less expense, to the end that the calamities and hardships that are apprehended may not be encountered by the communities affected. If, however, at the end of a further six months' period no appreciable betterment of these conditions are experienced by the rail carrier, it may, and should, renew its application for the abandonment of this suburban service, when the Commission would feel of necessity and of duty, bound to grant the permission regardless of sentiment or of consequences.

O R D E R

IT IS THEREFORE ORDERED, That the application of the applicant, The Denver and Rio Grande Western Railroad System, for permission to discontinue its suburban train service between Denver, Fort Logan and Littleton be, and the same is hereby, denied; without prejudice,

however, to the right of applicant to renew its application herein at the expiration of six months from this date should the circumstances then existing warrant such action, and it should be so advised.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 30th day of August, 1923.

(Decision No. 640.) PUC-5

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of The Colorado Motor Way, Inc., to Operate Lines of Transportation.) AMENDED APPLICATION NO. 191.

- - - - - - - - -

September 15, 1923.

- - - - - - - - -

Appearances:

For Applicant, The Colorado Motor Way, Inc.,

Halsted L. Ritter and P. M. Clark.

For Protestants,

Thomas R. Woodrow, for Joseph H. Young, Receiver of The Denver and Rio Grande Western Railroad System;

C. C. Dorsey and E. G. Knowles, for Union Pacific Railroad Company;

J. Q. Dier, for The Colorado and Southern Railway Company;

Earl H. Ellis, for The Atchison, Topeka and Santa Fe Railway Company;

W. V. Hodges and D. Edgar Wilson, for The Chicago, Rock Island & Pacific Railway Company;

T. H. Devine, J. W. Preston and T. C. Storer, for Missouri Pacific Railroad Company.

S T A T E M E N T

By the Commission:

This is an application for a certificate of convenience and necessity to operate lines of motor busses for carrying passengers for hire and also parcels and small packages between the following points in the State of Colorado, as the application was amended and heard; namely,

(1) from Denver to Nunn, passing through Henderson, Brighton, Fort Lupton, Platteville, Greeley, Eaton, Ault, Pierce, and all other intermediate places it may be able to serve; (2) from Denver to Fort Collins, traversing the route above described to Greeley, thence by a route through Windsor, Timnath and all other intermediate places it may be able to serve; (3) from Denver to Colorado Springs, passing through Littleton, Sedalia, Palmer Lake and all other intermediate places it may be able to serve; (4) from Colorado Springs to Pueblo, passing through Fountain, Buttes, Pinon and all other intermediate places it may be able to serve; (5) Colorado Springs to Canon City, passing through Florence and all other intermediate places it may be able to serve; (6) thence from Canon City to Pueblo, passing through Portland, Concrete and all other intermediate places it may be able to serve; (7) and thence from Pueblo to La Junta, passing through Avondale, Fowler, Manzanola, Rocky Ford and all other intermediate places it may be able to serve. Applicant desires such certificate to grant to said company the right to stop at any and all places along said routes where the business may develop, the company proposing to use the best motor passenger busses and to make as many round trips between said points as the business will warrant.

Protests were duly filed against the said application by the Union Pacific Railroad Company, The Colorado and Southern Railway Company, The Atchison, Topeka and Santa Fe Railway Company, The Denver and Rio Grande Western Railroad Company and its receiver, the Missouri Pacific Railroad Company and The Chicago, Rock Island and Pacific Railway Company.

The applicant set forth that it is a Colorado corporation of sufficient capital to properly carry on the business; that the operation of such passenger motor busses is for the public convenience and necessity because the territory traversed is a thickly populated country and a great deal of travel exists between the points named and the intervening country; that the routes are over improved highways, parts of which are concrete and all of which are being contemplated to be surfaced; that the service will be

more expeditious and convenient for the people as well as more frequent than the railroads can furnish; that it will serve many people now traveling in their own automobiles; that the operation will tend to increase the population and the pleasure of living along its route, and will furnish a facility for the transaction of business and the visiting of the people, one with another, and the general social intercourse which does not now exist and for which there is a demand; that the increased travel which would be developed by the company's motor bus passenger service would be very largely of its own creation and that which the railroads would not be able to secure or develop.

Maps were duly filed illustrating the proposed route and the lines of railway now being operated.

Each of the several railroad companies filed in substance the same protest, in which it is alleged that the application does not state facts sufficient to constitute grounds justifying or warranting the granting of the certificate of public convenience and necessity applied for; that the applicant has failed to comply with the statute and with the Rules of Procedure of this Commission, in that the applicant has failed and omitted to show that it has received the required consent, franchise, permit, ordinance, vote or other authority of the proper county, city and county, municipal or other public authority within and under whose jurisdiction the proposed motor bus line will be operated; and alleging the operation of railroad trains along their several lines as being more than adequate to supply and take care of the reasonable requirements and needs of the communities and territory located along said lines of railroad; that the communities are and have been sufficiently and adequately supplied and conveniently served by the protestants by means of their said lines throughout the entire year and at reasonable rates and charges; that the establishment and operation of the proposed motor bus line of the applicant will unjustly and unreasonably interfere with and injuriously affect the operation, traffic, revenues and business of the protestants.

A motion was filed during the hearing by the protestants to dismiss the application, for the reason that no evidence of consent or authority on the part of the counties through which the applicant proposes to operate was offered. This motion, after argument, was overruled. It was the view of the Commission that the counties have no inherent or legislative conferred power to grant any such authority. The motion of the protestants was based on the following provision, contained in Section 35 of the Public Utilities Act:

> "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, franchise, permit, ordinance, vote or other authority of the proper county, city and county, municipal or other public authority."

The following must be accepted as defining the powers and duties of counties in this respect:

> "The county is organized for governmental purposes, and is in reality part of the state's organization, possessing such jurisdiction and such power as the legislature has seen fit to confer."
>
> Nelson vs. Board of County Commissioners of Garfield County, 6 C.A. 279, 40 Pac. 474.
> Hockaday vs. Board of County Commissioners of Chaffee County and Hollenbeck, 1 C.A. 362, 25 Pac. 287.

And again,

> "Each organized county within the state shall be a body corporate and politic, and as such shall be empowered for the following purposes:
> First, to sue and be sued.
> Second, to purchase and hold real and personal estate for the use of the county and land sold for taxes as provided by law.
> Third, to sell and convey any real or personal estate owned by the county and make such order respecting the same as may be deemed conducive to the interests of the inhabitants.
> Fourth, to make all contracts and do all other acts in relation to the property and concerns necessary to the exercise of its corporate administrative power.
> Fifth, to exercise such other and further powers as may be conferred by law." C.L. 1921, Sec. 8658.

There is nothing in this concerning the question here involved, and this Commission is without power to add thereto. By the laws of 1921, page 514, the state has exercised the exclusive power to license

and collect the fee for the use of the public highway for automobiles. Therefore, the use of the public highway through the county for this purpose is within state regulation.

The applicant asks only for the use of the existing public highway, not for a franchise for its own exclusive use. The application is that the applicant may perform its service by the occupation of the public highways. Neither the board of county commissioners nor any other county authority has the power or authority to grant or refuse any person the right to the legitimate use of the public highways. This has been the law from time immemorial.

> "Highways are public roads which every citizen has a right to use."
> Angell on highways - 5.

> "The general rule may be deduced from principles and decisions already considered in this work, if not indeed self-evident, that it is the right of all to the use of the public roads and streets for the purpose of travel by proper means and with due regard to the rights of others. So it is apparently well settled that an automobile is a legitimate means of conveyance or travel upon such highways, and has in general, subject to valid statutory regulations, if any, the same rights thereon as other vehicles. Thus in one of the leading cases upon the subject it is said: 'The law does not denounce motor carriages as such on the public highways. For so long as they are constructed and propelled in a manner consistent with the use of highways and are calculated to subserve the public as a beneficial means of transportation with reasonable safety to travelers by ordinary modes, they have an equal right with other vehicles in common to occupy the streets and roads.'"
> Second Elliott on Roads and Streets, Section 1107.

> "The power of the legislature to regulate, either through the direction of local authorities or otherwise, is a legitimate exercise of the police power, and may regulate the speed and adopt other reasonable rules and regulations as to their use."
> Second Elliott on Roads and Streets, Section 1109.

> "The general rules governing the movement of automobiles, except as modified by statute, are the same as those which, as the result of long usage, have been formulated for simpler vehicles such as wagons."
> Mark vs. Firtsch, 195 N.Y. - 282.

For these reasons the Commission holds that it is not proper and not within its power to require the consent suggested in the statute.

In view of the testimony, the Commission feels it necessary to divide the application into two different parts; that relating to the territory north of Denver and that relating to the territory south of Denver. We have determined to grant the application insofar as it applies to a certificate of convenience and necessity for the territory north of Denver and to deny the application insofar as it applies to the territory south of Denver.

In the absence of a statute to direct or control, the Commission is sorely perplexed in the determination of a case like the present. Some of the counsel for respondents contend in their briefs that the applicant must establish the right to a certificate of convenience and necessity beyond a reasonable doubt. This is absurd. No such rule has been laid down by any utility commission nor promulgated by any court. It would seem to be time for railroad companies to understand that the state does not guarantee a satisfactory return upon utility investments, and further that the automobile is here to stay and that it can not be eliminated by any utility commission nor by any court or legislature; that it is a great industrial fact and must be met and treated as such. The law will not compel a person to ride on a railroad train or forbid him to ride in an automobile if he so desires. Such a policy is inconsistent with the American notion of human liberty.

It is not important to discuss the evidence. The territory north of Denver through which the application for a certificate is granted is an irrigated and rather thickly settled agricultural section. The railroads of protestants, chiefly the Union Pacific, have principally flag stations and do not seem to have made a reasonable effort to suit the convenience of the public in the matter of schedules in the operation of their railroads. This is evidenced by the failure of the railroads to put on an early train from this northern territory to Denver as requested by the public, and which omission is now supplied by the applicant operating its lines as recited in the application for a certificate. There appears also to have been carried by the applicant a sufficient number of passengers on its northern route to establish that the operation of the line is a convenient necessity to the

public. The railroad service to the south of Denver seems to be much more efficient and satisfactory. The country is sparsely settled and there does not seem to be any reasonably sufficient requirement by the public for the use of the auto line. An additional reason why the certificate should not be granted as to the southern route is that the applicant has failed to secure the consent of the city of Littleton as is required by the statute.

O R D E R

IT IS ORDERED BY THE COMMISSION, That a certificate of convenience and necessity be issued to the applicant for the operation of its line and for the carrying of passengers, together with parcel and small package deliveries, between the following points in the State of Colorado; namely, from Denver to Nunn, passing through Henderson, Brighton, Fort Lupton, Platteville, Greeley, Eaton, Ault, Pierce and all other intermediate places it may be able to serve; from Denver to Fort Collins, traversing the route described to Greeley, thence by route through Windsor, Timnath and all other intermediate places it may be able to serve.

IT IS FURTHER ORDERED, That the application for a certificate of convenience and necessity be denied for the operation of its line from Denver to Colorado Springs, passing through Littleton, Sedalia, Palmer Lake and all other intermediate places; Colorado Springs to Pueblo, passing through Fountain, Buttes, Pinon and all other intermediate places it may be able to serve; from Colorado Springs to Canon City, passing through Florence and all other intermediate places it may be able to serve; thence from Canon City to Pueblo, passing through Portland, Concrete and other intermediate places; and thence from Pueblo to La Junta, passing through Avondale, Fowler, Manzanola, Rocky Ford and other intermediate places; that the denial of such application is without

prejudice to the applicant to renew the same at any time that it may appear that changed conditions may cause the same to be more reasonable and as more likely to receive favorable consideration.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall

Commissioners.

Dated at Denver, Colorado,
this 15th day of September, 1923.

(Decision No. 640.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application)
of The Colorado Moter Way, Inc.,) AMENDED APPLICATION NO. 191.
to Operate Lines of Transportation.)

- - - - - - - - - -
September 21, 1923.
- - - - - - - - - -

Halderman, Commissioner:

I have signed the decision and order in the above entitled application for the reason that I concur in the conclusion reached therein. I am not free from doubt, however, as to the correctness of the interpretation of Section 35 of the Public Utilities Act as applied in said decision and order to the requirement that an applicant shall procure some sort of "consent, franchise, permit, ordinance, vote or other authority of the proper county" as a prerequisite to the issuance of a certificate of public convenience and necessity by the Commission. It will be noted that said Act has been complied with insofar as it pertains to municipal authorities, save and except as to the city of Littleton; and we seem to all be agreed that the consent of some sort or a showing that no consent is required is necessary to be procured from a town or city or other municipal authority.

As to whether or not such consent is required from a county has not heretofore been presented to the Commission, but it was sharply raised by the protestants in this case. The decision and order cites Section 8658, C.L. 1921, as containing all the powers conferred by the legislature upon counties. No reference is made, however, to Section 8682, C.L. 1921, which specifically confers various powers upon the board of county commissioners of each county, the eighth and ninth specific

powers therein granted being as follows:

> "Eighth,-To lay out, alter or discontinue any road running into or through such county, and also perform such other duties respecting roads as may be required by law.
>
> "Ninth,-To grant such licenses and perform such other duties as are or may be prescribed by law."

Section 35 of the Public Utilities Act was enacted many years subsequent to the enactment of the above cited section of the statutes, and it is somewhat perplexing to me as to whether or not the board of county commissioners, having the power to grant licenses and perform such other duties as are or may be prescribed by law, may not have the power to grant or refuse to grant the consent of the county to an applicant who desires to operate an automobile common carrier over a county's highways. The county is required by Section 1244, C.L. 1921, to keep in repair and maintain all public highways in the county, except such as are within the corporate limits of any city or town, and except those as are owned and operated by private corporations. Reading Sections 1244, 8682 and 8658 together, as they all pertain to the same general subject, it would appear that a reasonable interpretation of the legislative intent might be to clothe the board of county commissioners of each county with power as is specified in Section 35 of the Public Utilities Act.

I make these observations in the friendliest of spirit toward the decision and order in this application, and solely with the desire that if such decision and order shall be made the subject of review by the court of last resort, the attention of that Court may be called to the different statutes thought to be applicable to the subject under discussion.

Frank E. Hall Jr.
Commissioner.

Dated at Denver, Colorado,
September 21, 1923.

Partial Concurrence and Dissenting Opinion
of Commissioner Lannon
to Majority Decision No. 640.

In the Matter of the Application of)
The Colorado Motor Way, Inc., to)
Operate Lines of Transportation.)

AMENDED APPLICATION NO. 191

- - - - - - - - -
September 15, 1923.
- - - - - - - - -

I hereby concur in that part of Decision No. 640 denying the application for a Certificate of Public Convenience and Necessity for the operation of motor busses for carrying passengers, packages and parcels in both directions between Denver and Pueblo, Pueblo and La Junta, Colorado Springs and Canon City, and between Canon City and Pueblo and all intervening places between points enumerated.

I am constrained to say I regret that I can not accept that part of the decision of my conferees granting a certificate for the operation of the motor busses of this company between Denver and Nunn, passing through Henderson, Brighton, Fort Lupton, Platteville, Greeley, Eaton, Ault, Pierce and other intermediate places, and also between Denver, Greeley and Fort Collins, passing through Windsor, Timmath and the other intermediate places.

The basis of my non-concurrence in granting a certificate in the territory north of Denver lies in the fact of the frequent daily train service furnished by the protestants, the Union Pacific Railroad Company and The Colorado & Southern Railway Company. The Union Pacific runs six trains daily north from Denver. Four of these trains are operated in each direction between Denver and Greeley and two in each direction between Denver and Fort Collins. No. 103 of the Union Pacific leaving Denver at 8:00 A. M. arrives at Greeley at 9:35 A.M.; No. 21 leaving Denver at 1:30 P. M.arrives at Greeley at 2:58 P. M.; No. 105 leaving Denver at 4:00 P. M. arrives at Greeley at 5:40 P.M.; No. 109 leaving Denver at 6:00 P. M. arrives at Greeley

at 7:35 P. M. No. 105 stops at Nunn at 6:22 P. M.; No. 103 stops at Nunn at 10:31 A. M. No. 161 leaves Denver at 7:50 A. M., arrives at Fort Collins at 10:15 A. M.; No. 163 leaves Denver at 5:55 P. M., arrives at Fort Collins at 8:25 P. M.

Going south on the Union Pacific, No. 106 leaves Nunn at 7:47 A.M., arrives at Greeley at 8:28 A. M. and at Denver at 10:15 A. M.; No. 22, no stop at Nunn, arrives at Greeley 10:38 A. M. and at Denver at 12:15 P. M.; No. 110 leaves Nunn at 2:56 P. M., arrives at Greeley at 3:38 P. M. and at Denver at 5:45 P. M.; No. 104, no stop at Nunn, arrives at Greeley at 4:40 P. M. and at Denver at 6:20 P. M.; No. 160 leaves Fort Collins at 7:45 A.M., arrives at Denver 10:05 A. M.; No. 162 leaves Fort Collins at 3:45 P. M. and arrives at Denver at 6:10 P. M.

The Colorado & Southern operates daily, three trains in each direction, between Denver and Fort Collins. This road also operates two daily trains in each direction between Denver, Fort Collins and Greeley. No. 31 leaves Denver at 8:00 A. M., arrives at Fort Collins 11:05 A. M. and arrives at Greeley at 12:15 P. M.; No. 23 leaves Denver at 2:30 P. M., arrives at Fort Collins 5:27 P. M. and at Greeley at 6:40 P. M.; No. 29 leaves Denver at 6:00 P. M., arrives at Fort Collins 8:25 P. M. Going south No. 30 leaves Fort Collins at 7:13 A. M. and arrives at Denver at 8:40 A. M.; No. 32 leaves Greeley 2:05 P. M., arrives Fort Collins 3:10 P. M., and arrives at Denver 4:55 P. M.; No. 22 leaves Greeley 7:10 A. M., arrives Fort Collins 8:12 A. M. and arrives in Denver at 9:56 A. M.

Considerable stress has been laid on the statement that the railroads' landing of passengers in Denver was not at a reasonable hour for the transaction of business in Denver by people living in either Greeley or Fort Collins. This contention is more or less unjustified. The aforesaid time tables show that passengers may arrive in Denver via the Colorado & Southern from Fort Collins at 8:40 A. M. and again from both Greeley and Fort Collins at 9:56 A. M. The Union Pacific also has a train leaving Fort Collins at 7:45 A. M. that arrives in Denver at 10:05 A. M., and another train that leaves

Greeley at 8:28 A. M. and arrives at Denver at 10:15 A. M. Reflecting that one may, if so disposed, remain in the capitol until 6:00 P. M., it will be seen that one in attendance at court even can have almost the entire time of Denver court sessions at his disposal. Within this period one can also attend to matters at the state house, or can have almost the entire day to attend to business or social matters and then return to Greeley at 7:35 P. M. and to Fort Collins at 8:52 P. M. of the same day.

In the opposite direction those having business to attend to in either Fort Collins or Greeley can leave Denver at an hour early enough to give them almost the entire day in either Fort Collins or Greeley and then return to Denver at an early or seasonable hour in the evening.

As for travelers visiting Nunn, they can leave Denver by train at 8:00 A. M. and arrive at Nunn at 10:31 A. M. and remain four hours and twenty-five minutes, or until 2:56 P. M., and then arrive in Denver at 5:45 P. M., or for a sufficient period to transact any ordinary business. On the other hand, the traveling public can leave Nunn at 7:47 A. M. and arrive at Denver at 10:15 A. M. and remain five hours and forty-five minutes, or until 4:00 P. M., and then get back to Nunn the same evening at 6:22 P. M.

To my mind, it appears that both the Union Pacific and the Colorado & Southern are not only furnishing an adequate but commendable service, and that the railroad service between Denver, Greeley, Fort Collins, Nunn and intermediate points is sufficient to meet all the just and reasonable requirements for the transportation of passengers and for package delivery between the points named.

It would be ill advised to say that motor trucks have no place in this day and age. They already occupy a large and ever increasing field and one might just as well attempt to sweep back the tides of the ocean with a broom as to prevent their operation within useful and proper lines. However, this does not mean that they may not, without proper control, become a menace to the very people they seek to serve. While the taking from the railways of both passengers and express business by auto lines is keenly felt by all the

railroads, it is possible the larger and more prosperous roads of Colorado can withstand this invasion, but this subtraction from some of our weaker lines, already sorely financially depressed, may so seriously handicap them as to compel them to cease operation. The railroads are absolutely necessary to our civilization. If it were not for them the wheat, corn, potatoes, fruits, hay, lumber, coal, live stock, sugar beets, etc., could not be moved to and from the eastern or local markets. Colorado has had several of her railroad lines scrapped in the past few years for lack of business. Other of our roads are now in the hands of receivers, and on some of the lines the operating expense exceeds the operating revenues. The subject of licensing autos in competition with the rail carriers is fraught with consequences that may become far reaching as affecting the weal of our populace. It is of such vital importance it should bring forth remedial legislation from our next legislature.

In the first place, our railroads have some financial standing. In case of loss or damage to goods or of injury or loss of passengers' lives, the railroads can be made to respond in damages. Not so with the majority of truck operators. Oftentimes the latter are operating on a shoe string, as it were, not even having a clear title to the trucks they operate or any other property of value, thus being wholly and solely irresponsible and immune from all financial liability. Statutes should be drawn requiring those operating for hire to give good and sufficient bond to cover the lives of passengers carried, and also sufficient bond to cover all loss of baggage or freight carried; otherwise the public will be unprotected. Already there has come to the notice of this Commission several derelictions of auto bus operators. Only recently an old established Denver house appealed to this Commission, reciting that they had sent a bill of goods C.O.D. and that the truck driver had absconded with the proceeds. As there is no protective law, the Commission was powerless to act. Again a trucker came to Denver and loaded four or five tons of merchandise on his truck and demolished a steel bridge in Park County, Colorado. To show the fallacy and injustice of such operation to both the public and the Colorado & Southern Railroad, it is only necessary to state that the es-

timated cost of repairs on this bridge was $6,000. In Park County the Colorado & Southern road pays approximately one-third of the county taxes. Thus it will be seen that this railroad would be compelled to bear an expense of $2,000 as their part of rebuilding the bridge their competitor in the freight business had destroyed while the trucker got off scot-free. In addition to this the truck owner paid no taxes for the upkeep of the highway, while the Colorado & Southern had paid approximately one-third of all the expense of previous construction and upkeep of the road this trucker was allowed to use gratis. Such injustice to all the taxpayers of Park County should, of course, be prevented by proper legislation.

To emphasize the need of a broad comprehensive law affecting common carriers by auto, only one more case of many will be mentioned. In this instance all three parties to the transaction were made to suffer, wherein, with proper safeguards, all could have been protected. A party operating out of the metropolis of southern Colorado purchased a truck from a dealer, paying down a few hundred dollars as the first payment. In the course of his duties this trucker loaded all the effects of a householder on his truck. They were to be delivered to a distant point. Through some cause the truck ran into a deep arroya, and the only thing to be thankful for was that the driver's life was spared. In this wreck the party who purchased the truck lost all he had put into it. The party who sold the truck lost his machine, and the party who was having his household goods transported had them demolished. The trucker, making a mental survey of the situation and knowing he could not make good, did about the only thing he could and left for parts unknown.

The granting of "Certificates of Public Convenience and Necessity" to truckers in competition with the railroads, where the latter furnish frequent and adequate train service, as is done in this case, is uneconomic and grossly inequitable from either a public or railroad standpoint. The railroads pay out hundreds of thousands of dollars annually in taxes for the building and upkeep of the public highways they do not use. To say it is just to allow trucking concerns or "fly-by-night" companies who pay no taxes in the

counties through which they operate to use the state and county roads with their heavily loaded and destructive trucks, in competition with the railroads, especially in view of the fact that in many counties they have never contributed a single cent to either the building or upkeep of the roads they so largely destroy is not only grotesque but ludicrous as well.

The application for authority from this Commission to operate as a common carrier by auto is largely chimerical. If there ever was a reason for such operation, in the people's interests, it was several years ago when the roads were poor. Applications of this character are never made until the highways have been improved by the expenditure of huge sums of money wrung from the railroads, the small home owner, the farmer, the business man and others. It is then that the itinerant trucker wishes to serve the dear people and uses the miserable subterfuge of asking for a certificate, under the euphonious caption of "Public Convenience and Necessity," when in reality he wishes most sordidly to use, to his own profit, the roads that others have constructed, thereby "reaping where he has not sown."

For the aforesaid reasons I concur in the majority opinion in denying a certificate for all that territory between Denver, Colorado Springs and Pueblo, and between Pueblo and La Junta, and also between Colorado Springs and Canon City, and between Canon City and Pueblo.

I hereby dissent to the majority order granting a certificate to the applicant between Denver, Greeley and Nunn, and between Denver, Greeley and Fort Collins on the grounds that the service furnished by the Union Pacific and Colorado & Southern Railroads is superior to that furnished to many more populous sections of our country, and is sufficient, ample and adequate to meet all the reasonable transportation demands of the people between the points named.

H. D. Cannon
Commissioner.

Dated at Denver, Colorado,
this 15th day of September, 1923.

(Decision No. 640) 1/V PUC-5

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of)
The Colorado Motor Way, Inc., for a)
certificate of public convenience)
and necessity for the operation of)
a motor bus line between certain)
cities and towns in the State of)
Colorado.)

AMENDED APPLICATION NO. 191

ORDER DENYING
APPLICATION FOR RE-HEARING

November 27, 1923

Appearances:

For applicant, The Colorado Motor Way, Inc.,

Halsted L. Ritter and P. M. Clark.

For protestants and objectors,

Thomas R. Woodrow, for Joseph H. Young, Receiver of The Denver and Rio Grande Western Railroad System;

C. C. Dorsey and E. G. Knowles, for Union Pacific Railroad Company;

J. Q. Dier, for The Colorado and Southern Railway Company;

Erl H. Ellis, for The Atchison, Topeka and Santa Fe Railway Company;

W. V. Hodges and D. Edgar Wilson, for The Chicago, Rock Island & Pacific Railway Company;

T. H. Devine, J. W. Preston and T. C. Storer, for Missouri Pacific Railroad Company.

S T A T E M E N T

By the Commission:

On September 15, 1923, the Commission entered its Decision No. 640 in this case, granting to the applicant a certificate of public convenience and necessity for the operation of motor bus lines between certain cities and towns in the State of Colorado lying north of the City

and County of Denver, and denying to said applicant such certificate of public convenience and necessity for the operation of motor bus lines between certain cities and towns lying south of the City and County of Denver.

On the 5th day of November, 1923, the respondents and protestants filed their application for a re-hearing in said case.

Now on this 27th day of November, 1923, after considering all matters presented and carefully reviewing the testimony in the original hearing, the Commission is of the opinion that there is no valid reason why this application should re-open, and in consequence of which a re-hearing of the aforesaid application will be denied.

O R D E R

IT IS, THEREFORE, ORDERED By the Commission that the several applications for re-hearing by the respondents herein be, and the same are hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall

F. P. Lamson

Commissioners.

Dated at Denver, Colorado,
this 27th day of November, 1923.

(Decision No. 641)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the Board of County Commissioners of Archuleta County, Colorado, for the Opening of a Public Highway Over the Right-of-Way and Track of The Denver and Rio Grande Western Railroad System, at Mile Post 409 Plus 410 Feet, In Section 13, Township 32 North, Range 6 West, Ute Meridian, Near Allison in Archuleta County, Colorado.

APPLICATION NO. 227

SUPPLEMENTAL ORDER

- - - - - - - -

September 26, 1923.

- - - - - - - - -

S T A T E M E N T

By the Commission:

In the matter of the application of the Board of County Commissioners of Archuleta County, Colorado, for the opening of a public highway crossing over the right-of-way and tracks of The Denver and Rio Grande Western Railroad System, near Allison in Archuleta County, Colorado, the Commission has been advised by the Board of County Commissioners that in order to comply with the necessities of the situation the description of the location of the crossing applied for should read at Mile Post 409 plus 1568 feet, in Section 14, Township 32 North, Range 6 West, Ute Meridian, instead of at Mile Post 409 plus 410 feet, in Section 13, Township 32 North, Range 6 West, Ute Meridian, as given in the original application and order in this case.

The Denver and Rio Grande Western Railroad System having been fully informed of the proposed change in location and having advised the Commission that they have no objection to the change in location as requested, the Commission will, therefore, issue this supplemental order to correct the error in the description of the location of the crossing as given in the original order.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway at grade be, and the same is hereby, permitted to be opened and established over the main line track and right-of-way of The Denver and Rio Grande Western Railroad System at Mile Post 409 plus 1568 feet, in Section 14, Township 32 North, Range 6 West, Ute Meridian, near Allison, Archuleta 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 prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway at the crossing, including the necessary drainage therefor, be borne by Archuleta County, and that all other expense in the matter of installation and maintenance of said crossing as herein provided shall be borne by respondent, The Denver and Rio Grande Western Railroad System.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 26th day of September, 1923.

(Decision No. 642)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of)
The Colorado Springs and Interurban)
Railway Company for an Order Author-) APPLICATION NO. 241
izing it to Install Upon its System)
an Unlimited Ride, Transferable,)
Weekly Pass.)

September 27, 1923.

SUPPLEMENTAL ORDER.

Now comes the Colorado Springs and Interurban Railway Company, a corporation, engaged in transporting passengers for hire within the corporate limits of the City of Colorado Springs, Colorado, and from thence to the Town of Manitou, Broadmoor, Cheyenne Canon and Roswell, adjacent to said city, and whose postoffice address is 117 East Pikes Peak Avenue, Colorado Springs, Colorado, and presents its application praying for an order authorizing it to sell to the public unlimited ride, transferable, weekly passes over that portion of said company's system over which this Commission has jurisdiction, and where it has been authorized by prior order of this Commission to sell its transportation for the price of seven cents cash for a single ride, and to sell tickets therefor on the basis of eight full fares for fifty cents, for the price of seventy-five cents, and to sell a combination pass permitting the pass holder to obtain the like riding over that portion of said applicant's system where it now charges two fares for the price of $1.75.

IT IS THEREFORE ORDERED, That said applicant be, and it is hereby, authorized to install said system for the period of twenty-six weeks, beginning Sunday, September 30, 1923; that this order shall be in effect only for the period of twenty-six weeks beginning Sunday, September 30, 1923.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 27th day of September, 1923.

Commissioners.

(Decision No. 643)

MAKE NO COPY

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of The Denver and Rio Grande Western Railroad System for an Order Authorizing it to Waive the Collection of an Undercharge of $1,112.29 on 88 Cars of Coal Shipped from Wane, Colorado, to Denver, Colorado, in Months March to December, 1922.

APPLICATION NO. 284.

- - - - - - - -

September 29, 1923.

- - - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission on an application made informally by The Denver and Rio Grande Western Railroad System for an order of the Commission authorizing it to waive an undercharge of $1,112.29 on eighty-eight cars of coal shipped by The Garfield Coal Mining Company from Wane, Colorado, to Denver, Colorado, in the months March to December, 1922.

The application is supported by an affidavit from Mr. George Williams, the General Freight Agent of said railroad system, that the legal rate was determined by applying Wane, Colorado intermediate with Bowie, Colorado, as per Item 5, page 4, and rate in index 650 on page 7, D. & R.G.W. Tariff 5913-A, Colo. P.U.C. 589, effective March 20, 1920, and reducing same as per supplement No. 4 on and after July 1, 1922, said rate amounting to $4.25 per ton on lump and mine run and $3.55 per ton on slack.

As Wane is in the same group as Palisade and as it was the intention of the carrier in reissuing the above described tariff to have the same rates as published from Palisade apply from Wane, but through an oversight was eliminated, and for this reason The Denver and Rio Grande Western Railroad System feels that it would be doing an injustice to shippers in forcing collection of the rate as in effect from Bowie. The

discrepancy was cleared up in published Amendment 16 to D. & R. G. W. 5913-A, Colo. P.U.C. 589, effective August 22, 1923, putting Wane on same basis as Palisade as originally intended, with the effect that the rate on lump and mine run coal was then $3.55 and the rate on slack $3.27 per ton. The Commission feels that the charges assessed on rates applying from Bowie to be excessive for the transportation from Wane, and an order will be issued for the waiving of the collection of the undercharge amounting to $1,112.29.

The Commission is strongly of the opinion that this method of procedure should be discouraged, and that this order should not be accepted or deemed as a precedent for matters of this kind in the future. The railroad company should make the collection and then seek authority from the Commission for making reparation of any overcharge that is justly due.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad System be, and it is hereby, authorized and directed to waive the undercharge of $1,112.29 on eighty-eight cars of coal shipped by The Garfield Coal Mining Company from Wane, Colorado, to Denver, Colorado, consigned to various consignees, which moved during the months March to December, 1922.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. MacDermott

Commissioners.

Dated at Denver, Colorado,
this 29th day of September, 1923.

(Decision No. 644.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - -

The Trinidad-Las Animas County Chamber of Commerce, for Itself as Well as All Other Persons Similarly Situated,	)	
Complainant,	)	CASE NO. 268.
vs.	)	
The Colorado and Southern Railway Company, a Railway Corporation,	)	
Defendant.	)	

- - - - - -

(October 3, 1923.)

- - - - - -

S T A T E M E N T

By the Commission:

It appearing that the complainant in this cause has advised the Commission that an amicable agreement has been reached between it and the respondent herein, whereby the respondent will satisfy the complaint herein much more to the advantage of all concerned than if this cause were adjudicated, and passed a resolution authorizing the dismissal of said cause.

O R D E R

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 3rd day of October, 1923.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

The Colorado Springs & Interurban Railway Company, Complainant, vs. The Denver & Rio Grande Western Railroad Company and its Receiver, Joseph H. Young, and The Atchison, Topeka & Santa Fe Railway Company, Respondents.	)	CASE NO. 267.

- - - - - - - -
October 5, 1923.
- - - - - - - -

Appearances: Chinn & Strickler, of Colorado Springs, for Complainant; J. A. Gallaher and George Williams for The Denver & Rio Grande Western Railroad Company and its Receiver; Erl H. Ellis, for The Atchison, Topeka & Santa Fe Railway Company.

S T A T E M E N T

By the Commission:

The complaint herein was filed with this Commission May 24, 1923, and was set down for hearing and was heard by Commissioners Lamon and Scott at the City Hall, Colorado Springs, Colorado, August 29, 1923.

The cause of this complaint seems to have arisen from the fact that The Colorado Springs & Interurban Railway Company, previous to May 17, 1923, paid to the Midland Terminal a flat charge of $3.60 per car for switching its coal from the tracks of The Atchison, Topeka & Santa Fe to its power house in the southern part of Colorado Springs. This switching was done by the Midland Terminal Railway Company partly over the tracks of The Colorado Springs & Cripple Creek District Railway Company. The latter road was sold and junked, in consequence of which the rails were removed and the Midland Terminal was no longer able to make a transfer of this coal. At this juncture, May 17, 1923,

the Denver & Rio Grande Western and the Atchison, Topeka & Santa Fe built a connection between their lines, and it then devolved upon the Denver & Rio Grande Western to switch the coal to the power house of this complainant, for which The Denver & Rio Grande Western Railroad Company has been making a charge of twenty-five cents per ton.

In the Colorado Springs district there are three mines with railroad shipping connections; namely, the Pikes Peak Mine, six miles north on the line of the Denver and Rio Grande Western; the City Mines, about five miles north on the tracks of the Atchison, Topeka & Santa Fe, and the Keystone Mine, about four miles distant on the track of the Chicago, Rock Island & Pacific. From each of these mines the line rate to Colorado Springs is the same; namely, fifty cents per ton for the initial haul. In each case also where a transfer is made from the rails of one road to those of another a switching charge of twenty-five cents per ton is made by the road that sets the car to an industry located along its tracks, thus making the charge reciprocal between the three railroads. Where the industry happens to be located on the road that has control of the whole movement of the coal, then in that case the total charge from the mine to the user in Colorado Springs is but fifty cents per ton. Thus if this complainant were to get his coal from the Pikes Peak Mine it would be set to his plant at a charge of but fifty cents per ton.

The general practice among the carriers of the United States is that switching charges are not absorbed except on shipments where originating and delivery is made from and to competitive points, and then only where the road making the absorption has had more or less of a long haul on the shipment.

The reciprocal terminal switching charge under consideration can in no manner be claimed to be discriminatory for the reason that exactly the same charge is made for such service at all terminals in the Colorado common point territory; namely, Fort Collins, Greeley, Windsor, Longmont, Loveland, Colorado Springs, Pueblo, Walsenburg and Trinidad. In Denver, however, there are two zones. Within the inner zone the charge is eighteen cents per ton on all roads, while the charge in the outer zone is twenty-four cents on the

Colorado & Southern and twenty-five cents on the Denver & Rio Grande Western. The evidence shows that in every instance where the Colorado & Southern charges twenty-four cents per ton for reciprocal switching, the Denver & Rio Grande Western charges for the same service twenty-five cents. This difference was brought about by the disposition of fractions under the general reduction of 10% in freight rates, switching and terminal charges that became effective July 1, 1922, which would make the switching charge twenty-four and one-half cents, which the Denver & Rio Grande Western claims, under the rules, should be made twenty-five cents, while their competitors saw fit to waive the rule for the disposition of fractions and made the charge of twenty-four cents. These rates are on file with this Commission and are the legal charges for switching in force and collected in Colorado. The line haul from the mines in question to Colorado Springs of fifty cents per ton is the lowest rate, mileage considered, of any in Colorado; consequently it would be unfair for the railway making the line haul to absorb any portion of the switching charge. The Commission's files show that similar charges have been made by the respondent, Denver & Rio Grande Western Railroad, since June 18, 1907, or for over sixteen years. Again, the switching charge is in no way connected with the length of haul. It is worth just as much to switch a car that has had only a line haul of five or six miles as it is for one that has been hauled across the continent.

So far as the mileage is concerned in shipping coal into Colorado Springs from the nearby mines, it is of no moment, as in so short a haul full consideration must be given to loss of time in loading and unloading equipment. Again, it is the universal custom in the construction of tariffs to base rates on the same level up to ten miles in distance. The switching rates are reciprocal, and if the conditions were reversed and the Rio Grande Western were to transport coal from the Pikes Peak mine on their line to a customer located on the Atchison, Topeka & Santa Fe, then in that case the customer would have to pay the Santa Fe for the switching just as is now done

by this complainant to the Denver & Rio Grande Western. The switching charges of all the roads involved in this hearing are the same to each and all of their respective customers. The line haul charge of fifty cents per ton from the mines is a very reasonable one, and the twenty-five cents per ton, or the $6.30 minimum car load switching charge, puts the twenty-five ton customer on an equality as to costs per ton with the party who receives a fifty or seventy ton car load.

Inasmuch as the switching rate complained of herein seems to be fair and reasonable, and from the further fact that it would be unjust and discriminatory to change such rates in Colorado Springs without making a similar change in all other affected parts of Colorado, this Commission deems it wise to dismiss the complaint of this complainant and will disallow its prayer for a gross line haul and switching charge of forty-five cents per ton on coal delivered to its plant as asked for in its complaint to this Commission.

O R D E R

IT IS THEREFORE ORDERED By the Commission that the rate asked for by The Colorado Springs & Interurban Railway Company in its Case No. 267 be, and the same is hereby, denied and the complaint is dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 5th day of October, 1923.

(Decision No. 646)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of)
Union Pacific Railroad Company for)
Approval in Change of Crossing Pro-) APPLICATION NO. 285.
tection Near Wild Cat, Colorado.)

- - - - - - -
October 6, 1923.
- - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon application from the Union Pacific Railroad Company, in compliance with Section 29 of the Public Utilities Act of Colorado as amended April 16, 1917, for permission to remove and replace the present mechanical type interlocking plant maintained and operated at the point where that portion of the railroad line of The Great Western Railway Company, between Milliken, Colorado and Wattenburg, Colorado, crosses the right-of-way and tracks of applicant in the Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) of Section Twenty-six (26), Township Four (4) North, Range Sixty-seven (67) West of the Sixth Principal Meridian, between the stations of Dent and Wild Cat on the railroad line of applicant, with a crossing gate with signals to be constructed in substantial conformity to the plans and specifications attached to and made a part of said application.

The Great Western Railway Company having joined with the Union Pacific Railroad Company in asking the approval of the Commission for said removal and replacement of said interlocking plant with said crossing gate and concurred in the statements made in the foregoing application, and there further appearing no reason why this application should not be granted, the Commission will issue an order permitting the removal and replacement of said interlocking plant with the proposed crossing gate, as specifically described in the plans and specifications submitted to the Commission for its approval.

O R D E R

IT IS THEREFORE ORDERED, That the applicant, Union Pacific Railroad Company, be, and it is hereby, permitted to remove and replace the present mechanical type interlocking plant maintained and operated at the point where that portion of the railroad line of The Great Western Railway Company between Milliken, Colorado and Wattenburg, Colorado, crosses the right-of-way and tracks of applicant in the Northwest Quarter ($NW\frac{1}{4}$) of the Northeast Quarter ($NE\frac{1}{4}$) of Section Twenty-six (26), Township Four (4) North, Range Sixty-seven (67) West of the Sixth Principal Meridian, between the stations of Dent and Wild Cat on the railroad line of the applicant, with a crossing gate with signals to be constructed in substantial conformity with the plans and specifications submitted; provided that the applicant first negotiate and execute a formal contract with The Great Western Railway Company as to the details of the apportionment of the expense of the removal and replacement of said interlocking plant with said crossing gate and the operation and maintenance thereof.

The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of this crossing as may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 6th day of October, 1923.

(Decision No. 647)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - -

In the Matter of the Application of the City of Fort Collins, a Municipal Corporation, for an Order of the Public Utilities Commission of the State of Colorado Authorizing the Petitioner, as Owner of the Fort Collins Municipal Railway, to Discontinue a Portion of its Said Street Railway System Without the Corporate Limits of Said City, and Dismantling Said Portion of the Street Railway Line.

APPLICATION NO. 275.

- - - - - - -
October 8, 1923.
- - - - - - - - -

Appearance: For Applicant, Frank J. Annis, City Attorney for Fort Collins.

S T A T E M E N T

By the Commission:

The application herein was filed with the Commission September 8, 1923, and was set down and duly heard at the City Hall, Fort Collins, Colorado, Friday, September 21, 1923. This hearing was duly advertised and the greatest publicity was given to it through the Fort Collins Express-Courier.

The petitioner represented in its petition that the street railway line from the north street boundary of Linden Street in Fort Collins to the station at the factory of the Great Western Sugar Company, without the corporate limits of said city, had been operated at a loss of one thousand dollars during the last year of its operation, not including anything for depreciation.

The testimony shows that this street railway line, known as the "Factory Line," crosses both main lines and several switch tracks of the Union Pacific and Colorado & Southern Railways, which adds very materially to the upkeep of this part of their road. It was also shown that many of the employes of the sugar factory now have automobiles of their own and in

consequence do not patronize the railway, thus greatly reducing the revenues.

The evidence also showed that very high water in the Cache La Poudre had recently cut a new channel across its factory line which would entail an additional expenditure of several thousands of dollars for a new bridge if the city of Fort Collins were not allowed to abandon the track in question.

The city council of the city of Fort Collins, by resolution on the eleventh day of August, 1923, unanimously adopted a resolution endorsing the abandonment of its so-called factory line and asked this Commission's concurrence. W. A. Johnson, Superintendent of the Fort Collins Municipal Railway, A. J. Rosenow, City Clerk, and Frank B. Gates, Commissioner of Public Works of Fort Collins, all testified showing that the line which is sought to be abandoned is a losing proposition and that the rails are needed for other extensions where they will be more beneficial to the best interests of the people of the city. In addition to the aforesaid, Mr. A. D. Roach, Manager of the Great Western Sugar Company, whose company would be more deeply interested than any others in the abandonment, stated he had no objections. During the entire hearing there was not a single objection raised to the allowance of the application, and in consequence the application will be allowed.

O R D E R

IT IS THEREFORE ORDERED, That the city of Fort Collins be, and it is hereby, allowed to discontinue the operation and to dismantle all that part of the Fort Collins Municipal Railway known as the "Factory Line" from the corporate limits of Fort Collins to the terminus at the sugar factory of the Great Western Sugar Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 8th day of October, 1923.

(Decision No. 648)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Amended Application of the County Commissioners of Conejos County, Colorado, for Changing the Location of the Public Highway Crossing Originally Applied for in Application No. 200 to a Point Located at Mile Post 332 plus 4255 Feet, in the N.W.¼ of Sec. 18, T. 32 N., R. 5 E., New Mexico Meridian.

AMENDED APPLICATION NO. 200

October 13, 1923

S T A T E M E N T

By the Commission:

In compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, the County Commissioners of Conejos County, Colorado, have filed with the Commission an amended application for permission to change the location of the public highway crossing as originally applied for in their original Application No. 200 to a point located at Mile Post 332 plus 4255 feet, in Section 18, Township 32 North, Range 5 East, New Mexico Meridian.

The Denver and Rio Grande Western Railroad System has been fully informed of the proposed change and has advised the Commission that it has no objection to the change in location as requested.

It appears to the Commission that this change in location of the crossing as applied for is necessary in connection with the reconstruction of State Highway No. 71; and, as there further appears to be no reason why this application should not be granted, the Commission will, therefore, issue this order granting permission for the change in location as requested.

O R D E R

IT IS THEREFORE ORDERED, That permission be and hereby is granted to abandon the grade crossing originally applied for in Application No. 200, dated June 17, 1922, and authorized by the Commission, Decision No. 565, dated August 10, 1922; and to establish in lieu thereof a grade crossing over the right-of-way and tracks of The Denver and Rio Grande Western Railroad System at Mile

Post 332, plus 4255 feet, in the Northwest Quarter of Section 18, Township 32 North, Range 5 East, New Mexico Meridian; conditioned, however, that prior to the opening of said crossing to public travel, it shall be constructed in accordance with the specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of the roadway at the crossing, including necessary drainage therefor, shall be borne by Conejos County; and that all other expense in the matter of installation and maintenance of said crossing as herein provided shall be borne by The Denver and Rio Grande Western Railroad System.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Emmons,

By L. L. Gannon

Commissioners.

Dated at Denver, Colorado, this
13 day of October, A. D. 1923.

(Decision No. 649.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Amended Application of the County Commissioners of Conejos County, Colorado, for Changing the Location of the Grade Crossing Originally Applied for in Application No. 199 to an Undercrossing Located Near Cumbres Station in Section 18, T 32 N, R 5 E, New Mexico Meridian, at Mile Post 330 Plus 4170 Feet.

AMENDED APPLICATION NO. 199

- - - - - - - -
October 15, 1923.
- - - - - - - -

S T A T E M E N T

By the Commission:

On September 8, 1923, the Commission received an application, dated September 5, 1923, known as Amended Application No. 199, from the Board of County Commissioners of Conejos County, in compliance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, for the opening of a public highway crossing, wherein it is stated:

"1. That since the filing of the original Petition in the above cause, a change has been made in the location of State Highway No. 71 so that the crossing will be an undercrossing instead of a grade crossing as originally planned and asked for, and that it is proposed that said undercrossing shall be located at mile post No. 330 plus 4170 feet in the Northeast quarter (NE¼) of Section 18, Township 32 North, Range 5 East, New Mexico Meridian.

"2. That such change has been required for the reason that the grade crossing is not practicable and unsafe, and an undergrade crossing is more desirable and is necessary and proper for the service and accommodation of the public for the reason that said highway No. 71 will link the San Juan Basin with Eastern Colorado and will be used annually by many thousands of people."

On September 13, 1923, the Commission received a letter, dated September 11, 1923, from Mr. E. N. Clark, General Attorney for The Denver and Rio Grande Western Railroad System, wherein he stated:

"The Receiver agrees to the establishment of the undercrossing prayed for in Amended Application No. 199, provided the County of Conejos will bear one-half of the expense of the pile trestle structure which it would be necessary to construct. The Federal Bureau of Public Roads has agreed, at its expense, to construct a

road through the Denver and Rio Grande Western roadbed after a pile trestle has been erected. I am informed that under the statute covering the matter, the Federal Bureau of Public Roads cannot contribute any portion of the expense of the trestle. The Chief Engineer for the Receiver of the Railroad Company has informed me that the pile trestle structure will cost approximately $1680.00 and is of the opinion that the County should bear one-half of this expense or $840.00 and the Receiver bear an equal proportion of the expense, namely, $840.00. This arrangement would divide the entire expense about equally between the three parties interested, that is, the Federal Bureau of Public Roads, Conejos County and the Railroad Company."

On September 27, 1923, the Commission received a letter, dated September 22, 1923, from Mr. L. D. Blauvelt, State Highway Engineer of the State Highway Department of Colorado, wherein he stated:

"In regard to Amended Application #199, this is to advise that the State Highway Department will guarantee payment of the sum of $840.00, or such amount as may be found to cover 50% of the cost of the erection of the Pile Bridge referred to in the last mentioned above letter, either from the funds of Conejos County, or of the State Highway Department. It is therefore requested that the Public Utilities Commission issue an order for the under-grade crossing in accordance with Amended Application #199."

On October 3, 1923, the Commission received a letter, dated October 2, 1923, from Mr. J. W. Johnson, District Engineer for the United States Department of Agriculture, Bureau of Public Roads, District No. 3, as follows:

"In connection with the undergrade crossing at Mile Post 330 plus, on the D. & R. G. W. Railroad, near Cumbres Pass, Colorado, for which application has been made to you by the County Commissioners of Conejos County, and at the request of State Highway Engineer Blauvelt, I wish to advise you that, in the matter of apportioning the cost of this grade separation, this office has made provision to do the grading work necessary. Our estimates for the Cumbres Pass Forest Highway Project include the yardage necessary, and our appropriation is sufficient to cover the work involved."

From the foregoing, it appears to the Commission that all interested parties are agreed as to the location, necessity and character of the crossing and the apportionment of the cost of same; that said apportionment of the cost is fair and equitable; and, there further appearing no reason why this application should not be granted, the Commission will, therefore, issue its order granting permission for the change in location and construction of the undercrossing as requested.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of the Public Utilities Act of Colorado as amended April 16, 1917, permission be, and is hereby, granted to abandon the grade crossing applied for in original Ap-

plication No. 199, dated June 17, 1922, and authorized by the Commission in its Order No. 199, Decision No. 564, dated August 10, 1922, and to establish in lieu thereof an undercrossing under the right-of-way and main line tracks of The Denver and Rio Grande Western Railroad System near Cumbres Station, at Mile Post 330 plus 4170 feet, in the northeast quarter of Section 18, Township 32 North, Range 5 East, New Mexico Meridian; conditioned, however, that the following apportionment of the cost be agreeable to all interested parties; namely, that the cost of construction of the required pile trestle bridge is to be apportioned equally between The Denver and Rio Grande Western Railroad System and Conejos County; that the State Highway Department of Colorado guarantees Conejos County's payment of its proportion of the cost of the pile trestle bridge either from the funds of Conejos County or of the State Highway Department; that the cost of grading required in making the grade separation is to be borne by the Bureau of Public Roads, District No. 3, of the United States Department of Agriculture.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 15th day of October, 1923.

(Decision No. 650)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of W. H. Rhoads, doing business as The Rhoads Truck Line, for an order, authorization, permit or certificate authorizing said applicant to haul freight by truck to and from the cities of Montrose, Colorado, and Grand Junction, Colorado, including the town of Olathe, Colorado.

APPLICATION NO. 252

In the Matter of the Application of Henry C. Davis and Harry D. Davis, doing business under the firm name of Davis Bros., for a certificate, under Sec. 35 of the Public Utilities Act for the operation of an automobile truck line between Grand Junction and Bowie, Colorado.

APPLICATION NO. 253

October 26, 1923

Appearances: For applicant, W. H. Rhoads, Messrs. Blake & Bryant, Montrose, Colorado; for applicant, Davis Bros., Millard Fairlamb, Esq., Delta, Colorado; for protestant, The Motor Transportation Company, Messrs. Burgess & Bothwell, Grand Junction, Colorado, and Messrs. Charlesworth & Gueno, Delta, Colorado.

S T A T E M E N T

By the Commission:

The above matters are before the Commission by virtue of the filing of a petition in Application No. 252 on May 8, 1923, and in Application No. 253 on May 9, 1923. In each of the said applications, applicants sought a certificate of public convenience and necessity for the operation of a motor truck freight line over the routes therein described.

The route described by applicant in Application No. 252 is between the cities of Montrose and Grand Junction, Colorado, over the main traveled highway and serving en route the town of Olathe. The route desired by applicant in Application No. 253 is between Grand Junction and Bowie, Colorado,

and serving the intermediate points of Delta, Austin, Lazear, Hotchkiss and Paonia.

Upon the filing of each of said applications, copies thereof were served upon the Denver and Rio Grande Western Railroad and upon The Motor Transportation Company, an automobile freight and passenger line which heretofore had applied for and received a certificate of public convenience and necessity for operation over the routes embraced in both of the above applications.

In a general way, each of said applicants set forth the alleged necessity for the accommodation and convenience of the merchants and other shippers of freight in the territory described, as an added and supplemental means of transportation of freight in addition to that afforded by the Denver and Rio Grande Western Railroad and said The Motor Transportation Company; alleging that the service of the railroad and transportation companies was and is inadequate to afford reasonably efficient and proper service between the communities affected.

Protests and objections to the applications were filed by both the railroad and transportation companies; on May 16, 1923, by said railroad company, and on July 2, 1923, by said transportation company. The basis of the protest and objection of each of said protestants and objectors tersely stated is, that the existing method of transportation between the communities sought to be served by applicants is adequately and efficiently served by means of the railroad and of The Motor Transportation Company.

Both of said applications were, upon request of the parties to the proceedings, except as to the railroad company, continued from the date originally fixed for the hearing of said applications in the month of July, 1923, to Tuesday, August 7, 1923, at the Court House in Delta, Colorado, where the same were duly heard by Commissioner Halderman.

At the hearing, by stipulation of the parties appearing, the Denver and Rio Grande Railroad not participating in the proceeding, it was agreed

that the applications should be consolidated for purposes of the hearing and that any and all evidence submitted, insofar as the same was applicable, should be considered as it pertains to each of said applicants. At this hearing, which consumed all of two days and one night session, a very voluminous record was made, particularly the testimony or proof offered by applicants. The testimony became so voluminous and so extended and so much in detail that the sitting Commissioner admonished the attorneys engaged that, in the interest of economy of time and labor, very much of the testimony, in his judgment, was immaterial and irrelevant to the real issue being tried, to-wit: Does the public necessity and convenience require additional transportation facilities over the routes embraced in said applications other than the service being afforded by the railroad company and The Motor Transportation Company?

In the taking of testimony before the Commission in very many of the applications and cases heard by it, much of the testimony is really irrelevant to the question being tried; so that the Commission here desires to emphasize to the lawyers who appear before it, that they seek to avoid the presentation of unnecessary, irrelevant and immaterial matters in the hearing of proceedings before the Commission.

It developed at the hearing that applicants in both applications had been engaged in the motor truck transportation of freight over the routes described in the applications for at least two years prior to August, 1923. The files and records of the Commission disclose that protestant, The Motor Transportation Company, made application for a certificate of public convenience and necessity for passenger and express traffic over the routes herein involved, and was granted such certificate on May 2, 1922, being Application No. 151, Decision No. 534; that thereafter and on January 13, 1923, protestant, The Motor Transportation Company, filed its application for a certificate of convenience and necessity for the purpose of engaging in the motor truck freight business over the route between Grand Junction and Montrose; that said application was heard at Grand Junction on April 19, 1923, and the

certificate applied for was granted to said protestant on June 15, 1923, being Application No. 236, Decision No. 615.

Applicants, by the proof submitted and as reasons why the Commission should grant the certificates of convenience and necessity applied for, sought to establish two main propositions; first, that the volume of freight traffic between Grand Junction, Delta, Montrose, Hotchkiss and Paonia necessitated the installation of the freight truck service of applicants in addition to the existing freight transportation afforded by The Denver and Rio Grande Western Railroad Company and The Motor Transportation Company; and, second, that applicants had no knowledge of the law requiring a person engaged as a common carrier by motor vehicle or otherwise, to apply for and obtain a certificate of public convenience and necessity, until the hearing held in Grand Junction on April 19, 1923, upon the application of The Motor Transportation Company for its motor truck freight line; and, also, that Mr. DeMerschman, manager of the protestant transportation company, had practised a fraud upon the applicants in the making of his application for such motor truck freight line.

So far as the question of fraud is concerned, there was not a particle of testimony introduced to show that any fraud was practised upon the Commission. The testimony that was submitted tended to prove, if it proved anything, that applicants and Mr. DeMerschman had some conversation, prior to the April, 1923, hearing at Grand Junction, concerning protestant's application for such certificate. If there was any fraud practised by Mr. DeMerschman upon applicants in these cases, that is a question that is irrelevant to this sort of a proceeding for the reason that the Commission is not vested with jurisdiction to investigate and determine fraudulent practices as between individuals. Had the Commission been imposed upon and been misled by protestant transportation company, a different question would be presented; but, as stated, there was no evidence offered, and indeed no pretense, that the Commission itself was imposed upon or misled by Mr. DeMerschman or any other officer or agent of the transportation company.

Upon the question of the ignorance of applicants in not knowing or understanding that the law required one engaged in hauling freight by automobile or otherwise over established routes or between fixed termini for compensation is concerned, a law maxim as old as the hills is to the effect that "Ignorance of the law excuses no one." But to scrutinize the evidence, it will be observed that Mr. Rhoads testified that he knew as long ago as the spring of 1922 that the protestant had made application for a certificate of convenience and necessity for the operation of a passenger and express motor bus between Grand Junction and Montrose, serving Delta and Olathe en route; and it is fairly inferable from the testimony of Mr. Davis that he also had knowledge of that fact early in the year 1922. There was no testimony that applicants, or either of them, were or are unable to read and write the English language or that, by reason of the lack of educational facilities or for any other reason, they did not understand the law upon the regulation of motor vehicle common carriers to the extent, at least, that they were required to apply for and obtain a certificate from this Commission to lawfully engage in such business. On the contrary, both applicants testified that they were acquainted with Mr. DeMerschman; had knowledge of his operation of "The White Bus Line" for many months prior to April, 1923; and their testimony, appearance and conduct while upon the witness stand indicates beyond a doubt that they are endowed with a marked degree of intelligence and business capacity. In view of the fact that this Commission has held several hearings in Grand Junction during the years 1921 and 1922 and one at least in Montrose, and that the newspapers have commented upon such fact, it seems incredible that men of the character and capacity of applicants should not have had knowledge of such requirement of the statute, or, at least, such knowledge as would cause them to be put upon inquiry. No one may wilfully close his eyes and thus fail to see such things as would tend to give him knowledge or cause him to investigate. The maxim, "Equity aids the vigilant; not those who slumber on their rights," is applicable in answer to the contention of applicants in this respect.

With regard to the principal contention of applicants as a ground upon which they base their right for certificates of public convenience and necessity in this proceeding, that the volume of freight traffic is of such extent that the public convenience and necessity requires that they engage in the motor truck freight business in addition to the service being afforded by the railroad and transportation companies, the evidence establishes the fact, and indeed is practically admitted by applicants, that they continued to haul freight between Grand Junction, Olathe and Montrose, by the Rhoads Truck Line, and between Grand Junction, Delta, Hotchkiss and Paonia, by the Davis Brothers' truck line, after The Motor Transportation Company had received its certificate in June, 1923; that applicants continued such business in the same manner and to the same extent as they had been doing during the year 1922 and prior thereto. The testimony of protestant disclosed that it purchased additional equipment after the reception of its certificate in June, 1923, and prepared to engage in the hauling of freight over said route, but that because and by reason of the operation of applicants as they had theretofore been doing, its operations were conducted and were being conducted at a loss.

Much of the evidence submitted by applicants, as well as a resolution of the Board of County Commissioners of Delta County, was directed toward the proposition that there should be no monopoly in the use of the highways by a motor transportation common carrier; and, for that reason, applicants should be granted a certificate of public convenience and necessity. The whole theory of regulation of common carriers, or of any public utility, is essentially of a monopolistic character; the theory being that the utility serving the public, whether it be a common carrier, an electric light, water, gas, or other public utility, shall be entitled to earn a fair return upon the capital invested, and is entitled to protection from competition so long as the utility gives reasonably adequate and efficient service to the public. The utility's rates, practices and rules are made the subject of regulation by the state through the agency of a board, commission or body created by legislative enactment in the interest of the public, to the end that the

public shall not be required to pay more than the service is reasonably worth and that the utility is obliged to maintain adequate and efficient service. To illustrate: If the Denver and Rio Grande Railroad had been, in the prior proceeding before this Commission, proved to be serving the public in the territory involved in these proceedings adequately and efficiently, no certificate of public convenience and necessity would have been granted to The Motor Transportation Company; but the Commission found in the prior proceeding that the railroad company was not serving the public in the territory herein in such manner; hence, the transportation company was granted its certificate.

If the transportation company failed, neglected or refused to adequately serve the public, then, upon such showing made, the Commission would grant a certificate of public convenience and necessity to another auto truck common carrier. However, in this proceeding, the public is not complaining of the service being rendered by the transportation company; and, by reason of the large volume of freight hauled by these applicants, the transportation company is prevented from demonstrating its ability to meet the public convenience and necessity in the haulage of freight by its motor trucks. This competition has been for a period of at least two years, continues now, and has always been and is without authority of law. There was no evidence submitted by applicants tending to show or purporting to show that protestant had failed, neglected or refused to serve the public adequately and efficiently; but, on the contrary, that applicants had corraled the greater volume of the business and attempted to show that there was sufficient business for additional motor truck lines. Protestant, on the other hand, introduced testimony of the financial ability to augment its equipment to handle by truck whatever freight is offered between Grand Junction and the territory involved. If, after a reasonable length of time, protestant did not or could not furnish such service, then it would be time for applicants, or any person else, to make application for a certificate of public convenience and necessity to enter this particular field. These principles are so well established that

it would hardly seem necessary to cite authority; however, a few are herewith given.

Re Motor Transit Company, P.U.R. 1922-D, 495
Re Highway Transport Company, P.U.R. 1921-C, 719
Re Wilson & Company, P.U.R. 1920-C, 635
Re San Joaquin Light & Power Co., 1921-A, 613, P.U.R.
Re A. R. G. Bus Company, P.U.R. 1919-E, 232
Re A. L. Richardson, P.U.R. 1923-D, 531 (Advance Sheet Aug. 30, 1923)
Re Frost & Frost Truck Co., P.U.R. 1923-D, 536 (Adv. Sheet Aug.30,1923)
Re Grover C. Gillingham, P.U.R. 1923-D, 540 (Adv. Sheet Aug. 30, 1923)

Applicants also introduced what purports to be a resolution of the County Commissioners' Association of the Second State Highway District of Colorado, held at Ouray, Colorado, July 31, 1923. That resolution charges this Commission with attempting to use its powers and exercise jurisdiction over the public highways of this State. Said resolution, as well as the resolution hereinabove mentioned of the Commissioners of Delta County, indicates that a misunderstanding is prevalent, upon the Western Slope at any rate, of the scope, object and purpose of the Public Utilities law. They seemingly fail to distinguish or differentiate the use of the highways by a common carrier for hire as distinguished from the use of the highways by the public generally in its private and personal affairs. One using the highways as a common carrier for compensation is, in fact, being furnished a track or right-of-way comparable to the right-of-way and track of a railroad company for its purposes. Whether or not the State should attempt to regulate the use of the highways by common carriers is a matter that should be addressed to the legislative branch of the State government; but to adopt the theory of the resolutions aforesaid would be, in effect, to repeal and nullify the Public Utilities Act insofar as it seeks to regulate common carriers in this State.

In a recent case decided by the Supreme Court of Illinois, the principle of regulation is clearly set forth, wherein is stated the following:

> "It is not the policy of the Public Utilities Act to promote competition between common carriers as a means of providing service to the public. The policy established by that Act is that, through regulation of an established carrier occupying a given field and

protecting it from competition it may be able to serve the public more efficiently and at a more reasonable rate than would be the case if other competing lines were authorized to serve the public in the same territory. Methods for the transportation of persons are established and operated by private capital as an investment, but as they are public utilities the state has the right to regulate them and their charges, so long as such regulation is reasonable. The policy of the Public Utilities Act is that existing utilities shall receive a fair measure of protection against ruinous competition. Rates of fare charged for service are subject to regulation by the Commerce Commission within reasonable limits, but the commission has no power to make a rule or order regulating a utility which would amount to a confiscation of its property or require operation under conditions which would not provide a reasonable return upon the investment. Where one company can serve the public conveniently and efficiently, it has been found from experience that to authorize a competing company to serve the same territory ultimately results in requiring the public to pay more for transportation, in order that both companies may receive a fair return on the money invested and the cost of operation. ***

"Some individuals, perhaps a considerable number, would be convenienced by the operation of the bus lines; but it is clear from the record that to the great body of the public it would be neither a convenience nor necessity. It was not within the authority of the commission to authorize the operation of the bus lines for the convenience of a small part of the public already served by other utilities at no very great inconvenience."

West Suburban Transportation Company v. Chicago & West Towns Railway Company, 140 N.E. 56, 58; P.U.R. 1923-E, 150.

The New York Public Service Commission in a recent case promulgates the same general principles in the following excerpts:

"This change in policy was not actuated by any desire on the part of New York state to show favoritism to such persons or corporations as happened to be already interested in public utility enterprises at the time of the passage of the law. The far-reaching regulatory powers of the new Commissions were expected to be effectively used in compelling existing utility enterprises to give the very best service possible that the circumstances of each case permitted. It was expected that the Commissions would insist upon it that the public should for the future receive a very much better quality of service than many of these utility companies had in the past been willing, without efficient regulation, to accord. The underlying thought was that, in almost every case, the ultimate sufferer from unrestrained competition between public utilities was, necessarily, the public itself. Experience has demonstrated that competing companies, operating in a single field, were never likely to achieve such secure financial standing as to enable them, collectively, to give as good service as a single well-regulated monopoly, which was kept up to the mark by efficient state regulation, would be in a position to supply. The safeguard, of course, in all such cases--the justification for this seeming approval of the monopolistic idea--lay in the fact that, along with the power to establish a virtual monopoly, the Commission was given the power to compel these monopolies to serve the public more faithfully than had generally been the practice before the passage of the law.

"Since the Public Service Commissions law has been on the statute books the Commissions have frequently exercised their new powers to protect existing utility companies against competition, which, if permitted, would have been ruinous to both competitors. They have at the same time endeavored to exercise their regulatory powers to the fullest extent consistent with the other duty imposed upon them--the duty of permitting private capital invested in utility enterprises to earn a fair return upon the investment. On the whole it may be said that the results have justified the hopes which were entertained for this new attitude on the part of the state, toward competition between public utilities, and that the state has profited by its adoption."

Re T. S. Ashmead, et al, P.U.R. 1916-D, 10.

Without further discussion and for the reasons hereinabove stated, the certificates of public convenience and necessity applied for herein in said Applications Nos. 252 and 253, will be denied.

O R D E R

IT IS, THEREFORE, HEREBY ORDERED, That the application of W. H. Rhoads, doing business as the Rhoads Truck Line, Application No. 252, and the application of Henry C. Davis and Harry D. Davis, doing business under the firm name of Davis Brothers, Application No. 253, for certificates of public convenience and necessity for the operation of a motor truck freight line between Grand Junction and Montrose, in Application No. 252, and between Grand Junction, Delta, Hotchkiss, Paonia and Bowie, in Application No. 253, be, and the same are, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 26th day of October, 1923.

(Decision No. 651.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of George Black, Doing Business as The Denver Motor Transit Company, for a Certificate of Public Convenience and Necessity for Hauling Freight between the Cities of Greeley and Denver, Colorado, and Intermediate Territory.	APPLICATION NO. 273.

- - - - - - - - -
October 29, 1923.
- - - - - - - - -

S T A T E M E N T

By the Commission:

IT APPEARING, That George Black, applicant in this cause, appeared in person and asked for withdrawal of his application for operation between Denver and Greeley, Colorado, and that the same be dismissed;

O R D E R

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed with prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1923.

(Decision No. 652.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of George Black, Doing Business as The Denver Motor Transit Company, for a Certificate of Public Convenience and Necessity for Hauling Freight between the Cities of Pueblo and Denver, Colorado and all Intermediate Territory.

APPLICATION NO. 274.

- - - - - - - - -

October 29, 1923.

- - - - - - - - -

S T A T E M E N T

By the Commission:

IT APPEARING, That George Black, applicant in this cause, appeared in person and asked for withdrawal of his application for operation between Denver and Pueblo, and that the same be dismissed;

O R D E R

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed with prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1923.

(Decision No. 653.)

MAKE NO CORR

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

C. L. Preston, Doing Business as The Northern Transfer Company,
Complainant,
v.
George Black, Doing Business as The Chase Transfer Company, Gale Lewis, Doing Business as The Consolidated Truck Lines, and Southard & Burbridge, Doing Business as the Midwest Transit Company,
Defendants.

CASE NO. 271.

- - - - - - -
October 29, 1923.
- - - - - - -

S T A T E M E N T

By the Commission:

IT APPEARING, That the defendants herein have satisfied the complaint, the cause will be dismissed from the docket.

O R D E R

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1923.

(Decision No. 654.)

MAKE NO COPY

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

C. L. Preston, Doing Business as The Northern Transfer Company, Complainant, vs. Southard and Burbridge and A. J. Johnston, Doing Business as The Midwest Transit Company, Defendants.	)	CASE NO. 275.

- - - - - - -
October 29, 1923.
- - - - - - - - -

S T A T E M E N T

By the Commission:

IT APPEARING, That the defendants herein have satisfied the complaint, the cause will be dismissed from the docket.

O R D E R

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of October, 1923.

(Decision No. 655.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of The Denver and Rio Grande Western Railroad System for an Order Authorizing it to Waive the Collection of an Undercharge of $200.44 on Three Shipments of Second-hand Rails and Railway Track Material Shipped from Haverly and Steele on the Gunnison Division of the Denver and Rio Grande Western Railroad to Pueblo, Colorado, May 30 and June 1, 1923.

APPLICATION NO. 296.

- - - - - - -

November 5, 1923.

- - - - - - -

S T A T E M E N T

By the Commission:

This matter is before the Commission on an application made informally by The Denver and Rio Grande Western Railroad System for an order of the Commission authorizing it to waive an undercharge amounting to two hundred dollars and forty-four cents ($200.44) on three shipments of second-hand rails and railway track material shipped by the Herr-Robinson Supply Company from Haverly and Steele, on the Gunnison division of the Denver and Rio Grande Western Railroad, to Pueblo, Colorado May 30 and June 1, 1923.

The application is supported by an affidavit from Mr. George Williams, the General Freight Agent of said railroad system, that the legal rate was determined by applying rate from Haverly and Steele intermediate with Gunnison $6.00 per ton of two thousand pounds, as per Item 525 in D. & R. G. W. Tariff 4900-D, P.U.C. No. 15, effective January 1, 1922, and Gunnison to Kebler No. 1 rate, as published in Item 3070, Amendment No. 50 to the same tariff, effective December 2, 1922.

The rate requested is $5.00 per gross ton of two thousand two hundred forty pounds from Haverly and Steele to Pueblo, applying the inter-

mediate application as described above and the Gunnison to Pueblo rate as published in Amendment No. 71 to the same tariff, effective June 2, 1923.

In view of the fact that shipments were billed only one and three days before the effective date of the amendment to the tariff lowering the rate to the amount sought as basis for settlement, viz., June 2, 1923, and that it would be doing an injustice to the shipper in forcing the rate then in effect from Steele and Haverly, an order will be issued for the waiving of the collection of the undercharge amounting to $200.44.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad System be, and it is hereby, authorized and directed to waive the undercharge amounting to two hundred dollars and forty-four cents ($200.44) on three shipments of second-hand rails and railway track material shipped by the Herr-Rubinsam Supply Company from Haverly and Steele, Colorado, to Pueblo, Colorado, which moved May 30 and June 1, 1923.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 5th day of November, 1923.

(Decision No. 656.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the Board of County Commissioners of Weld County, Colorado, for the Opening of a Public Highway Over the Right-of-Way and Track of the Chicago, Burlington & Quincy Railroad Company at a Point on the Line Running East and West Along Sections 16 and 21 in Township 1 North, Range 65, Across the Burlington Railroad in Weld County, Colorado.	APPLICATION NO. 256.
In the Matter of the Application of the Chicago, Burlington & Quincy Railroad Company for Permission to Abandon the Public and Private Railroad Crossings Now in Existence and Heretofore Authorized by the Commission in Application No. 58, Decision No. 255, Dated June 15, 1919, and to Establish in Lieu Thereof a Public Highway Crossing at the Point Where the Main Line of Said Railroad Intersects the Section Line between Sections 20 and 29, Township 1 North, Range 65 West, 6th Principal Meridian; providing the crossing applied for in Application No. 256 is Granted.	APPLICATION NO. 271.

- - - - - - -
November 6, 1923.
- - - - - - -

Appearances:

C. A. Newitt and F. L. Powars, members of the Board of County Commissioners of Weld County, appeared for applicants in both cases.

J. L. Rice for protestant, Chicago, Burlington & Quincy Railroad Company.

S T A T E M E N T

By the Commission:

Application No. 256 of the Board of County Commissioners of Weld County, Colorado, for the location of a public crossing was not seriously disputed by the respondent railroad company, the contention of the company

being that if such crossing were to be allowed then the public crossing and the private crossing now in existence heretofore allowed by the Commission in Application No. 38, Decision No. 255, dated June 13, 1919, both near thereto, should be closed as set forth in the pleadings of the railroad company. All of these locations are between the stations of Hudson and Tenville, and are all within a distance of about one and one-eighth miles.

It is very clear that the crossing applied for by the Board of County Commissioners in Application No. 256 should be allowed. It is along a section line and public highway and is in the open country where a view of the railroad track may be had from either crossing for a long distance in both directions. The location is in the midst of homes and within a good irrigated farming section where the requirement for crossing railroad tracks is apparent. The establishment of the crossing would clearly be of advantage to the farmers in marketing their crops, and it also appears that if it were so placed good tenants could be readily secured for adjacent land in the matter of raising beets, for the reason that it would remove danger or inconvenience in the matter of children attending school and residing in the vicinity who are now required to cross tracks and climb through fences in order to reach the school bus which can not now travel along the particular highway. Besides the evidence shows that the school bus can be operated at about $700.00 less per annum if the crossing is established. The fact that the adjacent lands may be cultivated to beets will add to their usefulness and value. It is plain that the crossing should be allowed.

In regard to Application No. 271, it does not appear from the evidence that there is any good and sufficient reason why the other public crossing or the private crossing now in existence and heretofore allowed by the Commission in Application No. 38, Decision No. 255, dated June 13, 1919, should be closed. The only suggestion in this respect is the question of expense of maintenance and possible increase of danger. As to the expense of maintenance no evidence was offered. The Commission asked twice of witnesses for the respondent, who for every reason should know as to the

expense of maintenance, but the question was both times evaded and no information given. Inasmuch as the county in such cases must establish and maintain the grading, the expense of maintenance to the railroad must be very slight. The increased danger by reason of these crossings being close together was not made clear, the respondent relying on the alleged rule that crossings should be limited to a specific number per mile. In this case the engineer may have a complete view in approaching the first, going in either direction, and there being no material grade the train operates practically on a level.

The Commission personally visited the territory affected, and from this and the evidence introduced has reached the conclusion herein expressed without hesitation.

O R D E R

IT IS THEREFORE ORDERED, That a public highway crossing at grade be, and the same is hereby, permitted to be opened and established across the right-of-way and track of the Chicago, Burlington & Quincy Railroad Company at a point where the main line of the said railroad intersects the section line between Sections 16 and 21, in Township 1 North, Range 65 West, 6th Principal Meridian, in Weld County, Colorado.

IT IS FURTHER ORDERED, That the crossing at the point above described be constructed in accordance with plans and specifications prescribed in the Commission's order In Re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the Chicago, Burlington & Quincy Railroad shall open and establish the crossing and shall bear the expense necessary thereto, except that the County of Weld, Colorado, shall have performed the work of grading, including such drainage as is necessary for the establishment of proper approaches to said crossing.

IT IS FURTHER ORDERED, That the public crossing and the private crossing now in existence and heretofore allowed by the Commission in application No. 38, Decision No. 255, dated June 13, 1919, be, and remain, the same as at present.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 6th day of November, 1925.

(Decision No. 656.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the Board of County Commissioners of Weld County, Colorado, for the Opening of a Public Highway Over the Right-of-Way and Track of the Chicago, Burlington & Quincy Railroad Company at a Point on the Line Running East and West Along Sections 16 and 21 in Township 1 North, Range 65, Across the Burlington Railroad in Weld County, Colorado.	APPLICATION NO. 256.
In the Matter of the Application of the Chicago, Burlington & Quincy Railroad Company for Permission to Abandon the Public and Private Railroad Crossings Now in Existence and Heretofore Authorized by the Commission in Application No. 38, Decision No. 255, Dated June 13, 1919, and to Establish in Lieu Thereof a Public Highway Crossing at the Point Where the Main Line of Said Railroad Intersects the Section Line between Sections 20 and 29, Township 1 North, Range 65 West, 6th Principal Meridian; Providing the Crossing Applied for in Application No. 256 is Granted.	APPLICATION NO. 271.

- - - - - - -

November 8, 1923.

- - - - - - -

Halderman, Chairman:

I did not sign the order and decision in the above entitled matter, and could not consistently do so, for the following reasons:

Two public crossings at grade with a private crossing at grade, all within a distance of one and one-eighth miles, over the line of a transcontinental railroad with frequent trains, many of them fast express trains, is violative of the principles that the state and national authorities, as well as the railroad carriers throughout the country, have

been, and are, so urgently insisting upon in the interest of the "safety first" movement.

While I was not present at the hearing in these particular cases in September of this year, I did go upon the ground in June of 1919 when this matter was before the Commission and I am, therefore, familiar with the topography of the country. While the opening of the additional crossing as applied for in Application No. 256 will meet the convenience of some people, that would be true were there a crossing at grade at every half mile or less throughout the entire length of the railroad; but, as I understand, the governing and controlling principle in cases of this character is, that the convenience of the public must give way to the safety of the public whenever and wherever it is practically possible so to do. I would have been in favor of permitting the establishment of the crossing at grade as applied for in Application No. 256 provided the existing crossing, as described in Application No. 271, were permitted to have been closed.

The permitting of two crossings at grade, with a private crossing midway, in this western country where the density of population is by no means congested is, in my opinion, not only contrary to the principle of safety first in the interest of the public, but is unreasonable, unwarranted and unjustified from any point that it may be viewed.

Scott E. Haldeman,

Dated at Denver, Colorado,
this 8th day of November, 1923.

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, Colorado, for permission to establish a public highway crossing at grade over the right-of-way and track of the Union Pacific Railroad Company in Section 16, Township 14 South, Range 50 West, 6th Principal Meridian, at Mile Post 500.52.

APPLICATION NO. 265

November 14, 1923

S T A T E M E N T

By the Commission:

On July 26, 1923, the Board of County Commissioners of Cheyenne County, Colorado, filed with the Commission an application, dated July 25, 1923, and known as Application No. 265, for permission to establish a public highway crossing at grade over the main line track and right-of-way of the Union Pacific Railroad Company at a point approximately 577 feet west of the present crossing near the depot at the station of Wild Horse in Section 16, Township 14 South, Range 50 West, 6th Principal Meridian.

On October 24, the Commission's Engineer had an informal conference on the ground with the Division Engineer of the Union Pacific Railroad Company and one of the County Commissioners. At said conference it was decided that the crossing applied for, more specifically described as located at Mile Post 500.52, should be allowed; and the existing crossing located approximately 200 feet east of the depot at the station of Wild Horse, should be abandoned in lieu thereof.

All parties concerned have been fully advised of the above matters and agreed to same, as well as to the terms and conditions hereinafter stipulated. There appearing no reason why this crossing should not be allowed, the Commission will, therefore, issue its order granting permission for the establishment of said crossing.

O R D E R

IT IS, THEREFORE, ORDERED, In accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, that permission be, and hereby is granted, to establish a public highway crossing at grade over the main line track and right-of-way of the Union Pacific Railroad Company at Mile Post 500.52 in Section 16, Township 14 South, Range 50 West, 6th Principal Meridian; 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 construction and maintenance of the roadway at the crossing, including necessary drainage therefor, shall be borne by Cheyenne County; and all other expense in the matter of installation and maintenance of said crossing as herein provided shall be borne by the Union Pacific Railroad Company.

IT IS FURTHER ORDERED That the existing crossing located approximately 200 feet east of the depot at the station of Wild Horse, shall be abandoned in lieu of the establishment of the above crossing.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
14th day of November, A. D. 1923.

(Decision No. 658.)

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, Colorado, for permission to establish a public highway crossing at grade over the right-of-way and track of the Union Pacific Railroad in Section 5, Township 14 South, Range 51 West, 6th Principal Meridian, Cheyenne County, Colorado, at Mile Post 508.21.	APPLICATION NO. 266.

- - - - - - - -

November 14, 1923.

- - - - - - - -

S T A T E M E N T

By the Commission:

On July 26, 1923, the Board of County Commissioners of Cheyenne County, Colorado, filed with the Commission an application dated July 25, 1923, and known as Application No. 266, for permission to establish a public highway crossing at grade over the right-of-way and track of the Union Pacific Railroad Company at a point where the section line between Sections 5 and 6, Township 14 South, Range 51 West, 6th Principal Meridian intersects the track of said Railroad Company.

On October 24, 1923, the Commission's engineer had an informal conference on the ground with the Division Engineer of the Union Pacific Railroad Company and one of the County Commissioners. At said conference, it was decided that the crossing should be a right-angle crossing, therefore should be located about 60 feet east of the location requested in the application; namely, at Mile Post 508.21 instead of at the point where the section line between Sections 5 and 6 intersects the track. It was also agreed that the existing crossing near the west switch at the station of Arcya should be abandoned.

All parties concerned have been fully advised of the above matters and agreed to same, as well as to the terms and conditions hereinafter stipulated. There appearing no reason why this crossing at Mile Post 508.21

should not be allowed, the Commission will, therefore, issue its order granting permission for the establishment of the said crossing.

O R D E R

IT IS THEREFORE ORDERED, In accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, that permission be, and is hereby granted, to establish a public highway crossing at grade over the track and right-of-way of the Union Pacific Railroad Company at Mile Post 508.21 in Section 5, Township 14 South, Range 51 West, 6th Principal Meridian; 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 Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of the roadway at the crossing, including the necessary drainage therefor, shall be borne by Cheyenne County, and that all other expense in the matter of installation and maintenance of said crossing as herein provided shall be borne by the Union Pacific Railroad Company.

IT IS FURTHER ORDERED, That the existing crossing located near the west switch at the station of Arcya shall be abandoned in lieu of the establishment of the above crossing.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hatterman,

Commissioners.

Dated at Denver, Colorado,
this 14th day of November, 1925.

(Decision No. 659)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of)
The Colorado and Southern Railway)
Company to close the agency station)
at Alma, Colorado.)

APPLICATION NO. 280

November 16, 1923

Appearances: J. Q. Dier, of Denver, Colorado, for applicant, The Colorado and Southern Railway Company; Barney L. Whatley, of Denver, Colorado, and John M. Boyle, of Fairplay, Colorado, for the Board of County Commissioners of Park County and other protestants.

S T A T E M E N T

By the Commission:

The Commission received a letter from The Colorado and Southern Railway Company on August 25, 1923, asking for authority to close its agency station at Alma, Colorado, which is located on the Como-Alma sub-division of its narrow gauge South Park lines, thirty-two miles from Como and one hundred twenty miles from Denver.

The authorization to close the station as an agency station is sought on account of depreciation of business on said South Park division of said railway; and the letter further stated that an agency station is maintained at Fairplay, which is five and four-tenths miles distant from Alma; and applicant railway company states that the agent at Fairplay can adequately handle the business of the two stations.

Upon receipt of said letter, it was docketed as Application No. 280, and the railway company was advised to comply with the terms of General Order No. 34 of this Commission, which specifies the method of procedure to be adopted in the curtailment of a service such as is sought by applicant herein.

On August 31, 1923, the Commission was advised by applicant railway company that it had complied with the terms of General Order No. 34 in the posting of notices, as required thereby, of its intention to close Alma as an agency station, effective at the close of business September 29, 1923. In addition, the Commission notified the postmaster at Alma and asked that he put a notice in the post office advising the citizens of Alma of the application of applicant railway company to close its agency station thereat.

On September 7, 1923, a protest to the application was received from the Board of County Commissioners of Park County; and, thereafter, up to and including September 29, a number of protests from various persons and corporations were received, protesting and objecting to the closing of Alma as an agency station. One of said protests was in the nature of a petition, received by the Commission September 17, signed by upwards of one hundred of the business and mining men and residents of Alma and vicinity.

The basis of the protests is that were the agency at Alma discontinued that the people and others depending upon the railway service for their supply of fuel, feed, groceries, machinery and other supplies essential to the various activities being carried on at Alma and vicinity, would, thereby, be compelled to transact business with the nearest agency, which is at Fairplay, and that it would subject the patrons of the railway at Alma, Colorado, to great inconvenience, particularly in the winter season, on account of the difficulties of transacting business with an agent upwards of five miles distant. Protestants further allege that the volume of business during the past four or five months has apparently increased and is increasing at the Alma station; and that, were the agency station discontinued, the handling and disposition of freight at that station would be delayed and much loss and inconvenience caused to the residents and patrons of the railway company in the vicinity of Alma.

Upon notice duly given to all parties in interest, the matter was set for hearing and was heard at the City Hall, Alma, Colorado, on Friday, October 19, 1923.

The basis of the request of applicant to close the station of Alma as an agency station is simply a matter of economy. At the hearing, applicant introduced, over the objection of protestants, its Exhibits 1, 2 and 3. Exhibit 1 is a statement showing the net railway operating income by years for the period January 1, 1916 to June 30, 1923, as compared with 6% on investment alleged to be allowable under the Transportation Act, 1920, for The Colorado and Southern Railway Company as a whole. By that exhibit, it is shown that the net railway operating income under such 6% alleged to be allowable on the investment of said railway company, was a deficit of upwards of $2,000,000 in 1916, $4,000,000 in 1922, and $2,000,-000 for the first six months of 1923. Similarly, Exhibit 2, received over the objection of protestants, is a statement upon the same basis for the months of July and August, 1923, and a total for the eight months of 1923, to and including August 31, which showed a deficit of net railway operating income under the 6% alleged to be allowable on the investment, of approximately $450,000 for each of said months, and of $3,344,262 for the eight months' period of 1923. Exhibit 3 is a statement of the operating revenues, expenses, taxes and operating income on what is termed the Platte Canon, Leadville and Gunnison districts for the calendar years 1910 to 1922, both inclusive, and for the eight months of 1923. The Platte Canon, Leadville and Gunnison districts include the district termed Platte Canon from Denver to Como; the Leadville district is from Como to Leadville and whatever other branches there are in the narrow gauge system as it now exists, or the line from Como to Alma and the line from Buena Vista to Romley is called the Gunnison district. Exhibit 3 was likewise introduced over the objection of protestants as being immaterial, irrelevant and incompetent.

While said three exhibits were received in evidence for whatever evidentiary value they might possess upon the issue involved herein being determined, the Commission is inclined to the belief that the facts as dis-

closed by each of said Exhibits 1, 2 and 3 possess but little, if any, evidentiary value, for the reason that this proceeding involves the business transacted by the railway company at the station of Alma, and the expense incurred by the said company at that station in the transaction of such business. It is manifest, therefore, if the operations of an entire railroad company may be properly inquired into upon the taking away of an agent at any particular station merely to save the expense of keeping or maintaining an agent at that station, then what the receipts and expenditures of the company at the particular station were at any period, is of absolutely no moment. The Commission is inclined to follow the rule heretofore followed by it in Application No. 118, filed by the Receiver of The Denver and Salt Lake Railroad Company to discontinue the agency at Rollinsville, Colorado, Decision No. 381, decided November 19, 1920.

In the Salt Lake application, the inquiry was limited to the receipts of the Receivers at Rollinsville, the expenses of maintaining the agency there as compared with such receipts, and the inconvenience of the public to be incurred were Rollinsville closed as an agency station. Using the Denver and Salt Lake Railroad as an example of the principle that the financial condition of a company as a whole is immaterial and of but little value in determining questions such as are involved in this proceeding, if the financial condition of the railroad company as a whole were properly taken into consideration, then there is no station on the Denver and Salt Lake Railroad immune from having its agency removed regardless of how much business any particular station might transact with said Salt Lake railroad; because it is a notorious fact that The Denver and Salt Lake Railroad Company, through its Receivers, has been and is operating at enormous deficits each and every year for the past number of years.

Exhibits 4 and 5, introduced by applicant, are statements showing the tonnage and revenue by commodities received at and forwarded from Alma station for the twenty months, January, 1922 to and including August,

1923. During that period there were received fifty-two carloads of commodity freight, one hundred twenty-three tons of L.C.L. freight; and forwarded from that station during the same period, there were ten carloads and eleven tons of L.C.L. freight.

The revenues derived by the railway company at Alma station during said twenty months' period, January 1, 1922 to August 31, 1923, were shown by the following figures as taken from applicant's Exhibits 4, 5 and 6:

Revenues from freight received at Alma	$14,450.23
Revenues from freight forwarded from Alma	4,649.77
Revenues from ticket sales and excess baggage at Alma	3,519.62
Total	$22,619.62

By applicant's Exhibit 9, is shown the expense of operating the Alma station for the year 1922, and the six months' period ended June 30, 1923, a total of eighteen months. The expense incurred in operating Alma as an agency station comprises salaries and wages, and supplies and expenses, according to Exhibit 9; and, for the year 1922, salaries and wages were $1,403.07; supplies and expenses, $188.44; total for the twelve months, $1,591.51; for the six months' period, 1923, salaries and wages were $716.10; supplies and expenses, $85.32; total for the six months' period, $801.42. By dividing the total expense of 1922 into twelve parts, the expense per month for maintaining an agency at Alma is found to be $132.62; and, for the six months' period, 1923, $133.57 per month. By applying that to the entire eighteen months' period, it would approximate $1,600 a year, or $133.33 per month. The total receipts of the railway company at Alma station, as has been stated, are $22,619.62 for the twenty months' period; so that, by simple mathematical calculation, the expense incurred by the railway company in maintaining an agent at Alma for the same period is slightly in excess of 7% of the total moneys received at Alma station. Viewed in this light, it can not be consistently urged that an expense slightly in excess of 7% of the business done at an agency station is excessive or unreason-

able. On the contrary, it seems to the Commission that such expense is amply justified in contemplation of the amount of business done.

In the Rollinsville agency case, hereinabove referred to on the Denver and Salt Lake Railroad, the expense of maintenance of an agent there averaged $173.26 per month; while the total receipts at the Rollinsville station for the year in question was $7,552.13, made up of $5,398.09 freight revenue, $1,512.29 passenger revenue, $21.56 telegraph revenue, and $620.19 express revenue. In the instant case no figures were submitted and, hence, none are available to show what revenue, if any, is derived by applicant company from telegraph, mail and express service; but, of course, those items will add something to the total revenue derived at the Alma station.

In the cases that we have examined involving the discontinuance of an agency, no such amount of revenue has as yet been even approached as in the instant case. In New York Central Railroad Company, P.U.R. 1921-A, 349, total revenues received at the station where an agent was sought to be taken off, was less than $2,000, while the expense of maintaining an agent at that station was approximately $130 per month; and yet, the New York Commission, 2nd District, denied and refused to permit the railroad to discontinue its agent at the station involved, basing its decision upon the duty of the carrier to afford reasonable service to its patrons and the public. Likewise, in Delaware and Hudson Railroad, P.U.R. 1919-E, 555, where the average revenue during the period involved but slightly exceeded the average expense of maintaining an agent, the New York Commission refused to permit the discontinuance of the service of an agent although the nearest station to the station sought to be made a non-agency station was but three and three-tenths miles distant.

Applicant company strongly urges in its brief that the public will not be seriously inconvenienced from the fact that the nearest agent, in the event Alma is discontinued as an agency station, is but about five miles distant at Fairplay and that the patrons at Alma could, by telephone or otherwise, transact their business with the agent at Fairplay. All agreed, how-

ever, that some inconvenience would be experienced by the citizens of Alma and vicinity for the reason that in the event of shipments outbound, arrangements for equipment and for payment of freight bills and tickets would necessarily have to be made with the agent at Fairplay, while shipments inbound would in all instances have to be prepaid. Upon arrival at Alma, in the event the agent is discontinued, the testimony is to the effect that it would then become the duty of the train crew to take care of all L.C.L. freight and if perishable to transfer to the freight house. No provision other than the section men was suggested as to who should be responsible for the freight in the way of a caretaker, and protestants sought to show that the train, which is a mixed freight and passenger, is late more often than on time into Alma, and particularly in the winter season it is practically always late and sometimes very late.

It is in the evidence that Alma has been an agency station for a period of upwards of thirty years; also that about the same amount of business was transacted there as at Fairplay. There seems to be no question but that one agent would have plenty of time to attend to all the business of both stations if the stations were consolidated, or if the same amount of business of the two stations were offered at either place. In the Delaware and Hudson Railroad case above cited, one of the grounds for denial was that the station involved had been an agency station for upwards of fifty years, and the Commission held that it would be an injustice, except upon the most urgent showing of necessity, that the agent be dispensed with when he had become so much of a fixed and accustomed service to the public.

Applicant company speciously and cogently urged that it be permitted to discontinue its agency at Alma experimentally or for a limited period and "see how it works." It rather appears to the Commission that such experience ought not to be indulged as it inevitably leads to dissatisfaction and complaint. If an agent is a luxury at Alma, the Commission ought to permit a discontinuance of such agency without any strings to the permission; and if, in the future, conditions would so improve as

that the business transacted at Alma would reasonably justify the installation of an agent, that remedy could be pursued when the time arose, if ever.

An instructive case bearing upon the principles involved in the instant case is that of the Oregon Short Line Railroad Company, P.U.R. 1922-E, 161-175. In that case, the Oregon Short Line had made application to the Idaho Public Utilities Commission for authority to curtail its passenger train service on nine branch lines of the Oregon Short Line in Idaho, radiating from its main line. Some of the service desired to be curtailed was to substitute mixed train service for daily straight passenger service and run the mixed service triweekly; in others, and in all said curtailment, the service was to be reduced from daily to either biweekly or triweekly service; and the applicant railroad made the application upon the theory that greater economies would be affected thereby. The evidence of the applicant in the Short Line case established that there would be a monthly saving to the railroad, if the nine services sought to be curtailed were permitted, of $16,750, or a total of $205,200 per annum. The Idaho Commission denied the application after exhaustive hearings and in a lengthy and well considered decision. Some of the reasons given for that denial may well be taken into consideration in the instant case, as the following:

> "It is not sufficient reason for curtailing the service on a branch line that the branch line alone is operating at a loss; the convenience of the public must be taken into consideration if that convenience is not otherwise supplied. * * * *
>
> "On account of the stability of prices these mines (mines reached by some of the branch lines) are reopening and the mining business is brighter today than it has been for many years. Many men are now working in these mines and the indications are that the number will be greatly increased during the coming year. * * *
>
> "The inhabitants of the territory traversed by each of these branch lines are now emerging from a condition of pessimism and financial depresion to a condition of optimism and apparent prosperity. The conditions which existed in 1921, which naturally followed in the wake of a world war, have been accepted by these people, and they have been and are now bending their energies to restore their communities to their former normal condition. The curtailment of the present train service would be a set-back to the spirit of optimism now prevailing in these communities."

The above case was heard in the spring of 1922 and decided May 27, 1922.

It is the contention of protestants that mining activities are on the increase in the Alma section, and, as said by the Idaho Commission, to curtail the service at this particular time would be a set-back to the spirit of optimism that prevails in that portion of Park County. Indeed, one of the witnesses, Mr. LeWald, testified that his mining company had made an investment of something more than $150,000 within the past year and a half and had paid the railway company something more than $7,000 in freight on material and machinery shipped in; that his company made the investment upon the strength of conditions as they found them; and that had he known there would be no agency maintained at Alma, he and his company would not have made the progress toward the revival of mining that they are attempting to do. This witness also testified as to the inconvenience of doing business at a non-agency station by an experience on this same line of railroad while he was in business at Keystone, Colorado, and had to transact business at the railroad station of Dillon, some six or eight miles away.

A somewhat peculiar condition exists surrounding the matters involved in this proceeding, in that the depot at Alma is approximately one mile distant from the business section of the town, while the depot at Fairplay is almost equally distant from the business section of Fairplay; however, conditions at Fairplay are not involved in this proceeding except to the extent that the testimony of the auditor for applicant establishes the fact that one agent would have ample time to take care of the business offered at both these towns were the agencies consolidated.

In view of these facts and in view of the further fact that it is notorious that the South Park lines of applicant are not self-sustained and have not been for many years, the Commission is inclined to submit the suggestion to the people of the two communities and to the applicant company that it may be possible, in the interest of economy of railroad management, that they all get together and place an agent midway between Alma and Fairplay to serve both communities. This suggestion, of course, is

made de hors the record and is not to be considered by any party to this proceeding as being in any way an influence in the decision of this application.

Without extending this decision and order further, the Commission feels impelled to deny applicant the privilege of discontinuing Alma as an agency station at this time.

O R D E R

IT IS, THEREFORE, ORDERED That applicant, The Colorado and Southern Railway Company, be, and it is hereby, denied the privilege of discontinuing its agency at Alma, Colorado, for the present; without prejudice, however, to applicant renewing its application herein at such time in the future as it shall be advised when conditions at said station have so changed from those at present as would justify a renewal of such application.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
16th day of November, A.D. 1923.

(Decision No. 661.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of W. H. Rhoads for a certificate under Section 35 of the Public Utilities Act for the operation of an automobile truck line between Grand Junction and Montrose, Colorado.	APPLICATION NO. 252.
In the matter of the application of Henry C. Davis and Harry D. Davis, doing business under the firm name and style of Davis Brothers, for a certificate under Section 35 of the Public Utilities Act for the operation of an automobile truck line between Grand Junction and Bowie, Colorado.	APPLICATION NO. 253.

- - - - - - -

November 30, 1923.

- - - - - - -

S T A T E M E N T

By the Commission:

IT APPEARING, That William H. Rhoads, Henry C. Davis and Harry D. Davis, co-partners, on November 17, 1923, filed an application for re-hearing in the above entitled applications and asked that the order entered by the Commission October 26, 1923, be vacated and set aside; and,

IT FURTHER APPEARING, That the said applicants herein on November 27, 1923, asked permission to withdraw their application for re-hearing and that the same be dismissed;

O R D E R

IT IS THEREFORE ORDERED, That the application for re-hearing herein be, and the same is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 30th day of November, 1923.

(Decision No. 663

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of the Colorado State Highway Department for permission to abandon the public highway crossing at Mile Post D-81 plus 1940 feet in Section 33, Township 1 South, Range 75 West of the 6th P.M., and to establish in lieu thereof a public highway crossing at grade over the right-of-way and track of The Denver and Salt Lake Railroad Company at Mile Post D-81 minus 2029.6 feet in Section 4, Township 2 South, Range 75 West of the 6th P. M.

APPLICATION NO. 299.

- - - - - - -

January 4, 1924.

- - - - - - -

S T A T E M E N T

By the Commission:

The Denver and Salt Lake Railroad Company has been fully advised in this matter and has advised the Commission that it has no objection to the proposed change in the highway crossing. There appearing to be no reason why this application should not be granted, the Commission will, therefore, issue its order granting permission for the change in location as requested.

O R D E R

IT IS THEREFORE ORDERED, In accordance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, that permission be, and is hereby, granted to abandon the public highway crossing located at Mile Post D-81 plus 1940 feet in Section 33, Township 1 South, Range 75 West of the 6th P. M., and to establish in lieu thereof a public highway crossing at grade over the tracks and right-of-way of The Denver and Salt Lake Railroad Company at Mile Post D-81 minus 2029.6 feet in Section 4, Township 2 South, Range 75 West of the 6th P. M.; conditioned, however, that prior to the opening of said crossing to public

travel it shall be constructed in accordance with the specifications prescribed in the Commission's order In Re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of the roadway at the crossing, including necessary drainage thereof, shall be borne by the Colorado State Highway Department, and that all other expense in the matter of installation and maintenance of said crossing as herein provided shall be borne by The Denver and Salt Lake Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 4th day of January, 1924.

(Decision No. 663)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of Arapahoe County, State of Colorado, for Permission to Establish a Public Highway Crossing at Grade over the Right-of-Way and Track of The Colorado and Southern Railway Company at a Point where the Section Line between Sections 2 and 11, Township 5 South, Range 67 West of the 6th Principal Meridian, Arapahoe County, intersects said Railway.

APPLICATION NO. 279

(January 8, 1924)

STATEMENT

By the Commission:

The Colorado and Southern Railway Company has been fully advised in this matter and has advised the Commission that it has no objections to the establishment of this crossing. There appearing to be no reason why this application should not be granted, the Commission will, therefore, issue its order granting permission for the establishment of the crossing as herein requested.

O R D E R

IT IS THEREFORE ORDERED, In accordance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, that permission be, and is hereby, granted to establish a public highway crossing at grade at a point in Arapahoe County, where the section line between Sections 2 and 11, Township 5 South, Range 67 West of the Sixth Principal Meridian intersects the right-of-way and track of The Colorado and Southern Railway Company; conditioned, however,

that prior to the opening of said crossing to public travel it shall be constructed in accordance with the specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of the roadway at the crossing, including the necessary drainage thereof, shall be borne by Arapahoe County, and that all other expense in the matter of installation and maintenance of said crossing as herein provided shall be borne by The Colorado and Southern Railway Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 8th day of January, 1924.

(Decision No. 664)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the Application of Doud Brothers, M. H. Doud and the estate of C. H. Doud, deceased, permission authorizing the above firm or parties to conduct a stage line, auto, between certain points in San Juan County, Colorado.

APPLICATION NO. 240

S T A T E M E N T

By the Commission:

It appearing that a hearing was duly set at Grand Junction, Colorado, October 11, 1923, and applicant was duly notified of such hearing by an official notice, letter and telephone conversation. Failing to appear, it is the opinion of the Commission that this application should be dismissed.

O R D E R

IT IS, THEREFORE, ORDERED That this application be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
14th day of January, 1924.

(Decision No. 665)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of)
the Town of Dacono for Improved Rail-)
road Station Facilities and Service,) APPLICATION NO. 210
(Union Pacific Railroad.))

(January 18, 1924)

STATEMENT

By the Commission:

It appearing that petitioners herein are not desirous of having this matter brought to a hearing, it is the opinion of the Commission that this application should be dismissed.

O R D E R

IT IS THEREFORE ORDERED, That this application be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hall Herman

Commissioners.

Dated at Denver, Colorado,
this 18th day of January, 1924.

(Decision No. 666.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of the Town of Arriba for a certificate of public convenience and necessity for the construction of its new electric system.

APPLICATION NO. 223.

- - - - - - - -
January 18, 1924.
- - - - - - - -

S T A T E M E N T

By the Commission:

Under date of September 9, 1922, the Town of Arriba, Colorado, by its Mayor, Robert Leslie, and its Clerk, W. E. Kliewer, made application to this Commission for a certificate of public convenience and necessity for the construction of a power transmission line from the Town of Flagler, Colorado, to Arriba, Colorado, and the construction of a distribution system in the Town of Arriba, for the purpose of supplying the Town of Arriba and the inhabitants thereof with electric energy for lighting and power purposes. The power so distributed is to be purchased from the Town of Flagler.

IT NOW APPEARING, That the applicant in this case having complied with the law and the rules and regulations of the Commission, and that the applicant will not be in competition with any other utility of like character in any of the territory in which the certificate is prayed for; and,

IT FURTHER APPEARING, That a formal hearing in this matter will not bring forth any additional facts not now before the Commission, and would also cause unnecessary expense to the applicant and the Commission, the prayer of the petition will be granted.

O R D E R

IT IS THEREFORE ORDERED, That the application of the Town of Arriba for a certificate of public convenience and necessity to operate an electric system in the Town of Arriba and a transmission system from the Town of Arriba to the Town of Flagler, Colorado, be, and the same is hereby, granted, and this order shall be deemed a certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 18th day of January, 1924.

(Decision No. 667)

MARK

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Fort Morgan Commercial Club, et al,
Complainants,
vs.
Chicago, Burlington & Quincy Railroad Company,
Defendants.

CASE NO. 208

(January 18, 1924)

STATEMENT

By the Commission:

It appearing that complainants in this case are not desirous of a hearing, and no action having been taken for nearly two years, it is the opinion of the Commission that this case should be dismissed.

ORDER

IT IS THEREFORE ORDERED, That the above case be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 18th day of January, 1924.

(Decision No. 668.)

PUC-16

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of James Pearson for a certificate of public convenience and necessity for the operation of conveyances for carrying passengers, freight and express between Silverton and Eureka, San Juan County, Colorado.

APPLICATION NO. 286.

- - - - - - - - -

January 17, 1924.

- - - - - - - - -

Appearances: For applicant, Frank L. Ross, of Silverton; McMullin & Sternberg and J. P. Hellman, of Grand Junction, Colorado.

S T A T E M E N T

By the Commission:

The application in this case was received October 6, 1923, and after notice to The Silverton Northern Railroad Company, an interested party, this case was set down for hearing and was heard before Commissioners Frank P. Lannon and Tully Scott at the City Hall, Grand Junction, Colorado, Thursday, October 11, 1923, at 10:00 o'clock A. M.

The evidence in this case shows that the applicant seeks a certificate of public convenience and necessity for the operation of public conveyances between Silverton and Eureka, in San Juan County, Colorado, for the carrying of passengers, freight and express, and that he has a four year contract with the United States Postoffice Department for carrying the mail between Silverton and Eureka, daily, except Sunday, which said contract does not expire until July 1, 1926.

The testimony also shows that both the traveling public and the business men of Silverton generally depend upon and consider the freight, passenger and express service furnished by this applicant as reliable and highly satisfactory.

A schedule of rates has been filed which shows a charge for passengers of $1.00 each way between Silverton and Eureka, a distance of about eight and one-half miles, and a charge of 50 cents in either direction between Silverton and Howardsville, the latter being a distance of about four miles. A minimum charge of 25 cents is made for the delivery of small express packages.

The freight handled over this route all comes from Silverton and moves to Howardsville and Eureka, and no freight is hauled in the opposite direction. The major portion of the freight carried consists of groceries, fruits, vegetables and meats. The fact that the applicant goes to the various stores and collects packages and then delivers them to the parties in Howardsville and Eureka makes this service a great convenience, and to many a necessary service. For the freight service a charge of 35 cents per hundred pounds is made from Silverton to Howardsville, and 40 cents per cwt. is charged from Silverton to Eureka.

The applicant herein proposes to operate during the summer season on the following schedules:

Leave Silverton.....	8:00 A.M.
Pass through Howardsville	8:30 A.M.
Arrive Eureka.....	9:00 A.M.
Leave Eureka	10:00 A.M.
Pass through Howardsville	10:30 A.M.
Arrive Silverton.....	11:00 A.M.
Leave Silverton.....	8:30 A.M.
Pass through Howardsville	8:45 A.M.
Arrive Eureka.....	9:00 A.M.
Leave Eureka.....	9:30 A.M.
Pass through Howardsville	9:45 A.M.
Arrive Silverton.....	10:00 A.M.
Leave Silverton.....	1:30 P.M.
Pass through Howardsville	1:45 P.M.
Arrive Eureka.....	2:00 P.M.
Leave Eureka.....	2:30 P.M.
Pass through Howardsville	2:45 P.M.
Arrive Silverton.....	3:00 P.M.

The applicant's equipment consists of one Studebaker combination freight and passenger truck and one Dodge touring car. He also has an

arrangement with a party who has a Studebaker seven-passenger touring car which is used whenever business is sufficient to demand the operation of extra equipment.

During the summer an average of about seven passengers are carried daily. The travel is, however, very much restricted during the winter months and will probably not average more than two passengers per day. Silverton has an altitude of 9,300 feet, while Eureka is probably about 10,000 feet above sea level, in consequence of which this section is subjected during winter to violent storms and heavy falls of snow, making automobile travel impracticable for six months of the year, usually from December 1 to June 1, when horses and sleighs are used. When it is impossible to use the latter, the schedule is not kept and pack mules are usually used for carrying passengers, mail and small packages.

The Silverton Northern Railroad operates a mixed train service, carrying both passengers and freight, between Silverton, Howardsville and Eureka, making but one round trip daily. This company has offered no objections to the granting of the certificate sought.

In view of all the facts presented in this case, the Commission finds that the service furnished is both a convenience and a necessity.

O R D E R

IT IS THEREFORE ORDERED, That the application of James Pearson for a certificate of public convenience and necessity for the operation of a freight, passenger and express service, in both directions, between Silverton and Eureka and intermediate points in San Juan County, Colorado, is hereby granted and this shall be considered his certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 17th day of January, 1924.

(Decision No. 669)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of T. H. Beacom, as Receiver of the property and assets of The Denver and Rio Grande Western Railroad Company, for a certificate of public convenience and necessity authorizing the abandonment of the Blue River Branch of The Denver and Rio Grande Western Railroad Company.

APPLICATION NO. 281

January 25, 1924

S T A T E M E N T

By the Commission:

It appearing that the above application for a certificate of public convenience and necessity authorizing the abandonment of the Blue River Branch of the Denver and Rio Grande Western Railroad was filed with this Commission September 26, 1923. Contemporaneously, a like petition was filed with the Interstate Commerce Commission. The Blue River Branch of the Denver and Rio Grande Western Railroad is a narrow gauge line of railroad extending from Leadville to Dillon, approximately 35.68 miles in length, and was constructed in 1880-82 to serve mining industries adjacent thereto, it is practically paralleled by the narrow gauge railroad of The Colorado and Southern Railway Company and in consequence of the exhaustion of ore bodies and the discontinuance of mining operation adjacent to this branch, its operation was conducted at a heavy loss for many years prior to 1911, at about which time operation of this branch was entirely discontinued and has never since been resumed.

Due notice of the application to abandon was served upon the officials of Lake and Summit Counties and no protests have been filed. The Interstate Commerce Commission having granted the application to abandon December 1, 1923, this Commission is of the opinion, from the facts presented, that the present and future public convenience and necessity permit of the abandonment by the applicant of the branch line of railroad herein described,

and a certificate to that effect will be issued.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad Company and T. H. Beacom, as Receiver of said property, be issued a certificate of convenience and necessity authorizing the abandonment of the Blue River Branch line of said railroad; and this order shall be deemed and held to be a certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 25th day of January, 1924.

(Decision No. 670)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of T. H. Beacom, as Receiver of the property and assets of The Denver and Rio Grande Western Railroad Company, for a certificate of public convenience and necessity authorizing the abandonment of the Calumet branch of the Denver and Rio Grande Western Railroad.

APPLICATION NO. 282

January 25, 1924

S T A T E M E N T

By the Commission:

It appearing that the above application for a certificate of public convenience and necessity authorizing the abandonment of the Calumet Branch of the Denver and Rio Grande Western Railroad was filed with this Commission September 26, 1923. Contemporaneously, a like petition was filed with the Interstate Commerce Commission. The Calumet Branch of the Denver and Rio Grande Western Railroad is a narrow gauge line of railroad extending from Hecla Junction, in the County of Chaffee and State of Colorado, easterly to a point known as Calumet, a distance of approximately 7.13 miles, and was constructed in the year 1881 to serve the iron mines in the vicinity of Calumet. It has maximum grades of seven per cent. and maximum curves of twenty-four degrees. In the year 1897 a severe washout took out part of the line and as the mines had been permanently abandoned, the track was never rebuilt. In the year 1917, corporate authority was given to dismantle this branch and also authorized by this Commission but the work was never performed.

Due notice of the application to abandon this branch was served upon the mayors of Leadville, Lake County, and Salida, Chaffee County, and no protests have been filed. The Interstate Commerce Commission having granted the application to abandon December 1, 1923, this Commission is of the opinion, from the facts presented, that the present and future public convenience and necessity permit of the abandonment by the applicant of the branch line of

railroad herein described, and a certificate to that effect will be issued.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad Company and T. H. Beacom, as Receiver of said property, be issued a certificate of convenience and necessity authorizing the abandonment of the Calumet Branch line of said railroad; and this order shall be deemed and held to be a certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 25th day of January, 1924.

(Decision No. 671)

MAKE NO COPY

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Chamber of Commerce of Greeley, et al., Complainants,	)	
vs.	)	CASE NO. 244
Union Pacific Railroad Company, et al., Defendants.	)	
The Continental Investment Company, a corporation, et al., Complainants,	)	
vs.	)	CASE NO. 250
Union Pacific Railroad Company, et al., Defendants.	)	
W. R. Freeman and C. Boettcher, Receivers of The Denver and Salt Lake Railroad Company, et al., Interveners.	)	

January 29, 1924

Appearances: Whitehead & Vogl and Yeaman, Gove & Huffman, all of Denver, for Petitioning Interveners, The Victor American Fuel Company, The Routt Pinnacle Coal Company, and The Bear River Coal Company; Smith & Brock, of Denver, for Receivers of The Denver and Salt Lake Railroad Company, Interveners.

S T A T E M E N T

By the Commission:

On June 4, 1923, this Commission issued its order in the above entitled cases upon a common record made with the Interstate Commerce Commission in its investigation in re "Western Coal Rates, Docket No. 13588."

By order of this Commission dated June 4, 1923, made effective June 19, 1923, the rates for the transportation of coal intrastate were dealt with, and certain reductions made from the tariffs and schedules theretofore existing.

On June 15, 1923, a petition for leave to intervene and for a rehearing was filed by The Victor American Fuel Company; and, on June 21, 1923, similar petitions were filed by The Bear River Coal Company and The Routt Pinnacle Coal Company adopting the allegations of the petition of The Victor American Fuel Company, asking leave to intervene and become parties to the above entitled proceeding, and asking that a rehearing be granted as to that portion of the decision and order (of June 4, 1923) which relates to and provides for rates for the transportation of coal from mines in Routt County, Colorado, referred to in the order and decision in this case as the Oak Hills District.

The petitions in intervention and for rehearing complain of said June 4, 1923 order, and particularly that part of it which establishes a differential of 50¢ per ton from the Oak Hills District over the Walsenburg District to destinations east and north of Denver on the Union Pacific, Colorado and Southern, and Chicago, Burlington and Quincy Railroads; and, also, permission given in the order to maintain rates from the Oak Hills District to points on the Chicago, Rock Island and Pacific Railroad east of Limon which exceed rates by $1.20 per ton contemporaneously maintained from Walsenburg to similar destinations.

The intervening petitioners allege that the effect of the establishment of the 50¢ a ton differential as above stated will be to create an undue and unreasonable discrimination and prejudice against the producers in the Oak Hills District and that same will result in materially curtailing the movement of coal from the Oak Hills District to said destinations; and they further allege that the rates permitted from the Oak Hills District to points on the Rock Island, as above stated, in excess of the rates contemporaneously maintained from the Walsenburg field of $1.20 per ton, will create undue prejudice and discrimination against the producers of coal in said Oak Hills District and will absolutely prevent the movement of any coal from the Oak Hills District to said Rock Island destinations.

By further allegations in the intervening petitions, it is alleged that the above rate of 50¢ a ton established and of $1.20 per ton permitted, creates a prejudice and disadvantage to the operators in the Oak Hills District not only with regard to the relationship of said rates from the Walsenburg District, but also in relation to coal from the Cameo-Palisade Districts that are provided for in said order of June 4, 1923; and that the effect of the order of June 4 will be to unduly prefer coal produced in the Walsenburg and the Cameo-Palisade Districts over the coal produced in the Oak Hills District.

The intervening petitioners pray that they be allowed to intervene; that a rehearing be granted, in so far as the petitioning intervenors interested are affected; and that, after a hearing and after due notice to all parties interested, the Commission modify its order of June 4, 1923, and fix a rate of 25¢ per ton to destinations north and east of Denver on the Union Pacific, Burlington, Colorado and Southern, and Rock Island Lines over the rates contemporaneously maintained from Walsenburg to the same destinations.

A copy of the petition for leave to intervene and for rehearing as filed by said The Victor American Fuel Company, was caused to be served by the Commission upon all parties to the above entitled cases Nos. 244 and 250.

No appearances were made other than the Receivers of The Denver and Salt Lake Railroad Company, who, on June 23, 1923, filed an answer to said petition for intervention and rehearing, which answer reserved to the answering intervenor all the objections as to jurisdiction of the Commission in the premises and otherwise as stated in the record originally made in case No. 250.

The answer of the Receivers objects to the intervention of The Victor American Fuel Company for the reason that it was at the time of the hearing in the said Western Coal Rates Case, I.C.C. No. 13588, an active member of the Colorado-New Mexico Coal Operators Association, which

said association was a party to the joint hearing before the Interstate Commerce Commission and this Commission as aforesaid; that, therefore, , The Victor American Fuel Company should not be permitted to intervene because it had already been before the Commission in the above proceeding as an active member of said association.

The answer further alleges that the Victor Company is engaged in the production of coal in both the Walsenburg and Routt County fields and that it, as one of the active members of the Colorado-New Mexico Coal Operators Association, was instrumental in bringing about the reduction of rates from the Walsenburg field, as provided for in the order of June 4, 1923; and that, after having procured or assisted in procuring reductions from the rates in the Walsenburg field for the advantage of its mines located there, it now seeks to make a corresponding or even greater reduction in the rates of the Oak Hills District for the advantage of its property located there, and without any regard to the consequences or effect upon the rates of The Denver and Salt Lake Railroad Company.

The answer of the Railroad Company also points out that it operated at a deficit of $259,813.50 for the calendar year 1922, and at a deficit of $194,831.30 for the first four months of 1923; that approximately 85% of the total tonnage moved by the Moffat Road is coal tonnage and that any further reduction in rates ordered by the Commission would simply increase the deficit of the Railroad Company and would amount to confiscation of its property contrary to the Constitution of this State and to the Fourteenth Amendment to the Constitution of the United States.

The Receivers further allege that the total coal tonnage shipped over the Moffat Railroad, as disclosed by the record in the case, was 713,925 tons of revenue coal for the calendar year 1921, of which 275,164 tons moved in interstate commerce, 199,281 tons moved to Denver, and that a tonnage of only about 76,000 tons moved to points in Colorado other than to the city of Denver; that, for this reason if for no other, a reduction in rates for the comparatively small tonnage moved to eastern Colorado destinations would

necessarily affect and perhaps require substantial reductions in the Denver rate and would materially affect the existing rates to interstate points east of Colorado where the greater amount of the tonnage moves. The railroad intervener denies that the differential provided in the order of June 4, 1923, in this case, will retard the movement of coal from the Oak Hills District to destinations in eastern Colorado; and denies that the differential provided therein will constitute any undue or unreasonable prejudice or disadvantage to the Oak Hills District coal operators; and it, therefore, prays that the petition of the petitioning interveners for a rehearing be denied.

Pursuant to notice to all parties interested, this matter came on for hearing before the Commission at its Hearing Room, State Office Building, Friday, July 6, 1923. Testimony was submitted on behalf of the petitioning interveners for a rehearing, and for the Receivers of The Denver and Salt Lake Railroad Company,--they being all the parties who appeared and participated in this intervening proceeding.

At the outset of the proceeding on July 6, the Receivers renewed in the record what amounts to a motion to dismiss, on the ground that the Victor American intervener was not a party competent to institute such proceeding for rehearing for the reason that it was a member of the Colorado-New Mexico Coal Operators Association, complainant in the proceeding held by this Commission in conjunction with the Interstate Commerce Commission hereinabove referred to, and for the reason that its petition for leave to intervene and for rehearing was without merit. At the hearing this question was not ruled upon but was reserved for decision until the entire matter should be decided.

The Commission is quite of the opinion that, under the broad language of Section 51 of the Public Utilities Act, the motion or demurrer of The Denver and Salt Lake Railroad Company is not tenable and should be denied. Section 51 in its beginning reads as follows:

> "After any order or decision has been made by the Commission, any party to the action or proceeding or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters deter-

mined in said action or proceeding and specified in the application for rehearing, and the Commission may grant and hold such rehearing on said matters, if in its judgment sufficient reason therefor be made to appear."

It must always be borne in mind that a state regulatory body, or at least in Colorado under the Public Utilities Act, is not a court and is not invested with the jurisdiction and powers of a court. As a matter of fact, in various sections of the Act, it is specifically provided that the rules of evidence and proceedings as are applicable to courts of record shall not be followed and adhered to by the Commission; and it is for this reason that it is a common practice to admit hearsay and secondary evidence in hearings before the Commission that would be entirely objectionable and ruled out were it tendered before a court of record. It will be observed also that the excerpt from Section 51 above quoted provides that "any party to the action or proceeding" may apply for rehearing in respect to anything determined in said action or proceeding. It is conceded that The Victor American Fuel Company as a member of the Colorado-New Mexico Coal Operators Association, was a "party to the action or proceeding" that came on for hearing before this Commission jointly with the Interstate Commerce Commission in the above entitled case in May, 1922, which resulted in the order of June 4, 1923. Merely because the Victor Company was not a party, eo nomine, to the prior proceeding, and it being conceded that it is a party interested and affected by the prior proceeding, would give it the right to petition for leave to intervene and for rehearing, as we interpret the Public Utilities Act, and particularly that part of Section 51 above quoted.

We come now to a consideration of the basis of the complaint as alleged by the petitioning interveners, viz., a differential established under the order of June 4, 1923 of 50¢ per ton from the Oak Hills District over Walsenburg to points on the Union Pacific, Colorado and Southern, and Burlington east and north of Denver, and of the permission of rates by the Rock Island not to exceed $1.20 per ton differential Oak Hills District over Walsenburg, east of Limon.

The differential of 50¢ per ton Oak Hills District over Walsenburg District, as established by this Commission, to points intrastate north and east of Denver on the three rail carriers above mentioned, was taken into consideration by the Interstate Commerce Commission in its Docket No. 13930, hereinabove referred to, in the establishment of rates from the two districts to points interstate in the movement of coal from the respective fields to the Missouri River and other destinations. The rates established by this Commission in its decision and order of June 4, 1923, wherein was established the differential of 50¢, aforesaid, were the result of conferences between this Commission and the Interstate Commerce Commission in the establishment of rates for the movement of Colorado coal from the above mentioned districts to points intrastate and interstate with a view to harmonizing the proper relationship, or parity, of such rates.

At the hearing in May, 1922, and at the hearing of the instant case in July, 1923, no objection by any party was made as to the differential of 58¢ per ton Oak Hills over Walsenburg to Denver; that differential was not even considered or discussed.

To modify the order of June 4, 1923, as prayed for by the petitioning interveners, for a differential to points on said carriers north and east of Denver, and thereby to establish a differential of 25¢ Oak Hills over Walsenburg to said destinations intrastate, would result in some instances in the establishment of a lower rate to certain destinations north and east of Denver from Oak Hills than from Oak Hills to Denver. As an example, and bearing in mind that the rate Oak Hills to Denver is $2.92 on lump coal and $2.34 Walsenburg to Denver, accounting for the differential of 58¢ per ton, the present rate Oak Hills to Derby on the Burlington is $3.15 per ton; to establish a 25¢ differential, would make the Derby rate $2.90 per ton, or 2¢ less per ton than the Denver rate. The same condition would exist to Sable on the Union Pacific east of Denver. At Watkins on the Union Pacific, the present rate is $3.20 per ton, while a 25¢ differential would make the rate $2.95 per ton, or only 3¢ higher than the Oak Hills-Denver rate. It will

thus be seen that in some instances, and others may be cited, that to establish the differential of 25¢ asked for by the petitioning interveners, would result in what is properly designated as a Fourth Section violation under the Interstate Commerce Act, and, while in Colorado we have no specific statute, it is a general principle that a carrier may not charge less for a longer than for a shorter haul.

With reference to the $1.20 differential Oak Hills over Walsenburg to points on the Rock Island intrastate east of Limon, such differential is made necessary to maintain a proper relationship of rates intrastate to destinations east of Limon on the Kansas branch of the Union Pacific, and east of similar points on the Burlington and the Omaha or main line of the Union Pacific. This is best illustrated by the following table to some of the destinations on the lines of carriers above named.

Miles from Limon	Station C.R.I.&P.	Present Rate	Miles from Limon	Station U. P.	Present Rate
21.9	Arriba	$3.90	15	Hugo	$3.85
33.3	Flagler	4.10	33	Boyero	4.00
44.3	Seibert	4.20	50	Wild Horse	4.30
51.3	Vona	4.20	63	Kit Carson	4.30
58.6	Stratton	4.25	87	Cheyenne Wells	4.40
76.9	Burlington	4.40	97	Arapahoe	4.50

The present rate from Oak Hills to Wray on the Burlington, comparable to Burlington on the Rock Island and Cheyenne Wells on the Union Pacific, is $4.30 per ton, and on the Omaha or main line of the Union Pacific to Julesburg, comparable to said three points, the Oak Hills rate is $4.60. Therefore, so far as the rates from the Oak Hills district to said destinations, Cheyenne Wells on the Kansas branch of the Union Pacific, to Burlington on the Rock Island, to Wray on the Burlington, and to Julesburg on the main line of the Union Pacific, the distances are practically the same with the widest spread of 20¢, that to Julesburg, as the same are at present established. The same conditions apply to other points on the four carriers named between the farthest eastern points in Colorado to Limon on the Kansas Pacific and Rock Island, and to similar points on the Burlington and main line Union Pacific, as is disclosed by a cross section survey of the rates in that territory.

In the movement of coal from the Oak Hills District to points east of Limon on the Rock Island, that carrier, by a trackage agreement with the Union Pacific, transports coal from Denver to Limon over Union Pacific rails exactly as Oak Hills coal is transported from Denver to points on the Union Pacific, Kansas branch, east of Limon. Obviously, to establish a much lower differential than $1.20 on Oak Hills coal to Rock Island points east of Limon, would result in a gross discrimination to operators of Oak Hills coal to similar destinations in the territory on the Union Pacific, Kansas branch, east of Limon and to destinations on the Burlington and the main line Union Pacific east and north of Denver.

It is in the record in this and the prior proceeding that the movement of coal from the Oak Hills District to Denver during the calendar year 1921, the latest period for which figures were submitted, amounted to 199,281 tons; that during the same period approximately 76,000 tons moved from Oak Hills District to points in Colorado other than Denver, and that during the same period 438,761 tons moved in interstate commerce. The large tonnage moved to Denver with the 58¢ per ton differential over Walsenburg in said period, as compared with the tonnage moved to points in Colorado outside of Denver, would seem to indicate that a 50¢ differential to points outside of Denver in Colorado ought not to be a serious deterrent in the movement of Oak Hills coal to destinations in Colorado other than Denver. The petitioning interveners seek to account for this seeming anomaly by reason of the testimony submitted to establish the fact that two of the larger operators in the Oak Hills District, viz., The Moffat Coal Company and The Colorado-Utah Coal Company, maintain their own yards in Denver and were thus enabled to act as their own distributors and, by means of canvassers, are enabled to dispose of a large tonnage of Oak Hills coal in Denver despite the 58¢ per ton differential. This is a competitive condition, if true, with which the establishment of rates for transportation properly has no concern. It is not a factor to be considered in the fixing of rates. Were it worthy of consideration, let us say, the small merchant could complain of the merchandise rate and ask for a lower rate on the ground that large mercantile institutions in Denver are enabled to buy large quantities and, by storage capacity and other

means, are thus enabled to sell for less than a small competitor.

While the record in this and the prior proceeding discloses the approximate movement of coal from the Oak Hills District to destinations in Colorado north and east of Denver, there has been no evidence submitted in this proceeding of the movement from the Walsenburg fields to such destinations. It is in evidence, however, that the cost of mine operations in the Oak Hills District is anywhere from 75¢ to $1.00 per ton less than the cost of operations in the Walsenburg District by reason of the fact that the Oak Hills coal is mined from a newer field where the veins are wider and thicker and very much nearer the surface than in the Walsenburg field. By virtue of these and other operating conditions, the cost of mining coal in the Oak Hills region is testified to be cheaper by the above amounts than in the older and more expensive operations in the Walsenburg and Trinidad fields. As to the quality of coal from the respective fields, there is some difference of opinion; but, on the whole, it is safe to assert that the Oak Hills product is superior to that of the Walsenburg product, and the consumer, under ordinary conditions, would prefer the Oak Hills coal. Therefore, even though a differential does exist as against the Oak Hills operator, he ought to be, and evidently has been, capable of absorbing sufficient of this differential as to permit of a free competition in territory north and east of Denver in Colorado with the Walsenburg-Trinidad product. This is strongly indicated by the fact that in the calendar year above named, 199,281 tons of Oak Hills coal moved to Denver with a 58¢ per ton differential over the Walsenburg rate. Just what the movement of Walsenburg coal to Denver was during that period is not in evidence; but it is a fair assumption that if the Walsenburg coal was superior or even equal to the Oak Hills coal as a commercial product, it would practically eliminate the Denver market for Oak Hills coal when we bear in mind the 58¢ differential and a haul of 185 miles from Walsenburg to Denver over an old established and, but for the Palmer Lake hill, a prairie haul, as against 211 miles from Oak Hills District to Denver over one of the most difficult and expensively operated railroads in this western country.

Another factor that is taken into consideration by the Commission in denying the relief sought by the petitioning interveners for modification of the rates to points east and north of Denver as established by the order of June 4, 1923, is that were it feasible to grant the relief sought, aside from all other objectionable considerations hereinabove referred to, it would necessarily and inevitably diminish the revenues of the Denver and Salt Lake Railroad. It is in the testimony of this proceeding, and is not denied, that that carrier is operating at an enormous deficit; that the cessation of operation by the Denver and Salt Lake Railroad would be a catastrophe to the people in a great region of Colorado, equalling in area and possibility of development all of the New England states plus the State of New York. Now that the actual work of boring the Moffat Tunnel is in progress with every indication of its timely completion, it is most important that nothing should be done to endanger the continued operation of the Moffat Road, or, indeed, to seriously interfere with its giving such public service as its revenues reasonably will permit.

For the reasons hereinabove stated, and other considerations that might be dwelt upon, the Commission feels constrained to deny the prayer of the petitioning interveners and to allow the rates established and permitted under the order of June 4, 1923, to remain in effect until further order of this Commission.

O R D E R

IT IS THEREFORE ORDERED, That the petitions of The Victor American Fuel Company, The Bear River Coal Company and The Routt Pinnacle Coal Company for a modification of the order of this Commission in the above entitled cases, dated June 4, 1923, effective June 19, 1923, as on file herein, be, and the same is hereby, denied, and said petitions of intervention are hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of January, 1924.

(Decision No. 672.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

PUC-17

In the Matter of the Application of Charlie Collins of Palisade, Colorado, for a Certificate of Public Convenience and Necessity for the Operation of an Auto Truck Line for the Carrying of Freight and Express in both Directions between Palisade and Grand Junction, Colorado, via Clifton.

APPLICATION NO. 267.

- - - - - - - -

January 29, 1924.

- - - - - - - -

Appearances: For Applicant, Scott Heckman and J. P. Hellman, of Grand Junction, Colorado.
For Protestants, T. H. Beacom, Receiver of The Denver & Rio Grande Western Railroad Company, and The American Railway Express Company, Thomas R. Woodrow, Denver, Colorado.

S T A T E M E N T

By the Commission:

The applicant herein filed his application in this office July 26, 1923, and it was set down for hearing after all parties in interest were notified, and was heard before Frank P. Lannon and Tully Scott at the City Hall, Grand Junction, Colorado, Wednesday, October 10, 1923, at 10:00 o'clock A. M.

Charlie Collins, the applicant, resides at Palisade, Colorado, and asks for a Certificate of Public Convenience and Necessity for the operation of an auto truck line between Palisade and Grand Junction, in both directions, via Clifton, using two trucks for this purpose and giving a daily service, Sundays excepted, on the following schedules and freight rates:

Leave Palisade	8:00 A.M.
Arrive Clifton	8:30 A.M.
Leave Clifton	8:35 A.M.
Arrive Grand Junction	9:00 A.M.
Leave Grand Junction	11:30 A.M.
Arrive Clifton	12:00 M.
Leave Clifton	12:05 P.M.
Arrive Palisade	12:30 P.M.

FREIGHT RATES:

Merchandise, supplies, feed, groceries, ice cream, bread, etc.:

Grand Junction to Clifton	15¢ per cwt.
Grand Junction to Palisade	20¢ per cwt.

Machinery and hardware:

Grand Junction to Clifton	25¢ per cwt.
Grand Junction to Palisade	30¢ per cwt.

Merchandise, supplies, feed, groceries, ice cream, bread, etc.:

Palisade to Clifton	15¢ per cwt.
Palisade to Grand Junction	20¢ per cwt.

Machinery and hardware:

Palisade to Clifton	25¢ per cwt.
Palisade to Grand Junction	30¢ per cwt.

Coal

Palisade to Grand Junction	15¢ per cwt.

The freight from Grand Junction to Clifton and Palisade consists largely of groceries, flour, grain, ice cream, furniture and hardware. From Palisade to Grand Junction a large amount of fruit is shipped during the summer and fall months, and besides there are empty ice cream containers and other miscellaneous articles. The principal commodity from Palisade, however, consists of coal hauled from the Winger Mine, located about two miles east of Palisade, for the hauling of which a charge of $2.50 to $3.00 a ton is made. This is called a "wagon mine" on account of not having any railway connections. This applicant has been operating between the initial point and Grand Junction since April 8, 1922, over the "Ocean to Ocean" highway or Midland Trail, in either instance a distance of about fourteen miles, while Clifton is located about equidistant from either termini.

The evidence in this case shows that local shipments between the places involved herein have been very largely taken over by individuals who do their own hauling or by parties operating freight and express trucks.

In fact, a witness for the express company remarked that almost all the railroad express business between Palisade, Clifton and Grand Junction had been lost to the truck owners. Several reasons for this were advanced. One was that The American Railway Express Company charged 66 cents to 88 cents per cwt. for this service, while the larger part of the shipments, consisting of groceries, feed, flour, etc., could be forwarded by truck for 20 cents per cwt. and then delivered right on the floor of the house making the purchase, whereas if the same shipment had been made by rail it would entail an extra expense of cartage to depot and also from depot to destination. Neither is this all. The Railway Express Company ships furniture, such as chiffoniers, at first class rates and makes a charge for this service of $1.17 per one hundred pounds; and in addition to this the article must be wrapped or crated entailing further trouble and expense, all of which is avoided where the article is moved by truck.

D. L. Gardner, a merchant at Clifton, testified that he had a truck of his own, hauling most of his own freight, and that he also used the service furnished by the applicant; that he purchased most of his goods of wholesalers in Grand Junction and that he had not used either the railway freight or express service from Grand Junction since he had charge during the past year. He also gave as his opinion that the truck service was much more expeditious and satisfactory than that furnished by rail. Mr. Gardner averred that he could get two deliveries from Grand Junction daily by auto, whereas a delivery could not be received in any instance until the following day, and in many cases it would necessitate the waiting of two or three days for goods shipped by railway freight.

Mr. M. W. Kluge, a merchant of Palisade, and Mr. Gardner both testified that as far as they were individually concerned in getting freight from Grand Junction to their respective places of business, the taking off of the local freight service from the Denver & Rio Grande Western would not inconvenience them in their business as they use the truck service exclusively.

The testimony in this case showed that, as to Clifton, it had been customary to haul supplies from Grand Junction for the store there even before the advent of the auto truck, when they were hauled by horses. Owing to this and the further fact that if the auto truck line were not established, the stuff that now goes forward by common carriers by truck would move more or less by privately owned trucks, we are unable to see where the granting of the certificate asked for can or will be of any appreciable detriment to the respondents.

In view of the evidence presented the Commission finds that the service being rendered by this applicant is both a convenience and necessity, and will, therefore, grant the certificate asked for.

O R D E R

IT IS THEREFORE ORDERED, That Application No. 267 of Charlie Collins of Palisade, Colorado, for a Certificate of Public Convenience and Necessity for the operation of a motor truck line between Palisade and Grand Junction and intermediate points in Mesa County, Colorado, for the carrying of both freight and express, in both directions, between said points, via Clifton, be, and the same is hereby, granted and this shall be considered his certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of January, 1924.

(Decision No. 673.)

PUC-18

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of Raymond L. Webber for a Certificate of Public Convenience and Necessity for the Operation of an Auto Truck Line for Carrying Freight and Express between Palisade and Grand Junction, Mesa County, Colorado.

APPLICATION NO. 272.

- - - - - - - - -

February 8, 1924.

- - - - - - - - -

Appearances: For Applicant, W. R. Inman, of Grand Junction, Colorado;
For Protestant, T. H. Beacom, Receiver of The Denver & Rio Grande Western Railroad Company, and The American Railway Express Company, Thomas R. Woodrow, of Denver, Colorado.

S T A T E M E N T

By the Commission:

The applicant herein, Raymond L. Webber, of Palisade, Mesa County, Colorado, filed his application with this Commission September 4, 1923. His equipment consists of two trucks and he proposes to make two round trips daily, except Sunday, between Palisade, Clifton and Grand Junction, including intermediate stops, carrying both freight and express. The principal articles hauled from Grand Junction to Clifton and Palisade consist of flour, mill feed, meats, groceries from the wholesale houses, furniture, ice cream, etc. From Palisade to Grand Junction the bulk of the freight is coal. In addition, however, laundry, empty ice cream cans, household goods and also many kinds of fruits in season are moved. The last cherry season he hauled 98,225 pounds of cherries from Palisade to the Curry Canning Company at Grand Junction. These cherries are picked without stems, in consequence of which they are very juicy and will sour in a short time after picking, which necessitates expeditious handling. These were transported at a rate of

about 10,000 pounds per day and the consignments moved forward both day and night until the crop was harvested. These cherries were picked by various growers during the day and assembled at a store in Palisade between the hours of 3:00 and 7:00 P.M., and were bulked for shipment and delivered by truck to the canning factory at Grand Junction before 10:00 o'clock A.M. of the following day. In fact, the larger part of this fruit was delivered to the cannery the same afternoon or evening of the day it was picked. Under all the circumstances, this transportation service could not have been performed by the railroad company without the growers being subjected to severe losses and great inconvenience.

The evidence in this case also shows that this applicant hauls slack coal from the Farmers Riverside Mine, located a short distance east of Palisade, which is a wagon mine, and makes delivery from same to the bins of the Excelsior Laundry and the Ideal Cleaners at Grand Junction, charging therefor a rate of $2.25 per ton for slack and $2.50 per ton for lump. In this connection, C. M. Ferbrache, Manager of the Excelsior Laundry, testified that if the service now performed by truck were taken away from him he would be compelled to operate a truck of his own; that he now gets his slack coal from the applicant delivered in his bin at the laundry for $2.75 per ton, whereas if he had to make his purchases from yards, with railroad connections, it would cost him from $3.50 to $5.00 per ton.

When one takes into consideration the fact that the Denver & Rio Grande Western Railroad charges only 90 cents for hauling slack coal from Palisade to Grand Junction, while the trucker between the same points charges $2.25 for this service, one has to look further than the railroad to find the explanation for the movement of coal by truck. It is probably found from the fact that the mines with rail connections get a better price for their slack than the wagon mines, and in addition to this the coal dealer or middleman's charge for delivery and profit accounts for the disparity in prices between the truck hauled and the rail hauled coal in

Grand Junction.

The testimony of Mr. Webber showed that if he and his competitor, Mr. Collins, were to cease operations the business now done by them would not revert to the railway company. This would be especially true of the movement of coal from the Stokes, Winger and Riverside Mines as they have no railway connections, in consequence of which most of the coal from these mines now moves, and has moved for years, to Grand Junction by either teams or motor trucks.

The freight rates between the foregoing points by rail are as follows, per hundred pounds: First class, 25 cents; second class, 21 cents; third class, 17½ cents; and fourth class, 15 cents. The express rates on first class per hundred pounds are $1.17; second class, 88 cents; second class commodity rate, 68 cents per cwt.

Instead of the aforesaid rates by rail, for both freight and express, this applicant charges 20 cents per cwt. for haulage for merchants, and a charge of from 15 cents to 25 cents is made for hauling and delivery of small packages for the general public.

The extent to which the auto truck is now used in short hauls for the transportation of passengers, freight and express, and the great popularity and hold that the service of pick-up and delivery from and to the door has on the public is best illustrated by the evidence of Mr. L. A. Boyce, the local agent of The American Railway Express Company at Grand Junction. He testified that his company now does no express business between Grand Junction, Clifton and Palisade, and that while the Express Company formerly did a regular daily business between these points, this patronage now goes to the auto truckers exclusively.

There seem to be two controlling reasons for this. In the first place the auto truckers handle stuff as freight at rates of 20 cents per cwt. that formerly moved entirely by railway express at more than three times the charges now made by the truckers.

In the second place the Commission finds from the testimony heard in many cases of this character that it has been proven beyond a doubt that one of the impelling and foremost desideratums in the freight and express

movement by auto is the pick-up and delivery from and to "store door" and "house door" of the users of this service. This is so universally popular with the people that this custom has now grown to such an extent as to threaten American railways and railway express Companies with extinction of their short haul business unless we have some new legislation or the railroads take some drastic action to supplement and popularize this service over their own rails, or by auto service over the highways.

The Secretary of State's office shows there have been issued in Colorado 174,915 pleasure car licenses during 1923, and that there were issued 13,202 truck licenses in the same period. Of the trucks, about one half are of the one ton variety and the balance range from the latter size up to five tons capacity, in which as much as eight tons are sometimes hauled.

The operation of the heavy trucks over the highways of this State is now getting to be quite a hindrance and displeasure and is beginning to meet with a great deal of opposition from pleasure car owners, many of whom complain bitterly of the attitude of the "ownership of the road" assumed by the larger part of the heavier truckers in failing to turn out so the lighter auto vehicles may pass. This has become almost an unbearable nuisance.

Another feature of opposition to truck operation over the highways has just been advanced by the County Commissioners of Pueblo County, who have gone on record by unanimous vote that they are opposed to the heavy truck on account of the destruction of highways by a class of people who have contributed but little, if anything, to either the roads' construction or repair. Of course, the railroads are opposed to the heavy truck by reason of the fact that they are compelled to pay onerous taxes for the building and upkeep of the highways they do not use, but which are utilized by their competitors in hauling passengers and freight for which the latter have hardly ever contributed one cent. With 174,915 pleasure car owners and the other thousands of tax payers throughout the State objecting to having their taxes subverted to the construction of thoroughfares for the benefit of truckers who wreak havoc with roads, culverts and bridges, it is easy to see that something must be done by our next legislature to correct the existing inequalities and to at least make them, through heavy

license fees, or otherwise, reimburse the taxpayers for the damage done by the heavy trucks of those who "hold themselves out for hire" and are operating as public utilities. The taking of the freight business from the railways and transporting it over the highways, to the detriment of all other traffic, is an incident that was never intended by the advocates of better roads throughout this country.

In the instant case, however, the applicant has, by a preponderance of evidence, established the fact that convenience and necessity, under the existing law, seems to demand that the certificate prayed for be granted.

O R D E R

IT IS THEREFORE ORDERED, That the application of Raymond L. Webber for a Certificate of Public Convenience and Necessity for the operation of a freight and express truck line between Palisade and Grand Junction and intermediate points, in both directions, all in Mesa County, Colorado, be, and the same is hereby, granted and this shall be considered his certificate for said operation.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 8th day of February, 1924.

(Decision No. 674)

MARE NO COPY

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

The Midland Terminal Railway Company, Complainant, vs. The Conkling Coal & Transfer Company, Defendant.	CASE NO. 258

(February 9, 1924)

STATEMENT

By the Commission:

It appearing that defendants herein have ceased operations and there is no further cause for complaint, the case will be dismissed.

ORDER

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 9th day of February, 1924.

(Decision No. 675.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of Warren B. Chase for a certificate of public convenience and necessity authorizing and permitting the hauling of freight by motor truck between Denver, Platteville, Gilcrest, Peckham, LaSalle, Greeley, Eaton and Ault, Colorado; also between Denver and Loveland, Longmont, Berthoud and Fort Collins, Colorado.

APPLICATION NO. 292.

- - - - - - - -
February 18, 1924
- - - - - - - -

S T A T E M E N T

By the Commission:

The above application set for hearing this date was withdrawn upon motion of applicant and an order of dismissal will be entered.

O R D E R

IT IS THEREFORE ORDERED, That the above application be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

TULLY SCOTT

(S E A L)

F. P. LANNON
Commissioners.

Dated at Denver, Colorado,
this 18th day of February, 1924.

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. 675.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of Warren B. Chase for a certificate of public convenience and necessity authorizing and permitting the hauling of freight by motor truck between Denver, Platteville, Gilcrest, Peckham, LaSalle, Greeley, Eaton and Ault, Colorado; also between Denver and Loveland, Longmont, Berthoud and Fort Collins, Colorado.

APPLICATION NO. 292.

- - - - - - - -

February 18, 1924

- - - - - - - -

S T A T E M E N T

By the Commission:

The above application set for hearing this date was withdrawn upon motion of applicant and an order of dismissal will be entered.

O R D E R

IT IS THEREFORE ORDERED, That the above application be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 18th day of February, 1924.

(Decision No. 676)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the matter of the Application of)
)
C. C. Chase for Certificate of Public) APPLICATION NO. 298
)
Convenience and Necessity.)

(February 25, 1924)

STATEMENT

By the Commission:

The above application set for hearing this date was withdrawn upon motion of applicant and an order of dismissal will be entered.

ORDER

IT IS THEREFORE ORDERED, That the above application be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hall Chairman

Commissioners.

Dated at Denver, Colorado,
this 25th day of February, 1924.

(Decision No. 677)

At a General Session of the Public Utilities Commission of the State of Colorado held at its office in Denver, Colorado, on the 26th day of February, 1924.

INVESTIGATION AND SUSPENSION DOCKET NO. 62.
IN re RULES AND REGULATIONS AS PUBLISHED IN B. T. JONES NATIONAL CAR DEMURRAGE TARIFF 4 D, COLO. P.U.C. NO. 12, I.C.C. 1466, EFFECTIVE FEBRUARY 15, 1924.

IT APPEARING, That the Public Utilities Commission of the State of Colorado entered upon its own motion concerning the propriety of the new rates and charges, as set forth in B. T. Jones Tariff 4 D, Colo. P. U.C. No. 12.

IT IS THEREFORE ORDERED, That the Rules and Regulations, as published in the above Tariff, be, and are hereby, suspended until June 14, 1924.

IT IS FURTHER ORDERED, That the Rules and Regulations, as published in B. T. Jones Tariff 4 C, Colo. P.U.C. No. 8, shall remain in effect.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 26th day of February, 1924.

(Decision No. 677.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of The Colorado Motor Transport for a certificate of public convenience and necessity to operate a passenger motor bus line between Denver, Bergen Park, Idaho Springs, Georgetown and Silver Plume, Colorado.

APPLICATION NO. 248.

- - - - - - - -

February 27, 1924.

- - - - - - - -

S T A T E M E N T

By the Commission:

The above application having been set for hearing this date, upon failure of applicant to appear the same will 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 27th day of February, 1924.

(Decision No. 678.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

The Nuckolls Packing Company, Complainant, vs. The Atchison, Topeka & Santa Fe Railway Company, The Colorado & Southern Railway Company, The Denver & Rio Grande Western Railroad Company, Joseph H. Young, Receiver, The Denver & Rio Grande Railroad Company, Alexander R. Baldwin, Receiver, Defendants.	CASE NO. 266.

- - - - - - -

March 4, 1924.

- - - - - - -

Appearances:

R. L. Ellis, Esq., of Pueblo, Colorado, for Complainant and Intervener, the Pueblo Commerce Club;

J. A. Gallaher and W. M. Carey for Defendants, The Denver & Rio Grande Western Railroad Company and The Denver & Rio Grande Railroad Company, Alexander R. Baldwin, Receiver; Erl H. Ellis for Defendant, The Atchison, Topeka & Santa Fe Railway Company.

S T A T E M E N T

By the Commission:

Complainant, a corporation, by complaint filed March 10, 1923, alleges that the rate charged on wooden barrels in carload lots, applying between Denver, Colorado, and Pueblo, Colorado, on June 20, 1921, and subsequent to that date was and is unreasonable and unjustly discriminatory.

The Commission is asked to award reparation on one carload of barrels which moved from Denver to Pueblo, Colorado, in June, 1921 and to prescribe a just and reasonable rate for the future.

The shipment which originated at Denver, Colorado, on June 20, 1921, weighed 27,100 pounds, and charges were collected at the applicable fourth class rate of 50½ cents per one hundred pounds.

At the time of movement of shipment complained of the applicable rate on wooden barrels in carload lots in territory adjacent and to the east of Pueblo, Denver, Colorado Springs and Trinidad, and also eastward from these points as far as the Michigan and Indiana state line, was the class "D" rate, minimum 14,000 pounds. Class "D" rate also applied on the line of The Colorado & Southern Railway between all stations Denver and north, and on the line of The Colorado & Southern Railway in Wyoming. The following table taken from complainant's exhibit compares the rates charged with rates on the same commodity with distances approximately equal to that between Denver and Pueblo:

Rates On Wooden Barrels In Carload Lots
Rates in Cents Per Cwt.

FROM	TO	ROUTE	MILES	RATE 6-20-21	PRESENT RATE	RATE CLAIMED REASONABLE 6-20-21	RATE CLAIMED REASONABLE Present	CLASS RATES IN EFFECT AT PRESENT 4th	CLASS RATES IN EFFECT AT PRESENT D.
Denver, Colo.	Pueblo, Colo.	D&RGW	119	* 50½	* 45½	19	17	45½	17
Denver, Colo.	Pueblo, Colo.	C & S	117	* 50½	* 45½	19	17	45½	17
Denver, Colo.	Pueblo, Colo.	AT&SF	117	* 50½	* 45½	19	17	45½	17
Denver, Colo.	Cheyenne, Wyo.	C & S	120	# 22½	# 20½			45½	20½
Denver, Colo.	Flagler, Colo.	CRI&P	123	# 25½	# 23			39½	23
Denver, Colo.	Otis, Colo.	CB&Q	126	# 27½	# 24½			41½	24½
Denver, Colo.	Aroya, Colo.	Un.Pac.	122	# 23½	# 21			39½	21
Pueblo, Colo.	Morse, Colo.	AT&SF	122	# 25½	# 23			52	23
Pueblo, Colo.	Diston, Colo.	Mo.Pac.	118	# 26½	# 24			47½	24
Colo.Spgs.Colo.	Seibert, Colo.	CRI&P	123	# 27½	# 24½			44½	24½
Trinidad, Colo.	Caddoa, Colo.	AT&SF	126	# 25½	# 23			55	23

* 4th class rates, minimum 12,000 lbs.
\# Class D rates, minimum 14,000 lbs.

Complainant also shows the following comparisons:

FROM	TO	ROUTE	MILES	RATE IN EFFECT 6-20-21	TON MILE EARNINGS IN CENTS
Denver, Colo.	Pueblo, Colo.	D&RGW	119	50½	8.48
Denver, Colo.	Pueblo, Colo.	D&RGW	119	* 19	3.2
Denver, Colo.	Hutchinson, Kans.	D&RGW AT&SF	# 506	50½	2.0
Denver, Colo.	Osage City, Kans.	D&RGW Mo.Pac.	# 510	50½	1.98

* Rate claimed reasonable.
\# Shipments are hauled 119 miles to Pueblo on the D. & R. G. W. and turned over to A.T. & S.F. Ry. or Missouri Pacific R.R. and then hauled 387 to 391 miles farther at the same rate as charged to Pueblo.

The above comparison is significant for the reason that shipments to Osage City and Hutchinson, Kansas, which complainant shows are 391 and 387 miles, respectively, east from Pueblo on the lines of the Missouri Pacific and Atchison, Topeka & Santa Fe, pass directly through Pueblo, and yet the shippers at Pueblo are charged the same rates as those at the farther distant points.

While comparisons between local rates and earnings on proportions of through rates are not conclusive, yet they can not be ignored when the disparity is so great as shown in this case.

On a shipment of barrels from Denver to Hutchinson, Kansas, the division of revenue between the carriers is on the following basis: Denver & Rio Grande Western Railroad, 22%; Atchison, Topeka & Santa Fe Railway, 78%. Thus on a shipment from Denver, Colorado, to Hutchinson, Kansas, of the same weight as that which complainant shipped, the total revenue would be $136.85. Of this amount the Denver & Rio Grande Western would receive only $30.11 and the Atchison, Topeka & Santa Fe $106.73, while of the revenue on the shipment moving from Denver to Pueblo only, the Denver & Rio Grande Western received $136.85. Putting it another way, the Denver & Rio Grande Western for the citizen of Kansas puts his shipment in the "D" classification and

hauls it to Pueblo for $30.11, and for The Nuckolls Packing Company of Pueblo the shipment moving over the same rails by the same company is put in as fourth class and the Denver & Rio Grande Western collects for the identical service more than four times as much as is charged the Kansan for the same haul between Denver and Pueblo. This, of course, is an unwarranted discrimination against a Colorado industry.

A glance at one of the foregoing tables will show quite clearly the discriminatory features of the haul over the Colorado & Southern south to Pueblo as against the haul north to Cheyenne. In both instances the mileage is almost the same. To Cheyenne this company had barrels in class "D" June 6, 1921, and the rate was 22.5 cents per cwt. This same company shipping the same article to Pueblo, 117 miles, put barrels in as fourth class and charged a rate of 50½ cents per cwt.

Complainant alleged in its complaint, and defendant has admitted in its reply, that the rates cited from Denver, Colorado, to Hutchinson, Kansas, are a typical comparison between rates on wooden barrels in carload lots applying eastward from Denver to points in Kansas, Nebraska and Wyoming.

The record shows that generally in the middle western territory east of the Rockies barrels move on the class "D" rate. For instance, from south Omaha to Sioux City the rate is the class "D" rate of 11 cents, and from Omaha to Albert Lea the class "D" rate of 28 cents is applicable, and it is not denied that class "D" rate is applicable generally in this territory.

Defendants, however, rely greatly upon the fact that the Western Trunk Line Committee has recommended the cancellation of the class "D" rate and special commodity rates and the substitution of the fourth class rate in lieu thereof in this territory; but before such cancellation can be made it is necessary to get permission from the Interstate Commerce Commission and the state commissions having authority over the rates in this territory. So far as the record discloses, no such application has yet been made. On the other hand, a similar application made to the Interstate Commerce Com-

mission by the Atlantic Coast Line Railroad Company in cancellation of Interstate Classification Rating on empty wooden barrels, 85 I.C.C. 154, for permission to advance the rates from class "K" to the fourth class rating on interstate shipments of empty wooden barrels from South Carolina points, was denied, and the class "K" rates were left in effect.

The defendant in the cited case relied upon much the same character of evidence as relied upon by defendants in this case.

It is the contention of defendants that the class "D" rating is too low for application on wooden barrels. However, in view of the fact that the class "D" rate is so generally in effect in the territory adjacent to Pueblo and Denver, and in the middle western territory, we think the rate between Denver and Pueblo should not have been higher than the class "D" rate, minimum 14,000 pounds.

We find that under present conditions the rates on wooden barrels in carload lots between Denver and Pueblo should not exceed the class "D" rates, minimum 14,000 pounds; and we further find that complainant made shipment in June, 1921, as described, and paid and bore the fourth class charges thereon, and that charges on this shipment were excessive, unjust and discriminatory and should be adjusted on the basis of the class "D" rate in effect June 20, 1921.

O R D E R

IT IS THEREFORE ORDERED, That the defendants are hereby ordered to revise their tariffs in conformity with findings herein and place empty wooden barrels in their D classification of freight rates within fifteen days hereof.

IT IS FURTHER ORDERED, That the interested defendants make reparation from 50½ cents charged per cwt. down to 19 cents per cwt., as would have

been the case had the shipment moved under the D classification, and this shall be done within thirty days of the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 4th day of March, 1924.

(Decision No. 679.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of the Board of County Commissioners of Delta County, Colorado, for the opening of a public highway crossing at grade over the right-of-way and track of The Denver and Rio Grande Western Railroad Company at a point located in Section 15, Township 15 South, Range 96 West of the 6th Principal Meridian, at Mile Post 375 plus 3244 feet, near Campbell's switch; and for the abandonment of a crossing at Campbell's switch in the same section, township and range, at Mile Post 375 plus 4066.	APPLICATION NO. 312.

- - - - - - -
March 10, 1924.
- - - - - - -

STATEMENT

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Delta County, Colorado, in compliance with Section 29 of the Public Utilities Act as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track of the Denver and Rio Grande Western Railroad at a point located in Section 15, Township 15 South, Range 96 West of the 6th Principal Meridian, at Mile Post 375 plus 3244, near Campbell's switch; and for the abandonment of a crossing at Campbell's switch in the same section, township and range, at Mile Post 375 plus 4066.

This change in location of crossing is petitioned in connection with a change of location of the county road and county bridge across the Gunnison River to meet altered river channel conditions.

The application of the Board of County Commissioners of Delta County was filed in correct form with the Public Utilities Commission on

February 7, 1924, and on said date the Denver and Rio Grande Western Railroad was duly advised and a copy of the application sent to its representative.

The third paragraph of a reply, dated February 15, 1924, from the Denver and Rio Grande Western Railroad, through its General Attorney, E. N. Clark, states: "The Railroad Company has no desire to present any objection to this proposed change, and I am, therefore, authorized to inform you that so far as the railroad company is concerned an order may be entered by your Commission providing for the abandonment of the former crossing and the establishment of a new crossing at the point specified in the petition, on the usual terms and conditions."

On February 21, 1924, the Railway Engineer for this Commission, accompanied by Mr. Homer D. Graham, County Surveyor of Delta County, made an inspection of the proposed change, and recommended that as a part of the work involved in establishing the new crossing be included the removal of a growth of brush inside the railway curve east of and adjacent to the new crossing. This will lengthen the view for enginemen and those using the new highway.

The County Commissioners of Delta County and The Denver and Rio Grande Western Railroad Company being fully advised regarding this application, and having consented to the terms and conditions as hereinafter made in the order, and no objections having been filed, the Commission will, therefore, issue its order granting permission for the change in location of the crossing as herein set forth.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway crossing at grade be, and the same is hereby, permitted to be opened and established over the main line of the Denver and Rio

Grande Western Railroad in Section 15, Township 15 South, Range 96 West of the 6th Principal Meridian, at Mile Post 375 plus 3244 feet, near Campbell's switch in Delta 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 prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

Permission is also hereby granted to abandon and discontinue the use of the crossing in the same legal subdivision as above stated and at Mile Post 375 plus 4066, conditioned on the opening of the new crossing petitioned.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway at said new crossing, including the necessary drainage therefor, shall be borne by Delta County, and that all other expense in the matter of installation and maintenance of said crossing provided shall be borne by respondent, The Denver and Rio Grande Western Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 10th day of March, 1924.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of the Board of County Commissioners of Huerfano County for an order authorizing them to construct a public road crossing over the tracks of the Colorado and Southern Railway Company near Mile Post 167.

APPLICATION NO. 297

March 10, 1924

S T A T E M E N T.

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Huerfano County, Colorado, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track of the Colorado and Southern Railway at a point 1470 feet south of Mile Post 167, said point being in Section 27, Township 27 South, Range 67 West of the 6th Principal Meridian.

This crossing is petitioned to connect a public highway running east from a point on State Highway No. 26, about four miles north of Walsenburg, with a section of territory east of said Colorado and Southern tracks.

The application of the County Commissioners in this matter was referred to the General Solicitor of The Colorado and Southern Railway Company on November 5 for a statement of their attitude in the matter. Objections were raised by the Railway Company to the particular location of said crossing designated in the petition for the reasons that said crossing location would be unsafe and would possess poor drainage facilities, due to the fact that this crossing would be at a point upon the railway in a cut approximately three feet in depth.

On January 17, 1924, Mr. Burris, then engineer for the Public Utilities Commission, in company with Mr. Rose, of the Chief Engineer's

office of the Railway Company, and Mr. Neibuhr, one of the County Commissioners of Huerfano County, inspected the proposed site; and it was agreed between those representatives that this crossing could be located to better advantage to both the highway and Railway Company, at a point 2360 feet south of Mile Post 167.

In accordance with this conference, the County Commissioners of Huerfano County, on the 21st day of February, 1924, authorized the necessary change in their petition to designate the point of crossing to read as follows: "At a point 2360 feet south of Mile Post 167, said point being in Section 27, Township 27, Range 66." This action of the County Commissioners having removed the objections raised by the respondent railway company and no other objections having been filed, the Commission will, therefore, issue its order granting permission for the opening of this crossing as herein set forth.

O R D E R

IT IS, THEREFORE, ORDERED That, in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway crossing at grade shall be, and the same is hereby, permitted to be opened and established over the double track, main line of The Colorado and Southern Railway Company at a point 2360 feet south of Mile Post 167 located in Section 27, Township 27, Range 66 West of the 6th Principal Meridian and about four miles north of Walsenburg, Colorado; conditioned, however, that prior to the opening of said crossing to travel, it shall be constructed in accordance with the plans and specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED That the expense of construction and maintenance of grading the roadway at said new crossing, including the necessary drainage therefor, shall be borne by Huerfano County; and that all other ex-

pense in the matter of installation and maintenance of said crossing shall be borne by the respondent, The Colorado and Southern Railway Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 10th day of March, 1924.

(Decision No. 681.)

MAKE NO COPY

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

Homer Dell Crow, Complainant, vs. The Atchison, Topeka & Santa Fe Railway Company, The Denver & Rio Grande Western Railroad Company, The San Luis Central Railroad Company, Defendants.	CASE NO. 269.

- - - - - - - -
March 20, 1924.
- - - - - - - -

Appearances:

For Complainant, R. L. Ellis, Pueblo, Colorado.
For Defendant, The Atchison, Topeka & Santa Fe Railway Company, Erl H. Ellis.
For Defendants, The Denver & Rio Grande Western Railroad Company and The San Luis Central Railroad Company, J. A. Gallaher.

S T A T E M E N T

By the Commission:

Complainant's complaint herein was filed with this Commission June 9, 1923. This matter was set down for hearing and was heard at the hearing room of the Commission, 305 State Office Building, Denver, Colorado, on Tuesday, January 8, 1924, at 10:30 A. M.

Complainant alleges that the freight charges on one three days old calf shipped with a carload of emigrant movables were unreasonable, and we are asked to award reparation and establish reasonable rules in such matters for the future.

The shipment of emigrant movables weighed 26,170 pounds. For the three days old calf charges were assessed based on a minimum weight of

3,000 pounds. There being no through rate from Rocky Ford, Colorado, to Center, Colorado, the local carload rate on the emigrant movables from Rocky Ford to Pueblo of 21 cents per cwt., 42½ cents per cwt. from Pueblo to Monte Vista, and seven cents per cwt. from Monte Vista to Center was assessed. The rate assessed on the calf was the less than carload rate of 55 cents per cwt. from Rocky Ford to Pueblo, $1.48 per cwt. from Pueblo to Monte Vista, and 11 cents per cwt. from Monte Vista to Center.

By reason of the fact that the less than carload rate and a minimum of 3,000 pounds was assessed on the calf, the charges on the calf were equal to more than one-third of the charges on the carload rated as emigrant movables.

Under the carriers' tariffs the less than carload rate is applicable on the one calf for the reason that their tariffs provide that only ten head of live stock may be shipped in a carload of emigrant movables at the emigrant movable rate, and there were eleven head of live stock in the car.

In the complaint, complainant asks that the entire shipment of emigrant movables, including the one calf, be rated at the emigrant movable rate; and that in no event should the charges assessed have been higher than the charges on the carload of emigrant movables excluding the calf, plus the less than carload freight charges on the calf based on the actual or estimated weight of 250 pounds.

At the hearing complainant made no showing regarding his first contention, but contented himself upon a showing that the charges on the calf should have been based on the actual weight at the less than carload rate.

The record indicates that under the applicable tariff, charges on the calf should have been based on the actual or estimated weight from Rocky Ford to Pueblo, instead of on the minimum weight of 3,000 pounds. Thus the shipment was overcharged $15.12, as the Atchison, Topeka & Santa Fe tariffs permit the use of the actual or estimated weight on the calf as a basis for

the freight charges. This provision also applies on emigrant movables when moving in the territory east of Pueblo and in Kansas up to the Missouri River, and also in the state of Nebraska.

Defendants contend that very liberal concessions have been granted intending settlers, and that the line of demarkation must be drawn somewhere as to the number of head of live stock that would be permitted to be shipped as emigrant movables. This limit was set at ten head, and had complainant picked out one cow as excess over the allowed ten head of live stock permitted to be shipped as emigrant movables, the charges on the cow would have been based on a minimum of 3,000 pounds the same as on the calf; and that considering the calf as part of the emigrant movables and the one cow as the excess, the application of 3,000 pounds would not be out of line. But nevertheless, regarding this last contention, the fact remains that the cows and other live stock were permitted under the tariff to move at the carload rate, and that the calf was the only portion of the shipment not allowed to move at the carload rating, and it is, therefore, the charges on the one calf that we must consider.

It seems reasonable on the record before us that the carriers should limit the number of head of live stock to be shipped as emigrant movables and make reasonable provision for different charges for live stock shipped in excess of the number allowed, and complainant does not take exception to such a rule. Complainant does, however,take exception to the use of a minimum weight of 3,000 pounds on the excess head instead of the actual weight.

Defendant's witness admitted that the shipping of a calf with a car of emigrant movables was different than when shipping it as a less than carload shipment over their platform. He stated that the reason less than carload charges on a calf are based on minimum weight of 3,000 pounds instead of the actual weight is because the railroad company has to look after the calf when shipped over the platform, but he also stated they do not have to look after it when shipped with a carload of emigrant movables.

While the calf was in excess of the number of head of live stock permitted to be shipped as part of a carload of emigrant movables, it was shipped in the same car and as a part of the same shipment, and it would appear that the charges on the calf were unreasonable compared to the charges on the other portion of the shipment. The practice of basing charges on excess live stock when shipped with a carload of emigrant movables at the actual weight instead of a minimum weight is recognized by other carriers in a large territory, and is more in conformity with what would be considered just and reasonable rates.

The carriers for years have very wisely and consistently urged and advocated the loading of cars to capacity as a means of economy and for conserving equipment.

For this shipment Denver & Rio Grande car No. 62,620 was used. This car has a capacity of 80,000 pounds. Including the calf at 250 pounds, the total load amounted to only 26,420 pounds, or less than one-third the capacity of the car. On the basis of 250 pounds, moving at the rate provided for emigrant movables, the calf shipment would have amounted to $5.36. Instead of the latter amount, however, the complainant was compelled to pay the first class less than carload rate on 3,000 pounds, which amounted to $64.20 for the calf. Here, of course, is a plain case of heavily penalizing a shipper, not for overloading, but because he has exceeded the ten head of live stock allowed by some of the railroads' rules which, of course, is not only inconsistent but extortionate as well.

Charges such as resulted in this case from the present rule in effect on the Denver & Rio Grande Western and the San Luis Central Railroads restrict the heavier loading of cars of emigrant movables to the detriment of both the shipper and carrier, for while there is no evidence in the record to bear out the statement, it is apparent that the charges assessed on the calf are far in excess of its value.

We find that the charges assessed on the calf by The Denver & Rio Grande Western Railroad Company and The San Luis Central Railroad Company were unreasonable and in violation of Sections 13 and 18 of the Colorado Public Utilities Act, to the extent that they exceeded the less than carload rate at the actual or estimated weight of 250 pounds; that complainant paid and bore the charges thereon, and has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued by the use of the actual or estimated weight of 250 pounds; and that the complainant is entitled to reparation with interest.

It appears that shipment was overcharged on the movement between Rocky Ford and Pueblo, and it is expected that the defendant, The Atchison, Topeka & Santa Fe Railway Company, will make prompt refund of the overcharge.

O R D E R

IT IS THEREFORE ORDERED By the Commission, that the defendants, according as they may be interested, are hereby ordered to make reparation to complainant in conformity with the conclusions and findings herein within thirty days of the date hereof.

IT IS FURTHER ORDERED, That the defendants herein, the Denver & Rio Grande Western and the San Luis Central Railroads, shall make provision in their tariffs to the effect that charges on excess live stock in carload lots of emigrant movables shall be based on the actual weight instead of a minimum weight, and that shall be done on or before fifteen days of the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 20th day of March, 1924.

(Decision No. 682)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - -

Investigation by the Commission on its own motion into the reasonableness of the rates for power of The Roaring Fork Electric Light & Power Company.

CASE NO. 183

- - - -

April 3, 1924

- - - -

STATEMENT

By the Commission:

IT APPEARING, That the above entitled case was set for hearing May 19, 1920, and, at the request of interested parties, was continued indefinitely. No steps having been taken since the last filing on January 9, 1922, and notice having been served on January 4, 1922, to attorneys for defendant that, unless some party to the cause should, within fifteen days of the date of said notice, take such steps as were necessary to advance said cause upon the calendar for hearing and disposition, the Commission would conclude that nothing further was desired to be done by any party to said cause and would, upon its own motion, enter an order of dismissal therein without prejudice. No response to said notice having been received, the Commission is of the opinion that this cause should be dismissed.

ORDER

IT IS THEREFORE ORDERED, That the above entitled cause be, and the same is, hereby dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 3rd day of April, 1924.

(Decision No. 683)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - -

In the matter of the closing of)
Pinnee as an agency station,)
filed by the Chicago, Burlington) APPLICATION NO. 173
& Quincy Railroad Company.)

- - - -

April 3, 1924

- - - -

STATEMENT

By the Commission:

IT APPEARING, That no action in the above entitled application has been taken by either applicant or protestant for a period of two years, the same should be dismissed.

ORDER

IT IS THEREFORE ORDERED, That the above entitled application be, and the same is, hereby dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 3rd day of April, 1924.

Commissioners.

(Decision No. 684)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - -

In the matter of the discontinuance)
by The Rio Grande Southern Railroad)
Company of its station at Hesperus,) APPLICATION NO. 206
Colorado, and the withdrawal of its)
agency at said station.)

- - - -

April 3, 1924

- - - -

STATEMENT

By the Commission:

IT APPEARING, That on June 30, 1922, there was filed with the Commission a petition of The Rio Grande Southern Railroad Company that it be granted permission to close and abandon its agency station at Hesperus, Colorado, said change to be effective thirty days from the filing of the petition, and that after due notice to all parties interested, numerous protests were filed, with the result that the matter has laid dormant since the filing of the petition, and no action taken by the Commission, nor by the applicant railroad company.

Under these circumstances the Commission is of the opinion that this application should be dismissed.

ORDER

IT IS THEREFORE ORDERED, That the above entitled cause be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Frank E. Hoedemaker

H. D. Kannon

Teller Ouray

Commissioners.

Dated at Denver, Colorado,
this 3rd day of April, 1924.

(Decision No. 685)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of the Union Pacific Railroad Company for authority to abolish highway crossing near Mile Post No. 13, Boulder branch, and for authority to re-locate the same on the section line between Sections 7 and 8, Township 1 North, Range 68 West, in the 6th Principal Meridian.

APPLICATION NO. 311

April 5, 1924

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Union Pacific Railroad Company, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the closing of a public highway crossing at grade over the branch line of said railroad between Brighton and Boulder now located at a point 1867 feet west of Mile Post No. 13 in Section 7, Township 1 North, Range 68 West; and for the re-establishment of said crossing at a point on the section line between Sections 7 and 8, Township 1 North, Range 68 West, which point is 1165 feet west of said Mile Post No.13.

The proposed change was presented to the County Commissioners of Weld County and to the Railway Engineer of this Commission prior to the filing of the application, and the approval of the county commissioners was obtained in a letter addressed to the Commission, dated January 30, 1924. The Railway Engineer for the Commission, Mr. C. D. Vail, concurred in the opinion that the proposed change would improve the conditions regarding this crossing, having made a personal inspection of the site with Mr. Lowther, Division Engineer of the Union Pacific Railroad Company, on August 29, 1923.

The proposed change being approved and recommended, as set forth above, and no objections having been filed by any other interested parties, the Commission will, therefore, issue its order granting permission for the proposed change as herein set forth.

O R D E R

IT IS, THEREFORE, ORDERED, That in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, the public highway crossing at grade now existing at a point approximately 1867 feet west of Mile Post No. 13 on the Union Pacific Railroad, Boulder Branch, shall be, and the same is hereby, ordered to be closed; and a public highway crossing at grade, located at a point approximately 700 feet east of said old crossing on the section line between Sections 7 and 8, Township 1 North, Range 68 West, being at a point approximately 1165 feet west of said Mile Post No. 13, shall be opened. Said crossing shall be constructed in accordance with the plans and specifications prescribed in the Commission's order in re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128; and said new crossing shall be opened for travel before the crossing now in existence shall be closed to traffic.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway at said new crossing, including the necessary drainage therefor, shall be borne by Weld County; and that all other expense in the matter of installation and maintenance of said crossing shall be borne by the petitioner, the Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 5th day of April, 1924.

(Decision No. 686.)
Amending Decision No. 627.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of the Board of County Commissioners of Chaffee County, Colorado, for opening of a public highway over the right-of-way and track of The Denver and Rio Grande Western Railroad Company at a point 3155 feet west of Mile Post 217 on the narrow gauge line of said company.

APPLICATION NO. 259.

(Supplemental Order)

- - - - - - - - -
April 10, 1924.
- - - - - - - - -

S T A T E M E N T

By the Commission:

This supplemental order relating to Application No. 259, Decision No. 627, is made to define correctly with reference to legal sub-division the grade crossing ordered in Decision No. 627, to be located at a point 3155 feet west of Mile Post 217 on the narrow gauge line of the Denver and Rio Grande Western Railroad in Chaffee County.

The application of the Board of County Commissioners states that this point falls on the section line between Sections 1 and 2, Township 48 North, Range 8 East of the New Mexico Principal Meridian, and the order bearing Decision No. 627 described the location as the point where the section line crosses said main line track.

A letter from Thomas A. Nevens, County Attorney for Chaffee County, brings to the attention of the Commission the fact that the point described as 3155 feet west of Mile Post 217 falls on the north and south center line of Section 1, Township 48 North, Range 8 East, 1501 feet north of the south quarter corner of said Section 1; and this supplemental order is issued to correlate the described point in relation to the railroad stationing with the correct point in reference to legal sub-division.

The matter was referred to the chief engineer of the Denver and Rio Grande Western Railroad by letter of April 4, and a reply dated April 5 states that the crossing location properly described is the same point that was approved in a letter from E. N. Clark, General Attorney, bearing the date of July 9, 1923.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, the public highway crossing approved and permitted to be opened and established over the main line track and right-of-way of The Denver and Rio Grande Western Railroad System at a point where the section line between Sections 1 and 2, Township 49 North, Range 8 East, New Mexico Principal Meridian, intersects said main line track in Chaffee County, Colorado, be amended in description in reference to legal sub-division to read as follows:

> At a point 3155 feet west of Mile Post 217, which point falls on the north and south center line of Section 1, Township 48 North, Range 8 East, New Mexico Principal Meridian, and 1501 feet north of the south quarter corner of Section 1.

Other matters relating to said crossing other than description in reference to legal sub-division are to remain in accordance with Decision No. 627.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 10th day of April, 1924.

(Decision No. 687.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of T. H. Beacom, Receiver of The Denver and Rio Grande Western Railroad System, to discontinue on and after April 15, 1924, the operation of his suburban passenger service between Denver, Fort Logan and Littleton, Colorado.

APPLICATION NO. 270.

- - - - - - -
April 15, 1924.
- - - - - - -

Appearances: Thomas R. Woodrow, for Receiver of applicant railroad system;
Joel E. Stone, for protestants, citizens of Arapahoe County, Colorado;
Horace Phelps and Harry Dickinson, for protestant, the Transportation Bureau of the Denver Civic and Commercial Association.

S T A T E M E N T

By the Commission:

The above matter was before the Commission in 1923, by virtue of an application as above numbered on the dockets of the Commission, for permission to abandon the suburban service between Denver, Fort Logan and Littleton, Colorado, on and after August 31, 1923.

In the prior proceeding the matter was set down for hearing and heard on August 27, 1923, at the Hearing Room of the Commission, State Office Building, and on August 30, 1923, decision and order No. 639½ was issued by the Commission, wherein the permission sought for such discontinuance was denied, but without prejudice to the right of applicant to renew his application at the expiration of six months from said date, should the circumstances at the expiration of said period warrant such action and he should be so advised.

From the testimony at the hearing held in August, 1923, the Commission believed that, owing to a schedule of this suburban train service prior

to January, 1923, maintained by the applicant that was inconvenient and unsatisfactory to a large proportion of the commuters using such suburban service, not sufficient time had elapsed between January, 1923, and July, 1923, to demonstrate whether or not there was sufficient patronage to justify the continuance of the service, since it was agreed at the prior hearing that the schedule of service inaugurated on January 9, 1923, was entirely satisfactory to the patrons of said suburban service. Therefore, the Commission's order of August 30, 1923, denied the application for discontinuance of such suburban service for a period of six months, with a view to affording the people of the communities affected a reasonable opportunity to patronize such suburban service so as to make it at least self-sustaining, and also in harmony with the uniform policy of this Commission as expressed in the prior decision, of requiring a transportation utility to exhaust every reasonable effort to make the service rendered self-sustaining before permission to discontinue such service will be given.

In the prior proceeding it was established that the railroad system incurred a deficit by reason of the operation of this suburban service of approximately $2,000 per month for a period therein mentioned covering the years 1919, 1920, 1921, 1922, and the first seven months of 1923.

On March 15, 1924, the Receiver of applicant railroad system filed his petition with the Commission in renewal of his request for authority to discontinue such suburban service on and after April 15, 1924, which application was docketed under the same docket number as a continuation of the proceeding of 1923. The petition alleges as grounds for the permission sought that since August 31, 1923, the Receiver of said railroad system has made all reasonable effort to stimulate travel on said suburban service, and has made every reasonable effort to reduce the expense of operation of said suburban service, but that in spite of such efforts the service rendered since August,

1923, has been at an average deficit of operating expense over operating revenue of approximately $2,200 a month.

Petitioner further alleges that in his endeavor to stimulate and encourage travel upon such suburban trains he caused to be printed a notice in the form of a circular letter, and also upon cardboard, wherein he quoted from the decision of this Commission rendered on August 30, 1923, setting forth in such notice a portion of that decision, and quoting therefrom in such notice the language of the Commission that was in the nature of a warning to the patrons of this suburban service as follows :

> "It also seems fair to say that the people of Fort Logan, Littleton and other suburban points reached by this service have not, perhaps, heretofore given the patronage of this suburban service that degree of consideration that it deserves. If they must use their automobiles or patronize others for compensation or for convenience, then it must follow that the suburban service will, of necessity, be lost to them."

The Passenger Traffic Manager of applicant railroad system testified positively and in detail that he had caused said notice to be sent to every name in the telephone guides of the communities affected, and also had caused cardboard notices to be placed in the depots and coaches of the railroad at all points where the railroad had received patronage for its suburban trains, and especially at the larger points of Littleton and Fort Logan. He also testified that an experiment had been made for a period of three weeks, during November, 1923, with the operation of a gasoline railroad motor, but that owing to its size it was not suitable for the peak loads, that is, the morning and evening service maintained for the patronage of the strictly commuter patrons, and but little if any saving in operating expense was incurred over the cost of operating a steam locomotive and one coach; that the only labor cost saved was one man, a fireman, as the motor car required a motorman, conductor and flagman the same as the steam service, and that the cost of gasoline, oil, etc., was substantially the same as was the cost of coal in the operation of the steam train service.

Attached to the petition as an exhibit thereto, which was identified by the witness, Mr. Wadleigh, as being a true record of the suburban service afforded, are comparative tables for the eight months' period January to August, 1923, inclusive, with the six months' period September, 1923, to February, 1924, both inclusive, which comparative statement shows that the average number of passengers carried per train in the latter period exceeded that in the former period by one; that the average earnings per month in the latter period were $29.86 less than those for the former period; that the average earnings per train per trip were one cent more in the latter period than in the former period; and that the average earnings per train per mile were exactly the same in both periods, to-wit: 28 cents; and perhaps most significant of all is the comparison of the average number of passengers carried on the suburban train as being per month in the former period 3543 as against 3482, or 61 passengers less in the latter six months' period.

Upon the filing of the application on March 15, copies of it were served on representative citizens of Fort Logan and Littleton, and notice thereof given by publication, in addition to the notices that had theretofore been posted by the railroad as required by General Order No. 34 of this Commission concerning a proposed curtailment of service, with the result that no protests were filed by any person until the day of the hearing.

The matter was set down for hearing for April 4, 1924, at the Hearing Room of the Commission, State Office Building, Denver, and duly heard, when protestant citizens of Arapahoe County filed with the Commission three voluminous petitions signed by several hundred of the residents of Fort Logan, Littleton and other points served by this suburban service, which petitions opposed the discontinuance of this train service, the reasons given therefor being as follows:

> (1) That the business of these trains has increased 50 per cent during the six months' test period, and is still increasing.
> (2) That the railroad company deliberately tried to discourage patronage on the road by not using suitable and efficient equipment with reference to seating capacity.
> (3) With further reference to this attempt to discourage patronage, the patrons were compelled to incur discomfort and inconvenience because of there being no heat in the baggage rooms, poorly lighted cars; and last, that many residents disposed of their automobiles in the belief that the train service would be maintained.

At the hearing, however, there was absolutely no proof offered by protestants of the allegations of their protesting petitions; and practically the only serious contention made by their counsel was that in the comparison of trips made by this suburban train in the former eight months' period as compared with the latter six months' period, there were eleven less trips on the average, while in some months of the former period as compared with some months of the latter period there were as many as twenty less trips performed, accounted for by reason of the fact that during most of the latter period the suburban service theretofore rendered on Sundays was discontinued; and that by reason of the fact that less trips were performed and somewhat near the same revenue was derived, that thereby business of the suburban service had increased and was increasing. To grant the premise of this contention still does not account for the fact that as great an average deficit was incurred by the railroad during the six months' test period as was incurred by it during the eight months' period prior to September 23, 1924, according to the evidence submitted by the applicant.

Witness Wadleigh testified that a gasoline railroad motor car of sufficient capacity to accommodate the morning and evening peak loads of this commuter service could possibly be obtained, but that the cost thereof was upwards of $50,000 which, under the circumstances of the carrier, was prohibitive for the anticipated business of this suburban service. It was also in evidence that the Denver and Rio Grande Western System as a whole is operating at a loss, as is evidenced by the fact of its being in the hands of a receiver, and without such testimony the financial difficulties of The Denver and Rio Grande Western Railroad System are so well known to the inhabitants of Colorado that it is such a matter as that the Commission might properly take judicial notice.

Some effort was made by the Traffic Bureau of the Denver Civic and Commercial Association to maintain that the net revenues derived from the freight service to Fort Logan, if any, should be taken into account in determin-

ing the total operating expense and revenue of this Denver-Fort Logan branch. At the close of the hearing it was agreed that the carrier should prepare such statement as to the total revenue derived from local freight business between Denver and Fort Logan and the total expense of rendering such service for the period of twelve months prior to the hearing, but on April 8 a letter was received by the Commission from Mr. Wadleigh, Passenger Traffic Manager of the railroad, to the effect that it would require a considerable period of time, and a large expense to compute the desired figures; but that in his opinion, derived from inquiry that he had made, he was entirely satisfied that the result of such a computation would conclusively show that the expense of handling the local freight business between Denver and Fort Logan for the past twelve months has exceeded the revenue derived therefrom. However that may be, under the well known principle that where a transportation service is rendered the public and it does not yield at least sufficient revenue to pay its operating expenses and taxes, there is not sufficient public demand for the service.

Re Denver Boulder and Western Railroad Company, 1919-F, pages 9-17-18, and authorities cited.

Hence it follows that in the opinion of the Commission whether the local freight service operated between Denver and Fort Logan is profitable or otherwise, is immaterial in a proceeding having for its object permission to discontinue a passenger train service operated over the same route, for if the passenger service is not self-sustaining there is not sufficient public demand for that service. It must be borne in mind that the freight service will be maintained and the tracks will not be dismantled, so that if conditions should improve, this suburban service would be reinstated, either voluntarily by the carrier or upon application to the Commission, at such time as such operation would support itself; and at all times the railroad company, no doubt, will hold itself in readiness to serve any considerable number of passengers between Denver and Fort Logan upon reasonable notice, and also continue to serve Fort Logan with such freight service as it shall and may require.

Testimony was introduced to the effect that though during the period

prior to the August, 1923, hearing but few public jitneys were in use to serve the people from Fort Logan to Englewood, but that at the present time as many as nine jitneys were privileged and permitted to operate between those communities by the local authorities. Also that so far as the ordinary traffic is concerned there is an electric line operated on half hour schedules between Littleton and Englewood, and the jitney service between Fort Logan and Englewood aforesaid, where connection is made with the lines of the Denver Tramway system. This service, of course, would not be suited to the needs of the strictly commuter class for morning and evening transportation, as the time consumed would be too long and too inconvenient; but the Commission can not legally justify or compel the rendition of a service for the accommodation of the morning and evening patrons when that service is rendered at a substantial financial loss. This is another concrete illustration of the effect that the automobiles, both privately owned and operated and publicly operated, are having on the short haul transportation lines of the country. It is in the nature of an evolution from prior methods, which seems to be desired by great numbers of our population; and while the Commission offers no criticism of such desire, it merely states that it is the prime cause of the citizens of Fort Logan and Littleton losing this suburban service for, obviously, there is not a sufficient number of people to be transported day by day to support two or more methods of transportation service.

In addition to the jitney mode of transportation between Fort Logan and Englewood, and the electric interurban service between Littleton and Englewood, there are four steam passenger trains daily, in each direction, which serve Littleton-Denver traffic; but this service is also not suited to the strictly commuter passengers. Yet, so far as the ordinary traffic is concerned, this steam train service offered by the main line trains of the Denver and Rio Grande Western and Atchison, Topeka and Santa Fe Railroads is fairly reliable and always available.

A good deal was said at the hearing of last August, and reference made thereto at the present hearing, that in the event the Commission permitted

the discontinuance of this suburban service, popularly called the "Uncle Sam" train, the War Department would, in all probability, discontinue the Fort Logan army post and remove it to some other fort; also that the government was contemplating the augmentation of its troops at Fort Logan by at least a regiment during the fall of 1923. That, however, has not as yet been done, and there was no evidence that it was in contemplation by the government at this time. Indeed, the railroad's witness submitted testimony, in the shape of a telegram from Congressman Vaile, that the garrison at Fort Logan could not be increased to any extent until further authority had been received from Congress. But let it be supposed that the Fort Logan army post will be lost to Denver and the State as a direct result of the cessation of the Uncle Sam suburban service, that is no legal reason why this Commission should refuse to obey the law and permit the discontinuance of a service that is constantly costing a railroad a loss of at least $2,000 a month, when that railroad itself is financially embarrassed and in the hands of a receiver. If that lamentable and dire result should be seriously contemplated by the War Department, it would seem that the State of Colorado and the City of Denver should come to the rescue in some manner to piece out the railroad's revenue in this suburban service so that it could be continued without loss, or at least without serious loss. The Commission unhesitatingly states that the position of the railroad and its Receiver is eminently fair in that all it expects or desires is that this Uncle Sam suburban service shall be approximately self-sustaining.

The Commission regrets the necessity that impels it to permit the discontinuance of this service, as it fully appreciates the inconvenience that will be caused to a considerable number of the residents of Fort Logan and Littleton of the strictly commuter class. Insofar as criticism of its action in permitting the discontinuance of this service is concerned, which probably will be indulged in by those who do not or will not understand the situation, it cares nothing. It is here to administer the Public Utilities Law as it is written and interpreted by the courts and commissions of the country; and as before stated, the authorities are in entire harmony from the decisions of

the United States Supreme Court down to the decisions of the various commissions of the United States, that a service offered the public which is not patronized by the public to the extent that the service will pay at least its operating expenses and taxes is not justifiable, and that there is not sufficient public need or demand for it.

In view of the press of other business before the Commission, this decision has not been rendered until April 15, 1924, the date asked by the Receiver in his petition for permission to discontinue this service. In order that the users of this service may have reasonable notice of the discontinuance of this Uncle Sam train that they may, if desired, make other and different arrangements and adjust themselves to the circumstances after its discontinuance, the Commission feels it but fair to extend the time of operation of the train for a further period of two weeks. Hence the order will become effective, permitting the discontinuance of the suburban trains operated between Denver, Littleton and Fort Logan, on and after May 1, 1924.

O R D E R

IT IS THEREFORE ORDERED, That T. H. Beacom, Receiver of The Denver and Rio Grande Western Railroad System, be, and he is hereby, permitted to discontinue the operation of his suburban passenger service between Denver, Fort Logan and Littleton, Colorado, of suburban trains known as Nos. 31, 32, 33, 34, 35, 36, 37 and 38, on and after May 1, 1924, and until the further order of the Commission in the premises.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 15th day of April, 1924.

(Decision No. 688)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of)
The Southern Colorado Power Company)
for Discontinuance and Abandonment)
of Service and Removal of its Street) APPLICATION NO. 321
Railway Tracks from Santa Fe Avenue,)
Between Tenth and Fifteenth Streets,)
Pueblo, Colorado.)

April 15, 1924

Appearance: Todd Storer, of the firm of Devine, Preston & Storer, of Pueblo, Colo.

S T A T E M E N T

By the Commission:

On March 26, 1924, The Southern Colorado Power Company filed its notice of intention to permanently discontinue and abandon service on its single track electric railway line extending along and upon that portion of the county road in the county of Pueblo known as Santa Fe Avenue, between the south line of Tenth Street in the city of Pueblo, if the same were produced east, and the north line of Fifteenth Street in said city, if the same were produced east, and that it would cause to be removed all of its street railway track and appurtenances formerly used in the operation of said street railway line between the points mentioned.

Upon receipt of this application, the widest publicity was given through the Pueblo Chieftain and the Pueblo Star Journal. In response, the Commission received from all the residents along this line notice to the effect that they had no objection to the removal of the rails and abandonment of the line.

The Pueblo County Commissioners, as well as the City Commissioners of the City of Pueblo, and also the Pueblo Commerce Club have notified the Commission that they do not in any way wish to resist the application. In

fact, no protest of any name or nature has been made to this Commission from any source.

Originally this line ran from the junction of Tenth and Main Streets north to Fifteenth Street, thence west one block along the southern boundary of Mineral Palace Park, thence south on Main Street to Tenth Street. Operation of this line was abandoned in June, 1921, and has not since been used. In fact, the more important part of this line on Main and Fifteenth Streets was torn up in 1922 in order to make a broad paved highway on Main Street leading to the entrance of Mineral Palace Park.

In view of the fact that the line in question can serve no useful purpose under the present conditions and from the fact that no protest has been received to the application herein, the prayer of the petition will be granted.

O R D E R

IT IS, THEREFORE, ORDERED, That The Southern Colorado Power Company be, and it is hereby, permitted to permanently discontinue and abandon service on the said county road known as Santa Fe Avenue, between the south line of Tenth Street in the city of Pueblo, if the same were produced east, and the north line of Fifteenth Street in said city, if the same were produced east, and likewise for the removal at once of all of said street railway track and appurtenances on said Santa Fe Avenue between the points mentioned.

IT IS FURTHER ORDERED, That The Southern Colorado Power Company be, and it is hereby, required to leave the said Santa Fe Avenue in a smooth and passable condition after said rails and ties are removed from said street.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 15th day of April, 1924.

(Decision No. 689.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of the Board of County Commissioners of Huerfano County for an order authorizing a public highway crossing at grade over the single track of the Denver and Rio Grande Western Railroad at the point where said railroad track crosses the section line between Sections 18 and 19, Township 26 South, Range 65 West.

APPLICATION NO. 322.

- - - - - - -
April 16, 1924.
- - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Huerfano County, Colorado, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track of the Denver and Rio Grande Western Railroad at a point where said railroad crosses the section line between Sections 18 and 19, Township 26 South, Range 65 West of the 6th Principal Meridian.

This crossing is petitioned for the purpose of providing facilities for transporting children to and from school and also for the purpose of establishing a rural postal route and for the convenience of the residents of that section.

This application was received by the Commission on March 26, 1924, and was referred to the General Attorney of the Denver and Rio Grande Western Railroad, and his answer dated March 31, 1924, stating that no objection to said crossing would be entered by said railroad, was received on April 1, 1924.

On April 11 the Railway Engineer of the Commission, accompanied by Mr. Neibuhr of the Board of County Commissioners of Huerfano County, made an

inspection of the site, and it was found to be satisfactory in the essential features. The establishment of this crossing seems to be warranted as a measure of convenience and necessity to the residents of the vicinity of Orlando, and no objections to its establishment are before the Commission. Therefore, the Commission will issue its order granting permission for the opening of this crossing as herein set forth.

O R D E R

IT IS THEREFORE ORDERED, That in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway crossing at grade be, and the same is hereby, permitted to be opened and established over the main line track of the Denver and Rio Grande Western Railroad between the stations of Huerfano and Orlando, at the point where said railroad crosses the section line between Sections 18 and 19, Township 26 South, Range 65 West of the 6th Principal Meridian; and said crossing shall be constructed in accordance with the plans and specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway at said new crossing, including the necessary drainage therefor, shall be borne by Huerfano County, and all other expense in the matter of installation and maintenance of said crossing 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 16th day of April, 1924.

(Decision No. 690.)

MARK NO COPY

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

William Atwood, Complainant, v. Union Pacific Railroad Company and Chicago, Burlington & Quincy Railroad Company, Defendants.	CASE NO. 252.

- - - - - - -
April 17, 1924.
- - - - - - -

STATEMENT

By the Commission:

IT APPEARING, That the above case was set for hearing on motion to dismiss filed by defendants March 14, 1924, said hearing having been set for Wednesday, April 2, at the Hearing Room of the Commission at 10:00 o'clock A. M.; and after due notice served on all interested parties plaintiff failed to appear, whereupon a motion to dismiss was made by defendants and sustained by the Commission for the default of complainant;

O R D E R

IT IS HEREBY ORDERED, That the above case be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 17th day of April, 1924.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Herbert Sommers, Complainant,	)	
vs.	)	CASE NO. 275
The Midland Terminal Railway Company, Defendant.	)	

April 22, 1924

Appearances: For Complainant, Chinn & Strickler;

For Defendant, C. C. Hamlin and F. C. Matthews.

S T A T E M E N T

By the Commission:

Complainant's complaint herein was filed with this Commission December 27, 1923, and was set down for hearing and was heard at the Hearing Room of the Commission, 305 State Office Building, Saturday, January 26, 1924, at 10:30 A. M.

The complainant herein avers that the defendant carrier transports ice for hire between points in what is known as Ute Pass and Colorado Springs, and that complainant's natural ice business is located on defendant's line in said Ute Pass, at Woodland, twenty miles from Colorado Springs; that the defendant is demanding a rate for the transportation of said ice from points between Colorado Springs and Green Mountain Falls, over a distance of fifteen miles, the sum of $1.10 per ton. From all points beyond Green Mountain Falls, to and including Divide, a charge of $1.25 per ton is made to Colorado Springs for a maximum distance of 26.9 miles. These rates, this complainant claims, are unreasonable, unjust and in excess of a reasonable compensation for the service rendered,

and cites that the rate charged by The Denver and Rio Grande Western Railroad System is but 73¢ per ton from Monument to Colorado Springs, a distance of 20 miles, and but $1.09½ per ton from Monument to Pueblo, Colorado, a distance of 64 miles. Defendant also claims that a just and fair rate for the transportation of ice from all points in Ute Pass, to and including Divide, to Colorado Springs is not in excess of 75¢ per ton.

Opposing the position taken by the applicant, the defendant introduced evidence showing that the conditions as to grades on their line were much heavier than on the Denver and Rio Grande Western between Monument and Colorado Springs; that while the latter line's empty car movement was largely south, they could use this equipment with but little additional expense for the movement of ice to Colorado Springs, whereas, in the case of The Midland Terminal Railway Company, the cars for the transportation of ice on their line would nearly all have to be hauled from Colorado Springs over a grade whose maximum reaches as high as four per cent., while that on the Denver and Rio Grande Western between Monument and Colorado Springs has a maximum grade of but one and forty-two hundredths per cent.

From the standpoint of the haulage of the loaded ice cars from all the points mentioned on both roads, it is a downhill haul and the expense for handling is but little different in either case, as about all the power required is for operation of air brakes to retard or regulate speed of train movement from points of origin to destination at Colorado Springs.

Ice shipments from Ute Pass points and from Monument to Colorado Springs are largely competitive; and if transportation conditions were comparable, then the rates should be on the same basis. Account of heavier grades, lesser density of traffic, and more general unfavorable operating conditions over the rails of this defendant, the Commission finds that it would be unreasonable to ask it to furnish service at the same rates from

Ute Pass points to Colorado Springs as is made by the Denver and Rio Grande Western from Monument to the same point.

The points from which this complainant asks for a flat rate of 75¢ per ton to Colorado Springs, together with distances from the latter point, is as follows: Cascade, 11.5 miles; Green Mountain Falls, 14.9 miles; Woodland, 20 miles; Divide, 26.9 miles. While mileage is not controlling in such short distances, the average in the latter cases is almost identical with that of the movement from Palmer Lake, so that this Commission feels that the rates should be blanketed in the Ute Pass field between Cascade and Divide, both inclusive, as is done in the various coal fields of not only Colorado but throughout the United States and in many instances over far greater distances.

Taking all the facts presented into consideration, the Commission finds that the rates of the defendant carrier from all points from Cascade to Divide, inclusive, to Colorado Springs, are unjust, unreasonable and discriminatory in that they exceed eighty-eight cents per ton.

O R D E R

IT IS THEREFORE ORDERED, That the Midland Terminal Railway Company shall cancel its rates on ice between Colorado Springs and Divide, inclusive, as found in Midland Terminal Railway Company tariff No. 320, Colorado P.U.C. 81, effective March 10, 1923.

IT IS FURTHER ORDERED, That The Midland Terminal Railway Company shall publish and file with this Commission a rate of 88¢ per net ton on ice between Colorado Springs and Divide and intermediate points on minimum carload weight of 50,000 pounds, except when full loading capacity is utilized, when the actual weight, but not less than 40,000 pounds, will apply.

IT IS FURTHER ORDERED, That the cancellation of the present rates and the establishment of the rates provided herein shall become effective not later than fifteen days from the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 22nd day of April, 1924.

Commissioners

(Decision No. 692.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of the Board of County Commissioners of Logan County, Colorado, for the opening of a public highway crossing at grade over the track of the Chicago, Burlington & Quincy Railroad at a point on the south section line of Section 3, Township 7 North, Range 53 West of the 6th Principal Meridian.

APPLICATION NO. 213.

- - - - - - -
April 29, 1924.
- - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Logan County, Colorado, in compliance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track of the Chicago, Burlington & Quincy Railroad between Sterling and Cheyenne, near the station of Brownard, at a point where said railroad crosses the south section line of Section 3, Township 7 North, Range 53 West of the 6th Principal Meridian.

This crossing is petitioned to open an east and west highway that has been designated as a regular county road.

The application bears the date of July 22, 1922, and was referred to the Legal Department of the Chicago, Burlington & Quincy Railroad on July 28, 1922. An answer from Mr. E. E. Whitted, Attorney for the Chicago, Burlington & Quincy Railroad bearing date of August 25, 1922, states that no objection to this crossing would be imposed by the railroad provided the county was willing to stand the expense. A conference between the railroad's engineer and the engineer of the Commission was suggested regarding this matter of expense.

On September 3, 1923, Mr. C. C. Holtorf, Superintendent of the Chicago, Burlington & Quincy Railroad, suggested by letter that the crossing location be moved east thirty or forty feet in order that the view of approaching trains might be lengthened. The Board of County Commissioners of Logan County agreed to this change, and so notified the Commission by letter from the clerk of the board on October 15, 1923.

On April 23, 1924, Mr. Reynolds, Engineer for the Commission, met Mr. C. C. Holtorf, Superintendent, Mr. Charleston, of the Engineering Department, for the Chicago, Burlington & Quincy Railroad, Mr. C. M. Morris, County Commissioner, and Mr. J. E. Youngquist, County Surveyor of Logan County, and visited the site with them. It was agreed by all that a further improvement in the location of the crossing could be obtained at a point about 160 feet east of the proposed location, thus permitting a crossing at ninety degrees with the track and increasing the distance of the crossing from the cut on the railroad that was objectionable to Mr. Holtorf. This minor change in location now places the crossing at Mile Post 234.46. The division of the expense incident to the establishment of the crossing proportioned in the usual manner was agreeable to both the representatives of the railroad and the county. The Commission will, therefore, issue its order granting permission for the opening of this crossing as herein set forth.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway crossing at grade shall be, and the same is hereby, permitted to be opened and established over the main line track of the Chicago, Burlington & Quincy Railroad between Sterling and Cheyenne, near the station of Brownard and near the point where the south section line of Section 3, Township 7 North, Range 53 West of the 6th Principal Meridian crosses said track, and at a point on said track described as Mile Post 234.46; conditioned, how-

ever, that prior to the opening of said crossing to travel it shall be constructed in accordance with the plans and specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway at said new crossing, including the necessary drainage therefor, shall be borne by Logan County, and that all other expense in the matter of installation and maintenance of said crossing shall be borne by the Chicago, Burlington & Quincy Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of April, 1924.

(Decision No. 693.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of the Board of County Commissioners of Logan County, Colorado, for the opening of a public highway crossing at grade over the main line track of the Chicago, Burlington & Quincy Railroad between Sterling and Cheyenne, at a point on the west section line of Section 31, Township 8 North, Range 52 West of the 6th Principal Meridian.	APPLICATION NO. 214.

- - - - - - -
April 29, 1924.
- - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Logan County, Colorado, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track of the Chicago, Burlington & Quincy Railroad at a point on the west section line of Section 31, Township 8 North, Range 52 West of the 6th Principal Meridian.

This crossing is petitioned for the purpose of opening a county road north and south on said section line, which is approximately one mile west of the Town of Sterling.

The application of the Board of County Commissioners bears the date of July 21, 1922, and was referred on July 28, 1922, to the attorney for the Chicago, Burlington & Quincy Railroad for his consideration. A letter from Mr. E. E. Whitted, Attorney, bearing the date of August 25, 1922, states that no objection to the crossing would be imposed by the railroad, provided the county was willing to bear the necessary expense. He suggested a conference between the engineer for the railroad and the engineer for the Commission on this matter.

Although no objections to the establishment of this crossing were raised at the time of the making of the application, the matter has been delayed upon a statement to Mr. Burris, Engineer for the Commission, that it was not desired to start work on this road until the spring of 1924.

On April 23, 1924, Mr. Reynolds, Engineer for the Commission, met Mr. C. C. Holtorf, Superintendent, Mr. Charleston, of the Engineering Department of the Chicago, Burlington & Quincy Railroad, Mr. C. M. Morris, County Commissioner of Logan County, and Mr. J. E. Youngquist, County Surveyor of Logan County, and the proposed site was inspected and found to be entirely satisfactory for the establishment of the crossing at grade. The matter of expense was suggested, and it was agreed that this should be borne in the usual manner by the railroad and the county.

The Commission will, therefore, issue its order granting permission for the opening of this crossing as herein set forth.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway crossing at grade shall be, and the same is hereby, permitted to be opened and established over the main line track of the Chicago, Burlington & Quincy Railroad at Mile Post 231.61, said point being on the west section line of Section 31, Township 8 North, Range 52 West of the 6th Principal Meridian, and about one mile west of the Town of Sterling, Colorado; conditioned, however, that prior to the opening of said crossing to travel it shall be constructed in accordance with the plans and specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway at said new crossing, including the necessary drainage therefor, shall be borne by Logan County, and that all other expense in the matter of installation and maintenance of said crossing shall be borne by the Chicago, Burlington & Quincy Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of April, 1924.

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 Permission to Retire Spur Track at Haywood, Colorado.

APPLICATION NO. 249

May 3, 1924

STATEMENT

By the Commission:

This proceeding arises upon the application of J. G. Gwyn, Chief Engineer of The Denver and Rio Grande Western Railroad Company, by letter dated November 27, 1922, in compliance with Sections Nos. 24 and 25 of the Public Utilities Act, as amended April 16, 1917, and in accordance with General Order No. 34, effective May 1, 1921, to retire spur track 874 feet in length at Haywood, Colorado, Mile Post 275, and in lieu thereof to install 2375 feet of side track at Torres, Colorado, Mile Post 273.

The spur track at Haywood provides loading space for potatoes, especially, during heavy loading season, and also has a loading pen for live stock. Weighing on wagon scales has been done at Freeman, necessitating a haul from Freeman to Haywood, a distance of about one mile.

The Monte Vista Farmers Co-Operative Produce Co., by Fred S. Caldwell, General Manager, protested against the proposed change by filing a letter dated March 14, 1923, in which it was set forth that the spur at Haywood provided over-flow loading space for shippers near Freeman and also that the Haywood spur offered the only facilities in the vicinity for loading livestock. A request was made in this letter that Freeman siding facilities for loading be increased and that a stock pen be installed at Freeman.

An inspection of conditions was made by A. H. Samuels, Inspector for the Commission, on October 4, 1923, and he was told by Mr. Tandy, Manager of the Freeman Supply Co., that he had offered The Denver and Rio

Grande Western Railroad Company, through Mr. E. W. Deuell, Superintendent, an easement over certain lands to provide space for the loading pens at Freeman and was waiting on the contract for signature.

The matter was again referred to The Denver and Rio Grande Western Railroad System by letter from the Commission, bearing date of October 9, 1923. Copies of letters from Mr. Caldwell and Mr. Samuels were enclosed to inform the petitioner of the attitude of the interested shippers.

In April, 1924, Mr. W. L. Reynolds, Railway Engineer for the Commission, was informed that the Company had abandoned the idea of making the change and withdrew the petition by letter on April 30, 1924.

The Commission will, therefore, issue its order dismissing the proceeding as herein set forth.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with Sections No. 24 and 25 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, the withdrawal of Application No. 249, made and petitioned by The Denver and Rio Grande Western Railroad Company asking permission to retire spur track at Haywood, Colorado, be granted upon the request of the petitioner.

The matter is dismissed upon the condition, however, that existing facilities at Haywood be maintained and kept available for loading operations in the same manner as before the introduction of the petition to retire said facilities.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hall

H. D. Lannon

Commissioners.

Dated at Denver, Colorado,
this 3rd day of May, 1924.

(Decision No. 695)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

J. P. Adams, et al., Complainants,	)	
vs.	)	CASE NO. 170
Chicago, Burlington & Quincy Railroad Company, Defendant.	)	

May 6, 1924

Appearances: For Complainants, Frank McLaughlin;
For Defendant, J. L. Rice.

STATEMENT

By the Commission:

On January 18, 1924, this Commission received from the Chicago, Burlington & Quincy Railroad Company, through its attorneys, a petition to re-open Case No. 170, and to modify the Commission's order under Decision No. 281, made September 24, 1919. This petition was set down for hearing and was heard at the Hearing Room of the Commission, Monday, April 21, 1924, at 10:00 A. M.

This case applies to the station now known as Omar, in Weld County, Colorado, in which the defendant asks to be permitted to withdraw its agent from said Omar station, and to discontinue and close the same as an agency station.

The history of this case goes back to August 19, 1919, when a hearing was held by this Commission in response to a demand for the establishment of a station and agency at a point to be known as Omar. The testimony showed that to reach either of the then existing stations of Crest or Bronco nearest to the proposed Omar station, it was necessary to make a haul through deep sand and that it was impracticable to haul

much more than an empty wagon. It was represented by a large number of witnesses that the country contiguous to the station asked for was the center of a rapidly developing agricultural, stock raising and dairying community. The testimony adduced showed that a large number of settlers were earnestly imbued with the idea that on account of a recently established north and south road at this point on hard ground, it would facilitate the hauling of farm crops and general merchandise; and, with the addition of a depot and a local agent, Omar would become a very important distributing point, and such station would soon become a prosperous and paying agency.

In accordance with all the testimony in the original hearing, the Commission, on September 24, 1919, ordered a station erected and sidings built; all of which was finally consummated and put in operation in April, 1922. It was hoped and confidently predicted that after the installation of the railway agency that a small town would spring up. It was expected that outside capital would seek investment here and that an elevator, stores, post office, lumber yard, etc. would soon be in evidence. A temporary grain loading device was, however, installed and a small store established, but no capital could be induced to put up a permanent elevator. The store was later destroyed by fire and the post office was withdrawn. At the present time there are no permanent buildings of any name or nature at the place called Omar, save and excepting the depot of this defendant.

At the recent hearing the defendant submitted evidence as to the volume of business transacted at Omar for the nine months, April to December inclusive, 1921, and for each of the years 1922 and 1923.

The revenue of the station during the above periods, as shown by the testimony, was as follows:

	Freight Forwarded	Freight Received	Passenger Revenue	Total Freight and Passenger
April to December, 1921,	$8,015.24	$799.02	$113.71	$8,927.97
Average per month	890.58	88.78	12.63	992.00
Year 1922,	$1,749.31	$478.46	$177.87	$2,405.64
Average per month	145.78	39.87	14.82	200.47
Monthly per cent of 1921,	16.36	44.91	117.33	20.21
Year 1923	$ 533.28	$294.98	$ 60.89	$ 889.15
Average per month	44.44	24.58	5.07	74.10
Monthly per cent of 1921,	04.99	27.69	40.14	07.47

It is represented by the defendant that during the year 1921 when the station was new that the people patronized it to some extent, but during the years 1922 and 1923, the people of said community have transacted nearly all of their railroad business at the towns on either side of Omar, in the same manner as they did before the establishment of said station.

It is also represented that the defendant is required to pay, in order to maintain an agent at said station, the sum of $124.00 per month as the salary of said agent, together with the other expenses of keeping said station open.

The total average monthly revenue, as shown by the above statement, was $992.00 for 1921, $200.47 for 1922, and $74.10 for 1923, which, for the year 1923, is not a very creditable showing, being only 7.47% of the monthly average of 1921. Crediting the entire average monthly receipts to this station and comparing this item with the monthly salary of the Omar agent, would show a monthly deficit of approximately $50.00 for each and every month of 1923.

Taking into consideration the meager volume of business, as heretofore shown to have been done at Omar, especially during 1923, the maintenance of an agency at this point is no longer justified. To do so, the Commission finds it would be unwise and unjust to the defendant Railroad Company, and would not result in benefit to the patrons of this station commensurate with the expense entailed.

The Commission therefore finds that it would be unreasonable to expect, much less to compel, the Chicago, Burlington and Quincy Railroad Company to longer comply with this Commission's Order No. 281, issued September 24, 1919, insofar as the maintenance of a railroad agent at Omar is concerned.

This Commission finds, after careful consideration of all the testimony presented, that the petition of this defendant to re-open this case and modify the original order was well taken, and will, therefore, order a modification of the previous order.

O R D E R

IT IS THEREFORE ORDERED, That the order of this Commission made and entered in Case No. 170 on September 24, 1919, and any and all subsequent orders, if any, are hereby modified so as to allow the withdrawal of the agent of the Chicago, Burlington & Quincy Railroad Company at its station at Omar, Weld County, Colorado.

IT IS FURTHER ORDERED, That this order shall become effective on the 15th day of May, A. D. 1924.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 6th day of May, A.D. 1924.

(Decision No. 696)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Petition of)
J. Fred Jensen and Frank B. Laws)
for Opening of a Private Way with)
Crossing over the Right of Way and)
Track of the Colorado and Southern) APPLICATION NO. 327
Railroad Company, at a point 2670)
feet Northwest of Mile Post No. 11)
on the Denver, Colorado Springs Line.)

May 12, 1924

STATEMENT

By the Commission:

The application of J. Fred Jensen and Frank B. Laws, asking for a private road crossing across the track of The Colorado and Southern Railroad Company in Section 33, Township 4 South, Range 67 West, Sixth Principal Meridian, was filed April 23, 1924.

Although the petition states that the applicant does not have crossing facilities within two miles of his ranch, which is divided by the railway, the manner of relief proposed by establishing a private crossing between the two portions of the ranch reduces the matter to that of a private agreement and contract between the petitioners and the railway.

This Commission has no jurisdiction in matters of a private nature where the general public interest is not involved, therefore it will dismiss the proceeding for the reason that it lacks jurisdiction to consider the matter.

O R D E R

IT IS THEREFORE ORDERED, That Application No. 327, in the matter of the petition of J. Fred Jensen and Frank B. Laws for opening of a private way with crossing over the right of way and track of the Colorado and Southern Railway at a point 2670 feet northwest of Mile Post No. 11 on the Denver,

Colorado Springs Line, be, and the same is hereby, dismissed without action by the Public Utilities Commission of the State of Colorado for the reason that the matters contained in the application are not matters that the Commission are empowered to consider under the laws of the State of Colorado.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 12th day of May, 1924.

(Decision No. 698)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of)
The Grand Lake Telephone Company,)
Bruce Wiswall, Proprietor and Owner,) APPLICATION NO. 295
for a Certificate of Public Convenience)
and Necessity.)

May 14, 1924

Appearances: For applicant, Bruce Wiswall, doing business as The Grand Lake Telephone Company, in propria persona.
For The Mountain States Telephone and Telegraph Company, E. R. Campbell and Paul Holland, both of Denver, Colorado.

STATEMENT

By the Commission:

On November 3, 1923, there was filed with the Commission an application for a certificate of convenience and necessity by Bruce Wiswall, as The Grand Lake Telephone Company, to construct and operate a telephone line in the town of Grand Lake and in the territory contiguous thereto, and particularly along the north and west shores of Grand Lake, for the purpose of serving residents of said town and summer visitors therein.

The application represents, in brief, that the applicant is at present engaged in the business of a public telephone service in the said territory; that The Grand Lake Telephone Company is not a corporation nor a partnership business but is a private business conducted by applicant, Bruce Wiswall; that the part of the telephone line heretofore constructed and used is proposed to be augmented by constructing a line along the most densely populated residential sections of the Lake; that Grand Lake is not an incorporated town or city, and that, therefore, no permission for the operation of such utility is required.

Upon the filing of the application, copy of same was served

upon The Mountain States Telephone and Telegraph Company, who on November 13 filed its answer in which it states that it has no objection to the granting of the certificate applied for by applicant, Bruce Wiswall, for the territory described in the application and map thereto attached.

The matter was originally set for hearing before the Commission on January 22, 1924, at 10:00 o'clock A.M., at the Hearing Room of the Commission, 305 State Office Building, and notice thereof given to applicant and the said Mountain States Telephone Company, but by mutual agreement and other circumstances, the hearing was continued from time to time and finally was continued to and heard on March 25, 1924, at the Commission's Hearing Room aforesaid, before Mr. Commissioner Scott, now deceased, and by reason of the incapacity of Judge Scott from the time he conducted the hearing herein, an order in said application has not been prepared and issued.

It is stated in the record taken at the hearing that applicant Wiswall has conducted, in a small way, a telephone service at Grand Lake in conjunction with The Mountain States Company so far as toll and long distance service is concerned. Also that the telephone lines now existent are proposed to be extended as in said map and application described by applicant Wiswall, and that he proposes thereafter to maintain service of twenty-four hours per day between the period of June 1 and October 1 of each year, and that the telephone service proposed in the territory described is a seasonal proposition owing to the population of Grand Lake being largely composed of summer tourists during the aforesaid period. It further is made to appear from the record that prior to the summer of 1923 all the telephone service that could be given to the inhabitants of that region was toll station service by The Mountain States Company, but that was quite unsatisfactory by reason of the fact that messenger service was necessary and that usually the messenger charges were high, to take and deliver telephone messages; further that with the development proposed by applicant Wiswall, the toll service of The Mountain States Company will be speedily delivered to almost any part of the territory described.

The applicant states in the record that he is financially able to equip the proposed territory with telephone equipment and that he is amply able to finance the project to any extent that may be reasonably required by the needs of that community proposed to be served.

There being no other telephone utility in the territory proposed to be served by applicant Wiswall, and he being the first applicant for an installation of such telephone service, a certificate of public convenience and necessity will be granted the applicant for the installation and operation of such telephone service. It needs no proof that the telephone service is in this modern day and age of the world a convenience and necessity to the public when it may be obtained, and this is obviously a necessity and convenience to the people either permanently or temporarily residing in the mountainous country far removed from telegraph or railroad service, Grand Lake being some 35 or 40 miles from the nearest railroad station at Granby, Colorado, on the Denver and Salt Lake Railroad.

It may be observed, in passing, that subsequent to the filing of the application and answer, and subsequent, of course, to the date of the hearing on March 25, 1924, the Commission has received a written protest from Lucille Kirby and others objecting to the granting of the certificate applied for by Mr. Wiswall. But the basis of such protest is that the telephone service heretofore afforded the residents of the community by Mr. Wiswall has been unsatisfactory and irregularly and poorly conducted. Such matters may not be properly interposed in an application for a certificate of public convenience and necessity. Whatever operation of telephone service has been conducted by Mr. Wiswall in the past has been done by him as a private individual and not as a public utility so far as the record in the present proceeding reveals. If, pursuant to the granting of the certificate to the applicant as hereby applied for, the telephone service in the future rendered by The Grand Lake Telephone Company is inadequate, inefficient, or for any other good cause is unsatisfactory to residents and patrons of that territory, then is the proper

time for such patrons to file objections, and upon objections being sustained, it would be in the power of the Commission to revoke the certificate herein granted and grant a certificate to some person else who should apply therefor.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity require, and will require, the installation and operation of a telephone facility by the applicant herein, Bruce Wiswall, operating as The Grand Lake Telephone Company, and that this decision and order will 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 14th day of May, 1924.

Commissioners.

(Decision No. 699)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the)
Denver and Rio Grande Western Railroad)
for an Order Authorizing it to waive the) APPLICATION NO. 333
Collection of an Undercharge of $77.70)
on One Carload of Clay shipped from Castle)
Rock to Pueblo in January, 1924.)A

May 15, 1924

STATEMENT

By the Commission:

This matter is before the Commission upon an application made informally by the Denver and Rio Grande Western Railroad for an order of the Commission authorizing it to waive an undercharge of $77.70 on one carload of clay shipped by Grant Parfet, consigned to The Summit Pressed Brick and Tile Company, Castle Rock, Colorado, to Pueblo, Colorado, in the month of January, 1924.

The application is supported by an affidavit from Mr. George Williams, General Freight Agent, The Denver and Rio Grande Western Railroad System, that the legal rate and charges were exacted on the basis of 7½ cents per cwt., as carried in D&RGW Tariff 4900 E, Colo. P.U.C. No. 80.

Prior to the time this shipment moved, the carrier had under consideration the establishment of a rate of 6½ cents per cwt. on clay between Castle Rock and Pueblo, which is the rate carried from Castle Rock to Fuego, a point just outside the switching limits of Pueblo. However, through an oversight, the reduced rate was not published until the publication of Amendment No. 8, Item 2318 A, which became effective January 27, 1924, or subsequent to this movement, and for this reason The Denver and Rio Grande Western Railroad System feels that it would be doing an injustice to shippers in forcing collection of the rate as in effect at the time shipment was made.

The Commission feels that the charges assessed on this shipment were excessive to the extent that they exceeded 6½ cents per cwt., and an order will

be issued for the waiving of the collection of the undercharge amounting to $77.70.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad System be, and it is hereby, authorized and directed to waive the undercharge of $77.70 on one car of clay shipped by Grant Parfet from Castle Rock, Colorado, to Pueblo, Colorado, consigned to The Summit Pressed Brick and Tile Company, which moved in the month of January, 1924.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hall

Commissioners.

Dated at Denver, Colorado,
this 15th day of May, 1924.

(Decision No. 700)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of the Board of County Commissioners in and for the County of Logan in the State of Colorado for an order for the construction by the Chicago, Burlington and Quincy Railroad Company of a railroad crossing about three miles east of Galien at mile post No. 215 plus 710 feet.

APPLICATION NO. 264

May 17, 1924

STATEMENT

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Logan County, Colorado, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917 for the opening of a public highway crossing at grade over the main line track of the Chicago, Burlington and Quincy Railroad between Sterling, Colorado, and Holyoke, Colorado, at a point 710 feet west of mile post 215 between Galien and Fleming, Colorado.

This crossing is petitioned for the purpose of opening a county road north and south on the section line between Sections 3 and 4, Township 8 North, Range 50 West of the 6th Principal Meridian.

The application of the Board of County Commissioners bears the date of July 17, 1923, and was referred, on July 24, 1923, to Mr. E. E. Whitted, attorney for the Chicago, Burlington and Quincy Railroad Company, for consideration. An answer from the respondent railroad was received by the Commission on August 3, 1923, objecting to the location being near a deep cut where the view of travelers would be obscured. This answer proposed a change in location to a point about 300 feet east of said railway cut. The counter proposition was referred to the County by letter and copy of the answer on August 3, 1924.

The point described in the petition and the point suggested by the Railroad Company are identical; but the existence of a private crossing at the mouth of the cut caused a misunderstanding of the situation.

On April 23, 1924, Mr. Reynolds, Engineer for the Commission, met Mr. Holtorf, Superintendent, and Mr. Charleston of the Engineering Department of the Chicago, Burlington and Quincy Railroad, and Mr. C. M. Morris, Commissioner of Logan County, and Mr. J. E. Youngquist, County Surveyor of Logan County, and the proposed site was inspected and found to be satisfactory as described in the application.

On May 13, 1924, the Railroad Company filed an amended answer to the application consenting to the establishment of the crossing under the usual terms of division of cost, and further defining the location of the public crossing to be about 300 feet east of the present private crossing which they desire to abolish. The disposition of the private crossing is not within the jurisdiction of this Commission. The Commission will, therefore, issue its order granting permission for the opening of the public crossing as hereinafter set forth.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of the Public Utilities Commission of the State of Colorado, as amended April 16, 1917, a public highway crossing at grade shall be, and the same is hereby, permitted to be opened and established over the main line track of the Chicago, Burlington and Quincy Railroad at mile post No. 215 plus 710 feet, said point being in Section 4, Township 8 North, Range 50 West of the 6th Principal Meridian and about three miles east of Galien, Colorado, station of the Sterling-Holdrege line; conditioned, however, that prior to the opening of said crossing to travel, it shall be constructed in accordance with the plans and specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway at said new crossing, including the necessary drainage therefor, shall be borne by Logan County; and that all other expense in the matter of installation and maintenance of said crossing shall be borne by the Chicago, Burlington and Quincy Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall

Commissioners.

Dated at Denver, Colorado,
this 17th day of May, 1924.

(De. .ion No. 701)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Petition of The Colorado Springs and Interurban Railway Company for a Discontinuance of its Roswell Line.

APPLICATION NO. 314

May 20, 1924

Appearances: D. P. Strickler, Esq., of Colorado Springs, for applicant.
E. W. Arveson and F. E. Robinson, of Roswell, for protestants.
C. B. Horn, of Colorado Springs, on the brief for protestants.

STATEMENT

By the Commission:

This matter comes before the Commission upon the application of The Colorado Springs and Interurban Railway Company, a corporation, hereinafter called the Company, asking that an order be issued by the Commission permitting the Company to remove its tracks, poles and wires in and upon the Roswell line and to cease operations thereon.

The Company filed its application with the Commission on February 26, 1924, stating that it operates in the City of Colorado Springs and to the town of Manitou and to Broadmoor, Cheyenne Canon and Roswell, suburbs of Colorado Springs.

The application further states that service from the north terminus of its Tejon Street line at the northerly limits of the city to Roswell is furnished by a stub line.

It is alleged that the operating cost on this stub line for 1923 amounted to $3911.06 for labor and approximately $4000.00 for maintenance, power etc., making a total of $7911.06, and that the operating revenue from said Roswell line was $1846.71. The application further alleges that the total receipts of the whole system for 1923 were less than the operating

expenses and depreciation costs.

It is further alleged that the farthest distance from present terminus of the north Tejon Street line to the end of said Roswell line is but approximately four blocks, and that a portion of said length is on a county bridge over and across a railroad cut on The Chicago, Rock Island and Pacific Railway; that said bridge is in a state of unrepair and is unsafe for ordinary traffic and is barricaded; that an expenditure of $15,000 would be required to repair said bridge; that the railway company was held by the Supreme Court of the State of Colorado to be free from liability in respect to maintenance of said bridge; and that the highway north of said bridge has been vacated by the Board of County Commissioners of El Paso County.

A protest by the Roswell Community Club accompanied by a petition carrying about three hundred seventy names, purported to be signatures of residents of Roswell, was filed with the Commission on March 6, 1924.

The petition of protest alleges that property owners in Roswell acquired their property with the understanding that the car line would be a permanent establishment; that approximately five hundred people, ninety per cent of whom use the car line, are dependent on shops and stores in Colorado Springs; that at least forty people residing in Roswell use the car line daily and that the discontinuance of the service would be a hardship and danger to them, and especially to those who return home at night.

This petition suggested the reestablishment of through service by Tejon Street cars and the abolishment of the stub line.

Upon due notice, the matter was set for hearing at Colorado Springs, Colorado, on March 31, 1924, and was heard in the City Hall of Colorado Springs, at 11:30 A.M., on said day.

Mr. B. M. Lathrop, General Superintendent of the Company, was the only witness for the applicant. He testified that he had been associated with the Company for twenty years. From his testimony it appears that the Roswell line has been in existence for about twenty-five years, and that since its construction it has failed to produce a profit and that the revenue is now decreasing even with a forty per cent increase in fare.

Mr. Lathrop also testified that the present schedule used on north Tejon Street could not be maintained with the Roswell loop included in the trips, and that serious disarrangements in schedule would occur, especially during rush hours in traffic, and upon the Canon and Broadmoor lines in particular. He also testified that the Company ceased operating their twenty-two ton cars over the north Tejon Street bridge over the Rock Island Railway about four years ago on account of the condition of the bridge, and gave his estimate of the cost of both repairing and replacing the present structure, stating that the Company would be required to participate in the cost of such work to the extent of one third of the amount involved, and that the Company was not financially able to make nor would the revenue of the line justify such an outlay.

Mr. Lathrop presented applicant's Exhibit A, a statement of operation for the years 1918 to 1923 inclusive for the Roswell line as a separate unit, and also for the Company's system as a whole. From this Exhibit A and the testimony, it appears that the receipts for 1923 on the Roswell stub amounted to

Cash	$ 572.89
Tickets	956.82
Passes	317.00
Total	$1846.71

The Roswell patrons are given transfers from north Tejon cars, therefore the above amount represents only the volume of traffic outbound from Roswell. The return traffic is as large if not greater. An inspection of the trip sheets of the Roswell line by Mr. H. B. Dwight and Mr. W. L. Reynolds, Engineers for the Commission, revealed an apparent northbound use of the line by transfer twenty per cent larger than the southbound traffic, which originates on the stub line. It appears, therefore, that the patrons of the Roswell line, collectively, furnish nearly $4000.00 of the gross yearly revenue of the Colorado Springs street railway system.

The trip sheets of the Roswell line, as reported by the engineers, show a very uniform distribution of the traffic carried, averaging about one hundred fifty passengers per day ranging from about one hundred per day in the winter to two hundred per day in the summer. This means from six to

twelve per hour.

Testimony was given by Mrs. W. H. Rummel, Jas. Cooper, Thos. F. Millisack, Mrs. Al Jewell, L. C. Young and Henry E. Finch to the effect, in general, that as residents of Roswell they were dependent on the line for a means of transportation, and that its discontinuance would cause hardship, inconvenience and even danger to residents in Roswell.

The condition of the Rock Island bridge was made a subject in the matter by both the applicant and the protestants. No evidence was introduced in this case showing expert or official condemnation of the structure other than that it has been closed to vehicular traffic by the County Commissioners of El Paso County. A letter was received by the Commission on April 18, 1924, signed by Harry A. Scholton, J. Oscar Call and W. H. Bartell, County Commissioners of El Paso County, stating that the bridge was closed only to vehicular traffic, and that the Road Superintendent has inspected the bridge and found it good for several years and that the Board is willing to and would keep the bridge in condition for the purpose for which it is now being used.

The Commission will not determine as to the safety of the bridge to carry two truck cars weighing approximately twenty-two tons, but is lead to believe by the testimony and investigations made that under present operating conditions it is safe for the carriage of one truck cars weighing approximately nine tons.

One feature concerning this bridge that appears worthy of consideration is the fact that, in event the Roswell line be discontinued, the people that must walk on to Roswell from the terminus of the north Tejon line would either be forced to find their way across the barricaded north Tejon Street bridge in its present state of unrepair, which applies more especially to its floor, or by a circuitous route to Cascade Street where there is a bridge open to traffic.

No doubt, in event of the establishment of a less frequent service than is now being maintained into Roswell, many passengers during daylight hours and in good weather would walk between the suburb and the end of the Tejon Street line, or vice versa. The Company would not be deprived of any

revenue in such case nor would the patrons be forced to make the additional walk involuntarily.

The Commission believes that the maintenance of the stub line is unnecessary and unwarranted with the present volume of traffic, but in consideration of those who must depend on this service as a means of transportation, the Commission concludes that some service should be continued on the Roswell line. The fact that the revenues of this branch line of the system fall below the average for the whole system does not justify the abandonment of the line. Every means of adjustment of operating expenses and revenue, whereby the public be given adequate service at a fair cost, must be tried.

The Commission concludes that the Roswell patrons can be transported conveniently with less frequent service than now prevails, and that the Company can revise its schedule on north Tejon Street in a manner that the smaller cars running to Las Animas and Ivywild can make the Roswell loop at such times as will give residents of Roswell hourly service for those cars whose southerly terminus is Las Animas Street, and forty-five minute service for those cars whose southerly terminus is Ivywild. Any one car would not make the Roswell trip oftener than once in two hours for Las Animas cars and once in three hours for Ivywild cars. After the hour of 7:45 P.M., when Ivywild cars cease running, Broadmoor and Canon cars or a short car could give the service to Roswell patrons.

The Commission will not attempt to dictate the schedule in detail, but merely limit the operating interval and hours between which service into Roswell shall be maintained.

It is the opinion of the Commission that by proper adjustment of the new service to the existing schedules, no serious disarrangement will occur and that, in view of the change to a through service instead of a change in cars at the bridge, it will in some respects furnish a more convenient service than at present, and at a substantial saving to the applicant company.

O R D E R

IT IS THEREFORE ORDERED, That the application of The Colorado Springs and Interurban Railway Company for permission to remove its tracks, poles and wires in and upon the Roswell line of its system, and to abandon

and cease operations thereon be, and the same is, hereby denied.

IT IS FURTHER ORDERED, That said The Colorado Springs and Interurban Railway Company shall continue to serve the public by operating cars on said Roswell line substantially as follows: On week days and Sundays, at least one car each hour from the northerly terminus of the north Tejon Street lines to and around the Roswell loop during that portion of the day when scheduled service is maintained on the north Tejon Street lines, until the further order of the Commission in the premises, without prejudice to the right of applicant renewing its request after the lapse of a reasonable length of time, to discontinue and abandon said Roswell service, should its deficits continue to be incurred under the plan hereby proposed, and it should be so advised.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 20th day of May, 1924.

(Decision No. 702)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Union Pacific System for an Order Authorizing it to Waive the Collection of an Undercharge of $55.00 on Ten Carloads of Sheep shipped from Deer Trail, Colorado, to Denver Union Stock Yards in July, 1922.

APPLICATION NO. 336

May 22, 1924

STATEMENT

By the Commission:

This matter is before the Commission upon an application made informally by the Union Pacific System for an order of the Commission authorizing it to waive an undercharge of $55.00 on ten carloads of sheep consigned to Oliver Gerkin, Deer Trail, Colorado, to Denver Union Stock Yards, in the month of July, 1922.

The application is supported by an affidavit from Mr. C. W. Axtell, Asst. General Freight Agent, Union Pacific System, that the legal rate and charges were exacted on the basis of 14 cents per cwt., as carried in Union Pacific Tariff 3035 C, Colo. P.U.C. No. 138.

Prior to the time this shipment moved, the carrier had under consideration the establishment of a rate of 11½ cents per cwt. on sheep between Deer Trail and Denver Union Stock Yards. However, through an oversight, the reduced rate was not published until the publication of Supplement No. 12½ to Union Pacific Tariff 3035 C, Colo. P.U.C. 138, Page 1, effective July 6, 1922, or subsequent to this movement, and for this reason the Union Pacific System feels that it would be doing an injustice to shippers in forcing collection of the rate as in effect at the time shipment was made.

The Commission feels that the charges assessed on this shipment were excessive to the extent that they exceeded 11½ cents per cwt., and

an order will be issued for the waiving of the collection of the undercharge amounting to $55.00.

O R D E R

IT IS THEREFORE ORDERED, That the Union Pacific System be, and it is hereby, authorized and directed to waive the undercharge of $55.00 on ten carloads of sheep shipped from Deer Trail, Colorado to Denver Union Stock Yards, consigned to Oliver Gerkin, which moved in the month of July, 1922.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hardesman,

H. D. Lamm

Walter Booth

Commissioners.

Dated at Denver, Colorado,
this 22nd day of May, 1924.

(Decision No. 703.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of The Denver and Rio Grande Western Railroad System and The Colorado and Southern Railway Company for an order authorizing them to waive the collection of undercharges of $74.29 and $46.14 on two carloads of coal shipped from Castleton, Colorado, to Romley and Kokomo, in September, 1921.

APPLICATION NO. 337.

- - - - - - -
May 22, 1924.
- - - - - - -

STATEMENT

By the Commission:

This matter is before the Commission upon an application made informally by The Denver and Rio Grande Western Railroad System and The Colorado and Southern Railway Company for an order of the Commission authorizing them to waive undercharges of $74.29 and $46.14 on two carloads of coal consigned to Frank Esta and J. M. Armstrong, Castleton, Colorado, to Romley and Kokomo respectively, in the month of September, 1921.

The application is supported by affidavits from Mr. Geo. Williams, General Freight Agent, The Denver and Rio Grande Western Railroad System, and Mr. J. E. Buckingham, Asst. General Freight Agent, The Colorado and Southern Railway Company, that the legal rate and charges were exacted on the basis of $5.55 per net ton to Kokomo and $7.05 per net ton to Romley, as carried in D&RGW Tariff 5913 A, Colo. P.U.C. No. 589, effective February 28, 1921, and Class D rate as published in Index 341, C&S Ry. Co. Tariff 1 L, Colo. P.U.C. No. 362, as increased by Supplement No. 24.

Prior to the time this shipment moved, the carriers had under consideration the establishment of a rate of $3.87½ per net ton on coal between Castleton, Colorado, and Kokomo and Romley. However, through an oversight, the reduced rate was not published until the publication of Supplement No. 10 to

C&S Tariff 807 L, Colo. P.U.C. No. 387, effective December 7, 1921, or subsequent to this movement, and for this reason The Denver and Rio Grande Western Railroad System and The Colorado and Southern Railway Company feel that it would be doing an injustice to shippers in forcing collection of the rate as in effect at the time shipment was made.

The Commission feels that the charges assessed on this shipment were excessive to the extent that they exceeded $3.87½ per net ton, and an order will be issued for the waiving of the collection of undercharges amounting to $74.29 and $46.14.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad System and The Colorado and Southern Railway Company be, and they are hereby, authorized and directed to waive undercharges of $74.29 and $46.14 on two carloads of coal shipped from Castleton, Colorado to Romley and Kokomo, consigned to Frank Esta and J. M. Armstrong, which moved in the month of September, 1921.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 22nd day of May, 1924.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

The Public Service Company of Colorado, a corporation, Complainant, v. The City of Loveland, a municipal corporation, - - - - - - - - Defendant.	CASE NO. 276 Reopening Case No. 144

- - - - - -
June 3, 1924
- - - - - -

Appearances: Paul W. Lee and George H. Shaw, of Fort Collins, for Complainant;
Pershing, Nye, Fry & Tallmadge, of Denver, and Ab H. Romans, of Loveland, for Defendant.

S T A T E M E N T

By the Commission:

On March 10, 1924, complainant filed its complaint herein, alleging its corporate capacity and post office address, and that it is a successor in title and right to The Western Light and Power Company, a corporation; that heretofore and on November 2, 1917, said Western Light and Power Company instituted a proceeding before this Commission seeking to obtain its order to prevent the city of Loveland, defendant therein, from proceeding with the construction of its proposed electric light plant, and sought to show thereby that said city had not prosecuted the proposed work uninterruptedly and in good faith, and with reasonable diligence in proportion to the magnitude of the undertaking, under the authority theretofore conferred upon said city; that said city answered said complaint and participated at the hearing of said proceeding, and that a decision and order was duly entered by this Commission

in said cause on to-wit: December 31, 1917, Decision No. 152, Case No. 144.

Complainant further alleges that in said decision and order this Commission held that said city had complied with the Public Utilities Act with respect to the exercise by it of reasonable diligence in its said proposed electric light plant undertaking; and further that the Commission held and determined that, "the municipality, however, must now proceed under such rules and regulations as the Commission may prescribe." The complaint further alleges certain parts and portions of the aforesaid decision and order of December 31, 1917, which will hereinafter be more specifically referred to, particularly that part of said decision and order that specified that the municipality should not proceed further to build and complete its proposed municipal electric light plant and system "until such time as the municipality shall again appear before the Commission and show to the Commission that it is ready to proceed in the interests of the municipality, or until such time as the Commission, on its own motion, shall authorize the municipality to resume work under more normal conditions."

The second paragraph of the complaint alleges that the municipality of Loveland has not, before the filing of said complaint, or at any time, appeared before the Commission and shown to it that the city is ready to proceed with said work in the interests of the municipality, nor has the Commission, on its own motion, authorized the municipality to resume work thereon, nor has this Commission at any time promulgated or prescribed rules or regulations under which said city might proceed with the completion of said proposed work, pursuant to the provisions of Section 35 (b) of Chapter 127, Laws of 1913, (Public Utilities Act) being Section 2946, C. L. 1921.

It is further alleged that in the prior proceeding, the original plan for the construction of said proposed municipal electric light plant did not contemplate for such purpose an expenditure in excess of $122,000; and that at the hearing in said original cause this Commission found that prior to the date of

the hearing said city had expended approximately $24,000 in prosecuting the construction work for said proposed plant, and that at the date of the aforesaid original hearing the Commission found that the sum of $163,680 would be the required sum for the completion of said electric light project.

In paragraph three, complainant alleges that subsequent to the decision and order in Case No. 144, said city changed its plan concerning the construction of said electric light plant, with the effect that the same will cost a sum greatly in excess of the amount as originally contemplated as aforesaid, and also greatly in excess of the estimated cost thereof as the same was estimated by this Commission in the prior proceeding; that since the date of the hearing and order in the prior proceeding the work of building and constructing said plant has been entirely suspended, and that at the date of filing the complaint herein the plans for the construction thereof had been so materially changed as that it makes the same a new enterprise, with the result that the said city, through its council, now proposes to construct its said electric light plant at a total cost estimated at $425,000 in addition to the sums heretofore expended by the city on said project.

Then follow allegations of the proposed plan of the defendant city, to finance the completion of the proposed electric light plant as being certain bond issues, one of $83,000, authorized by an election of April 3, 1917, another of $45,000, authorized by an election of April 5, 1921, and that said sum of $128,000 was and is approximately three per cent of the assessed valuation of the property embraced within said city, as determined by the assessment thereof last had before the adoption of the ordinance authorizing the issuance of said bonds; and alleging that, under Section 8 of Article 11 of the constitution of Colorado and Chapter 200, Session Laws of 1919, the aggregate amount of debt that may be created by a city or town for all municipal purposes, except a debt contracted for supplying water to said city or town, shall never

at any time exceed three per cent of the total assessed valuation of the taxable property in such city or town.

In paragraph four of the complaint are alleged two certain ordinances of Loveland, No. 206, passed July 5, 1922, the other No. 221, passed August 7, 1923, whereby the said city has undertaken to authorize the issuance of special obligations in an amount not exceeding $300,000, which are to be designated as "Loveland Municipal Light and Power Revenue Bonds," and are to be paid solely and only out of the revenues derived from the municipal light and power system out of the fund to be created and to be known as the Loveland Light and Power Revenue Fund; then setting forth the principal sum payable in a series and absolutely from May 1, 1924, to May 1, 1933, in certain proportional amounts. Complainant also sets forth a provision of Ordinance No. 206, as follows:

> "The city of Loveland hereby irrevocably covenants and agrees with each and every holder of Loveland Municipal Light and Power Revenue Bonds issued under the provisions of this ordinance, that it will, through the appropriate action of its City Council, establish and enforce a schedule of charges for electric current sufficient at all times punctually to pay the interest accruing upon said revenue bonds; to discharge the principal thereof at maturity, and to cover all operating expenses, maintenance and depreciation charges."

Then it is alleged that the obligation of the city under the above covenant amounts to a pledge, that the schedule of charges to be established and enforced by the city for such purpose will impose rates greatly in excess of a just and reasonable charge to consumers of electricity and contrary to the provisions of the Public Utilities Act, or in case the city shall be required under the law to prescribe just and reasonable rates comparable to the rates of complainant now in force and effect in the city of Loveland, then and in that case a deficit will accrue and the city will not, as a matter of law, be allowed to make such deficit up out of the general revenues of the city, with the ultimate result that the proposed municipal electric light plant will become so deteriorated as to be incapable of properly supplying adequate service to the city and its inhabitants, and the major

part of such investment would thereby be lost; and that under the Public Utilities Act the city is prohibited from establishing or enforcing other than a reasonable charge for its electric service, and that a reasonable charge for such electric service does not permit a rate or rates to be charged sufficiently high to provide for the payment and retirement of the principal sum of $300,000 within the term of years specified.

Paragraphs five and six of the complaint allege the duty of the Commission to prescribe rules and regulations with respect to the completion of the said municipal light plant, and in that event to find and declare, if the evidence so justifies, that no charge or rates will or could be permitted for such electric service high enough to permit of the payment and retirement of said principal sum of $300,000 . Then follows an allegation as to the passage by the city on March 4, 1924, of a resolution in and by which it determined to proceed with the completion of its proposed electric light and power system, and in pursuance thereof to advertise for bids for the construction of same and authorize a call for such bids, and setting forth the resolution so passed on said date for such purposes, which resolution provided that on the 18th of March, 1924, at the City Hall in Loveland, bids would be received for the completion of the proposed hydro-electric light and power system; and that the successful bidder, as the accepted contractor, must agree to purchase and pay for at par Loveland Municipal Light and Power General Obligation Bonds not to exceed the aggregate amount of $125,000 and Loveland Municipal Light and Power Revenue Bonds not to exceed the aggregate amount of $300,000 as authorized by the ordinances aforesaid, and providing the manner in which the successful contractor should be paid, either out of the proceeds of the purchase of the bonds or by delivery of the General Obligation Bonds up to $125,000 at par, the balance of the contract price by the delivery of the Revenue Bonds at par.

The complainant prays that, upon hearing, it shall be determined that the authority under which the city of Loveland had proceeded in the

original cause, decided December 31, 1917, has lapsed under the provisions of Section 2946, C. L. 1921, Section 35 (b), Chapter 127, Session Laws of 1913, and that the plan now in contemplation has been substantially and materially changed from the plan in view in the prior proceeding, Case No. 144, and that the city shall not be permitted to proceed under the new plan by reason of the aforesaid decision in Case No. 144; but in the alternative, that if the Commission shall deny the foregoing relief, then that it shall prescribe rules and regulations with respect to the completion of such work as it shall find and determine, that said city will not be entitled to charge and collect for electric service to said city and its inhabitants an amount sufficient with which to pay off and discharge the principal of the proposed $300,000 of Revenue Bonds within the period of time proposed.

Service of complainant's complaint was duly made upon the city of Loveland, which filed its answer to the complaint on March 20, 1924. The answer sets up as a first defense to the complaint, after stating the municipal character of the defendant under the laws of the State of Colorado, that the Commission has no power to make, supervise or interfere with any municipal improvement, money, property or effects, or perform any municipal function whatever, and that the statutes of this State purporting to vest the Commission with any such power are unconstitutional and void, as being in conflict with Section 35 of Article 5 of the constitution of the State of Colorado; hence, the Commission is without jurisdiction to make any order of any kind or nature relative to the construction and operation by defendant city of a municipally owned electric light plant.

For a second defense to the complaint herein defendant city, though admitting the corporate capacity of complainant as alleged in complaint, and that it is the successor in title and right to The Western Light and Power Company, a corporation, and that said Western Light and Power Company brought its action before this Commission with a view of obtaining an order preventing defendant city from proceeding with the work of construction of its proposed electric light plant, and that a hearing was held and an order entered

therein, being the decision and order hereinabove referred to, and sets forth the order of the Commission in the original proceeding in full, which culminated in said order and decision of December 31, 1917, denies each and every allegation contained in the first paragraph of the complaint except those admitted or alleged in said first paragraph of said second defense.

The defendant city denies each and every allegation in paragraph two of the complaint, except that it admits that defendant city has not heretofore appeared before this Commission and shown that it is ready to proceed in the interests of the municipality, and admits that this Commission, on its own motion, has not authorized said municipality to resume work, and alleges as reasons why said steps had not been made and taken as being the reasons set forth in the first and third defenses incorporated in said answer.

Defendant city denies each and every allegation set forth in paragraphs three, four and five of the complaint, except that it admits that it is now ready to proceed with the completion of a municipally owned electric light plant, pursuant to the plans and ordinances set forth in the third defense, and admits that the General Obligation Bonds mentioned in paragraph three of the complaint have been duly authorized and that the total estimated cost of said plant is approximately $425,000 in addition to the amount that has already been spent thereon, and admits that the city has duly passed and adopted the aforesaid ordinances, Nos. 206 and 221, which contained the provisions as are set forth in said ordinances, and attaching copies thereto, and admits the allegations of paragraph six of said complaint.

For a third defense to the complaint, it is alleged that the city, in good faith, had commenced the construction of an electric light and power plant, to be municipally owned and operated, prior to April 16, 1917; that The Western Light and Power Company, on November 2, 1917, began a proceeding before this Commission to prohibit the city from the completion of such electric light system, and that an answer was filed to the complaint in said pro-

ceeding and a hearing held thereon, and on December 31, 1917, the Commission entered orders in the words and figures as set forth in paragraph one of the second defense; that the complainant is the successor of The Western Light and Power Company, the complainant in the prior or original proceeding, which was docketed by this Commission as Case No. 144, and the decision in which case was number 152.

Then follow in the fourth, fifth, sixth and seventh paragraphs of the third defense allegations reciting the fact that defendant city passed Ordinance No. 206 on July 5, 1922, and that on July 19, 1922, an action was begun by O. D. Shields and others in the District Court of Larimer County, Colorado, against the defendant city, with the object and purpose of having said ordinance declared invalid; that said District Court sustained a demurrer to the complaint and dismissed said cause; that from the decision of said District Court, plaintiffs sued out a writ of error to the Supreme Court of this State, and the Supreme Court affirmed the decision of the District Court of Larimer County in July, 1923, sustaining the validity of said Ordinance No. 206; that the aforesaid action was brought by O. D. Shields on behalf of the tax payers of said city, and that said Western Light and Power Company at such time was a tax payer of said city and, therefore, was represented in said court action and bound by its decision.

In paragraphs five and six is recited the history of litigation begun by The Franklin Trust Company in July, 1922, as a mortgagee of The Western Light and Power Company, in the United States District Court for the District of Colorado, for a similar purpose of declaring Ordinance No. 206 invalid and to enjoin the city from proceeding thereunder; that a motion to dismiss said proceeding was made in the United States District Court, which motion was denied for the reason that the United States District Court was of the opinion that sub-division (b) of Section 11 of Ordinance No. 206 was invalid as creating a debt of the city of Loveland in violation of the state constitution; but that after said United States District Court decision and in the month of August, 1923, said city finally passed and adopted Ordinance No. 221,

and that thereafter said Ordinance No. 221 was brought into the proceedings in the said United States District Court by answer, and that upon a motion to strike that part of the answer setting up Ordinance No. 221, the United States District Court held that the amendment made by Ordinance No. 221 cured the defects above stated in Ordinance No. 206; and that thereafter and about March 8, 1924, said Trust Company applied to said United States District Court for a temporary restraining order and preliminary injunction to enjoin the city from further proceeding under said ordinances, which said application was denied by said Court.

In the seventh paragraph of the third defense, the city alleges that it was not in a position to proceed with the completion of said electric light plant prior to the aforesaid decision sustaining the validity of Ordinances Nos. 206 and 221, and that it was not in position to proceed further with said electric light plant until it had received bids for the sale of its securities, described in said ordinances, for the construction of said light plant.

In paragraph eight it is alleged that the city advertised for bids in accordance with the aforesaid ordinances on March 4, 1924, to be presented to the city on March 18, 1924, and that on said latter date a bid for the purchase of bonds and securities for the completion of said light plant was received, the terms of which were acceptable to the city, from The Hendrie & Bolthoff Manufacturing & Supply Company, and that pursuant to said bid the city and said Supply Company entered into a contract for the sale of said securities by said city to said Supply Company, and for the completion of said electric light plant under the terms of said Ordinances Nos. 206 and 221.

The ninth paragraph of the third defense alleges that the rates prescribed by said Ordinance No. 221 are not in excess of the rates now being paid for electric current for light, heating and power purposes in said city, and that said rates are sufficient in amount to enable said city to pay out of the income derived therefrom the following:

(a) The necessary costs and expenses of the efficient and economical operation of such municipal light and power system, and the creation of a suitable amount for the purpose of creating reserves for depreciation or obsolescence in buildings, machinery and equipment; and

(b) The interest upon both its income bonds and its general obligation bonds, to be issued pursuant to the terms of said Ordinance No. 206 as amended by said Ordinance No. 221; and

(c) The principal of said income bonds and said general obligation bonds within fifteen years from the completion of said plant.

Then follow allegations to the effect that by the plan adopted by the said city, as provided in said Ordinances Nos. 206 and 221, the city will acquire an electric light plant to be owned by it without its citizens or inhabitants paying higher rates than are now paid for electric current for lighting, heating and power purposes, and that when said electric light plant is paid for, electric energy for said purposes can be furnished to the citizens and inhabitants of said city at a much less rate than it could be furnished by a private corporation. And in paragraph eleven it is alleged that the city proposes to amend Ordinance No. 206 for the purpose only of changing the date of issue of its income and general obligation bonds, and postponing the maturity dates thereof, whereby the date of said bonds will be changed to March 1, 1924, and the maturity of said income bonds will be fixed annually in a series from 1926 to 1935, and the maturity of said general obligation bonds will be fixed annually in a series from 1935 to 1939, but that in no other respect will said amendment change the terms upon which said bonds are to be paid or the method prescribed for their payment.

The concluding and twelfth paragraph of the third defense alleges that complainant, as the occupying electric utility, does not have an exclusive franchise from said city, and that complainant's right to occupy the streets and public places of said city to operate its electric light plant expires on June 17, 1928, and that thereafter the city will have a right to exclude complainant and its successors from the streets and public places of the city and from further operating and maintaining an electric light system therein.

The prayer in the first and second defense is that the complainant's complaint herein be dismissed, while the prayer of the third defense is that if this Commission has and assumes jurisdiction in this proceeding, then that the Commission approve the plan of defendant city as set forth in its said Ordinances Nos. 206 and 221.

At the request of the parties to the proceeding, the matter was assigned for hearing by the Commission at an early day after the issues were thus made up, and in pursuance thereof and upon notice to all parties, the hearing was duly held at the City Hall, Loveland, Colorado, April 7, 8, and 9, 1924. At the threshold of the hearing and before any testimony was taken, the defendant, pursuant to its first defense, moved that the entire proceeding be dismissed under the authority of a decision handed down by the Supreme Court of Colorado at 10:00 o'clock A. M. of April 7, 1924, in a cause therein pending, entitled Town of Holyoke v. Smith, et al., notice of which defendant's counsel had received by telephone. The Commission, however, suggested that a certified copy of such decision be obtained and presented to the Commission for consideration at a night session on April 7, pending which the hearing proceeded, and before the same was concluded a number of witnesses testified and a mass of documentary evidence was submitted.

At the night session of April 7, a certified copy of the decision of the Supreme Court in the Holyoke case having been obtained, arguments were had upon the plea to the jurisdiction contained in the first defense, and subsequently briefs were filed on that and other questions involved. Inasmuch as great stress has been laid on the jurisdiction of the Commission by reason of the decision in the Holyoke case, the Commission will first consider whether or not the effect of that decision is to exclude the Commission from a consideration of the matters involved herein under the provisions of Section 35 (b) of the Public Utilities Act of 1913, as amended, Section 2946, C. L. 1921. As the Commission is advised, and from a careful study of the

Holyoke case, it is determined thereby that this Commission is without authority in the matter of fixing rates to be charged by a town or city in the operation of its electric light utility. The instant case, however, is one arising under the provisions of the aforesaid Act, Section 35 (b), which requires a certificate of public convenience and necessity as a condition precedent to the embarkation of a town or city, or any person else, upon the erection and operation of a new utility, and the Act expressly so states that it is applicable to municipally owned as well as privately owned utilities.

The Supreme Court decision in the Holyoke case is not founded upon the premise that the Public Utilities Act of 1913, as amended in 1917 by Section 35 (b), does not in terms include municipalities, but that in respect to the fixing of rates of a municipally owned utility, said Section 35 (b) is not applicable because in conflict and in violation with the controlling provisions of Article 5, Section 35 of the state constitution, which reads;

> "The General Assembly shall not delegate to any special commission, private corporation or association any power to make, supervise, or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever."

The decision of the Supreme Court aforesaid, as the Commission understands it, was that in the matter of fixing rates the state police power, as delegated by the legislature to the Commission, could not be invoked because there was no "general public welfare" to be protected; and that in the matter of the operation of a town's electric light plant, the people themselves could correct any grievances or remedy any conditions that were not satisfactory to them. Said Supreme Court decision is limited to the sole question before the Court in the Holyoke case, which was that in the operation of a municipally owned plant that the fixing of rates is a municipal function; but that is not the question before the Commission in the instant case. The question before the Commission is one not of local concern, but it is a matter rather of general state policy, based on the proposition of

the state in its powers of regulation in the interest of the public as a whole, which so regulates as that the duplication of similar utilities shall not be permitted, as being against the public interest.

A recent case decided by the Public Service Commission of Maryland well states this proposition as:

> "Duplication of generating plant and distribution system increases the capital investment upon which rates must yield a return, decreases the area into which service may be extended, reduces the number of consumers who must pay the charges, and hence increases the pro rata share that each user must pay."
>
> Re Mayor and Counsel of Hagerstown, P.U.R. 1924-B, 211, Adv. Sheet No. 2, March 27, 1924.

The idea of restricted competition in cases where the occupying utility is properly performing its public functions is the necessary correlative of the principle of state regulation of public utilities. The acts of the various states providing for utility regulation, so far as we are advised, incorporate provisions substantially as those found in the Public Utilities Act, as amended in 1917, Section 35 (b). It follows, therefore, that if there is in the instant case a conflict between this general state wide policy and the local application of it, it would seem that the state policy should prevail. This, however, is properly a justiciable question and one which the Commission feels it is not justified in determining. Suffice it to say that the matter of the fixing of rates for a municipally owned plant is not the same as the question of whether or not a municipality should be permitted to engage in competition by the construction and operation of a municipally owned plant with an existing utility of a like character operating within the limits of such municipality.

The Commission has uniformly refused to entertain or attempt to determine questions purely judicial in character, and this was the holding of the Commission in the opinion rendered in the original proceeding decided December 31, 1917, Case No. 144; and it seems to be the uniform view of the Commissions that it is not within the province of a Commission to pass upon the constitutionality of the act under which it operates, and in harmony with that view this Commission has so uniformly held.

As has been stated in numbers of Commissions' decisions, the Commission is bound to assume the validity of a statute under which it exists and which defines its duties and responsibilities until such time as the Commission shall be otherwise judicially advised.

The plea to the jurisdiction of the Commission as contained in the first and second defense is, therefore, overruled as not having been determined by the Supreme Court of this State in the Holyoke case, upon the constitutionality and validity of Section 35 (b) of the Act of 1913, as amended in 1917, which requires a certificate of public convenience and necessity to be first obtained before a municipality, or other person or corporation, may embark upon the erection and operation of a like utility in competition with an occupying utility.

In the prior proceeding in Case No. 144, reported in 5 Colo. P.U.C. 74, 82-83, P.U.R. 1918-E, 968, in the decision and order rendered therein it was first determined by the Commission that the defendant city in that proceeding was not required to apply to the Commission for a certificate of public convenience and necessity for the construction of its proposed electric light plant, for the reason that it had begun said work prior to the effective date of Section 35 (b) of the Public Utilities Act, to-wit: July 16, 1917, and had been prosecuting said work in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, but that on account of economic conditions then exisiting it was held that the defendant city should not proceed further to build and complete the proposed municipal light plant "until such time as the municipality shall again appear before the Commission and show to the Commission that it is ready to proceed in the interests of the municipality, or until such time as the Commission, on its own motion, shall authorize the municipality to resume work under more normal conditions." In the prior proceeding, testimony was before the Commission that, as shown by the estimates of the city's engineer, the cost of completing the city's proposed electric light plant had greatly increased from the time it was begun up to the time of the hearing in November, 1917, so that "approx-

imately two dollars must now be spent where one dollar would suffice under normal conditions." In the instant case, the testimony of the engineer for the city of Loveland, as well as others, is to the effect that costs have not materially changed, but if anything are higher now for labor,materials, supplies, machinery, in short, everything that goes into the building and completion of an electric light plant, than they were in November, 1917. It was pointed out in the prior decision also that the city of Loveland and its inhabitants were then being served by an occupying utility at rates fixed by the Commission; hence, there was no urgent need for completion of the work. The occupying utility is the same now as then except for a change in name, and it has every right to remain until the expiration of its franchise on June 17, 1928. What the Commission said in the prior proceeding as being true is equally true now, and unless the Commission finds from the testimony that the completion of said electric plant, after the same has lain dormant for approximately four years, is in the public interest, the authority sought by defendant city to complete said plant should be denied. It goes without saying that, as alleged in the complainant's complaint and admitted in the answer, defendant city made no application to the Commission for a certificate of convenience and necessity to complete its electric light system, nor did the Commission, on its own motion, take any steps in that direction. The answer, in a sense, excuses the defendant from so doing on account of the various suits and proceedings which were brought against the defendant by the predecessor of complainant and others; but the outstanding fact remains that the city in 1917, recognized the validity of those sections of the Public Utilities law contained in Section 35 (b), accepted the Commission's authority and jurisdiction in the premises, and something more than four years later, proceeded to take such steps as were necessary to complete its proposed electric light plant by the passage of ordinances authorizing the issuance of bonds, advertising for bids and entering into contracts, all without application to

or knowledge of the Commission, and in direct conflict with the provisions of said Section 35 (b), which provides that a public utility, having authority to construct a utility but not having actually exercised that authority, or if the authority has been suspended for more than one year, then requires the utility to apply to the Commission for a certificate of public convenience and necessity to continue with the work of completion of the same.

Subsequent to the hearing and subsequent to the filing of briefs herein, a committee of citizens of the city of Loveland presented to the Commission a written request that the Commission, regardless of its jurisdiction and power in the premises, should use its offices and its engineering force to advise and decide upon the feasibility of the proposed municipal hydro-electric plant, as the plans and purposes thereof were developed by the testimony at the hearing, for the reason that doubt had been raised in the minds of such citizens as to whether or not the plant, if built according to the plans now proposed, would be self-sustaining, and in order that all citizens of Loveland might have the benefit of the opinion of the Commission in such matter.

In a recent case heretofore referred to, Re Mayor and Council of Hagerstown, P.U.R. 1924-B, 211-213, the Maryland Commission, in a situation before it with reference to the construction and operation of a proposed municipal light plant in Hagerstown, which is quite similar to the situation in the instant case, so aptly expresses the principles which should be taken into consideration in matters of this character, and which so fully meets with the Commission's approval, that we quote:

> "It should be borne in mind that Commission regulation was resorted to only after competition in the utility field had been long tried and found utterly wanting and that governmental regulation by a commission with powers of investigation and administrative discretion, but required to follow judicial procedure, was adopted not as a supplement to but in lieu and stead of competition. It was assumed--what commission experience has everywhere demonstrated and proved--that duplication of generating plant and distribution system increases the capital investment upon which rates must yield a return, decreases the area into which service may be extended, reduces the number of consumers who must pay the charges, and hence increases the pro rata share that each user must pay. It was also taken as an economic truth that competition maintains rates close to the cost of service furnished by the most poorly equipped and situated competitor. Regulation undertakes to preserve for and to return to the consuming public in reduced rates the economies of monopoly in public service, and through the exercise of authority

> to supervise the operating expenses, to enforce efficient and economical management, to regulate accounting and financing, to investigate and fix rates, charges, practices and rules, and through general supervision and control exercised by virtue of the delegated police power of the state over those engaged in rendering public service and employing therefor that kind of private property 'clothed with a public interest,' to force rates below the competitive figure to near the cost of production by a single company well and economically managed."

The above decision points out that the Maryland statute under which it exists and which conferred the power on the Commission is almost identical with the Colorado statute, except that in Maryland the Commission is vested with power to regulate the issuance of stocks and bonds of a utility, municipally as well as privately owned.

With the view, therefore, of discharging a duty expressly conferred by statute, assuming that the statute is valid as being constitutional, as well as in compliance with the request made upon the Commission by several hundred of the citizens of Loveland for an expression of the opinion and judgment of the Commission and its staff upon the matters involved herein, we shall next consider the feasibility and practicability of the plan adopted by defendant city for the completion of its proposed electric light plant, for whether or not this Commission has jurisdiction over a municipally owned plant to "fix rates," the fact remains that whatever power fixes a rate, be it the town board of trustees, the city council, the legislature itself, or any other agency, a rate may not be so high as to be confiscatory of the property of the citizens, which is held by a uniform line of decisions from the United States Supreme Court down through all state and federal courts, as well as commission holdings.

The question of feasibility can be considered from two viewpoints; First, are the proposed plans adequate, complete, economical and physically practicable to take care of the present and future needs of the city of Loveland; and second, with what reasonable expectation can the citizens of Loveland hope to carry out the proposed fifteen year program as set forth in defendant's answer to the Commission, wherein it is expressly requested that the Commission approve these plans.

The matter of physical practicability depends fundamentally upon the sufficiency and reliability of the stream flow of the Big Thompson River, since the proposed plans do not provide for a standby plant nor for storage of more than a nominal amount.

All of the principal witnesses testified in regard to the stream flow, presenting data from records and making certain deductions and conclusions based thereon. It is of interest that the same public records of the State Engineer's office and of the United States Geological Survey are the basis of all this testimony. These records are admittedly fragmentary and unreliable for the winter months.

It was pointed out that when the gauging station was moved in 1917 from Arkins to Drake, higher up on the river, certain diversions for irrigation purposes might have caused lower minimums in earlier records than should be considered in this project. No evidence that such diversions have ever occurred in the months of low stream flow was introduced. Moreover, the character of the records taken after the change leads to the belief that the older records are just as reliable and point just as clearly to what may be expected as more recent measurements and, in fact, are likely to indicate greater flow than could be available at the dam site because of the additional drainage area adjacent which increases the flow at Arkins over that at Drake.

It is unfortunate that in the winter months very few measurements were made. Very evidently, this was a direct result of the difficulties presented in winter and for the additional reason that these records were made primarily for irrigation purposes and, therefore, a record of winter flow is not important.

However, for hydro-electric plant purposes, the winter flow is of first importance because it is in the winter that the heaviest demands for electric service must be met by a plant rendering service of the character required by a city like Loveland. The continuous reliability and sufficiency

of the power supply at all times is a principal factor of its success. The demands must be met as they happen to occur. Satisfactory electric service does not permit delay, curtailment or shut down whenever the primary source of power happens to be too small.

It is, therefore, customary and necessary that an electric utility shall have available a capacity in excess of any demands which have ever been made upon it. As the demands increase, added capacity must be supplied so as to maintain a proper margin of safety. The probable demands of the community must be anticipated so far in advance that increased demands can be met the moment they occur. The occasion of maximum demand is quite likely to occur at the moment of lowest stream flow, and to install hydro plant capacity in excess of the lowest minimum stream flow limitation is folly unless provision for standby service or sufficient storage to equalize the stream flow to a particular average minimum flow has been made.

What margin of safety to use and what capacity smaller than the minimums of record to install, are matters of experience and judgment. Certainly if there are incomplete records at critical points, as in this case, conservative plans are advisable, or there are likely to be occasions when the whole expensive installation will be idle and useless at the moment of greatest need.

The Commission is impressed by the fact that upon these fragmentary records, those witnesses whose recorded qualifications show the greatest experience and training in matters of this character are correspondingly more conservative.

Furthermore, it has been pointed out, and not controverted, that all of the winter records were taken just after periods of high or rising temperature, and that during the periods of low temperature no records were made. This indicates the probability of many periods of low stream flow and of minimums much lower than those upon which the proposed plans have been based.

Also it has been pointed out, and not seriously controverted, that the gauging stations responsible for these records can report the stream flow only as a function of the varying stream level. This relation is a true one only when the area of the cross section of the river remains the same as it was when measured and the flow computed as a function of stream level. Any obstruction, such as ice along the bottom or sides of the stream, will diminish this area of cross section and make the recorded flow higher than actually occurred. Photos are in evidence showing ice conditions which are likely to have brought about this erroneous result, and no facts were presented to the contrary.

Now, the Commission is aware that adequate storage does tend to equalize the stream flow and remove to a certain extent the dangers inherent to low water periods. That the storage reservoir is large enough, the Commission gravely doubts. Its capacity is alleged to be forty acre feet, but no exact data has been submitted from which this can be accurately checked. Also it was alleged that this storage capacity was sufficient to carry the plant operation over a period of twenty-four hours of low water. It would appear that such allegations should have been supported by exact engineering studies of the conditions of flow, storage and use over a period of time long enough to show that it would be possible to have the reservoir full when its maximum capacity should be needed, that the probable load curve of use would not deplete it too rapidly and that there would not immediately follow other days of small flow which would require some help from storage before the reservoir could be refilled. The Fargo Engineering Company's report (Defendand's Exhibit No. 1) is lacking in such details and studies of the water supply and storage conditions properly analyzed with reference to proper load conditions of use as are usual and necessary preliminaries to hydro-electric project consideration, and the testimony in support of the report is even more vague and uncertain.

It was alleged that reservoirs on this slope and on streams of the character of the Big Thompson River have a tendency to "silt up," or fill

with the debris carried by every freshet. The turbulent waters coming into the quiet pool of the reservoir drop the suspended solid matter because the velocity of the water is suddenly checked. Defendant's witnesses denied this possibility, and further answered the allegation by stating that it was intended to give the reservoir such personal supervision that this mishap would not occur. The Commission is familiar with this phenomena and the futility of man in control of it. The effect of "silting up" is to reduce reservoir capacity. These mountains are full of small abandoned reservoirs which became valueless in this way. It appears that defendant has considered this phase of the construction too lightly.

In the face of the conflicting conclusions reached by different witnesses as to water supply and storage, the Commission, with its staff, might have conducted an independent investigation of these matters; but it is so obvious that, regardless of the exact hydro-electric capacity of the river at this point which good, conservative engineering practice would approve, the plans for this project show too little study of these fundamental factors and, if built, its ability to carry the total probable demands, even during its first year of operation, is so close to the danger line of impossibility that the Commission can not fairly approve this feature of the plans. Certain factors as pointed out which should have been given serious consideration have been disregarded or belittled.

In view of the above, it appears imperative that a sufficient standby plant, or provision for standby service, should form a part of the original plans. A standby is entirely omitted from the plans which the Commission is asked to approve. In that respect, the Commission decides the plans are incomplete. It can not consider that the small auxiliary plant proposed for carrying the peaks as the business grows in later years could fulfill the standby requirements. It would be entirely inadequate for the purpose under consideration. The only evidence submitted as to a suitable standby plant originated from complainant's witnesses. This proposed standby plant must be

considered by the Commission as an essential part of the proposed project, especially since this testimony was not seriously challenged by defendants.

In order to decide as to the probable adequacy of the proposed plant for supplying the needs of the city of Loveland, it is necessary to predict the policy which the city will pursue. It may decide to build its own distribution system at an estimated cost of $83,956.69 and operate in competition with the Public Service Company for at least four years to the end of its franchise, and longer should the people so elect. That competition would end in four years can not now be determined. In competition the total business will be divided between the municipal and the private utility. The probable ratio of division can not be more than a guess. The Fargo Engineering Company has assumed that the municipal plant will at once attach 70 per cent of the total business, basing this figure on the ratio of the votes upon the bond issue; that it will retain 70 per cent for four years and then get 100 per cent of it. This appears to be a very optimistic conclusion and is likely to be quite far from correct. This assumption is an important factor in enabling The Fargo Engineering Company to reach favorable conclusions on the basis of competition for four years. Its showing becomes less favorable in direct proportion as this percentage is decreased. The actual division will certainly depend as much upon the relative quality and reliability of service and upon the rates charged as it will upon municipal pride. When individual benefits and expense are at issue, the utility giving the best service at the lowest cost is likely to get the larger share of the business.

Certainly if competition continues, the ease with which the municipal plant can carry the load varies in direct proportion to the extent to which it shares the business, but its ability to meet its financial obligation program is correspondingly diminished.

The other possibility is that the city may purchase the existing distribution system of the Public Service Company at the figure of $151,747

awarded by the court in condemnation proceedings instead of building a competing system at $83,956.69. Thus it would at once eliminate competition and receive the total available revenue; however, this plan emphasizes the necessity of immediately including sufficient standby plant as an essential part of the project.

The Commission believes from the evidence presented that this last plan offers the more favorable arrangement upon which the city could proceed.

The Commission, in considering the proposed plans, can not overlook the large investment contemplated. Within its knowledge, no complaints have been made as to the quality or reliability of service rendered by the present utility nor has any protest been made as to the fairness of the rates now being charged. There is nothing in the proposed plans that assures the city of Loveland of better service or of lower rates. In fact, slightly higher than present rates are provided by ordinance for the initial operation, and provision is made for still further increases if this proves advisable. Hence, the desire for municipal ownership is largely an expression of municipal pride and energy.

Therefore, in the face of the very evident reasons expressed above for municipal ownership, the Commission is surprised that so little thought has been given to the first cost of the investment. Even on the figures shown in the Fargo Engineering report (Defendant's Exhibit No. 1), page 50, of an estimated cost of investment of $287,525.00 for the plant, which now appears to cover only part of the necessary expenditure, it means a cost of $319.00 per K. W. and the Commission is well aware that this is higher than has been necessary to provide similar service with other types of plant. This surprise is increased when it is found that the city still wishes to go ahead with the construction after receiving The Hendrie & Bolthoff Manufacturing & Supply Company's bid of $371,587.14, as attached to defendant's answer to the complaint, which does not cover all of the items which are a part of The Fargo Engineering Company's estimate. If these estimated items for completion of the dam, completion of the tunnel, engineering and supervision during construction and

interest during construction are added to the bid, it appears that the city is willing to pay a total of $396,893 for a plant estimated two years ago at $287,525, or an increase in price in two years of $109,368, or of about 38 per cent. This increase has not been explained satisfactorily to the Commission. The explanation offered by defendant's witness, that costs for labor and material have increased to this extent during 1922 and 1923, is contrary to the Commission's knowledge of the trend of such costs. Thus the present total cost contemplated is at least $396,893, or a cost per K. W. of $441.00. Why should Loveland be willing to pay a price approximately double the cost of other equipment which will satisfactorily give the same service?

Furthermore, the bid of $371,587.14 is a total obtained by applying unit costs to the estimated units in the specifications provided by the city. If any of these units have been underestimated, as is frequently the case, this means an increase of the above bid figure.

The figures in the above paragraph do not include money already spent by Loveland on this construction, nor the difference in cost of the distribution system if purchased instead of built, as will be necessary if competition is to be eliminated, nor any provision for standby plant. So it appears that the city will have spent approximately $562,000 for this plant when finally complete.

In view of the above, the Commission does not agree that the contract price is reasonable, nor can it consent that the city of Loveland enter into a business at such an excessive first cost of investment when it is obvious that much more reasonable plans are possible; and the Commission must conclude that the proposed plans which it has been asked to approve have been clearly shown by the testimony to be inadequate, incomplete and impracticable. That these plans are uneconomical for the citizens of Loveland must follow from the single item of excessive cost of installation and consequent high annual fixed charges. This is more clearly shown by the following financial digest which is based on a consideration of all the exhibits, with the idea of determining what the city of Loveland may reasonably expect in its efforts to carry out the proposed fifteen year program:

Complainant's Exhibit 3:

Page 4 shows the required average annual net earnings to meet the bond issue of $300,000 to be	$41,700.00
Page 5 shows the required average annual net earnings to meet the bond issue of $125,000 to be	13,482.14
Page 7 shows the required average annual net earnings to meet a depreciation allowance of 2 1/2% on an investment of $425,000 to be	10,625.00
Shows the required average annual net earnings to meet a contingent allowance of 1% on an investment of $425,000 to be	4,250.00
* Total average annual net requirement for this purpose	$70,057.14

Complainant's Exhibit 1:

Table 3 shows that the total gross revenues for the year ending July 31, 1923, were	$66,276.84
This shows that the present rates would have to be increased to meet this requirement without any consideration whatever given to operating expenses.	
This requirement does not take into consideration the money already spent which is shown by the evidence to be	$50,000.00
Neither does it include a standby plant which all the testimony admits will be needed and one of suitable size will cost not less than	$90,000.00

These items should also be considered in the fixed capital requirements from net revenues.

The item of $10,625 as the depreciation requirement is a very nominal figure for an investment of this size and character; in fact, the defendant's Exhibit No. 1 at page 62 sets up this item to be $11,180 on a proposed capital expenditure of only $220,489 in depreciable items. It is certain that the needed standby plant will also require a depreciation reserve in excess of 2 1/2% and this item has not been included.

The item of operating expense was testified to at length and arrived at by different methods in the various exhibits. The Commission's engineers do not concur with any method as being exactly accurate, but the results obtained are in close enough agreement so that they can be used to indicate what would be needed in the way of gross revenues from electric service.

Operating Expense Estimates:

From exhibit of Fargo Engineering Company Defendant's Exhibit No. 1, page 61,	$21,000.00
From exhibit of Public Service Co. of Colo. Plaintiff's Exhibit No. 1, table 1,	33,700.00
From exhibit of Wood and Webber Plaintiff's Exhibit No. 2, table 2,	27,000.00
From exhibit of H. S. Evans Plaintiff's Exhibit No. 3, page 7, as applied to actual K.W.H. sales in Loveland shown in Plaintiff's Exhibit No. 1, table 3,	33,478.27

Using neither the highest nor the lowest of these estimates, but using the average of the four, the operating expenses would be	$28,794.57
Adding the average annual net requirement (See * above)	70,057.14
Makes the total annual gross revenue needed on the basis of the present business in Loveland	$98,851.71
The revenues obtained by The Public Service Company of Colorado for the year ending July 31, 1923, in Loveland were	$66,276.84
This shows that if the municipal plant was in full operation enjoying all of the business, that the service users would have to pay an excess over the present rates of	$32,574.87
This means that the present rates would have to be increased	49.15%

* * * * * * * *

Using the most optimistic figure of operating expense	$21,000.00
Add the required net earnings of	70,057.14
Makes the total annual gross revenue needed on the basis of the present business in Loveland	$91,057.14
This shows that the service users would have to pay an excess over the present rates of	$24,780.30
Which means an average rate increase of	37.39%

No consideration has been given in this setup to the item of money already spent ($50,000) nor to the item of $90,000 needed for a standby plant, either in the interest or amortization requirements.

The money required for working capital and extensions has likewise not been included.

The taxes lost to the taxpayers of Loveland have likewise been disregarded here.

It is plainly evident that under the most favorable conditions used that the electric service users of Loveland would have to pay an average rate increase of at least 37 per cent at once, and this increase would be still greater in following years because of the decrease in use due to higher rates. In other words, the "law of diminishing returns" would be effective.

The study of the Loveland situation presented by Dean H. S. Evans of the University of Colorado is interesting and illuminating. This witness is independent of any financial interest involved in this case. His report is a logical engineering treatise of what expectation the citizens of Loveland can have for successfully carrying out their proposed fifteen year program if the experience of other cities of Colorado is used as a measure.

The method used, as stated in his report, Complainant's Exhibit No. 3, is predicated on the following:

"The proposed bond issues are amortized over the life of the issues, to which is added the interest charge. Depreciation and contingent allowance is made on the total fixed capital proposed. These items together constitute the net annual revenue the city must receive from electric operation to:

"(1) Provide for the payment of the interest charges and the retirement of the bonds within their life without additional burden on the taxpayers of the city.

"(2) Provide a rate schedule that will give this result without the necessity of changing the rate annually as would be required if the amounts are to be met as provided in the ordinance."

The low rate of 2 1/2 per cent for depreciation is used. No provision is made for obsolescence or plant inadequacy. The allowance for contingencies is one per cent. Nothing is included for the extensions which would inevitably be required. Therefore, the results obtained are extremely conservative and probably too favorable to the project.

The $125,000 General Obligation Bonds at 6 per cent run for a fifteen year period, which, on the basis of an annual retirement of bonds, leads to an average net annual requirement for amortization and interest of $13,482.14.

The $300,000 Income Bonds at 6 per cent run for a ten year period which, on the basis of equal annual retirements, leads to an average annual net requirement for amortization and interest of $41,700.00

As a matter of fact the provisions in the bonds themselves for retiring the entire issue of General Obligation Bonds at the end of the fifteen year period, and of retiring the Income Bonds in unequal amounts on specified dates, leads to a somewhat greater total interest demand than provided above. Therefore, the Evans Analysis is somewhat more favorable than that in the Fargo Engineering Company's reports, which take account of the provisions in the bonds, which would likely cause a yearly readjustment of electric rates.

The depreciation allowed on $425,000 is $10,625, and for contingencies, $4,250,

Thus the total net annual requirements to be provided from electric income to meet the bond provisions amount to $70,057.14.

The witness estimated operating expense on the basis of the experience for four years of the towns of Glenwood Springs and Longmont, which operate comparable hydro-electric utilities, and this expense was found to be an average cost per K. W. H. for electricity sold of 3.087 cents.

The expected annual K. W. H. sales are built up from the averages of nineteen Colorado towns and cities operating under comparable conditions, and indicate a probable annual demand of 1,190,275 K. W. H. for Loveland which, at the anticipated operating expense rate of 3.087 cents per K. W. H. would amount to $36,743.79.

Thus the complete total annual amount required from electric earnings for this plant would be $106,800.93.

Then the witness distributes this required revenue among the different classes of service, basing the demands in each class upon the average experience of the nineteen towns and cities, thus determining the necessary average price per K. W. H. in each class, which are:

	Average Present Rate	Average Needed Rate
For commercial lighting, average rate, comparable with the average present rate in the nineteen towns and cities of Needed rate is higher than present rate by 35.97%.	9.34¢	12.70¢ per K.W.H.
For municipal lighting, average rate, comparable with the average present rate in the nineteen towns and cities of Needed rate is higher than present rate by 35.95%.	5.23¢	7.11¢ per K.W.H.
For commercial power, average rate comparable with the average present rate in the nineteen towns and cities of Needed rate is higher than present rate by 36.05%.	4.05¢	5.51¢ per K.W.H.
For the total output to be sold, required average rate, comparable with the average present rate in the nineteen towns and cities of Needed rate is higher than present rate by 36.12%.	6.59¢	8.97¢ per K.W.H.

These results, which to the Commission appear to be very conservative, and which are based on data in the sworn annual reports of the nineteen towns and cities and which have been checked by the Commission's staff, of themselves form a complete and conclusive answer to the question of whether or not the proposed plant, together with the proposed program of bond retirement, and which The Fargo Engineering Company alleges is entirely feasible, is really in the best interests of the city of Loveland. How can the citizens of Loveland hope to prosper under a schedule of electric rates at least 36 per cent higher than the average of those in nineteen other comparable towns and cities of Colorado, as is clearly shown by Dean Evans' report?

Furthermore, this report has not taken account of the decrease in use which will always follow every material increase in rates. This decrease in use would make still higher rates necessary and further increase the harmful conditions. In the light of other testimony which has estimated the probable results from the actual past experience of The Public Service Company of Colorado in Loveland, and which includes necessary items omitted from Dean Evans' report, the Commission must conclude that these results are more favorable to Loveland than are likely to occur if this plant is put into operation on the present plans. The Commission would be remiss in its duty to the citizens of Loveland if it failed to bring the gravity of the present scheme to their attention.

The Commission is convinced that the above figures alone, and which were not controverted, are sufficient to justify it in refusing the approval asked by the city of Loveland.

In conclusion, the Commission, after analyzing all the figures presented in the evidence, determines that if the city of Loveland should build an electric light plant in accordance with the proposed plans, supplemented by a standby plant now shown to be essential, and at a cost of approximately $562,609.00 for the plant and standby, the situation in Loveland for the fifteen year period is farily predicted if the proposed program, which the

Commission is asked to approve, is carried into effect.

This conclusion is based, insofar as possible, upon the figures contained in defendant city's Exhibit No. 3, submitted by the Fargo Engineering Company, supplemented with certain items omitted therefrom, but which are admitted or proven to be essential and necessary. The Commission does not give specific approval to said figures, nor does it find them to be accurate and correct.

The aforesaid items used are as follows: The Hendrie & Bolthoff bid, cost to complete the dam and tunnel, standby plant, elimination of competitive utility, engineering, supervision and interest during construction, working capital, cost of extensions, increase of revenue and expenses, and completion of the bond retirement program as provided in Ordinances 206 and 221.

The result of this analysis shows that using the gross revenue provided in the Fargo Engineering Company's report, defendant city's Exhibit 3, the defendant city will find that it has failed to meet its requirements as provided by said Ordinances, by the sum of $545,429.00.

Therefore, for the reasons hereinbefore stated, the Commission withholds its approval of the plan set forth in defendant city's answer for the construction of its proposed electric light plant and system, and finds from the evidence submitted that the present or future public convenience and necessity does not require, nor will not require such construction.

O R D E R

IT IS, THEREFORE, ORDERED, By the Public Utilities Commission of the State of Colorado, that the plea to the jurisdiction of this Commission set forth in the defendant city's answer as and for its first defense, is hereby overruled.

IT IS FURTHER ORDERED, That, as disclosed by the evidence submitted herein, the present or future public convenience and necessity does not require

nor will not require the construction of the electric light plant or system by defendant city, as the same is proposed and set forth in the answer of defendant filed herein, and the exhibits thereto attached, and that the plan proposed by said city for the construction of its electric light plant or system, as aforesaid, be, and the same is hereby, disapproved as not being in the public interest of the public affected thereby.

Mr. Commissioner Bock, succeeding Commissioner Scott, deceased, was not a member of the Commission at the time of the hearing and arguments submitted in this proceeding, and, therefore, does not participate in the above decision and order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

(S E AL)

GRANT E. HALDERMAN

F. P. LANNON

Commissioners.

Dated at Denver, Colorado,
this 3rd day of June, 1924.

(Decision No. 705.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of M. E. Rumburg, Owner of the M.E. Rumburg Telephone Exchange, to abandon and cease to operate his only telephone line between Sawpit and Placerville, Colorado.

APPLICATION NO. 344.

- - - - - - -
June 6, 1924.
- - - - - - - -

Affidavits: Milton E. Rumburg, owner
S. J. Adams, subscriber
D. E. Cless, subscriber
Axel Nelson, subscriber
Stockton Smith, subscriber
C. M. Welbon, Agent, Rio Grande Southern Railroad Co., subscriber.

S T A T E M E N T

By the Commission:

On April 30, 1924, applicant, Milton E. Rumburg, filed his petition with the Commission, wherein is set forth that the applicant has owned and operated a telephone line between Sawpit and Placerville, Colorado, and that for the past three years and more he has had only five subscribers on this line.

The petition further sets forth that the total income is only about $9.50 per month, while the expense of operation, including maintenance, taxes and incidentals, will total approximately $16.00 per month, and that this business has been operated at a loss for ten years or more.

The petition also recites that on April 25 and 26, 1924, a hard snow storm damaged the line to such an extent that a cost of about $200.00 for repairs is necessary to put this line in condition for further service.

The applicant also alleges that he is physically and financially unable to rehabilitate this line and continue its operation and that, in view of the above conditions, he has obtained the consent of each of the

subscribers that this service be abandoned.

The Commission, acting in its discretion and in consideration of the character of the statements in the petition, waived a formal hearing in this matter and in lieu thereof accepts the affidavits of each of the parties in interest. These affidavits, from Milton E. Rumburg, the owner, and from each of the five subscribers, were received by the Commission on May 16, 1924.

These affidavits recite and agree with the statements made in the petition in every respect. No protest is made, and it is quite apparent that further operation of this line is not practicable nor essential, and that permission to abandon the service is the only reasonable conclusion. The Commission so finds, and an order will be entered in accordance with the plea of the petition.

O R D E R

IT IS THEREFORE ORDERED, That Milton E. Rumburg, owner of the M.E. Rumburg Telephone Exchange, be, and he is hereby, permitted to discontinue the operation of his telephone system between Sawpit and Placerville, Colorado, and cease to function as a public utility.

IT IS FURTHER ORDERED, That the said applicant be, and he is hereby, allowed and permitted to complete the dismantling and removal of his telephone plant and system.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 6th day of June, 1924.

(Decision No. 706)

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 Permission to Curtail the Time of Train Service upon the Creede Branch thereof.

APPLICATION NO. 164

(June 10, 1924)

STATEMENT

By the Commission:

The above application was transferred from Informal Complaint No. 1208, January 26, 1922, and hearing set for February 7, 1922, at which time hearing was held.

Parties agreed upon continuance of existing schedule as dictated into the record until such time as all passenger train schedules on the Fourth Division are satisfactorily adjusted, and until the Commission orders otherwise.

No further steps having been taken by the railroad company, the Commission is of the opinion that this application should be dismissed.

ORDER

IT IS THEREFORE ORDERED, That the above application be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hall Emeritus.

H. D. Lannon

Otto Peck

Commissioners.

Dated at Denver, Colorado,
this 10th day of June, 1924.

(Decision No. 707)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of potato growers, resident and operating in the Monte Vista, Center and Del Norte, Colorado districts, and embracing intermediate and contiguous leading stations, re distribution of cars for loading of potatoes.

APPLICATION NO. 221

(June 10, 1924)

STATEMENT

By the Commission:

IT APPEARING, That there has been no prosecution in this cause, and motion to dismiss having been filed by applicant, it is the opinion of the Commission that the same should be dismissed.

ORDER

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hall Emeritus

H. D. Lamon

Otto Bock

Commissioners.

Dated at Denver, Colorado,
this 10th day of June, 1924.

(Decision No. 708)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In Re Advance in Rates in Power Service)
of The Summit County Power Company.) I. & S. No. 54

(June 10, 1924)

STATEMENT

By the Commission:

On November 10, 1920, The Summit County Power Company filed tariffs with the Commission increasing the charges of rates and special power agreements, effective December 10, 1920, designated as follows:

4th	Revised	Sheet	No.	4	to	Colo.	P.U.C.	No.	3
1st	"	"	"	4-A	to	Colo.	P.U.C.	No.	3
1st	"	"	"	4-B	"	"	"	"	3
1st	"	"	"	4-C	"	"	"	"	3
2nd	"	"	"	7-A	"	"	"	"	3

On December 9, 1920, the Commission, on its own motion, entered upon an investigation and hearing concerning the propriety of the increases and lawfulness of the schedules enumerated.

IT APPEARING, That, under date of October 5, 1921, the Commission entered its order further suspending the effective date of said tariffs, inasmuch as the increases proposed appear properly to depend upon the Commission's decision in I. & S. No. 40, The Colorado Power Company, these cases being interlocked insofar as power service is concerned.

IT FURTHER APPEARING, That, in I. & S. No. 40, The Colorado Power Company, the Commission denied any increases of their tariffs filed in that case, and that the instant case has not been prosecuted on its merits.

O R D E R

IT IS THEREFORE ORDERED, That the schedules of The Summit County Power Company, filed with the Commission embodying advances in its tariffs

and agreements and which were suspended by the Commission, be, and the same are hereby, permanently suspended, and the case is dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Halderman,

[signature]

Otto Bock

Commissioners.

Dated at Denver, Colorado,
this 10th day of June, 1924.

(Decision No. 709.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

City of Boulder, a municipal corporation,

Complainant,

v.

The Colorado and Southern Railway Company, a corporation,

Defendant.

CASE NO. 114.

- - - - - - -
June 11, 1924.
- - - - - - -

Appearances: F.L. Moorhead, Esq., of Boulder, Attorney for Complainant; J.H. Barwise, Jr., and J.Q. Dier, Esqs., of Denver, Attorneys for Defendant.

S T A T E M E N T

By the Commission:

On the 29th day of December, 1916, the city of Boulder, complainant herein, filed a complaint with this Commission, the allegations of which are set forth in an opinion handed down by the Commission on January 5, 1918, Volume 5, Colo. P.U.C., page 89. At that time the Commission expressed itself favorably to the relief prayed for by the complainant, but held that no order should be entered causing the relocation of tracks of the defendant railway company because of the abnormal price of labor and materials, and in the interest of conservation of materials and labor which should be utilized for the more important and serious war needs. The entering of any order was expressly deferred until such time as the cost of labor and materials may again reach the normal trend. The Commission further decided that the case be held open for such further orders to be made by the Commission, on its own motion or upon application of the complainant, as, in the opinion of the Commission, the interests of

the public seem to require.

Nothing further was done in the case until February 21, 1924, when the complainant filed with the Commission a petition to reopen same. In this petition the complainant alleges that nothing has been done since January 5, 1918, to change the tracks of the defendant company through the city of Boulder; that since said date Twelfth Street, which crosses the Colorado and Southern line at Water and Marine Streets, has been paved; that Arapahoe Avenue, crossing the track of The Colorado and Southern Railway Company, has been paved, and that the traffic on these streets has increased very greatly since the last hearing in this matter, and that since said hearing the University of Colorado purchased certain lands which lie east of the tracks of the defendant company, as shown by a map filed therewith and marked Exhibit A; that on the lands of the university so acquired a gymnasium is now being erected for the use of the student body; that upon completion thereof hundreds of students and persons will have occasion to cross and re-cross these tracks daily going and coming from the gymnasium; that a stadium is in contemplation of a seating capacity of twenty-five thousand persons, to be erected on the said lands of the university, and that there will, on numerous occasions, be between ten and twenty-five thousand persons crossing these tracks; that, in addition to all the conditions referred to above, all of the conditions stated in the original complaint still exist, making it imperative that the grade crossing of the defendant company be abolished, and that its line of track entering the city of Boulder through the campus of the University of Colorado be changed. The map filed by the complainant with the petition to reopen the case indicates the extent of the relief sought.

The defendant company filed a motion to dismiss on March 6, 1924, upon which a hearing was had on May 21, 1924.

The grounds for dismissal are seven, but since the ground of "sole and exclusive jurisdiction over and control of the abandoning of said railroad

tracks and the construction of new railroad tracks in lieu thereof* * * * by law vested in the Interstate Commerce Commission," was the only one argued at the hearing, and, owing to the opinion of the Commission thereon, as hereinafter expressed, it will not be necessary to consider the other grounds raised by the motion to dismiss.

The relief sought would require the abandonment of about two and one-half to three miles of the main tracks of the defendant company, which is an interstate carrier, as well as a relocation of its union station. It was admitted in argument that the expense involved would run at least to a quarter of a million dollars. The change would also involve a relocation of the freight houses and freight depot. In short, it would appear that a real abandonment of the main tracks of the defendant company at a substantial capital outlay is involved in this case.

Subsequent to the decision of January 5, 1918, Congress passed the Transportation Act, approved February 28, 1920. Section 1, paragraph 18, of the Act contains the following language:

> " * * *No carrier by railroad subject to this Act shall abandon * * * * any portion of a line of railroad * * * * unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit such abandonment."

This paragraph was before the Supreme Court of the Unites States in the case of Railroad Commission of California vs. Southern Pacific Company, et al., October term, 1923, April 7, 1924, 44 S.C.R., 376. In that case the city of Los Angeles petitioned the Railroad Commission of California to require certain railroads engaged in interstate commerce to build a union depot in the city of Los Angeles. This involved an abandonment of the main tracks of some of the railroads in the city of Los Angeles and their passenger stations. It was contended in that case by the Railroad Commission that said paragraph 18 referred only to "extensions of a line of railroad having the purpose to include new territory to be served by the interstate carrier, and do not refer to an extension of new main track for the mere purpose of

rearranging terminals within the same city." The Supreme Court of the United States held that the language of paragraph 18 could not be so limited, and to sustain its ruling referred to paragraph 22 of the same section, which is as follows:

> "The authority of the Commission conferred by paragraphs 18 to 21, both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one state, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

The case of Railroad Commission of California vs. Southern Pacific Company, et al., supra, is in point and is applicable to the facts in the instant case. The city of Boulder is requesting an extension of the lines of and an abandonment of about two and one-half or three miles of main track of the defendant company, which also involves an abandonment of the present union depot and its erection elsewhere. If the city of Boulder were merely asking for a relocation of the tracks of defendant company so as to eliminate the necessity of crossing Twelfth Street, this Commission would have ample authority under the police power of the State to grant such a relocation. However, considerable more is involved in its petition. A substantial capital outlay of $250,000 or more would be required to grant the changes requested by the petition to reopen, filed February 21, 1924.

The Commission is of the opinion that there is involved in this case the extension and construction of a new line of railroad and the abandonment of a portion of the main tracks of the defendant company at a substantial capital outlay, to such an extent that the sole jurisdiction for the relief prayed is in the Interstate Commerce Commission, and that, therefore, this Commission has no jurisdiction in the premises..

O R D E R

IT IS THEREFORE ORDERED, That the Commission, having no jurisdiction to determine the matters contained in the petition of the com-

plainant herein, the motion to dismiss is sustained and the proceeding be, and is hereby, dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 11th day of June, 1924.

(Decision No. 710)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of The Colorado Springs and Inter-urban Railway Company for Authority to Change its Existing Tariff, Schedule, Rates, Fares and Charges.	APPLICATION NO. 348

June 11, 1924

Appearances: D. P. Strickler for Petitioner.

S T A T E M E N T

By the Commission:

Petitioner showed that it was operating street and interurban railway passenger line within Colorado Springs, county of El Paso, Colorado and extending to the town of Manitou, Ivywild, Broadmoor, Cheyenne Canon and Roswell, and having a trackage of approximately forty-one miles.

This companys sworn statement shows that it is capitalized for $1,500,000.00, $1,000,000.00 common stock and $500,000.00 in six percent cumulative preferred stock; that it also has an outstanding bonded indebtedness of $1,500,000.00 bearing interest at the rate of five percent per annum; that no dividends have ever been paid on its $1,000,000.00 common stock and no dividends have been paid on its preferred stock since the year 1912; that it is in default in its taxes since March first, 1924, in the sum of $42,452.52 and is now in default in interest on its bonds in the sum of $70,625.00.

It further appears that on June 10,1924, City Council of the City of Colorado Springs sustained a petition presented by this company for an increase in fare, to the sum of ten cents cash full fare and five cents cash half fare, with the sale of weekly pass tickets as follows:

Weekly pass ticket, good within the corporate limits of Colorado Springs - $1.25.
Weekly pass ticket good within the corporate limits of Colorado Springs and from thence to Manitou and return - $2.00

Weekly pass ticket good within the corporate limits of Colorado Springs and thence to either the Broadmoor or Canon districts and return - $2.00
Present transfer priviledges to remain in force.

The major portion of the revenue derived by this utility is from business originating within the corporate limits of the City of Colorado Springs and that the City of Colorado Springs is a Home Rule City with authority given its council in its Charter to regulate the rates of public utilities operating therein.

In view of the fact that petitioner is in urgent need of increased revenue and in view of the further fact that a similar petition has been granted by said City Council of Colorado Springs,Colorado, it is the opinion of this Commission that it is in the interest of the community served by said utility, that petitioner's said petition be granted.

O_R_D_E_R

IT IS THEREFORE ORDERED, That all Rates, Fares and Charges heretofore existing and filed with the Colorado Public Utilities Commission by The Colorado Springs and Interurban Railway Company be, and the same are hereby, abrogated and annulled, and the Rates, Fares and Charges from and after Sunday, June 15,1924, shall be as follows within each present zone of said petitioner's system:

For each and every full fare - ten cents.
Children under twelve years of age and over six years of age - five cents.
Children under six years of age when in charge of anyone paying full fare shall be entitled to ride free.
Petitioner shall offer for sale, weekly passes which shall entitle the purchasers thereof, as well as members of his family, to unlimited riding over the period of one week as follows:

(a) Good within the corporate limits of the town of Manitou and from thence to Colorado Springs and return, for $ 2.00

(b) Good within the Broadmoor and Canon districts and from thence to Colorado Springs and return, for $ 2.00

(c) Good only within the Broadmoor and Canon districts, for $ 1.00

(d) Good only within the corporate limits of the town of Manitou $ 1.00

And that present transfer privileges shall remain in force, except the same shall not apply to pass tickets.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

Dated at Denver, Colorado,
this 11th day of June, 1924

(Decision No. 711)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of Bruce Wiswall for a certificate of public convenience and necessity authorizing him to operate a motor bus line for the hauling of passengers between Denver and Grand Lake, Colorado, and not serving intermediate points.)

APPLICATION NO. 524

(June 11, 1924)

Appearances: Mr. Elmer L. Brock, for Receiver, The Denver and Salt Lake Railroad Company;
Mr. W. H. Wadley, for W. E. Carver.

STATEMENT

By the Commission:

IT APPEARING, That there has been no prosecution in this cause, it is the opinion of the Commission that the same should be dismissed.

ORDER

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 11th day of June, 1924.

(Decision No. 712)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of the Chicago, Burlington & Quincy Railroad Company for authority to abolish the highway crossing over its track at or near the point where said track crosses the section line between Section 34, Township 8 North and Section 3, Township 7 North, Range 46 West, 6th Principal Meridian in Phillips County, Colorado, near Paoli.	APPLICATION NO. 121.

- - - - - - -
June 12, 1924.
- - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Chicago, Burlington and Quincy Railroad Company, through its attorneys, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the closing of a public highway crossing at grade over its main line track about one thousand feet west of the town of Paoli, Colorado, at which town another crossing over said main line track exists.

Exhibit one, a map, accompanies the petition and shows tracks, roads and other features in the vicinity of Paoli, Colorado.

The application, bearing the date of November 26, 1920, was filed with the Commission on November 26, 1920, and was referred to the Board of County Commissioners of Phillips County, Colorado, and to the Mayor and Board of Trustees of Paoli, Colorado, on December 2, 1920.

The feasibility of closing the crossing at issue is based in the application upon the existence of a connecting public road on the south side of the applicant's right-of-way between the town of Paoli and the highway near and south of the crossing desired closed.

On April 7, 1921, the Board of County Commissioners of Phillips County, Colorado, objected by letter to the closing of the crossing for the reasons that the road on the south side of the track did not lawfully exist, and that the public did not favor vacating the crossing. Mr. Claude D. Walrod, County Attorney for Phillips County, Colorado, advised the Commission by letter on September 10, 1921, that the situation in regard to the south road still existed at that time, stating:

> "Second, as we are advised, no road has ever been laid out or established according to law on the south side of the railroad track where crossing is to be vacated. The vacancy, of course, at the point mentioned might cause the county to be in the expense of purchasing a roadway over the Burlington right-of-way, whereas the Burlington now has a crossing upon an established highway."

The matter was set for hearing on September 29, 1921, but this date was changed to October 5, 1921, upon the request of Mr. Walrod. On the latter date the case was opened for hearing by the Commission at its Hearing Room, Capitol Building, Denver, but a continuance was granted by the Commission upon the stipulation submitted by Mr. Rice for the applicant, that if the parties to the controversy were unable to agree upon a satisfactory settlement the case would be reset at some future convenient date.

On May 13, 1922, the Commission was advised by Mr. Whitted, Attorney for the applicant, that negotiations for a right-of-way for the road south of the railway were in progress, and asked that the matter be held in abeyance.

The applicant railroad on June 9, 1924, through its Attorney, Mr. Barwise, requested that the Application No. 121 be dismissed. No evidence being before the Commission that either the applicant or respondent is now, or has been during the past two years, actively endeavoring to acquire the necessary right-of-way to make it feasible to vacate the crossing at issue, the Commission will, therefore, issue its order as herein set forth granting the request of the applicant for dismissal of the case, leaving the matter in status quo.

O R D E R

IT IS THEREFORE ORDERED, That the matter of the application of the Chicago, Burlington & Quincy Railroad for the closing of a public highway crossing at grade west of the town of Paoli, Colorado, at or near the point where the main line track of the applicant crosses the section line between Section 34, Township 8 North, Range 46 West and Section 3, Township 7 North, Range 46 West of the 6th Principal Meridian, is hereby dismissed, without prejudice to right of the applicant or respondents to again bring the matter before the Commission by the filing of a new application.

IT IS FURTHER ORDERED, That the crossing facilities at the location described in this action be continued in service and maintained for public travel.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 12th day of June, 1924.

(Decision No. 715)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of Walter B. Arnold, for a Certificate of Public Convenience and Necessity.	APPLICATION NO. 315

June 15, 1924

S T A T E M E N T

By the Commission:

On March 5, 1924, the above named applicant, Walter B. Arnold, filed an application with the Commission seeking a Certificate of Public Convenience and Necessity to engage in the operation of an automobile passenger and express line between the towns of Steamboat Springs and Craig, Colorado.

Upon the filing thereof, copies were served upon the receivers of The Denver and Salt Lake Railroad and the American Railway Express Company, each of whom filed an answer and protest to the granting of said Certificate; the former on March 19, 1924, and the Express Company on March 23, 1924. Thereafter the Commission set the matter for hearing at the Court House, Steamboat Springs, Colorado, originally for May 27, 1924, but upon the Commission's own motion the same was reset to be held at the same place on June 23, 1924, due notice thereof having been heretofore given to applicant and both protestants.

Thereafter and on June 10, 1924, by letter dated at Kremmling, Colorado, June 8, 1924, the Commission is in receipt of a letter written to it by applicant Arnold which merely states:

> " I wish to withdraw my application for operating a stage line between Steamboat Springs and Craig, Colorado.
> Yours truly, (Signed) Walter B. Arnold."

In obedience to the request of applicant, his application will be dismissed, as once filed it may not be withdrawn. The Commission is not impressed with the tactics that have been pursued by applicant in this proceeding nor with other applicants of a similar nature who have pursued the same tactics, that is, of filing an application for a Certificate of Public Convenience and Necessity which sets the machinery of the Commission in motion, then after protests and objections have been filed and it is carried on the dockets of the Commission, and finally set down for hearing at a definite time and place and all parties have been notified thereof, then to arbitrarily and summarily ask that the application be dismissed. The Commission has no choice, however, nor, for that matter, desire to do otherwise than is requested by applicant, but in so doing it feels that in justice to all concerned the application should be dismissed with prejudice, there being an application for a like purpose between the same points. Therefore, the Commission will order that by virtue of the request of applicant above mentioned, his application for his stage line in questinn, will be dismissed, with prejudice.

O R D E R

IT IS THEREFORE ORDERED, That the application of Walter B. Arnold for the operation of an automobile passenger and express line between the towns of Steamboat Springs and Craig, Colorado, be, and the same is hereby, dismissed with prejudice to his making application for a Certificate of Public Convenience and Necessity for a like service between the points mentioned, save and except upon a showing that good and sufficient cause, in the opinion of the Commission, existed for his request that the application filed herein be withdrawn.

Commissioners.

Dated at Denver, Colorado,
this 13th day of June, 1924.

(Decision No. 714.)

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 discontinuance of regular train service between Denver and Morrison, Colorado.

APPLICATION NO. 331.

- - - - - - -
June 13, 1924.
- - - - - - -

Appearances: For applicant, J.Q. Dier, of Denver.
For protestants, Carl Whitehead, of Denver.

S T A T E M E N T

By the Commission:

Applicant, The Colorado and Southern Railway Company, filed its petition with the Commission on May 12, 1924, asking that the Commission authorize it to discontinue the operation of its regular tri-weekly mixed train (passenger and freight) service on its narrow gauge branch line of railroad extending from Denver to Morrison, Colorado, setting forth in said application that the distance between said points is approximately seventeen miles, and that for the year 1923 and the first three months in 1924 the total operating revenues of the applicant amounted to $3,085.19, of which but the sum of $158.95 was derived from passenger traffic; that during the same period of time the operating expense, excluding taxes, amounted to $19,005.09. Attached to the application is an exhibit setting forth the financial operations of the applicant during the period mentioned.

Applicant also posted notice, as required by General Order No. 34 of this Commission, apprising the patrons of said railway of the application for such proposed discontinuance of regular train service.

On May 27, 1924, protest and objection to the application was filed by the trustee for the bondholders of The Colorado Colleries Company,

a Colorado corporation, and The Green Mountain Coal and Clay Company, a common law trust, by their attorney, protesting to the granting of the application for such discontinuance of service, and representing somewhat at length their grounds of protest and objection.

Upon notice to all parties interested, the matter was set for hearing Tuesday, June 10, 1924, 10:00 o'clock A.M., at the Hearing Room of the Commission, 305 State Office Building, Denver, Colorado, where the same was duly heard.

It will be noted that the concluding sentence of paragraph four of the application, in emphasizing the desire of applicant to discontinue the operation of its regular train service between the points mentioned, states: "If the authority herein sought be granted, freight service will be operated at such times as may be necessary to economically handle the business offered."

At the beginning of the hearing, Mr. Whitehead, for protestants, stated for the record that the protestants hereinabove mentioned and The Pacific Lumber Company, for whom he desired his appearance entered, were protesting only to the extent that if service for the moving of their products should be rendered by the applicant upon reasonable request, there was no disposition or desire of protestants, or either of them, to insist upon the present regular schedule of train service being maintained.

Upon that statement of protestants' attorney, it was suggested by the Commission that a recess be taken, with the view of the parties coming together on some understanding or agreement that would be mutually satisfactory to the carrier and to the protestants, comprising, apparently, practically all of the shippers of freight into and from Morrison over applicant's narrow gauge line.

Upon reconvening of the hearing the parties had reached an agreement, which was dictated into the record and concurred in by all parties concerned, which reads as follows:

"The protestants, A. B. Fritz, as Trustee, The Green Mountain Coal and Clay Company, a common law trust, I.I. Arnold, P.H. Shaklee, Otis A. Rooney, representing the owners of the property on which the Sharon coal mine is located, and The Pacific Lumber Company will consent to the following arrangement:

"1. That this hearing be continued until the 1st of October, 1924.

"2. That from this date, until the further order of this Commission, the present regularly assigned or scheduled train service on the Morrison Branch be suspended, and that the freight traffic on that branch be handled on the following minimum basis:

"(a) Whenever there are five (5) carloads of freight to be moved in whole or in part in either direction on a single round trip, the same shall be moved during any day on notice given by noon of the preceding day.

"(b) Whenever there shall be a total of three (3) cars to be moved from the coal mining property known as the Sharon mine, whether the cars be of coal or of clay or other material, the same shall be moved during any day on notice given by noon of the preceding day, provided that the railway company shall not be called upon more than once in any one week to move a minimum of less than five (5) cars on any one round trip.

"3. It is the understanding that the foregoing shall be carried out in substance and in good faith by the railway company and by the shippers."

It is the understanding of the Commission, gained from the pleadings, and so far as it is advised and not questioned, that the passenger traffic between Denver and Morrison and, indeed, a large part or proportion of the L.C.L. freight moved between said points, is transported by passenger and freight automobile carriers.

In compliance with the understanding and agreement hereinabove quoted, the Commission will enter its order of approval in harmony with such arrangement. In the meantime the application will remain pending until October 1, 1924, and until the further order of the Commission in the premises.

O R D E R

IT IS THEREFORE ORDERED, That applicant, The Colorado and Southern Railway Company, be, and it hereby is, authorized and permitted to discontinue its regularly operated tri-weekly mixed train (passenger and freight) service on its narrow gauge branch line of railroad extending from Denver to Morrison, Colorado, from and after June 10, 1924, until October 1, 1924, and

until the further order of this Commission in the premises.

IT IS FURTHER ORDERED, That during the period June 10, 1924 to October 1, 1924, said applicant carrier shall move freight thereover in carloads at such time and when there are five carloads of freight to be moved, in whole or in part, in either direction on a single round trip, provided consignors of said freight shall give the carrier notice of such movement by at least noon of the day preceding; and further that whenever there shall be a total of three cars to be moved from the coal mining property known as the Sharon mine, carloads, whether of coal, clay or other material, the carrier shall move the same during any day, provided notice by consignor is given the carrier by noon of the preceding day and, provided further, that said applicant carrier shall not be called upon nor required to move a minimum of less than five cars on any one round trip more than once in any one week.

IT IS FURTHER ORDERED, That the above application be suspended but remain on the dockets of this Commission for further proceedings should this order be not fairly complied with, or at the expiration of the period hereinabove stated, to-wit: October 1, 1924.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 13th day of June, 1924.

(Decision No. 715

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of The Denver and Rio Grande Western Railroad System for an order authorizing them to waive collection of undercharges of $35.89 on one carload of freight automobiles Grand Junction to Montrose in February,1924, consigned to Hartman Brothers.	APPLICATION NO. 351

- - - - - -

June 10, 1924

- - - - - -

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 System for an order of the Commission authorizing them to waive undercharges of $35.89 on one carload of freight automobiles consigned to Hartman Brothers, Montrose,Colorado in the month of February,1924.

The application is supported by affidavit from Mr. George Williams, General Freight Agent, The Denver and Rio Grande Western Railroad System, that the legal rate and charges were exacted on the basis of second class rate of 63½ cents per cwt. Montrose to Grand Junction as published in D&RGW RR System Tariff 4900 E Colo. P.U.C. 80.

At the time this shipment moved D&RGW RR System Tariff 4900 E Colo. P.U.C. 80 carried a rate of 39 cents cwt. on automobiles Grand Junction to Montrose, but through error in publishing did not provide for freight automobiles and trucks. The reduced rate was not published until the publication of Amendment No. 14 to D&RGW RR System Tariff 4900 E Colo. P.U.C. 80 and for this reason the Denver and Rio Grande Western Railroad System

feels it would be doing an injustice to shippers in forcing collection of the rate as in effect at time of movement.

The Commission feels that the charges assessed on this shipment were excessive to the extent that they exceeded 39 cents cwt. and an order will be issued for the waiving of the collection of undercharges amounting to $35.89.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Rio Grande Western Railroad System be, and it is hereby, authorized and directed to waive undercharges of $35.89 on one carload of freight automobiles shipped Grand Junction to Montrose consigned to Hartman Brothers which moved in the month of February,1924.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

Dated at Denver,Colorado,
this 10th day of June,1924

716

(Decision No.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

In the Matter of the Application of the Chicago,Burlington & Quincy Railroad Company for an order authorizing them to make refund of overcharges in freight amounting to $7.82 on 158 cases canned tomatoes returned Sterling,Colorado to Denver,Colorado on Way-Bill 651, October 25,1923	APPLICATION NO. 350

June 9, 1924

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 Chicago, Burlington & Quincy Railroad Company for an order of the Commission authorizing them to make refund of $7.82 on shipment of 158 cases canned tomatoes, Sterling,Colorado to Denver,Colorado in October, 1923, consigned to the Morey Mercantile Company.

The application is supported by affidavit from Mr. J. F. Vallery Assistant General Freight Agent, Chicago, Burlington & Quincy Railroad Company that the legal rate and charges were exacted on the basis of 120% of the fourth class rate account original Bill of Lading did not carry stamp per rule 41 section c consolidated classification No. 3 Colorado P.U.C. No. 7.

The carriers agent at Sterling,Colorado now furnishes affidavit in which he states it was error on his part in not applying stamp to original Bill of Lading. Had this been done shipment would not have been penalized 120% of the fourth class rate.

The Commission feels that the charges assessed on this shipment were excessive to the extent that they exceeded 45½ cents per cwt. and an order will be issued giving the carrier authority to make refund of $7.82 overcharges.

O R D E R

IT IS THEREFORE ORDERED, That the Chicago, Burlington & Quincy Railroad Company be, and they are hereby, authorized and directed to make refund of $7.82 overcharges.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 9th day of June, 1924.

(Decision No. 717)

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 them to make refund of $117.00 overcharges on two carloads of radiators shipped from Boulder to University of Colorado in November 1920	APPLICATION NO. 349

- - - - - -

June 9, 1924

- - - - - -

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 Railway Company for an order of the Commission authorizing them to make refund of $117.00 overcharges in freight on two carloads of radiators shipped from Boulder,Colorado, to State University, Colorado in November,1920, consigned to the University of Colorado.

This application is supported by affidavit from Mr. J. E. Buckingham Assistant General Freight Agent, Colorado and Southern Railway; that the legal rate and charges were exacted on the basis of a combination of rates over Boulder,Colorado using 15¢ cwt. Boulder,Colorado to destination. Had the through rate been applied the local rate of 15¢ cwt. would have been eliminated as published in Colorado P. U.C. 397.

The carriers former agent at Boulder misplaced or lost the original file of papers and before same could be duplicated and filed with this Commission the two year statute of limitation for reparation had run. The Commission feels that the charges assessed were excessive to the extent that they exceeded the through rate originating point to destination and an order will be issued authorizing carrier to make refund of the overcharge of $117.00.

ORDER

IT IS THEREFORE ORDERED, That the Colorado and Southern Railway Company be, and they are hereby, authorized and directed to make refund of $117.00 overcharges, due the University of Colorado.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 9th day of June, 1924

(Decision No. 719)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of Washington County, in the State of Colorado, for an order for the opening of a public highway crossing over the right-of-way and main line track of the Chicago, Burlington & Quincy Railroad, at or near the point where the section line between sections 2 and 3, T 3 N, R 53 W, of the sixth Principal Meridian, crosses said track between the stations of Akron and Xenia, Colorado.	APPLICATION NO. 340

June 17, 1924

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Washington County, Colorado, in compliance with section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track of the Chicago, Burlington & Quincy Railroad, between Akron and Xenia, Colorado, on the section line between sections 2 and 3, T 2 N, R 53 W, of the sixth Principal Meridian. The crossing is petitioned for the purpose of accommodating school children living south of the railroad, as well as the general public, there being no other crossing in the vicinity.

The application of the Board of County Commissioners bears the date of April 16, 1924, and was referred, on May 22, 1924, to Mr. J. H. Barwise Jr., attorney for the Chicago, Burlington & Quincy Railroad, for consideration. An answer from the respondent railroad was received by the Commission on June 10, 1924, offering no objection to the establishment of the crossing at the point described in the petition, or 250 feet east of the section line, under the usual terms as to division of cost.

The Railway Engineer for the Commission, Mr. Reynolds, accompanied by Mr. T. McAloon, County Commissioner for Washington County, Mr. E. Burtiss, Road Foreman for said county and Mr. John Duncan, County Clerk, made an inspection of the proposed site on June 13, 1924, and found a condition with respect to difference in elevation between track and natural ground surface at the section line that warrants locating the crossing at a point about 435 feet easterly along track center line from the section line.

This location falls at mile post 434.48 where the width of railroad right-of-way is 200 feet. A highway now exists parallel and adjacent to the railroad right-of-way on the north. Mr. McAloon assures the Commission's Engineer that the connecting highway right-of-way on the south from the crossing to the section line will be provided by the owner of the abutting land.

No obstructions to view from any angle exists at the location. The length of roadway across the railroad will be 260 feet and almost level.

The Commission will, therefore, issue its order granting permission for the opening of the public highway crossing as hereinafter set forth.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway crossing at grade shall be, and the same is hereby, permitted to be opened and established over the main line track of the Chicago, Burlington & Quincy Railroad at mile post 433.48, said point being in section 2, T 2 N, R 53 W, of the sixth Principal Meridian, between the stations of Akron and Xenia; conditioned, however, that prior to the opening of said crossing to travel, it shall be constructed in accordance with the plans and specifications prescribed in the Commission's order in re Improvement of Grade Crossings in Colorado, 2 Colo. P. U. C. 128.

IT IS FURTHER ORDERED, That the expense of acquiring the necessary rights of way for, and the construction of, the necessary connecting highway south of the railroad and the expense of construction and maintenance of grading the roadway at said new crossing, including the necessary drainage therefor,

shall be borne by Washington County, and that all other expense in the matter of installation and maintenance of said crossing shall be borne by the Chicago, Burlington & Quincy Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

Dated at Denver, Colorado,
this 17th day of June, 1924.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO.

(Dec 721)

ORIGINAL

IN THE MATTER OF THE APPLICATION OF THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY TO INCREASE ITS RATES AT AGUILAR, COLORADO.

APPLICATION NO. 358

S T A T E M E N T

By the Commission:

On the 23rd day of June, 1924, The Mountain States Telephone and Telegraph Company filed with this commission an amended schedule of exchange rates for its exchange at Aguilar, Colorado. The rates sought to be put into effect by such amended schedule were as follows:

Individual business service,	$4.50	per month
Two-party business service,	3.50	" "
Individual Residence service,	2.50	" "
Four-party residence service,	2.00	" "

The exchange rates for Aguilar heretofore in effect and which were sought to be increased were:

Individual business service,	$3.00	per month
Two-party business service,	2.50	" "
Individual residence service,	2.00	" "
Two-party residence service,	1.75	" "
Four-party residence service,	1.50	" "

On filing its amended schedule whereby it sought to have the increased rates put into effect, the company also filed its verified application wherein it asked this commission to exercise the authority granted by Section 16, Laws of 1913; Section 2927, Compiled Laws, 1921, and approve and authorize the amended schedule of rates before the expiration of the usual thirty (30) days' notice. As grounds for the application, the company set forth that theretofore, to-wit, on May 12, 1924, the

mayor and board of trustees of the town of Aguilar had notified the company of the action of said board theretofore taken, whereby certain improvements including ornamental lighting for the main street of the said town had been authorized, and requesting the company to remove its telephone poles, wires and fixtures from the said main street in order to permit the improvements so ordered; that the changes and removals of its telephone poles, wires and fixtures would inflict upon it a gross expenditure of approximately Seven Thousand Dollars ($7,000) and a net increase of approximately Four Thousand Dollars ($4,000) in its exchange investment in the town of Aguilar; that such increase in its exchange investment represented an increase of approximately sixty (60) per cent. of its entire exchange investment in the said town; that such increased investment was not justified and could not be made by the company without compensation in some form; that pursuant to negotiations with the mayor and board of trustees of the town of Aguilar, it was agreed that the company should circulate a petition among its subscribers in the said town whereby an increase in exchange rates could be effected to the end that the company might in some measure be reimbursed for the expenditures about to be inflicted upon it.

To the application of the company there was filed, as a part thereof, a petition addressed to this commission, signed by seventy-seven (77) of the eighty (80) subscribers to telephone service from the exchange at Aguilar, whereby the said seventy-seven (77) subscribers prayed that this commission authorize and approve the amended schedule for increased rates submitted by the company. Subsequently, a supplemental petition in the same form and to the same effect as the original petition, signed by another subscriber to telephone service from the Aguilar exchange, was filed with this commission. In addition, another subscriber addressed a letter to this commission, acknowledging notice of the application of the company for increased rates and evidencing

his intention not to object to the same.

The commission, having found that the changes and removals of the company's telephone poles, wires and fixtures from the main street of Aguilar will inflict upon it the expenditure alleged, and in view of the practically unanimous assent of the subscribers of the company in its Aguilar exchange,

ORDER

IT IS THEREFORE ORDERED that the amended schedule of rates of the applicant, The Mountain States Telephone and Telegraph Company, filed with this commission for service in the exchange at Aguilar, Colorado, as set forth above and as filed on June 23, 1924, be, and the same is, hereby permitted to become effective on the completion of the changes and removals of the telephone poles, wires and fixtures of the applicant from the main street of Aguilar.

IT IS FURTHER ORDERED that, upon the completion of the removals and changes of its telephone poles, wires and fixtures as requested by the town of Aguilar, the applicant, The Mountain States Telephone and Telegraph Company, file with this commission its statement in writing to the effect that such changes and removals have been completed.

Dated at Denver, Colorado, this 30th day of June, A. D. 1924.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Commissioners.

(Seal)

(Decision No. 725)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of Kiowa County, Colorado, for a Public Grade Crossing across the tracks of the Missouri Pacific Railroad at Chivington, Colorado.

APPLICATION NO. 335

(July 3, 1924)

STATEMENT

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Kiowa County, Colorado, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public highway crossing at grade over the tracks of the Missouri Pacific Railroad "at a point where the said railway crosses Newman Street of the town of Chivington," Colorado.

The application, dated May 16, 1924, and received by the Commission May 21, 1924, was referred to Mr. T. H. Devine, Pueblo, Colorado, Attorney for the respondent railroad, for an expression of its attitude in the matter. Mr. Devine replied by letter on June 6, 1924, assenting to the establishment of a crossing at this point, if, after the usual investigation, the Commission deemed it justified; Mr. Devine stated further that he had not been advised whether or not the county has a right-of-way across the railroad property at the point of the proposed crossing.

The Commission will not determine on the question of right-of-way within the lines of Newman Street on the railroad area but will issue its order relative to the matters usually met in a proceeding of this nature, dependent upon the legal occupation or acquisition of the land by the proper municipal or county authorities.

On June 26, 1924, W. L. Reynolds, Railway and Hydraulic Engineer for the Commission, made an investigation of conditions at Chivington,

viewing the site and discussing the matter with Mr. J. O. Walker, County Commissioner of Kiowa County, and with business men of Chivington. It was brought to the attention of Mr. Reynolds that three school busses bringing children from the area north of the railroad are now compelled to travel over a quarter of a mile extra distance for the sole purpose of crossing the tracks.

All the places of business in the town face the railroad within a distance of about two blocks on a street paralleling the right-of-way and on the north side of it. The only means of entering this street from the south side is over a crossing just west of the depot. This brings all vehicles on to this street headed east and without a means of recrossing except by turning in the street.

The location of crossing on Newman Street is satisfactory regarding grades and unobstructed view; in fact, it excels the old crossing in respect to view as a small grove across from the depot somewhat hinders the view of westbound trains to the driver of a vehicle crossing from the north.

It is the opinion of the Commission that the convenience and necessity of the public require the establishment of the crossing at Newman Street, and it will, therefore, issue its order granting the request of the applicant under the conditions as herein set forth.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 14, 1917, a public highway crossing at grade shall be, and the same is hereby, permitted to be opened and established over the tracks of the Missouri Pacific Railroad at Newman Street, in Chivington, Colorado; conditioned, however, upon the legal possession or acquisition of right-of-way, and further conditioned that, prior to the opening of said crossing to travel, it shall be constructed in accordance with the plans and specifications

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 construction and maintenance of grading the roadway at said new crossing shall be borne by Kiowa County, and that all other expense in the matter of installation and maintenance of said crossing shall be borne by the Missouri Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 3rd day of July, 1924.

Rec 725

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of A. G. DANA, for authority to construct an oil pipe line in Townships 5 and 6 North, Range 91 West of the Sixth Principal Meridian, Moffat County, Colorado.) APPLICATION NO. 356.

- - - - - - - - - - -
July tenth, 1924
- - - - - - - - - - -

Appearances: George E. Brimmer, of Cheyenne, Wyoming for Petitioner.

FINDINGS AND ORDER.

By the Commission:

The Application of A. G. Dana, of Cheyenne, Wyoming, requesting an order from The Public Utilities Commission of the State of Colorado authorizing the construction of a pipe line for the conveyance of oil in Townships Five (5) and Six (6) North, Range Ninety-One (91) West of the Sixth Principal Meridian, Moffat County, Colorado, was received by The Public Utilities Commission under date of June 25th, 1924. On June 26th, 1924, the petition was formally filed with The Public Utilities Commission; and Notice was ordered given that upon July 10th, 1924, at the hour of two o'clock P. M., The Public Utilities Commission of the State of Colorado would hear evidence in support of the application and any protests filed in opposition thereto and evidence in support of such protests.

At the appointed hour, the petitioner appeared by his counsel, while no protestant entered appearance or offered opposition to the granting of the application.

The applicant offered evidence, under oath, relative to the necessity for the construction of the proposed pipe line and the Commission being now fully advised in the premises,

DOTH FIND:-

1. That the applicant is a resident of Cheyenne, Wyoming and is engaged in the business of producing oil and gas; that he is the general manager of The Kasoming Oil Co., a Wyoming corporation; that The Kasoming Oil Co. is owned by The Prairie Oil and Gas Company, a Kansas Corporation.

2. That in the year 1923, The Texas Oil Company and The Transcontinental Oil Company secured control of the Hamilton Dome in Moffat County, Colorado, and drilled a test well in the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section Thirty-Three (33) Township Five (5) North, Range Ninety-One (91) West of the Sixth Principal Meridian; that, as a result of the drilling operations, oil was discovered in commercial quantities to the approximate amount of 4500 barrels per day.

3. That The Prairie Oil and Gas Company has entered into contract with The Texas Oil Company and The Transcontinental Oil Company for the purchase and handling of the production of oil from the Hamilton Dome; that The Prairie Oil and Gas Company is to take the oil as produced.

4. That three or four additional wells are being drilled upon the Hamilton Dome, but, before definite arrangements for construction of refineries or conveyance of large quantities of oil can be made, it is necessary that a test of the production of the first well be had; that it is inadvisable to build tankage away from the railroad for the purpose of utilizing said tankage in connection with the test; that it has been determined by The Prairie Oil and Gas Company to be advisable to build the tankage on the Moffat Railroad near Craig, Colorado; that to convey the oil from the Hamilton Dome to the Tank Farm near Craig it is necessary to construct a pipe line approximately sixteen miles long.

5. That the application for permission to construct the pipe line has been made in the name of A. G. Dana, but that the real parties in interest would be The Prairie Oil and Gas Company; that The Prairie Oil and Gas Company has completely financed the construction of a pipe line for the said Dana; that the said Dana is fully competent financially and otherwise to have the said pipe line constructed and to manage the same through arrangements made with The Prairie Oil and Gas Company, aforesaid.

6. That no protests have been presented in opposition to the construction of the said pipe line or to the granting of a Certificate of Convenience and Necessity.

7. That it is to the best interests of the People of Colorado that the pipe line be constructed andthat the Commission grant authority for the construction of the pipe line.

O R D E R.

WHEREFORE, IT IS ORDERED: That the applicant, A. G. Dana, of Cheyenne, Wyoming, be and he is hereby granted a Certificate of Necessity and Convenience authorizing him to construct a pipe line for the conveyance of oil as proposed along the right of way, extending approximately through the following described sections of land, to-wit:

Range 91 West of the 6th P.M.
Township 5 North
Section 33
Section 28
Section 21
Section 20
Section 16
Section 17
Section 8
Section 7
Section 6
Range 91 West of 6th P.M.
Township 6 North
Section 31
Section 32
Section 29
Section 28
Section 21
Section 15
Section 10
Section 3
Section 2

IT IS FURTHER ORDERED, That the said A. G. Dana be and he is hereby granted authority to convey oil through the said pipe line when constructed with full right to operate the said pipe line for the conveyance of the oil purchased by The Prairie Oil and Gas Company and by the said A. G. Dana or owned by them and for the conveyance of oil through the said pipe line as a common carrier.

IT IS FURTHER ORDERED, that the said A. G. Dana report to this Commission within Forty Five (45) days after the full completion of the pipe line the approximate cost of same, by verified statement.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

By _____

_____

_____

Commissioners

Dated at Denver, Colorado this
10th day of July, 1924.

(Decision No. 726.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - - -

In the Matter of the Application of the Paradox Land & Transport Company, a corporation, for a certificate of public convenience and necessity.

APPLICATION NO. 306

July 11, 1924.

Appearances: Geo. H. Swerer and H. E. Luthe, Esqs., of Denver, for applicant;
E. E. Whitted, J. L. Rice and J. Q. Dier, Esqs., of Denver, for The Colorado and Southern Railway, and The Denver and Interurban Railroad, protestants;
C. C. Dorsey and E. G. Knowles, Esqs., of Denver, for Union Pacific Railroad, protestant.
T. A. McHarg, of Boulder, for Boulder Chamber of Commerce.

S T A T E M E N T

By the Commission:

The above named applicant filed its application with the Commission on December 21, 1923, for a certificate of public convenience and necessity, authorizing it to operate a passenger motor bus line between the city of Denver, Colorado, and Boulder, Colorado, and between the city of Fort Collins, Colorado, and the town of Wellington, Colorado, and the northern boundary line of the State of Colorado, in each instance over the main traveled highways between such points.

The application, insofar as it effects the city of Boulder, is the second that has been made by applicant, the first having been filed on February 5, 1923, decided June 14, 1923, in which the Commission denied the issuance of the certificate.

Re Paradox Land & Transport Company, P. U. R. 1923-E, 759.

In 1921 a certificate of public convenience and necessity for the operation of a motor bus line between Denver and Fort Collins, Colo-

rado, over the main traveled highway, was issued to a co-partnership, operating under the name of Paradox Land & Transport Company, which subsequently was acquired by the present incorporate applicant, and it has been operating said bus line since issuance of the certificate in April, 1921.

Re John T. Donovan, et al., P. U. R. 1921-D, 488.

The present application, therefore, is for authority to extend the operation of the present bus line from Fort Collins, north to Wellington, thence to the northern boundary line of the State; and from the town of Lafayette, a point on the Denver-Fort Collins line, to the city of Boulder. The applicant states in its application the belief that the public convenience and necessity requires the establishment of both said extensions of its bus line, and the principal ground upon which it relies with respect to the line between Denver and Boulder, is the convenience and necessity of the residents of the town of Lafayette, and the people residing along the highway between Lafayette and Boulder, needing additional means of transportation to Boulder, the county seat of Boulder County, in which the town of Lafayette is situated; and that with respect to the extension of its bus line between Fort Collins and Wellington and thence to the northern boundary line of the State, that the existing train service is entirely inadequate to serve the public convenience and necessity in the transportation of passengers between said points.

Copies of the application were served upon The Colorado and Southern Railway Company and The Denver and Interurban Railroad Company, which operate passenger train service between Denver and Boulder, and also upon the Boulder Chamber of Commerce. The two rail carriers filed an answer and protest on December 31, 1923, to the granting of the certificate applied for, and later an answer and protest was filed by the Boulder Chamber of Commerce. Subsequently, the Union Pacific Railroad Company asked leave to intervene, and filed its answer

and protest by adopting the allegations of the answer and protest of the Colorado and Southern Railway aforesaid. At the hearing the Board of County Commissioners of Boulder County, filed a protest against granting applicant the certificate applied for, in the nature of a certified copy of a resolution adopted by said Board, March 15, 1924.

The basis of objections by the rail carriers substantially is, that they are furnishing adequate and efficient train service between Denver and Boulder, and, as a matter of fact, more numerous train service than the passenger traffic justifies. The answer and protest of the Boulder Chamber of Commerce is based on the ground that so far as the city of Boulder is concerned, it is now adequately served by transportation companies now already in the field and operating in and out of the city, and that the transportation facilities now available are amply adequate for the transportation needs of that community, and that to grant additional facilities would merely divide the business, with a probably future expectation of a cessation of the rail facilities that now exist.

The Colorado and Southern Railway Company protests against the issuance of the certificate between Fort Collins and the north boundary line of the State, for the reason that the passenger train service furnished by them is now, and in the past has been, more than adequate to supply and take care of the reasonable requirements and needs of the communities in the territory between Fort Collins and Wellington and the Colorado-Wyoming State line.

The application was set for hearing for February 18, 1924, along with a number of other applications seeking certificates of public convenience and necessity for the operation of motor truck freight lines between Denver and various points north and south thereof; but later, by agreement of all parties in interest, the instant application was continued until March 18, 1924, where the hearing, upon notice to all parties, was duly heard at the Hearing Room of the Commission, State

Office Building, Denver, Colorado. Subsequently briefs were filed, but owing to circumstances surrounding the personnel of the Commission which were unavoidable, the decision of the matter has been thereby deferred until the present time.

Applicant proved its incorporate capacity and also filed evidence sufficient to satisfy the requirements of the statute with reference to the consent of the city of Boulder as to the operation of said motor bus line, into and out of, said city. The testimony presented by applicant was not more convincing as to the alleged public convenience and necessity for the operation of said bus line between Denver and Boulder, than was its testimony, presented at the hearing upon its prior application in 1923.

It is conceded by all parties that so far as the cities of Denver and Boulder are concerned, protestant, The Denver and Interurban Railroad Company, operates daily its thirteen (13) interurban trains in either direction, the first train out of Denver being at 6:20 A. M. for Boulder, and the first train out of Boulder being 6:10 A. M. for Denver and hourly thereafter, except for a period of two hours in mid-day, until late at night, the last train out of Denver for Boulder being at 11:43 P.M. and out of Boulder for Denver at 10:40 P. M. In addition to the above twenty-six (26) electric trains serving Denver and Boulder, the steam carriers operate four passenger trains daily in either direction between Denver and Boulder, three of which via The Colorado and Southern operate on schedules leaving Denver at 8:00 A. M., 2:30 P. M. and 6:00 P. M., arriving at Boulder about one hour and fifteen minutes later, and returning, leaving Boulder at 8:50 A. M., 10:03 A. M. and 5:08 P. M., arriving Denver 10:05 A. M., 11:15 A. M. and 6:25 P. M.; while the Union Pacific operate a service from Denver via Brighton and Saint Vrain to Boulder, which though not of importance to the patrons traveling between Denver and Boulder, yet affords an additional means of transportation between Denver and Boulder and intermediate points.

It will hardly be questioned that the above train service insofar as Denver and Boulder are concerned, is probably as frequent as any other similar communities in the United States, save possibly between two centers of very large population; certainly it is a service much superior to any train service afforded any communities in the Trans-Mississippi country and surely any community or communities within the confines of the State of Colorado; and we may say, in passing, that but for the existence of the cities of Denver and Boulder, there would be no electric train service at all, and no application for a certificate of convenience and necessity for the operation of a motor bus line. Take the patronage afforded by passengers traveling between Denver and Boulder and vice versa, out of the equation, there would not be sufficient passenger travel left to warrant the operation of a motor bus as often as once a day, and probably not at all.

The principal evidence offered by applicant to prove the alleged public convenience and necessity for the operation of its proposed motor bus line between Denver and Boulder, is to the effect that the people of Lafayette, and some school children living along the Arapahoe Road east of Boulder for a distance of eight or ten miles, would be conveniened by the inauguration of this bus line. That falls short of the proof necessary to establish the public convenience and necessity, as that phrase has been construed. The public convenience and necessity means in the statutory sense, the convenience and necessity of the general public as contra-distinguished from the convenience and necessity of a community, locality, or a specific territory. This phase of the matter was before the Supreme Court of Illinois in the review of a case involving the granting of a certificate of public convenience and necessity by the Illinois Commerce Commission, in which it was said:

"Some individuals, - perhaps a considerable number, - would be convenienced by the operation of the bus lines; but it is clear from the record that to the great body of the public it would be neither a convenience or necessity: it is not within the authority of the Commission to authorize the operation of the bus lines for the convenience of a small part of the public already served by other utilities at no very great inconvenience."

West Suburban Trans. Co. v. Chicago & W. Towns Ry. Co. P. U. R. 1923-E, 150:: 140 N. E. 56.

It is conceded that so far as the people of Lafayette are concerned who desire to go to Boulder, they have an opportunity three times daily to do so, with ample time between trains to transact business; likewise to Denver the same condition exists with the added facilities of the steam train of the Chicago, Burlington & Quincy Railroad, which affords a morning and evening service, to and from Denver. While it might be somewhat inconvenient for the people of Lafayette, it is not the convenience and necessity that is contemplated by the statute. It is probably true that if a bus, or an electric car, or a flying machine, offered service every fifteen minutes from dawn until midnight of each day, some person or persons would find it convenient to use such fifteen minute service; but such a service would hardly be termed a necessity of any character. Eliminate patronage from Denver and Boulder and Lafayette and you have left a patronage practically negligible.

In a recent case decided by the Supreme Court of Ohio, the facts in which are quite similar to the facts in the instant case with respect to the Denver-Boulder situation, on a review by the Ohio Supreme Court of a Commission order denying the issuance of a certificate of public convenience and necessity to bus operators who paralleled the lines of the Scioto Valley Traction Line between Columbus and Chillicothe, and in approving the decision of the Commission denying such certificate, this language is used:

"According to the record the Scioto Valley Traction Line is handling on the Columbus-Chillicothe Division an average of 1800 passengers per day;***the passenger carrying facilities of the traction line are over half idle; the general public use the parallel state highway to such an extent that it is generally congested; the cars of the applicants carry an average of seventeen (17) persons per round trip;***applicants, however, do not make, or offer to make, any such permanent investment as carries assurance of a reasonable perpetuity of service should the owners of the Scioto Valley Traction Line terminate its operations."

Re J. B. McLain, et al., P. U. R. 1924-B, 188, Adv. Sht. March 13, 1924.
143 N. E. 381, Adv. Sht. May 13, 1924.

The same principle in practical effect has been announced by this Commission a number of times, the last of which is in the application of Rhodes and Davis Brothers for the operation of motor truck freight lines on the Western Slope, decided October 26, 1923.

Re W. H. Rhodes, et al., P. U. R. 1924-C, 303, Adv. Sht. No. 2, June 5, 1924.

In its brief applicant has adverted to the fact that Boulder is the seat of the University of Colorado and that large numbers of the students travel between Boulder and Denver at the week end and upon other occasions; hence it is argued that public convenience and necessity require the operation of the proposed motor bus line. With twenty-six (26) electric trains and six (6) steam trains plying between Boulder and Denver daily, regardless of weather conditions, from early morning to late at night, it is difficult to see wherein even the necessity and convenience of the student body reasonably would require any additional transportation facilities; and when it is remembered that the electric and steam service is provided day in and day out through storms, strife, snow, cold and sleet, whereas the motor bus line, with its limited capacity is more likely to be effected by adverse weather and road conditions, and hence its facilities curtailed to this extent, the argument is scarcely worthy of consideration. If it were not for the electric and steam service above mentioned and there were any considerable number of students that desired to travel between Boulder and Denver at frequent intervals, a considerable number of busses would be required which would merely add to the congestion upon the main traveled highway, and consequently the public would be more inconvenienced than the student body would be convenienced. Applicant in its brief also adverted to the alleged fact that there are a number of taxi owners in Boulder who transport passengers from Boulder to Denver daily who have never applied for, nor received, a certificate of public convenience and necessity so to do; and the inference from the argument is, that in view

of applicant obeying the law in making its application as it has always done, it should not be denied the certificate applied for when others are permitted to engage in the passenger carrying business between the cities named, unlawfully. The attitude of the applicant in obeying the law is certainly commendable, but the Commission cannot deal with the alleged unlawful taxi common carriers until that situation is brought before it.

For the reasons herein above stated and for others that might be alluded to were it not for unduly prolonging the length of this decision, the Commission finds that the public convenience and necessity does not require, nor will not require, the operation of the proposed auto bus passenger line of applicant herein, between the cities of Denver and Boulder, Colorado, and that much of its application will therefore be denied.

With reference to that portion of the application wherein the applicant seeks a certificate of public convenience and necessity for the operation of its auto bus line between Denver and Wellington and thence north to the Colorado-Wyoming State line, but comparatively little evidence was submitted. It is conceded however, that train service between Fort Collins and Wellington is confined to two trains daily in either direction, over The Colorado and Southern Railway; north bound service comprising trains leaving Fort Collins at 11:05 A. M. and 8:57 P. M., arriving Wellington 11:27 A. M. and 9:20 P. M.; south bound leaving Wellington 6:46 A. M. and 2:53 P. M. arriving Fort Collins 7:13 A. M. and 3:20 P. M. Thus it will be seen that the rail carrier affords but one train that the public could conveniently use, being trains 31 north bound and 32 south bound, insofar as traffic from Fort Collins to Wellington is concerned. In the other direction, traffic from Wellington to Fort Collins would be required to leave at 6:46 in the morning and either leave Fort Collins at 11:05 in the forenoon or remain until 8:57 at night.

There was testimony offered by applicant in proof of the alleged public convenience and necessity, that in the territory contiguous

to Wellington there had been recently discovered large oil deposits and a great deal of activity in the way of drilling for oil and gas has recently been undertaken in the territory tributary to Wellington, so that the present rail passenger service is inconvenient and inadequate to the general public for use between Fort Collins and Wellington. By its schedule, applicant proposes to operate auto passenger busses daily between Fort Collins and the oil territory, affording patrons the opportunity of north and south bound service thrice daily, on a schedule that will permit a passenger a considerable length of the day at Wellington or in the oil territory tributary thereto. Under the present schedule one desiring to go from Fort Collins to Wellington, as stated above, in daylight service, would use train 31, arriving at Wellington at 11:27 A. M. and be compelled to return on train 32, leaving Wellington at 2:53 in the afternoon, thus giving one about three hours and a half at Wellington and the oil fields, lest he remain until the next morning at 6:46 A. M.

Inasmuch as applicant has heretofore received a certificate of public convenience and necessity for the operation of its auto bus passenger line between Denver and Fort Collins, and has, so far as it has been brought to the attention of the Commission, rendered adequate and convenient service to the population between those two cities and intermediate points, for approximately a period of three years, the Commission is inclined to the belief from all the testimony produced, that the present and future public convenience and necessity requires, and will require, the extension and operation of applicants auto bus line from Fort Collins to Wellington on the schedule filed with its application; and it so finds and in the order accompanying this decision, authorizes the operation of said auto bus line between said points. Applicant shall, however, file with the Commission within 15 days from this date, its verified statement showing the amount of capital it has invested in the equipment used and useful in the operation of its Fort Collins-Wellington auto bus line.

O R D E R

IT IS THEREFORE ORDERED, That the application of the Paradox Land and Transport Company, applicant herein, for a certificate of public convenience and necessity to operate an auto bus passenger line between the cities of Denver and Boulder, Colorado, be, and the same is hereby, denied.

IT IS FURTHER ORDERED, That the application of said applicant for a certificate to operate its auto bus passenger line between the city of Fort Collins and the town of Wellington, Colorado, on the schedule filed with its application be, and the same is hereby, granted, and this order shall be deemed and held a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That as to that part of the application for the establishment by applicant of an auto bus passenger line between Wellington and the northern boundary line between the States of Colorado and Wyoming, be, and the same is, for the reasons herein above given, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

(Decision No. 727)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Petition of J. +Fred Jensen and Frank B. Laws for opening of a Private Way with Crossing over the Right of Way and Track of The Colorado and Southern Railway Company, at a point 2670 feet northwest of Mile Post No. 11 on the Denver, Colorado Springs Line.	APPLICATION NO. 327

(July 15, 1924)

STATEMENT

By the Commission:

The Colorado and Southern Railway Company filed, in the above application, a motion to dismiss for want of jurisdiction on May 5, 1924. On May 12, 1924, an order was entered by the Commission dismissing the application herein for the reason that the matters contained in the application are not matters that the Commission is empowered to consider under the laws of the State of Colorado.

A search of the file discloses that the motion filed by The Colorado and Southern Railway Company was not set down for hearing and no notice of any hearing was served upon the applicants, nor have they had an opportunity to be heard on said motion.

ORDER

IT IS THEREFORE ORDERED, That the order entered by the Commission on May 12, 1924, dismissing said Application No. 327, be vacated and set aside.

IT IS FURTHER ORDERED, That said Application No. 327 be reinstated on the calendar, pending on the motion of the respondent, The Colorado and Southern Railway Company, to dismiss and that said motion to dismiss be set down for hearing as soon as convenient, upon notice to all parties interested in said application.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E Hall
J. D. Lawson
Walter Bock
Commissioners.

Dated at Denver, Colorado,
this 15th day of July, 1924.

(Decision No. 728

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) APPLICATION NO. 332
closing of its Agency Station at)
Dillon, Colorado.)

(July 23, 1924)

STATEMENT

By the Commission:

IT APPEARING, That applicant in this cause has requested its application be withdrawn and order of dismissal be entered.

O R D E R

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed without prejudice to the later filing of a similar application.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Halderman

W. P. Lamon

Otto Bock

Commissioners.

Dated at Denver, Colorado,
this 23rd day of July, 1924.

(Decision No. 729.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of The Colorado & Southern Railway Company for an order authorizing the consolidation of its agency stations at Fairplay and Alma, Colorado.

APPLICATION NO. 317.

- - - - - - -
July 26, 1924.
- - - - - - -

Appearances: J. Q. Dier, of Denver, Colorado, for Applicant, The Colorado & Southern Railway Company; Barney L. Whatley, of Denver, Colorado, and John M. Boyle, of Fairplay, Colorado, for Protestants, the Town of Fairplay, Colorado, the Town of Alma, Colorado, and certain individuals.

S T A T E M E N T

By the Commission:

On March 20, 1924, The Colorado & Southern Railway Company, pursuant to the Commission's General Order No. 34, filed with the Commission its petition for authority to consolidate its existing agency stations at Fairplay and Alma, in Park County, Colorado, at a point about midway between those towns. Subsequently protests were filed by the towns of Fairplay and Alma and certain residents of Park County.

Thereupon the application was set for hearing at Fairplay for May 1 and, by agreement, continued first to May 13 and later to Friday, May 23, 1924, at which time the hearing was duly held at the county Court House, Fairplay, at 10:00 o'clock A.M.

During August, 1923, The Colorado & Southern Railway Company filed an application with the Commission for authority to close its agency station at Alma, Colorado. This application was docketed as No. 280. Protests having been filed, a hearing was thereafter held, and on November 16, 1923, the application was by order "for the present" denied (Decision No. 659). In the course of the report accompanying the order, the Commission said:

"A somewhat peculiar condition exists surrounding the matters involved in this proceeding, in that the depot at Alma is approximately one mile distant from the business section of the town, while the depot at Fairplay is almost equally distant from the business section of Fairplay. However, conditions at Fairplay are not involved in this proceeding except to the extent that the testimony of the auditor for applicant establishes the fact that one agent would have ample time to take care of the business offered at both these towns were the agencies consolidated.

"In view of these facts and in view of the further fact that it is notorious that the South Park lines of applicant are not self-sustained and have not been for many years, the Commission is inclined to submit the suggestion to the people of the two communities and to the applicant company that it may be possible, in the interest of economy of railroad management, that they all get together and place an agent midway between Alma and Fairplay to serve both communities. This suggestion, of course, is made dehors the record and is not to be considered by any party to this proceeding as being in any way an influence in the decision of this application."

In the petition filed herein the foregoing extract was quoted and the suggestion thus made adopted in the prayer for relief, the relief prayed for being authority "in the interest of the efficient and economical management and operation of its said lines of railroad to close its existing agency stations at Fairplay and Alma and in lieu thereof to establish an agency station approximately midway between said towns."

At the hearing it was developed that while from a railroad operating standpoint the location of the agency station at the midway point was feasible and practicable, and that it would be a matter of more or less indifference whether the station was maintained at such midway point or at Alma or at Fairplay, yet it seemed to be the consensus of opinion of the witnesses testifying for the protestants that the midway location for the station would not be satisfactory to the company's patrons. Accordingly, during the course of the hearing, an oral application was made on behalf of the railway company for permission to so amend its prayer as to ask for relief in the alternative, i.e., for the establishing of the consolidated agency either at the midway point or at Fairplay or at Alma, as the Commission might determine would best serve the public interests. Objection thereto was made on behalf of protestants and ruling thereon reserved.

It has long been the established rule in this State that in contested cases the prayer for relief is of no particular significance, and that such relief as the facts pleaded and the evidence warrant should be granted. Such doctrine is here applicable. In our judgment, the petition adequately alleges the facts essential to the conclusion that two agency stations within 5.4 miles of each other, under existing conditions, are not required and the evidence submitted fully supports and confirms such conclusion. Technical amendment of the prayer hence becomes unnecessary or, if deemed advisable, will hereafter be considered as having been made pursuant to the oral application.

The narrow gauge lines of The Colorado & Southern Railway Company are known as its South Park Division and consist of about two hundred ninety-one miles of operated railroad, made up as follows: The Clear Creek district (Denver to Silver Plume, with a branch from Forks Creek to Central City) sixty-seven miles; the Platte Canon and Leadville districts (Denver to Leadville via Dillon, with a branch from Sheridan to Morrison) one hundred sixty-five miles; and the Gunnison district (Como to Alma and Buena Vista to Romley) fifty-nine miles. It is a matter of record of which this Commission has long been advised and which the public at large, if it were but interested, could easily verify, confirmed by the record in this case, that the expense of operating these narrow gauge lines, including the taxes paid thereon, annually exceeds the revenues derived from their operation by from one-half to three-quarters of a million dollars. For example, in 1923 this operating deficit was over $650,000. These losses, incurred in furnishing railroad facilities to the mountainous portions of the State served by applicant's narrow gauge lines, constitute an exceedingly heavy drain upon the earnings of its broad gauge railroad and in part, at least, afford an explanation of applicant's failure in recent years to earn from its railway operations interest upon its bonded indebtedness. Again, taking 1923 for illustration, The Colorado & Southern Railway Company earned from the operation of all its lines of railroad only

$790,129.99 with which to pay over $2,000,000.00 of interest upon its outstanding bonds.

To curtail expenses and by that means to thereby reduce the startling operating deficit of the narrow gauge lines is consequently imperative, and should meet not only with the support and encouragement of this Commission, but of the public at large.

Leaving the main line at Como, a branch line thirty-one miles in length extends to Alma station, the town itself being about one mile from the station. Fairplay station is located 5.4 miles from the terminus of this branch. The town of Fairplay is similarly about three-fourths of a mile from Fairplay station. The distance by the highway from Como to Fairplay is ten miles, and to Alma sixteen miles.

The following table of operating results for the five year period last past portrays the unhappy plight of this branch:

	1919	1920	1921	1922	1923
Operating Revenues	$18,849.74	$22,560.35	$20,953.34	$21,989.46	$19,648.66
Operating Expenses	$67,093.36	$100,538.80	$60,055.55	$55,712.55	$62,644.81
Taxes	$24,395.83	$ 27,327.08	$29,971.59	$31,511.32	$28,706.16
Operating Deficit	$72,639.45	$105,305.53	$69,073.80	$65,234.41	$71,702.31

According to the United States census reports, in 1880 the population of Park County was 3970; in 1890, 3548; in 1900, 2998, in 1910, 2492; in 1920, 1977. The population of Fairplay in 1890 was 301; in 1900, 319; in 1910, 265; in 1920, 183; of Alma in 1890, 367; in 1900, 297; in 1910, 301; in 1920, 127.

From January 1, 1924, to the hearing date, May 21, 1924, there were four inbound carload shipments to each of these towns and one outbound carload, or a total movement of nine carloads to and from Alma and Fairplay during a period of four and two-thirds months. Such record is but typical of the railroad shipping activity in recent years. The passenger traffic is, similarly,

almost negligible. Constant service tendered but with almost no patronage necessarily produces results such as indicated by the above quoted figures.

Protestants do not question the accuracy of these figures, or of the testimony to the effect that the business transacted at each of these stations does not require to exceed two hours daily of the eight hours during which the agent is on duty. In other words, the combined business of the two stations will not occupy more than one-half of the eight hour day during which an agent at the consolidated agency would be on duty.

The Commission has now conducted two investigations with reference to conditions upon this branch. The testimony is convincing, we believe, that the applicant should be permitted to inaugurate the desired economy. Located as they are, within approximately five miles of each other, all things considered it is evident that public convenience and necessity, as that phrase is interpreted, does not require the maintenance of the two agencies.

We believe it to be the duty of the people of these two nearby communities to cooperate with the railway company. As well said by the Interstate Commerce Commission:

> "They should realize that they have a duty to perform. The mere desire to have a railroad is not enough. There must exist the will to cooperate in its operation by accepting such reasonable economies in service as may be feasible and by adequately supporting the line. Resort should not be had, where no necessity exists, to other carriers or to other forms of transportation."
>
> In re Abandonment of C. P. & St. L. RR, 76 I.C.C. 801,807.

If that spirit actuates them, the people of these two towns and the surrounding region will not find the inconvenience of one agency serious. They should remember that it is better to have this branch operated with only one agent than to have no railroad. Upon the record here submitted, neither good morals nor the law can justify the needless economic waste involved in a retention of the two agencies.

Where then shall the consolidated agency be maintained? Bearing in mind that the prime motive for the consolidation of agencies in this case is one of economy to the railroad, and that the cost of installing the consoli-

dated agency at the midway point between Fairplay and Alma, according to the testimony, would approximate $1,000.00, and when so located would be of no benefit or advantage to the people of either town or, as one witness stated it, "we had as well have no agent at all," meaning that if the agent were located at the midway point, it is apparent that it is illogical and ill advised to even contemplate the establishment of the agency station at such midway point.

The Commission's proposal has been rejected and, acquiescing therein, it seems to the Commission, and it accordingly finds, that the retention of the present agency station at Fairplay and the closing of the Alma agency will best serve and meet the needs and requirements of the greatest number. The reasons for this conclusion are obvious and do not require discussion or elaboration other than to point out that Fairplay is the more centrally located, in addition to being the county seat.

O R D E R

IT IS THEREFORE ORDERED, That The Colorado & Southern Railway Company be, and it is hereby, permitted to discontinue and close its agency station at Alma, Colorado, on and after August 15, 1924, and until the further order of the Commission in the premises.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 26th day of July, 1924.

(Decision No. 730)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

In the Matter of the Application of The Denver and Rio Grande Western Railroad for an order authorizing it to waive the collection of an undercharge of $28.00 on a mixed carload of flour and grain from W. B. Hoagland & Brother consigned to LaVeta Mill and Produce Company, Ft. Garland to LaJara month of February, 1924.	APPLICATION NO. 362

July 26, 1924.

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 for an order of the Commission authorizing it to waive an undercharge of $28.00 on one mixed carload of flour and grain shipped by W. B. Hoagland and Brother, consigned to LaVeta Mill and Produce Company, Ft. Garland to LaJara in the month of February, 1924.

The application is supported by an affidavit from Mr. George Williams, General Freight Agent, The Denver and Rio Grande Western Railroad Company, that the legal rate and charges were exacted on the basis of 27¢ cwt as carried in D. & R. G. W. Tariff Colo. P. U. C. 37.

Prior to the time this shipment moved the carrier had under consideration the establishment of a rate of 20¢ cwt on mixed commodities, Ft. Garland to LaJara. However, through an oversight the reduced rate was not published until the publication of Amendment 18 to Colo. P. U. C. 37, effective May 19, 1924, or subsequent to this movement, and for this reason The Denver and Rio Grande Western Railroad Company feels that it would be doing an injustice to shipper in forcing collection of the rate as in effect

at the time shipment was made.

The Commission feels that the charges assessed on this shipment were excessive to the extent that they exceeded 20¢ cwt, and an order will be issued for the waiving of the collection of the undercharge amounting to $28.00.

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 the undercharge of $28.00 on one mixed car of flour and grain from W. B. Hoagland and Brother, consigned to LaVeta Mill and Produce Company, Ft. Garland to LaJara, Month of February, 1924.

Ernest E. Hall Newman,

Otto Bock

Commissioners

Dated at Denver, Colorado,
this 26th day of July, 1924.

(Decision No. 731.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

In the Matter of the Application of the Board of County Commissioners of Weld County, Colorado, for the opening of a public highway over the right-of-way and track of the Chicago, Burlington & Quincy Railroad Company at a point on the line running north and south along the line between Sections 29 and 30, in Township 2 North Range 64 across the Burlington Railroad in Weld County, Colorado.	APPLICATION NO. 318

July 28, 1924.

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Weld County, Colorado, in compliance with section 29 of the Public Utilities Act as amended April 16, 1917, for the opening of a public highway crossing at grade over the right-of-way and track of the Chicago, Burlington & Quincy Railroad Company between Hudson and Keensburg, Colorado, at a point on the section line between Sections 29 and 30, Township 2 North, Range 64 West of the sixth Principal Meridian.

The application, dated March 14, 1924, and received by the Commission March 17, 1924, was referred to Mr. E. E. Whitted, General Solicitor for the respondent railroad, for an expression of its attitude in the matter.

Upon March 28, 1924, an answer from the attorneys for the railroad to the matters set forth in the application was received by the Commission and three days later an amended answer was filed stating the disposition of the railroad to oppose the establishment of a grade crossing at the point on the section line, but assenting to the utilization, as

a subway, of a masonry culvert about one half mile west of the proposed location. The Board of County Commissioners of Weld County, requested a hearing in the matter, stating that they did not favor the subway on account of the drainage problem involved.

On June 11, 1924, a party composed of C. A. Hewitt and F. L. Powars, County Commissioners of Weld County; C. W. Charleston and H. A. Aalberg, Engineers and P. Herigstad, Roadmaster for the Railroad; L. L. Stimson, an Engineer from Greeley employed by Weld County; and W. L. Reynolds, Railway and Hydraulic Engineer for this Commission, made an inspection of the two sites and the adjacent features. Mr. Reynolds made a report on conditions as they appeared to him stating that the culvert lacked sufficient headroom, that the connecting roadway on the south would be expensive and that facilities for draining the subway were not favorable, expressing an opinion that the grade crossing as proposed in the application had better merit. Copies of this report were sent to both the County Commissioners and the railroad and on July 21, 1924, a letter from J. H. Barwise, Attorney for the railroad, was received waiving its contention for a subway crossing and consenting to the grade crossing on the section line, under the usual terms of division of cost.

An agreement having been reached as to location and division of cost and it appearing that public convenience and necessity require the establishment of the crossing as set forth in the application, the Commission will, therefore, issue its order granting the request of the applicant under the conditions as herein set forth.

O R D E R

IT IS THEREFORE ORDERED, That in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway crossing at grade shall be, and the same is hereby, permitted to be opened and established over the main line track of the Chicago, Burlington & Quincy Railroad Company between Hudson and Keensburg at a point where

the north and south section line between Sections 29 and 30, Township 2 North, Range 64 West of the sixth Principal Meridian crosses said track, conditioned, however, that before said crossing shall be opened to public travel it shall be constructed in accordance with plans and specifications prescribed in the Commission's order in re - Improvement of Grade Crossings in Colorado, 2 Colo. P. U. C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway, including the necessary drainage therefor at said new crossing shall be borne by Weld County, Colorado and that all other expense in the matter of installation and maintenance of said crossing shall be borne by the Chicago, Burlington & Quincy Railroad Company.

Dated at Denver, Colorado,
this 28th day of June, 1924.

Commissioners.

(Decision No. 732.)

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 Kit Carson, State of Colorado, for the opening of a public highway over the right-of-way and track of The Chicago, Rock Island and Pacific Railway Company at a point about 320 feet east of Mile Post #459.	APPLICATION NO. 338

July 28, 1924.

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Kit Carson County, Colorado, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public highway crossing at grade over the right-of-way and track of The Chicago, Rock Island and Pacific Railway Company at a point about 320 feet east of Mile Post No. 459 which point is on the range line between Townships 44 and 45 West of the sixth Principal Meridian.

The application, dated May 21, 1924, and received by the Commission on May 24, 1924, was referred to Messrs. Hodges and Wilson, the Attorneys for the respondent railroad, for an expression of its attitude in the matter. An error in the application asking for the establishment of a crossing above grade, caused some delay in obtaining the consent of the railroad, however, on June 20, 1924, a letter from the County Commissioners was received correcting the description of the type of crossing desired to read, at grade , thereby removing

the cause for hesitancy on behalf of the railroad in consenting to the establishment of the crossing under the usual terms as to the division of the expense. The answer from the railroad was received on July 2, 1924, agreeing to the amended reading of the application.

The features of the site in respect to suitability and safety were inspected on July 22, 1924, by M. N. Lines, Assistant Railway Engineer for the Commission and conditions were found to be satisfactory. The establishment of the crossing appears to be warranted as a means of connecting the area south of the railroad with the Pikes Peak Highway to the north.

The Commission will therefore issue its order granting the request of the applicant under the conditions as herein set forth.

O R D E R

IT IS THEREFORE ORDERED, That in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway crossing at grade shall be, and the same is hereby, permitted to be opened and established over the tracks of The Chicago, Rock Island and Pacific Railway Company, west of Burlington, Colorado, on the range line between Townships 44 and 45 west of the sixth Principal Meridian, at or about a distance of 320 feet east of Mile Post No. 459, conditioned, however, that before said crossing is opened for public travel it shall be constructed in accordance with the plans and specifications prescribed in the Commission's order in re - Improvement of Grade Crossings in Colorado, 2 Colo. P. U. C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway, including the necessary drainage therefor, at said new crossing, shall be borne by Kit Carson County and that all other

expense in the matter of installation and maintenance of said crossing shall be borneby The Chicago, Rock Island and Pacific Railway Company.

Grant E. Hall Freeman,

M. L. Lawson

Commissioners.

Dated at Denver, Colorado,
this 28th day of July, 1924.

(Decision No. 733.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of The Colorado Gas and Oil Pipe Line Company, a corporation, for a certificate of public convenience and necessity.

APPLICATION NO. 303.

- - - - - -

July 30, 1924.

- - - - - -

Appearances: For the Applicant,
M. A. Lindsley and M. E. Inthe, of Denver, Colorado.
For Protestants,
Rodney J. Bardwell, of Denver, Colorado, for The Public Service Company of Colorado; Paul M. Gregg, of Los Angeles, California, and Robert Hawley, of Cheyenne, Wyoming, for The Union Oil Company of California; Frank J. Annis, of Fort Collins, Colorado, for the City of Fort Collins; Claude C. Coffin, of Fort Collins, Colorado, for the Chamber of Commerce of Fort Collins; George M. Shaw, of Fort Collins, Colorado, for the Board of County Commissioners of Larimer County; E. T. Snyder, of Greeley, Colorado, for the City of Greeley.

S T A T E M E N T

By the Commission:

This is an application by The Colorado Gas and Oil Pipe Line Company, a corporation, filed with the Commission November 27, 1923, for a certificate of public convenience and necessity to operate, lay, build and construct a natural gas and oil pipe line for the transportation of natural gas and oil in the State of Colorado in the following general course, direction and termini:

Commencing at Section 31, Township 10 North, Range 68 West of the Sixth Principal Meridian, thence in a northeasterly direction to the one hundred fifth meridian; thence north to the northern boundary of the State of Colorado, and thence in a direct line as near as may be practical to the southerly limits of the City of Cheyenne, Laramie County, Wyoming, and also

commencing at Section 31, above described; thence in a southeasterly direction, as near as may be practical, to the one hundred fifth meridian; thence in a southerly direction along said meridian, as near as practical, to the northern limits of the City and County of Denver, and such variations as may be necessary to avoid going through any town, hamlet or city, with a detour east or west around Denver, as may be practical, and thereafter along said one hundred fifth meridian, as near as may be practical, in a southerly direction to the northern limits of Colorado Springs without going through any town, city or hamlet, passing to the west or east of Colorado Springs; thence in a southeasterly direction following a direct course as near as practical to the northern city limits of Pueblo, with the right to run branch lines in the most direct way deemed practical to such towns, cities and hamlets as may be deemed advisable to connect with the main trunk line.

Protests were duly filed by The Union Oil Company of California, The Public Service Company of Colorado, the City of Fort Collins, the Board of County Commissioners of Weld County, Colorado, and the Chamber of Commerce of Fort Collins, Colorado.

The applicant sets forth that it is a corporation incorporated under the laws of the State of Colorado for the objects and purposes as set forth in its Articles of Incorporation. Some of the objects and purposes given therein are to own, hold, acquire by lease or otherwise, and to operate a pipe line for the carriage and transportation for hire of natural gas and oil within the State of Colorado, and to construct and lay gas and oil mains and pipes, and branches and spurs connecting with such mains into cities, towns and villages, and to carry, distribute and deliver natural gas and oil for hire to consumers along said mains, pipes and branch lines and spurs; and generally to carry on and operate a gas and oil pipe line as a public carrier, and for itself, of natural gas and oil.

The applicant further sets forth in its application that a large supply of natural gas has been recently discovered at Wellington, in the County of Larimer, State of Colorado, and a natural gas well in said Welling-

ten has been drilled, which well is now producing approximately 82,000,000 cubic feet of natural gas per day; that other natural gas wells are being drilled in and about said described locality; that the said gas well, now producing great volumes of gas, is situated on a natural gas structure which, it is estimated by government geological experts, will produce a supply of natural gas that will supply the needs of all the inhabitants along the contemplated pipe line, and for all the inhabitants of cities and towns along said pipe line and adjacent thereto, for a period of seventeen years for fuel and light purposes; that there are other structures along said proposed pipe line of the applicant which promise to greatly add to the supply of natural gas now being produced at the structure at Wellington, Colorado; that there is at present no means of conveyance of said natural gas from the site of its discovery and production, and that a natural gas pipe line, such as is described in its application, is necessary for the purpose of transporting such natural gas now being produced, and which may in the future be discovered and produced, in and about Wellington, Colorado, and other localities in the neighborhood thereof to the inhabitants remote from said gas producing well or wells, and to the inhabitants of the various cities and towns along and near the said proposed gas pipe line; that there is now no other pipe line for the conveyance of natural gas within the territory herein described.

The applicant prays that the Commission make its order authorizing the issuance to the applicant of a certificate of public convenience and necessity enabling and permitting the applicant to lay, build, construct and operate said natural gas and oil pipe line along the course as particularly described in its petition for the transportation of natural gas and oil conformably to Section 35 of the Public Utilities Act, being Chapter 127, Session Laws of Colorado, 1913, as amended and approved April 16, 1917, Session Laws of Colorado of 1917.

The grounds of protest of The Public Service Company of Colorado filed herein, briefly stated, are that the protestant is a public service business corporation under the laws of this State, empowered by its articles of incorporation to do and perform every and any act requisite and beneficial

to be done or performed in order to exercise and avail of any privilege which might be granted by this Commission by any such certificate of public convenience and necessity as is prayed for in the petition of the applicant; that it is the successor, by consolidation and merger under the statutes of Colorado, of its predecessor, public service business corporations, The Denver Gas and Electric Light Company and The Western Light and Power Company. Since said merger the protestant has furnished, and now furnishes, electric current for the inhabitants of the region lying easterly from the Rocky Mountains, northerly from the south boundary of Littleton, westerly from the east boundaries of Aurora, Hudson and Kersey, and southerly from the north boundaries of Pierce and Wellington, and has furnished, and now furnishes, artificial gas to the inhabitants of Denver; that when a sufficient available supply of natural gas shall be demonstrated to justify pipe line distribution thereof in the region now furnished by the protestant, it desires to construct and operate such pipe line under proper safeguards of the public interest, and that in any event it should have such privilege because of its prior occupation of said region and its present ownership of most of the distributing systems therein, and for other reasons. On information and belief, the protestant further alleges that natural gas has not been discovered in sufficient quantity to warrant the issuance of a certificate of convenience and necessity; that the application is premature, and that the public interest requires sufficient delay to afford further investigation; that generally the applicant has not made a sufficient showing from a financial as well as a practical standpoint for a certificate of convenience and necessity. Additional reasons are given in the protest but need not be further specified.

The protests of The Union Oil Company of California, the Board of County Commissioners of Weld County, the Chamber of Commerce of Fort Collins and the City of Fort Collins cover practically the same objections as the protest of the Public Service Company.

A hearing was had on this application before Commissioners Grant E. Halderman, Frank P. Lannon and the late Tully Scott at the Hearing Room

of the Commission, State Office Building, Denver, Colorado, on Monday, March 17, 1924. Evidence was produced by the applicant through witness J. W. Atkins, one of its directors. His testimony was to the effect that he has had a very wide and varied experience in relation to natural gas and oil projects, and that oil and gas has been his principal business for the last nineteen years; that he has constructed six pipe lines; that the cost of the pipe line from Fort Collins to Denver would be, roughly estimated, about $2,500,000, and that he and his associates are financially able to construct the pipe line in question; that there is sufficient gas in commercial quantities in the Wellington field to warrant the construction of the pipe line prayed for in the application. Cumulative evidence was submitted by him to show his standing as a business man, especially in pipe line construction and operation, as well as his financial ability.

The protestants, The Union Oil Company of California and The Public Service Company of Colorado, urge that the privilege of transporting oil and gas should be reserved until actually called for by or shown to be necessary to those who actually produce such oil and gas for distribution to the public. We can not agree with this contention. The interests and plans of the producer in the distribution of oil and gas to the public are always subservient to the best interests of the public. The best interests of the public require that the oil and gas produced be transported to the consumer at reasonable rates and under reasonable rules and regulations. The producer is not a public utility; the transporter is. To await the pleasure of the producer would, in effect, place the consumer at his mercy. Hence, under the police power of the State, the Commission has been given the power to say when, after a hearing, a public convenience and necessity exists. While the producer is entitled to the oil and gas he finds in the ground, the public has some interest in its use and convenient transportation. The legislative intent in declaring a pipe line a public utility is to prevent a monopoly by the producer of the oil and gas found, in its

efficient and reasonably necessary distribution at reasonable transportation rates to the consumer.

Much is made of the contention that no present convenience and necessity is shown to exist for the distribution of natural gas to the consumer. The Public Utilities Act of Colorado, Section 35, approved April 16, 1917, in part reads as follows:

> "No public utility shall henceforth begin the construction of a new * * * * system without first having obtained from the Commission a certificate that the * * * * future public convenience and necessity * * * * will require such construction.* * *"

The Commission is of the opinion that the distribution of natural gas and oil, if not for present, then surely for future public convenience and necessity, is apparent to everyone who understands the industrial conditions as well as the domestic requirements in the territory contemplated and deems further discussion unnecessary.

Another contention of the protestants is that the applicant is not a "public utility" within the meaning of that term as defined in Section 3 of the Public Utilities Act, it never having operated as such. The language of Section 3 germane to this contention is as follows:

> "The term 'public utility' when used in this act includes every * * * * pipe line corporation operating for the purpose of supplying the public for domestic, mechanical or public uses."

Such a construction of this section would foreclose the entry of any new company in the public utility business in this State unless it first commenced operation without a certificate of convenience and necessity, and which commencement, of course, would be in violation of the Act. In other words, it must first be a violator before it could become a lawful public utility. In our opinion such a contention is not only frivolous, but would not be in harmony with such a construction as would be consistent with the intended scope of public utility control and regulation.

All protestants object to the issuance of the certificate to the applicant for the reason that it has not at this time contracted for the transportation of gas with any one producer in this State. Pipe line transportation is still in the state of experimentation in the territory in ques-

tion, and surely it would be too much to expect that the applicant would enter into contracts for transportation of gas and oil or its purchase for transportation until such time as it would be assured that a certificate of convenience and necessity would be granted.

There is also no merit in the contention of the Public Service Company that, owing to prior operations, it is exempted from the requirement of securing a certificate of convenience and necessity for a pipe line under Section 35, supra. An application for pipe line transportation does not involve an extension of such operations as are now performed by the Public Service Company, or any other public utility, in the territory in question. Distribution of artificial gas to consumers is not analogous to transportation of natural gas as a common carrier. Other questions have been raised by the protestants, but in our opinion they are not of sufficient importance to warrant further consideration and do not affect the merits of the application.

The Commission is of the opinion that the evidence sufficiently establishes that the applicant is able to finance the construction of said pipe lines, as described in the application, of such carrying capacity as may be required to serve the producers and consumers along the proposed line; that the parties interested in the applicant company have ample experience and skill in the financing, construction and operation of oil and gas pipe lines as public carriers; that the evidence of a gas structure along the proposed pipe line described in the application is an established fact, and that the natural gas production in and about the territory traversed by the proposed pipe line is more than a probability, which is confirmed by recent press dispatches to the effect that another large gas well has been brought in in the Wellington field; that the present and future public convenience and necessity requires the construction of a pipe line for the transportation of oil and natural gas along the line proposed in said application, except from the northern boundary of the State of Colorado to the southerly limits of the City of Cheyenne, Laramie County, Wyoming, over which territory this Commission has no jurisdiction.

This decision and order is signed and issued the afternoon of July 30, 1924, and it is to be regretted that information as to its import, as well as copies of the dissenting opinion of Mr. Commissioner Lannen, have been, prior to this time, given to the Denver Post. In its 2:00 o'clock edition is a full copy of the dissenting opinion, with no reference whatever to the majority opinion except that it is understood that that opinion will be issued today. How or in what manner this information was given to the newspaper in question is not known to the majority members of the Commission. The Commission deprecates the breach of etiquette and all rules of propriety governing courts and commissions as is indicated by the above facts.

O R D E R

IT IS THEREFORE ORDERED BY THE COMMISSION, That a certificate of public convenience and necessity issue to the applicant for the building, construction and operation of a natural gas and oil pipe line along the course as particularly described in its petition, except as to such course as lies without the State of Colorado, for the transportation of natural gas and oil, subject to the following terms and conditions required by public convenience and necessity.

First, that the applicant make a preliminary survey of the proposed course as particularly described in its petition and file a map or maps of the same with this Commission within three months from the date of this order.

Second, that the proposed pipe line, as the same will be more particularly described in said preliminary survey and maps, be built, constructed and operated by applicant within a reasonable period of time from this date, having due regard for all circumstances surrounding such construction, and with reasonable diligence in proportion to the magnitude of the undertaking.

Third, that the certificate hereby granted shall not be directly or indirectly transferred or assigned to any person, firm or corporation

without the consent of this Commission first had and obtained.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Frank E. Haldeman,

Otto Bock

Commissioners.

Dated at Denver, Colorado,
this 30th day of July, 1924.

Issued July 30, 1924, at 4:00 P.M.

John W. Flemming

Secretary.

Dissenting Opinion of Commissioner Lannon
To Majority Opinion No. 733.

- - - - -

In the Matter of the Application of The Colorado Gas & Oil Pipe Line Company, a corporation, for a Certificate of Public Convenience and Necessity.	
Protestants: Union Oil Company of California, Chamber of Commerce of Fort Collins, Public Service Company of Colorado, The City of Fort Collins, Weld County Board of County Commissioners.	APPLICATION NO. 303

July 30, 1924.

The petitioner company was conceived and born (incorporated) out of wedlock, the afternoon of the day of its petition, at a cost of childbirth only, and without a penny of assets other than the hope of this grant as its nursing bottle.

It was conceived in stealth and bad faith.

Its only hope of continued life or of any strength lay in the nourishing productive millions of The Union Oil Company and in its petition and a grant thereof.

Its attorneys sought immediate grant in secrecy, without notice to the public or interested communities or parties.

Assuming such grant would be exclusive, promoters hoped to preempt the field for all possible future pipe line service for oil and gas from the Fort Collins field where they had not spent a single dollar in development and thus expected to reap where they had not sown, to the exclusion of the real developers.

The only financially able promoter is said to have made his million or more in getting like grants and selling out to bona fide operators in southern states.

At the hearing their plans were frankly confessed to be to issue bonds and by the sale of them, and possibly by the sale of stock, to obtain funds to construct and operate a paper shoe-string promotion plan.

Its petition was not accompanied with a detailed map of the location of its route as provided by sub-section (d) of Rule IV of this Commission's "Rules of Procedure" and also in violation of Section 35 of the Public Utilities Act in regard to getting a permit from the various counties for the construction of its pipe line.

Testimony revealed that it planned its route to avoid requiring any local franchise or permit from any village or city interested.

Testimony also showed that it had no contract, not even negotiations, up to the time of the hearing (months after the petition) to obtain under any conditions or circumstance gas or oil for purchase or for carriage, and that no definite figure on cost or size of pipe line had even been considered.

The evidence of the principal promoter of the applicant also showed that he would not even consider the building of his pipe line until further development had been made in the new field which would warrant the construction of pipe lines, thus putting the applicant in the category of seeking a franchise for a pipe line he might not ever even care to build.

Testimony likewise showed that it had had no negotiations at the time of the hearing for any local permit or franchise to distribute the carried products or other negotiations to sell the same if obtained and owned by it.

Evidence further showed that no share of its stock had been subscribed for or was agreed to be purchased by anyone; and the same as to its possible issue of bonds; and failed to show any negotiations toward such ends.

The testimony showed that the Union Oil Company of California owned all the known natural gas supply, and that it could not yet be determined whether

there would be any such supply available for public consumption at any time; that that company had leases on much of the structure in which gas had been found, and was likely to control most of that structure's output; that it had assets of more than $100,000,000.00 and was willing and entirely able to enter the pipe line service under public regulation whenever circumstances of the supply and possible demand should become known and justify the same.

Testimony also shows that Public Service Company has millions of dollars invested in gas manufacture and distribution at Denver, and that other distributing companies have large investments at different points in the state.

No fair or decent consideration has been given to these pioneering investments, especially in discovering gas and oil in the Wellington field, at great cost and hazard. Some of these investors ought to be awarded an equal, if not a preference right to such certificate, they being already concerned and heavily invested in discovering, owning, supplying or distributing gas, besides being heavy taxpayers in our state.

The State and its Commission owe a duty to its own people over and above all these interests. The interests of its people are not protected in making such a grant.

Every added middleman between production and consumption adds overhead expense and adds cost and unfair return burdens to the consumers. Direct dealings between producer and consumer ought to be favored to the end of cheaper rates.

The Commission should protect the reputation of our state by dealing fairly with capital invested in the public service to the end that new capital for extensions, betterments and new services may be obtained at low rates. It should not discourage or repress present investors or investments. A grant of a supposed exclusive certificate of convenience and necessity in this case, would prevent them, except at the cost of propitiating this fledgling grantee, from adopting their existing investments to

meet the changed conditions by providing the newer and cheaper service. They should not be required to junk their facilities or to be at the mercy of those who do not pioneer and do not risk capital in an existing service. Investors need, and should be given the opportunity, to meet all changed conditions and preserve their investment and a fair return. Any course that tends to negative such a fair proposition would seem unconscionable.

The Commission should at least preserve their opportunity to meet any changed conditions until the changes are real and not merely conjectural. Such attitude would be of the highest ultimate benefit to all consumers and would tend to establish a reputation assuring to investors in public utility bonds and stocks that this state will protect such investments until the investors fail to meet actual new and changed circumstances as they arise. The opposite course, as by granting this certificate, says to such prospective investors: "Colorado is not a safe state. Its Public Utility Commission will not protect investments. Any irresponsible promoter can obtain a pre-empting right in Colorado wherewith to bludgeon you out of some or all your investment or its value."

The Commission, within its territorial jurisdiction, and home rule cities within theirs, have full power of regulation and control of all public utilities. This power of regulation should insure the best and cheapest service to the public and at the same time a fair return to the utility. It should prevent duplication of investment and excessive overhead expense, and also require the most economical operation consistent with good service.

The rightful rate of return on capital invested in public service is largely affected by the interest rate necessary to lure investor's money into utility securities.

Public policy requires that we look first to the welfare of the people, and it follows that in all proper and consistent ways such investments in the public service should be safeguarded while properly restricted and regulated.

This grant is a gift, utterly without valuable consideration. The petition contains no promise to perform. The conditions are too vague to be

enforced. If the petitioner had promised construction and operation, it is powerless to perform such promise, and the promise would be worthless.

It is not sufficient to say that the Union Oil Company of California has no investment in pipe lines, nor to say that The Public Service Company is only a manufacturer and distributor of gas and electricity.

The Union Oil Company may build its own pipe lines to deliver its own products where it will, without entering into the public service, but it seems willing as well to enter the public service when circumstances justify. If it should build its own pipe lines without entering the public service, and if the grantee of the certificate constructs a public pipe line, therein would be great economic waste. Under such circumstances our plain duty is to withhold such certificate until circumstances justify a public service pipe line. Thus consumers would be saved higher rates necessary to yield a fair return upon the duplicated investment.

The existing public utilities occupy the field as much as present circumstances justify. They should be accorded preference if willing in due time to meet a changed situation. Meantime, no others should be granted any permit. The field should be kept open until there is actual need.

The Commission could as justifiably grant to any person without capital a permit of the exclusive right to construct pipe lines in the entire State of Colorado for all future time.

No king or potentate ever made a grant of greater value for so little excuse, cause or reason.

The grant abuses the powers of the Commission. It is beyond its discretion.

The very name of the certificate implies that the Commission must find that granting it to this particular grantee is a matter of "public convenience" instead of a public disaster.

The style of the certificate also implies that any grant must be because of a public need or necessity. No such present need exists, and the future is wholly uncertain.

No circumstance shown in the petition or in the evidence evince any public convenience or need. Everything shows that the grant is only harmful

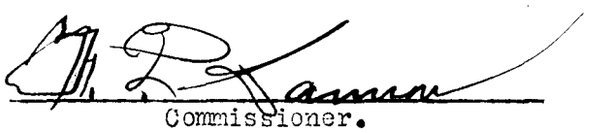
to the public and is convenient only to the grantee and may be used as a means to the end of sandbagging the public or investors in other utilities. There is no present or probable immediate need therefore. The needs of the future can safely rest upon the law of supply and demand, unto which law this Commission should give its aid, and withhold its interference.

If a sufficient supply is found, nothing but the arbitrary action of this Commission could prevent The Union Oil Company from seeking the best market for its gas, and the same is true of any other producer. For the same reasons, The Public Service Company and other distributing companies of electricity and gas, under the law of supply and demand, would reach out for the cheapest and best supply. No one can question the ability of either of these principal companies to construct such pipe line all under public regulation. The argument of selfishness on their part tending to postpone such pipe line service, is error. Selfishness would dictate establishing such service as soon as feasible, in order to reap the gain and occupy the field. Such companies well know that real capital would seek that very service, and that this Commission ought to grant others the privilege if they become laggard in seeking it, when such service is due.

The granting of this certificate is lacking in genuine safeguards of the public interest. It is so general in the conditions imposed, as to leave this Commission practically powerless to enforce its supposed conditions. The meaning of those conditions may be litigated for years without, in the meantime, any substantial pipe line construction or service.

The action taken seriously jeopardizes the public interest. It is so manifestly unfair to those who ought to have prior right thereto at a proper time, that the order should be stayed and public hearings should be invited that all the people and the press should first consider and be heard from on so vital a question affecting the welfare and development of our State.

For the above and aforesaid reasons I most respectfully dissent to the decision rendered by my conferees in application No. 303.



Commissioner.

(Decision No. 734.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

The Denver Gas and Electric Light Company, a corporation, The Coffin Packing and Provision Company, a corporation, et al., Complainants, v. The Colorado and Southern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Union Pacific Railroad Company, Defendants.	CASES NOS. 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, and 228.

- - - - - - -
August 2, 1924.
- - - - - - -

ORDER

By the Commission:

WHEREAS, In the above entitled and numbered cases a decision and order was entered by this Commission on May 14, 1924, applicable to all of said cases; and,

WHEREAS, Thereafter, and on to-wit: May 24, 1924, a petition for rehearing was filed on behalf of the complainant in each of said cases, which motions were thereafter set down for hearing and heard before the Commission; and,

WHEREAS, Thereafter, and on to-wit: July 1, 1924, a decision and order was entered in Case No. 215 denying the petition for rehearing for the reasons in said decision and order set forth, and the decision and order in the other cases above referred to in the caption hereof was withheld to permit the complainant in Case No. 215 to sue out a writ of review in that case

as a test case if such complainant should so determine; and,

WHEREAS, The complainant in said Case No. 215 has not sued out a writ of review and the period for which so to do has expired;

NOW, THEREFORE, IT IS ORDERED BY THE COMMISSION, That the petition for rehearing in Cases Nos. 216 to 228, each inclusive, is hereby denied as of this date for the reasons set forth in the decision and order of this Commission in Case No. 215 aforesaid, and said decision and order denying the petition for rehearing in Case No. 215 is, and shall be considered as, filed in each of said Cases Nos. 216 to 228, inclusive, of this date, and each of said Cases Nos. 216 to 228, inclusive, is hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT H. HALDEMAN

(S E A L)

F. P. LANNON

OTTO ROCK

Commissioners.

Dated at Denver, Colorado,
this 2nd day of August, 1924.

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. 735)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of Doud Brothers for a franchise and permit to conduct and operate an automobile stage line between the town of Silverton, San Juan County, Colorado, and the town of Eureka and the village of Gladstone, in said County and State.

APPLICATION NO. 326.

- - - - - - -

August 7, 1924.

- - - - - - -

S T A T E M E N T

By the Commission:

IT APPEARING, That the applicants herein, by their Attorney, Wm. A. Way, under date of August 2, 1924, have requested the dismissal of their application without prejudice, and no objection having been offered by protestants, the cause will be dismissed.

O R D E R

IT IS THEREFORE ORDERED, That the above cause be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 7th day of August, 1924.

(Decision No. 736.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the transfer of the certificate of convenience and necessity from the Hair and Ballie Transportation Company to Frank Lalor and Orval Blair, said certificate having been granted under Application No. 97.)

APPLICATION NO. 97.

- - - - - - -

August 14, 1924.

- - - - - - - -

STATEMENT

By the Commission:

IT APPEARING, That the above application was filed with the Commission March 12, 1924, copies of the application were duly served upon the attorneys for the Union Pacific Railroad Company, The Colorado and Southern Railway Company and Fred B. Miller, Receiver, The Colorado, Wyoming & Eastern Railway Company.

No protest was filed on behalf of the Union Pacific Railroad Company or The Colorado and Southern Railway Company. Protest was filed on behalf of The Colorado, Wyoming & Eastern Railway Company, Fred B. Miller, Receiver, and the Jackson County Commercial Association, of Walden, Colorado, by A. A. Hunter its Secretary; also protest was made by A. E. Wilkins, Editor, the Jackson County Star of Walden, Colorado.

The matter was set for hearing at Fort Collins July 15, 1924, at the Court House at 11:00 o'clock A.M., and thereafter continued to August 8 and, on the Commission's own motion, hearing advanced from August 8 to August 4, and on August 2 was continued to August 7, same time and place, upon request of Editor A. E. Wilkins of Walden, Colorado, who advised the Commission by phone that he could not be present on the 4th and requested the continuance. Whereupon, on August 2 telegrams were sent to all parties interested setting the hearing for August 7 at the Court House, Fort Collins, Colorado.

On August 7, after the Commission had gone to Fort Collins, the following letter from Mr. J. R. Sullivan of Laramie, Wyoming, Attorney for applicant, was received at the office of the Commission, dated August 5, 1924:

> "I am in receipt of your letter dated August 4th, also your telegram of August 2nd, advising me of the hearing to be had at Ft. Collins on August 7th.
> "I wish most respectfully to advise you at this time that the Lalor-Blair Transportation Company is no longer interested in the transfer of the Hair-Ballie Transportation Company's certificate and has therefore requested that the matter be dismissed."

Also on August 7 letter from Mr. F. B. Miller, Receiver of the Laramie, North Park & Western Railroad Company, which succeeded The Colorado, Wyoming & Eastern Railway Company, under date of August 5, 1924, reading as follows:

> "Replying to your wire of the 2nd and letter of the 4th inst. regarding hearing in the application of Lalor-Blair for transfer of certificate from Hair-Ballie Transportation Co. under Application No. 97, please be advised that counsel for Lalor-Blair advise is no longer in the transportation business and will not appear to further the transfer of this certificate.
> "Under the circumstances counsel for the above railroad will not appear to object to the transfer."

The Commission, having gone to Fort Collins on August 7 to hear this case at expense and the neglect of other work, where if it had been promptly informed by the litigants in this case this would not have been necessary and the trip avoided, is of the opinion that this application should be dismissed with prejudice, and an order to that effect will be entered.

O R D E R

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 14th day of August, 1924.

(Decision No. 738.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of Otis Wilkerson for permission to operate an automobile stage line between Colorado Springs and Woodland Park, Colorado.	APPLICATION NO. 313.

August 23, 1924.

STATEMENT

By the Commission:

It appearing that the above application was filed with the Commission, February 25, 1924, copies of the application were duly served upon: H. J. McCoy, of Colorado Springs, Colorado, attorney for The Midland Terminal Railway Company; E. B. Upton, of Cripple Creek, Colorado, attorney for C. H. Williams and Son, applicants; Fred N. Bentall, of Colorado Springs, Colorado, attorney for The Gray Truck Line, applicant; and Frank A. Hart, of Green Mountain Falls, Colorado, applicant for himself.

Protests were filed on behalf of The Midland Terminal Railway Company, C. H. Williams and Son and Frank A. Hart, Hearing was set for July 18, 1924, at 11 o'clock A. M. at City Hall, Colorado Springs, Colorado, and later continued to August 15, 1924, same time and place. On August 15, 1924, hearing was held at Colorado Springs, Colorado, and applicant was not represented, either in person, or by his attorney.

The Commission is of the opinion that this application should be dismissed with prejudice for failure of applicant to appear, and an order to that effect will be entered.

O R D E R

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

Grant E. Halderman
M. L. Lannon
Otto Bock
Commissioners.

Dated at Denver, Colorado,
this 23rd day of August, 1924.

Dec 737

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF COLORADO

IN RE: LOCATION OF STATIONS AND LOADING TRACKS ON THE FORT COLLINS EXTENSION OF UNION PACIFIC RAILROAD.	APPLICATION NO. 365

August 21, 1924

O R D E R

WHEREAS, On August 4, 1924, Union Pacific Railroad Company filed with the Commission its application for approval of the location of stations and loading tracks on the proposed extension of the Fort Collins Branch of Union Pacific Railroad; and

WHEREAS, By order of the Commission said application was set down for hearing Thursday, August 21, 1924, at eleven o'clock A. M., at the Court House at Fort Collins, Colorado, and notice of such hearing having been published August 7, 1924, in the Fort Collins Express Courier, a newspaper published at Fort Collins, Larimer County, Colorado, and a copy of said notice having been sent by the Secretary of the Commission to the Board of County Commissioners of Larimer County; and

WHEREAS, On August 7, 1924, members of the Commission and the Railway Engineer of the Commission made a personal inspection

of the proposed locations on the ground; and

THE MATTER now coming on for hearing before the Commission, and, it appearing that no written protests or objections have been filed and that no parties have here appeared to contest, object or protest against the application herein, and, Union Pacific Railroad Company having appeared by its attorneys and having produced evidence in support of said application, and, the Railway Engineer of the Commission having advised the Commission that in his judgment the location of stations and loading tracks on the Fort Collins Extension of Union Pacific Railroad should be approved, and, the Commission being of the opinion that the establishment of the proposed stations and loading tracks at the suggested locations, with facilities as indicated in the evidence adduced, will enable Union Pacific Railroad Company sufficiently, conveniently and adequately to serve the region tributary to said extension, and, the Commission being fully advised in the premises,

IT IS ORDERED that the location of the stations and loading tracks on the Fort Collins Extension of Union Pacific Railroad, as shown on the plat attached to the application and referred to in the evidence as "Exhibit 1 ", to-wit:

Station No. 1 to be known as POUDRE

Station No. 2 to be known as FLAVIN

Station No. 3 to be known as REMINGTON

Station No. 4 to be known as PORTNER

Station No. 5 to be known as RIPPLE

Station No. 6 to be known as BUCKEYE

together with the facilities to be furnished thereat, be, and the

same are, hereby approved by the Commission.

DATED this 21st day of August, A. D. 1924.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

(Decision No. 740.)

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 it to close its agency station at Earl, Colorado.

APPLICATION NO. 341.

- - - - - - -
August 26, 1924.
- - - - - - -

Appearances: A. Ewing, Superintendent, and F. M. Williams, Division Freight Agent, for Applicant; S. L. Martin, of Earl, Colorado, for Protestants.

S T A T E M E N T

By the Commission:

On March 21, 1924, the Commission received a communication from the applicant, by A. Ewing, Superintendent of the New Mexico division of its western lines, asking for permission and authority to close its agency station at Earl, Colorado, for an indefinite time and until business conditions would warrant it in reopening its agency station at that point.

Upon the reception of the communication, applicant's attention was directed to General Order No. 34, which requires the posting of notices in the station affected at least fifteen days prior to the date specified for the closing of an agency station, which subsequently was complied with.

Thereafter the Commission received protests from the patrons of applicant at its Earl station on May 27, containing some forty-five or fifty signatures, and stating that the patrons of that office were desirous that the office be continued, and that the station in the past had been of great service to the people of the community, and that the protestants considered it imperative for the best interests of that community that the agency station be not discontinued.

Owing to a change in the personnel of the Commission, occasioned by the death of one of its members, this and other matters were delayed in

receiving more prompt attention, with the result that on July 7, 1924, pursuant to notice to all parties interested, the Commission set down for hearing and heard on that day in the City Hall, Trinidad, Colorado, testimony submitted by applicant and protestants.

From the testimony it appears that Earl has been a station on the line of applicant railway company for many years; that there is an open station called Model about four miles east of Earl station and at Hoehne, about seven miles west, so that applicant contends there is no necessity, in view of the amount of business transacted at Earl station during the past eighteen months, for further continuance when the stations on either side are so near to it.

In substantiation of its position, applicant filed a statement showing its earnings and expenses at Earl station for the period January, 1921, to June, 1924, inclusive, by years. Comparing 1921 with 1923, the following figures are indicative of the business formerly done at Earl station and that done at said station in 1923:

Pounds Freight Less Carload		CARLOADS		Total Freight & Passenger	Station
Forwarded	Received	Forwarded	Received	Earnings	Expenses
1921		1921		1921	1921
35878	255690	53	24	$10451.57	$1996.45
1923		1923		1923	1923
2460	92214	33	16	4016.27	1803.05

From the above tabulation it is apparent that a diminution of business and earnings is quite considerable in the year 1923 as compared with 1921. The year 1922 is also considerably less than 1921 but considerably more than 1923, while the station expense for each of the years is approximately the same. If there were no substantial reasons advanced why the agency station should be continued for a further period, the above showing would amply justify the Commission in permitting it to be closed.

Protestants, however, offered a number of witnesses who testified, in substance, that during 1922, and particularly 1923, owing to drought and other conditions, they suffered extremely from crop failures which accounted for the decreased business given the railroad in 1923 as compared with 1921. Protestants' evidence established the fact that there were approximately 20,000 acres of irrigated land in the district contiguous to Earl station, and that the prospects for the crop season of 1924 were very excellent as compared with the last two years, and that in view of the establishment and widening of the irrigated land tributary to Earl station there was every reasonable expectation to believe that the freight shipments offered to applicant railroad at Earl in the season of 1924 would be fairly comparable with the business done at that station in 1921. Witness Dunleavy, for protestants, was particularly optimistic and gave his testimony in a straightforward businesslike manner. This witness testified that he had seventy acres of beans alone that gave every evidence of a normal yield, which would be from 700 to 1,000 pounds to the acre, and that other land owners had considerable acreage of beans, and that alfalfa and other crops in the Earl district gave promise of a much better yield than in the last two years. This witness, as well as one or two others, frankly took the position that if their hopes and prospects were not fairly realized as to the yield to be derived from their lands in the season of 1924, then there might be no objection made to the closing of this agency station.

There was some evidence also offered by applicant as to the loss of freight revenue occasioned by freight truck operators between that district and the city of Trinidad. The Commission has given no permission to any person to operate an auto freight or passenger line in the district mentioned, and if that condition exists it is done without legal right. The people of that community, however, must realize that if they desire to retain railroad facilities their patronage must be given to the railroad rather than to an indiscriminate auto truck operator. On the other hand, one or two witnesses for protestants stated that in buying tickets from Earl to California

points over the Santa Fe System lines, they were unable to do so at Earl station, and were requested by the agent at Earl to procure such tickets at Trinidad. The only materiality of this testimony is that if Earl station had sold this passenger business its credit in the way of passenger earnings would have been considerably increased.

Under all the circumstances and conditions surrounding the situation, as disclosed by the testimony, the Commission is of the opinion that it would be unfair to the residents of that district to permit the agency at Earl station to be discontinued at this time. It would be, in effect, penalizing them for the crop failures of 1922 and 1923. The Commission concludes, therefore, that it will deny the application of applicant to close its agency station at Earl at this time, but without prejudice and subject to applicant renewing its application after six months from the date hereof should circumstances indicate such action to be wise and as it may be advised.

O R D E R

IT IS THEREFORE ORDERED, That the application of The Atchison, Topeka and Santa Fe Railway Company for permission to close its agency station at Earl, Colorado, be, and the same is hereby, denied without prejudice.

IT IS FURTHER ORDERED, That applicant is privileged to renew its application, should it be so advised, from and after the expiration of six months from the date of this order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 26th day of August, 1924.

(Decision No. 741.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of Charles Maxday, Sr., Inc., a Colorado corporation, to operate lines of transportation in the State of Colorado.

APPLICATION NO. 319.

- - - - - - - -

August 26, 1924.

- - - - - - - -

Appearances: Hawley & Erickson, of Trinidad, Colorado, for Applicant;
J. L. Rice and J. Q. Dier, of Denver, for The Colorado and Southern Railway Company;
E. N. Clark, Thomas R. Woodrow and W. E. Hutton, of Denver, for T. H. Beacom, Receiver of The Denver and Rio Grande Western Railroad System.

S T A T E M E N T

By the Commission:

Applicant filed its petition with the Commission on March 21, 1924, alleging therein that petitioner is a corporation under the laws of Colorado, and filed a certified copy of its Articles of Incorporation with the petition; that petitioner's postoffice address is 140 North Commercial Street, Trinidad, Colorado; that petitioner is engaged in the operation of a taxicab line in the city of Trinidad, and in the operation of an automobile line between Trinidad and the town of Aguilar and between Aguilar and Walsenburg and intermediate points.

Petitioner applies for a certificate of public convenience and necessity to operate lines of motor busses for the carrying of passengers for hire, and parcels and small packages between Trinidad, Aguilar, Walsenburg and intermediate points; and particularly along the route or line of highway proposed to be traveled by such bus lines as described in paragraph five of the petition, as passing northbound from Trinidad to Walsenburg through Bowen, near Suffield, through Chicosa and Barnes, near Ludlow, through Aguilar, near Jewel and the southwestern mining camps north of Aguilar, through Rugby, Black Diamond, near Rouse, Munson, Mayne, Ideal and Ravenwood into Walsenburg.

Applicant has been licensed to operate said lines in the city of Trinidad and the towns of Aguilar and Walsenburg, and there are no regulatory ordinances or rules in the towns and cities through which it is proposed to operate nor through the counties of Las Animas and Huerfano, in the state of Colorado.

Applicant also alleges that in the operation of said motor bus line it will compete with The Colorado and Southern Railway Company and The Denver and Rio Grande Western Railroad System, and accompanying the application is a map showing the line of highway proposed to be traveled, with the line of the Colorado and Southern indicated by green ink and the Denver and Rio Grande Western by red ink.

It is further alleged that the present and future public convenience and necessity requires and will require the operation of such line of motor busses for the carrying of passengers for hire and the carrying of parcels and small packages between the points above mentioned, and that said points are inadequately served by the said railroad companies.

Accompanying the application is also a rate sheet showing the tariff or rates which it is proposed to charge passengers on its lines and for the carrying of parcels; and it is further alleged that in case the certificate is granted, the petitioner proposed to carry ample public liability, property damage, theft and other forms of insurance to insure adequate compensation in the event of personal injury, loss or damage.

Upon the filing of said application same was duly served on the rail carriers mentioned, as well as on the American Railway Express Company, who thereafter, and on the 2nd of April, filed answers or protests to the granting of the application, the substantial ground of protest being that there is no genuine necessity, public or otherwise, for the establishment of said proposed bus line, and that no reasonable convenience to the public will result thereby, and further that the territory described is now being more than adequately served by the existing transportation facilities, which are now far in excess of all public requirements, and that the facilities afforded by the rail

carriers and by the American Railway Express Company are now, and in the past have been, more than adequate to take care of the needs of the communities and territory referred to in the application.

Further allegations in the protests are to the effect of the payment of substantial sums in the way of taxes to the counties of Huerfano and Las Animas, and that they are used in part to build and maintain the roads and highways in said counties, and that the highways should not be unnecessarily burdened with heavy traffic, as is contemplated by applicant, inasmuch as such traffic would add greatly to the wear upon and deterioration of said highways, and that the operation of said motor busses, if established, would deprive protestants of a substantial amount of business.

Upon notice given to all parties in interest, the matter was set down for hearing and heard on Monday, July 7, 1924, at the City Hall, Trinidad, Colorado.

It was made to appear by the testimony submitted by applicant that Trinidad and Walsenburg are adjoining county seats of Las Animas and Huerfano Counties, respectively, and that the population of Trinidad is approximately ten thousand, that of Walsenburg being about five thousand, and approximately forty-one miles apart; that Aguilar, the principal town between said points, is of about twenty-five hundred population, including the coal mining camps contiguous to it, and that it is approximately midway between Trinidad and Walsenburg upon the state highway; that the train service afforded Aguilar by The Colorado and Southern Railway Company is from the station of Lynn, which is about two and one-half miles distant from the town of Aguilar, and the service afforded by the Rio Grande is from the town of Augusta, about five miles from Aguilar.

The train schedule maintained by the rail carriers was conceded to be at present northbound from Trinidad to Walsenburg on the Colorado and Southern, leaving Trinidad 4:50 A.M., arriving Walsenburg 6:08 A.M., with no intermediate stops; train No. 7 leaving Trinidad 10:55 P.M., arriving Lynn 11:50 P.M., Walsenburg 12:43 A.M.; southbound on the Colorado and Southern,

train No. 2 leaving Walsenburg at 6:20 P.M., Lynn 7:06 P.M., arriving Trinidad 7:55 P.M.; train No. 8 leaving Walsenburg at 5:17 A.M., Lynn at 6:10 A.M., arriving Trinidad 7:00 A.M. It will thus be seen that even for Trinidad and Walsenburg traffic the schedule of the rail carriers is not at all convenient and that, from the testimony, the inhabitants of Aguilar are served by the Colorado and Southern from its Lynn station, two and one-half miles distant, and that great inconvenience and delay would necessarily be experienced by the residents and inhabitants of that community.

Train schedules of the Denver and Rio Grande Western are so arranged as to leave Trinidad northbound at 8:00 o'clock A.M., arrive Augusta 8:45 A.M., Walsenburg 9:40 A.M.; southbound leaving Walsenburg 2:47 P.M., Augusta 3:55 P.M., arrive Trinidad at 4:40 P.M. Bearing in mind, however, that the Aguilar people may use the Rio Grande service only from Augusta, distant five miles, so far as the people of Aguilar are concerned, the Rio Grande schedule affords them no service worth mentioning.

Applicant produced a number of witnesses who testified as to the public convenience and necessity of the automobile bus lines, both for the accommodation of the residents of Aguilar and intermediate points between Trinidad and Walsenburg in going to and from those cities, and also for the convenience and necessity of the commercial traveling public in making the coal camps intermediate between Trinidad and Walsenburg.

Applicant testified that its bus line proposes to operate, and does operate, daily four busses in either direction arranged on schedules convenient to meet the needs and requirements of its patrons.

In short, the evidence of the applicant and its witnesses, in view of all the circumstances of train schedules and of the communities heretofore having been served by the Colorado and Southern from Lynn, and by the Denver and Rio Grande Western from Augusta, two and one-half and five miles distant, respectively, to Aguilar and its environs, overwhelmingly establishes the fact in the mind of the Commission that this situation is a concrete example of conditions that amply justify and warrant the establishment and

operation of applicant's bus lines in the interest of public convenience and necessity, present and future.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires, and will require, the establishment and operation of the auto bus lines proposed by applicant, Charles Maxday, Inc., and this order shall be taken, deemed and held to be a certificate of convenience and necessity therefor.

IT IS FURTHER ORDERED, That applicant shall file within twenty days of this date in the office of the Commission its tariff of rates for the transportation of passengers, parcels, baggage and express from Trinidad to Walsenburg and intermediate points.

IT IS FURTHER ORDERED, That applicant shall operate said bus lines daily, except Sunday, throughout the year unless prevented by the act of God, the public enemy, or extreme and unusual weather conditions, and this order is made subject to compliance by applicant with the rules and regulations now in force or to be hereafter adopted by this Commission with reference to automobile common carriers, and also subject to any legislative action that may in future be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall

W. P. Lamon

Otto Bock

Commissioners.

Dated at Denver, Colorado,
this 26th day of August, 1924.

PUC 21

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of Robert A. Arnett for a certificate of public convenience and necessity, authorizing permission to operate as common carrier, automobile stage carrying passengers, baggage and express between Steamboat Springs and Craig, Colorado.	APPLICATION NO. 329.

August 26, 1924.

Appearances: Gilbert A. Walker, of Steamboat Springs, Colorado, for Applicant;
Elmer L. Brock, of Denver, for Protestant, The Denver and Salt Lake Railroad Company;
F. O. Reed, of Denver, for Protestant, American Railway Express Company.

S T A T E M E N T

By the Commission:

On April 23, 1924, Robert A. Arnett, the above named applicant, filed his petition seeking a certificate of public convenience and necessity to operate as a common carrier, an automobile stage between Steamboat Springs and Craig, Colorado, for the carrying of passengers, baggage, express and light freight.

He states in his application that he is engaged in the automobile business and ranching; that his post-office address is Steamboat Springs, Colorado; that he wishes authorization from this Commission to engage as a common carrier for the aforesaid purposes, between Steamboat Springs and Craig, Colorado. Applicant further alleges that he is well equipped to look after and conduct such business in a business-like way; that he conducted a stage line in the summer of 1923 between said points which proved highly satisfactory, con-

venient and accommodating to the people of said towns and the residents intermediate, and that the same supplied a much needed necessity; that he proposes to make one round trip each day, leaving Steamboat Springs at 8 o'clock in the morning and returning from Craig at 6 o'clock in the evening, serving the people intermediate as well as said towns.

Upon the filing of the application, copies of same were served upon The Denver and Salt Lake Railroad Company and upon the American Railway Express Company, which resulted in the answer and protest of W. R. Freeman and C. Boettcher, Receivers of said railroad company, being filed on April 30, 1924, and American Railway Express Company, May 5, 1924.

The answer and protest of receivers recite their appointment and qualifications as receivers and that they are operating said railroad for the transportation of passengers, freight and express, and all other traffic between Denver through Steamboat Springs to Craig, Colorado; that the proposed automobile line between Steamboat Springs and Craig, Colorado, would directly compete with their business between Steamboat Springs and Craig, and that the volume of such business is not sufficient to operate the said line in competition with the railroad; that public convenience and necessity does not require, nor will not require, the operation of an automobile passenger, freight and express line between said points.

Protestants further allege that the railroad is operating throughout the entire year, and alleges that the proposed automobile line would not operate except during the summer months, and that the result of the granting of the application would simply be that applicant would participate in the passenger, express, freight and baggage business between said points during certain seasons of the year, which would be to the detriment and damage of the receivers and the railroad operated by them; and that the inevitable result of the granting of the application would be the impairment of the railroad service to the detriment of the railroad company and its receivers and the public served by it between said two points.

Protestant railroad further alleges that it pays large sums in taxes to the counties through which it operates; that it was established and is maintained at enormous expense and that it should be protected from competition so long as the road continues to furnish reasonable transportation facilities for the communities served by it. They also allege that the railroad has been operated, and is operating, at a deficit to the extent that they have not been able even to pay operating expenses, and that if the certificate were granted to applicant, it would simply add to the difficulties of the receivers maintaining said railroad in operating condition.

And in the third and closing paragraph of the receivers protest it is set forth that on June 1, 1924, there will be inaugurated a sleeping car service in connection with a night train known as No's 1 and 2; that said train west bound, No. 1, leaves Steamboat Springs at 7:15 A. M., arriving at Craig 9:30 the same morning; east bound, No. 2, leaves Craig daily at 6:00 P. M. arriving at Steamboat Springs at 7:55 the same day; and that this is an innovation to the traveling public between Denver, Steamboat Springs and Craig; and pending the effort of the receivers to improve the service of the public, no competition should be allowed between Steamboat Springs and Craig.

The protest of the American Railway Express Company alleges that neither the present nor the future public convenience and necessity requires, or will require, the operation of the proposed motor truck line, nor the transportation of express or freight between said two points, and that the Express Company now provides, and will continue to provide, sufficient service on passenger trains operated by the Denver and Salt Lake Railroad to accommodate the present and future public needs in said localities.

The matter was set down for hearing at the Court House, Steamboat Springs, Colorado, for June 23, 1924, upon due notice to all parties, at which time testimony in support of the application and in opposition thereto by protestants, was submitted.

At the hearing applicant testified that he proposed to carry baggage, parcels and light freight generally, with his equipment, although he also would transport passengers incidentally. He testified at some length as to the alleged necessity for the operation of the service proposed for the accommodation of the people of Steamboat Springs and Craig and the towns and communities intermediate.

Craig is the county seat of Moffat County while Steamboat Springs is the county seat of Routt County, and are distant approximately 50 miles. One passenger train daily in either direction serves this territory. Train No. 1 leaves Steamboat Springs at 7:15 in the morning, arrives Craig 9:30 same morning; train No. 2 leaves Craig at 6:00 P. M. arriving at Steamboat Springs at 7:55 the same evening. Freight train service rather independable and irregular, is afforded between said towns daily which, according to the evidence submitted, the west bound train arrives at Steamboat Springs generally about noon and at Craig generally about 4 o'clock in the afternoon. The east bound freight service leaves Craig generally about 8:30 in the morning, arrives at Steamboat Springs generally about 1 o'clock in the afternoon. The above schedules of freight train service both east and west bound appears on Denver and Salt Lake Railroad Company's Exhibits 4 and 5, which shows a wide spread of arrival and departure of freight trains so that the statement is made hereinabove that the freight train service is irregular and independable.

Several witnesses testified for applicant, of the convenience and necessity afforded by the automobile line operated by him, particularly with respect to the carrying of vegetables, fruits, meats and other perishable commodities. It would seem to be quite apparent that between the two adjoining county seats, the public necessity and convenience requires, and will require, additional means of communication than that at present afforded by the rail carrier.

The principle, if not the real basis of protest offered, is that the railroad is being operated at a loss and that to permit the automobile competition would perhaps accentuate that loss, and in impairing the service being afforded by the railroad company. From all the evidence submitted it can hardly be conceived that its service between Steamboat Springs and Craig, and vice versa, is at all convenient to serve these two communities and intermediate points.

As to those grounds of protest that the rail carrier is operated at a deficit, not being able to earn even its operating expenses and taxes, those are matters that might properly be alleged as a reason for an increase of rates in a proceeding brought for that purpose, but not a proceeding seeking further and additional facilities for the transportation of baggage, light freight, express and passengers. This is best answered by the Supreme Court, through Mr. Justice Allen, in the case of C. Boettcher, et al., vs Public Utilities Commission, et al., 73 Colo. 46, wherein it is said:

> "The only reason apparently advanced against the conclusion that the order is reasonable is that the railroad transports coal at a loss. This argument might be effective in a rate case, but the fact that a common carrier operates at a loss does not relieve it from performing the duties incident to transportation. The duties follow the status of common carrier in its financial condition. The duties are not obviated by the fact that they necessitate expense."

The above case was decided upon a review of an order of this Commission requiring The Denver and Salt Lake Railroad and its receivers to make a car door board allowance to shippers of coal, and its main defense was that the road was being operated at a loss. The principle announced by the Court in the above case is, of course, binding upon this Commission, and the same principle being deemed applicable in the instant case, we cannot escape the conclusion that the certificate of public convenience and necessity applied for is required, and will be required, to meet the reasonable public convenience and necessity of the communities effected.

In view of the testimony of applicant that he proposes to transport passengers merely as an incident to his auto bus operations, it is deemed advisable by the Commission to eliminate such service from this

application; this, in view of the further fact that another application for the carriage of passengers only, between said cities, is pending, and was heard at the same time and place as this application.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires, and will require, the operation of an automobile line for the transportation of baggage, freight and express between Steamboat Springs and Craig, Colorado, by Robert A. Arnett, applicant in the above entitled proceeding, and that this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That applicant shall file with the Commission within twenty days from the date hereof, a schedule of his rates and the time of leaving and departure from the various communities he serves.

IT IS FURTHER ORDERED, That applicant shall operate his said automobile transportation line daily, except Sunday, throughout the year, except when prevented by the act of God, the public enemy, or unusual and extreme weather conditions, and this order is made subject to compliance by applicant with the rules and regulations now in force or to be hereafter adopted by this Commission with reference to automobile common carriers, and also subject to any legislative action that may in future be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 26th day of August, 1924.

(Decision No. 743)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of T. H. Beacom, as Receiver of the Property and Assets of The Denver and Rio Grande Western Railroad Company and for leave to take up and remove approximately three miles of track from Leadville, Colorado, to Leadville Junction, Colorado.

APPLICATION NO. 368

(August 28, 1924)

WHEREAS, In the above entitled matter, the Commission on the 22nd day of August, 1924, made, and entered, its order therein upon application of the Receiver aforesaid for permission to abandon the tracks of said The Denver and Rio Grande Western Railroad System between Leadville, Colorado, to Leadville Junction, Colorado, from Mile Post 276 plus 1240 feet and Mile Post 279 plus 411 feet, being approximately three track miles of said railroad; and

WHEREAS, The order above specified was made, and entered, upon the representation of applicant that no protests or objections would be made thereto by the citizens and inhabitants of Leadville, and the contiguous territory; and

WHEREAS, Protest and objection is made to the Commission by the Leadville Chamber of Commerce, by the Board of County Commissioners of Lake County, by the Mayor of the City of Leadville, and by the President of the Leadville Lions Club, to the abandonment of said railroad trackage, under date of August 27, 1924, by writing filed in the office of the Commission; and

WHEREAS, In view of the protest and objection made thereto, the Commission deems it to be in the public interest to rescind and cancel its order made, and entered herein as above, on the 22nd day of August, 1924,

and that the status quo of the trackage of the applicant be maintained until the further order of the Commission; and

WHEREAS, The Commission deeming it of public interest hereby, upon its own motion, orders an investigation of the matters and things made the subject of petition by the applicant herein, and that all parties interested be given an opportunity to be heard.

O R D E R

NOW, THEREFORE, IT IS HEREBY ORDERED by the Commission, that the order of August 22, 1924, made, and entered, as hereinabove specified, be, and the same is, hereby rescinded, cancelled and for naught held.

IT IS FURTHER ORDERED, That a public hearing upon the matters and things involved in the said application be, and the same is, hereby ordered to be held at the Court House in the City of Leadville, Colorado, on Thursday, the 18th day of September, 1924, at 10:00 o'clock in the forenoon of said date.

IT IS FURTHER ORDERED, That the Secretary of the Commission be, and he is, hereby instructed to forthwith cause a certified copy of this order to be served upon applicant, the Receiver of The Denver and Rio Grande Western Railroad System, and upon the Mayor of the City of Leadville, the Chairman of the Board of County Commissioners of Lake County, the President of the Leadville Chamber of Commerce, the President of the Leadville Lions Club, and that he cause to be published in the newspapers of Leadville, a notice of the time and place of the hearing above set forth.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Isaac E. MacDermaid,

H. D. Lawson

Allen Boyd

Commissioners.

Dated at Denver, Colorado,
this 28th day of August, 1924.

(Decision No. 744.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

PUC-11

In the matter of the application of W. E. Carver and Company for a certificate of public convenience and necessity authorizing applicant to operate a passenger motor line between Steamboat Springs and Hamilton, Colorado, and intermediate points, Denver and Steamboat Springs Stage Company, substituted.

APPLICATION NO. 328.

- - - - - - - -

September 4, 1924.

- - - - - - - -

Appearances: William H. Wadley, of Denver, for original and substituted applicant;
Elmer L. Brock, of Denver, for protestant, Receivers of The Denver and Salt Lake Railroad Company;
C. D. Reilly, of Denver, for protestant, American Railway Express Company.

S T A T E M E N T

By the Commission:

Applicant, W. E. Carver and Company, a copartnership composed of W. E. Carver and Norman R. Carver, at the time of filing application for a certificate of public convenience and necessity to operate an automobile passenger stage line between Steamboat Springs, Craig and Hamilton, Colorado, filed April 23, 1924, alleges the postoffice address of applicant copartners and the alleged necessity for the operation of an automobile passenger line over the main highway along Bear River, starting from Steamboat Springs and proceeding westerly by way of Hayden to Craig, then southerly along the established wagon road to Hamilton. A map was filed with the application showing the line of the proposed operation of said automobile bus stage line, as well as the only competitor so far as was known to applicant, The Denver and Salt Lake Railroad Company, which operates and operated a line of railroad between Steamboat Springs and Craig.

At the hearing held in Steamboat Springs as hereinafter stated, the death of W. E. Carver was suggested to the Commission, and upon showing that the heirs of said W. E. Carver, deceased, had formed an incorporation under the laws of Colorado called the Denver and Steamboat Springs Stage Company, and upon said corporation filing a certified copy of its Articles of Incorporation, said corporation was substituted for the applicant herein in lieu of the theretofore existing copartnership.

The Receivers of said railroad filed protest and answer to said application on April 30, 1924, setting forth therein the fact of their appointment and qualifications as Receivers of said railroad; that they were operating said railroad for the transportation of passengers, baggage, express and freight from Denver through Steamboat Springs to Craig, Colorado; that the passenger motor stage line, if established, would directly compete with said railroad in the transportation of passengers between Steamboat Springs and Craig; that the volume of passenger traffic between Steamboat Springs and Craig is not sufficient to justify the operation of said automobile stage in competition with said railroad; that public convenience and necessity do not require, and will not require, the operation of a passenger motor bus line between said points; that said railroad operates throughout the entire year, whereas the motor stage line would only be operating through the summer months, and if permitted to be established it would take away from the railroad the passenger business in the summer seasons to the damage of the Receivers and the railroad operated by them.

They further allege in the answer and protest that said railroad pays large sums to the counties through which it operates in the way of taxes which are in part diverted to the maintenance and building of highways in said counties; that the railroad has been built at enormous expense and that the Receivers have not been able to earn even the operating expense, much less pay anything in the way of dividends upon the investment, and that the operation of the proposed automobile stage would further add to the difficulty of maintaining and operating said railroad in proper condition; and further alleges in paragraph 3 of the answer and protest, concerning the proposed establishment on June 1,1924, of a sleeping car

service in connection with a night train over said railroad,known as Nos. 1 and 2; No. 1 leaving Denver at 7 o'clock at night, arriving at Steamboat Springs at 7:15 the next morning, and Craig at 9:30 same morning; No. 2 leaving Craig daily at 6 o'clock P. M., arriving Steamboat Springs at 7:55 same evening and due to arrive Denver the following morning at 7:45; and it is alleged that such service will depend upon the patronage of the public to justify it, and that if the stage line is permitted to operate between Steamboat Springs and Craig, that competition will in a measure affect the success of the proposed sleeping car service of the railroad company.

The matter was originally set for hearing at the Court House, Steamboat Springs, Colorado, May 27, 1924, 10:00 o'clock A. M., but by agreement of all concerned, hearing was continued until Monday, June 23, 1924, at 10:00 o'clock A. M., at the same place where the matter was duly heard, notice having been given to all parties in interest.

The testimony of applicant discloses that Steamboat Springs and Craig are adjoining county seats about fifty miles distant; that the only passenger service is that afforded by the train schedules as being operated and as proposed to be operated by said Receivers; and that the convenience and necessity of the inhabitants and of the traveling public between Steamboat Springs and Craig requires, and will require, the operation of the automobile stage line which applicant testified would be upon the following schedule:

Two stages daily, in each direction, except Sunday.

WESTBOUND

Leave Steamboat Springs 6:00 P.M., arrive Craig 8:00 P.M.
" " " 8:30 A.M., " " 10:30 A.M.

EASTBOUND

Leave Craig 5:30 A.M., arrive Steamboat Springs 7:30 A.M.
" " 3:30 P.M. " " " 5:30 P.M.

Applicant testified that no licenses or permits were required from either Moffat or Routt Counties, nor from the towns of Steamboat Springs and Craig or from any intermediate towns. The original application was for the operation of the proposed stage line from Steamboat Springs through Craig to

Hamilton; but inasmuch as Hamilton is some ten miles off the railroad, the Commission deemed it had no jurisdiction as to that portion of the route from Craig to Hamilton, under the statute, and hence the application was heard only upon that portion of the route between Steamboat Springs and Craig.

By applicants' testimony it was further shown that W. E. Carver had heretofore and on December 18, 1922, been granted a certificate of public convenience and necessity for the operation of an automobile stage line for the carrying of passengers between the cities of Denver and Steamboat Springs, Colorado, and that said line had been taken over by the substitute applicant herein, the Denver and Steamboat Springs Stage Company; and that the service proposed to be established between Steamboat Springs and Craig was upon such schedule as would connect at Steamboat Springs with the operation of said stage company between Steamboat Springs and Denver.

While the testimony of applicant was not very satisfactory as to the alleged public convenience and necessity for the installation and operation of said motor stage line between Steamboat Springs and Craig, the present schedule of railroad train service discloses that one residing at Craig, desiring to transact business in the adjoining county seat of Steamboat Springs by train, would be compelled to leave Craig at 6:00 o'clock in the evening, stay over night at Steamboat Springs and then transact his business there before 7:15 the ensuing morning, or rely upon a freight train service provided, which the testimony discloses is irregular and independable, or remain at Steamboat Springs throughout the day and another night in order to return to his home at Craig by 9:30 the second morning. In the reverse direction, one at Steamboat Springs desiring to transact business at Craig, traveling by rail, would have to leave Steamboat Springs at 7:15 in the morning, arriving at Craig 9:30 same morning, remain all day and until 6 o'clock in the evening to arrive back at Steamboat Springs at 7:55 that evening. The mere statement of this passenger train schedule between Steamboat Springs and Craig and vice versa establishes the fact, as the Commission believes, that it is not a reasonably adequate or efficient passenger train service to the citizens and inhabitants of the communities affected.

The evidence on behalf of the protestants was very largely confined to a showing of their pecuniary difficulties in the operation of said railroad and their inability to meets its operating expenses, to say nothing of paying interest upon its bonded indebtedness; also upon its payment of taxes to Routt and Moffat Counties through which it operates. The Commission's entire sympathy is with the idea that automobile common carriers who use the highways of the State for their private gain should be required to pay something toward the maintenance of the highways over which they operate; but this is a matter for legislative action and one the Commission is powerless to remedy. So far as the inability of the railroad to operate, except at a loss, is concerned, that is such a matter as is irrelevant where adequate and sufficient transportation to meet the public convenience and necessity is involved. This principle is well established by decisions of numerous courts and commissions. If the people who are directly interested in maintaining the service of The Denver and Salt Lake Railroad Company will withhold their patronage from an automobile stage line, as is their privilege, there soon will be no additional service required to meet the public convenience and necessity of the communities affected. One can not say, however, that the passenger facilities now being furnished between Steamboat Springs and Craig by the rail carrier are at all convenient or that they meet the necessities of the two communities. This is not said in criticism of the schedules maintained by the Receivers of the railroad company, doubtless it is the best that can be furnished; and the Commission has done many things in the past to aid The Denver and Salt Lake Railroad Company in its efforts to furnish service to the people of northwestern Colorado.

The activities incident to the discovery of oil and gas in the region of Craig, which was adverted to by applicant in its testimony, is an added reason why additional transportation facilities should be provided for the accommodation, convenience and necessity of the people of Steamboat Springs, Craig and intermediate points. If that activity continues and that field should eventually become an established productive oil territory, it is not improbable

but that the rail carrier may be able to provide additional service and thereby actively solicit the local patronage between Steamboat Springs and Craig that now requires the automobile stage line service.

Without further discussion of the testimony adduced and thereby extend this decision and order to an unreasonable length, the Commission feels constrained in the line of its duty to grant the certificate of convenience and necessity to applicant, as prayed for by it.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires, and will require, the operation of an automobile motor stage line for the transportation of passengers between Steamboat Springs and Craig, Colorado, by the Denver and Steamboat Springs Stage Company, substituted applicant in the above entitled proceeding, and that this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That applicant shall file with the Commission within twenty days from the date hereof a schedule of its rates and the time of leaving and departure of its automobile stage line from the various communities served by it.

IT IS FURTHER ORDERED, That applicant shall operate its said automobile stage line daily, except Sunday, throughout the year, except when such operation is prevented by the act of God, the public enemy, or unusual and extreme weather conditions; and this order is made subject to compliance by applicant with the rules and regulations now in force or to be hereafter adopted by this Commission with reference to automobile common carriers, and also subject to any legislative action that may in future be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 4th day of September, 1924.

Decision No. 745

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF COLORADO

In the Matter of the Joint Application of Chicago, Burlington & Quincy Railroad Company and The Colorado and Southern Railway Company for Authority to Discontinue Passenger Train Service by Chicago, Burlington & Quincy Railroad Company between Lafayette, Colorado, and Burns Junction, Colorado, and to Substitute Passenger Train Service by Chicago, Burlington & Quincy Railroad Company between Lafayette and Louisville, Colorado, in lieu of Passenger Train Service by The Colorado and Southern Railway Company.	Application No. 371.

September 12, 1924.

Appearances:

For Applicants, J. L. Rice
For Town of Lafayette, Mr. R. W. Morgan,
Mr. Beckett, Mr. Henning.

STATEMENT

BY THE COMMISSION:

On September 9, 1924, the Chicago, Burlington & Quincy Railroad Company and The Colorado and Southern Railway Company presented to the Commission a joint application for permission to the Burlington Company to discontinue operation of passenger trains between the City and County of Denver and Lafayette, in Boulder County, Colorado, and for authority also to The Colorado and Southern Railway Company to cease operation of its passenger trains between Lafayette, Louisville and Coalton. The applicants propose,

in lieu of the service sought to be discontinued, the operation of two passenger trains each way daily, by Chicago, Burlington & Quincy Railroad Company between Lyons, Colorado, and Louisville, connecting at the latter point with the electric cars of The Denver & Interurban Railroad Company, operating between Boulder, Colorado, and Denver, except that trains are not to be operated on Sunday between Lafayette and Lyons.

Upon receipt of the application the Commission caused notice to be given to the Mayors of Lyons, Longmont, Erie and Lafayette, that the matter would be made the subject of investigation and hearing at the City Hall in Lafayette, September 12th, at 9:30 A. M. A like notice was posted at the station at Eversman.

A session of the Commission was accordingly held at Lafayette and all present were fully heard.

The town of Lafayette lies twenty-two miles north of the City of Denver, and is served by what is known as the Denver-Lyons branch of the C.B.& Q. Railroad. It is also connected by a Colorado and Southern branch line with the town of Louisville, 2.8 miles to the southwest. The station of Coalton is situated 3.12 miles south of Louisville and is at the junction point of the two lines of railroad, leading northerly from that point to Boulder,- one by way of Marshall, the other via Louisville. These latter roads are used jointly by The Colorado and Southern Railway Company and The Denver & Interurban Railroad Company. From Coalton, south, to Denver, The Colorado and Southern and The Denver & Interurban each have a railroad. These lines are parallel and practically upon the same right of way. From Burns Junction (a station 1.87 miles south of Coalton) to Denver,

the Burlington Company operates its trains over the Colorado and Southern track.

It appears from the evidence that at present the Chicago, Burlington & Quincy Railroad Company operates one passenger train each way daily, except Sunday, between Denver and Lyons, leaving the latter place at 9 A. M., passing through Lafayette at 10:10 A. M. and reaching Denver at 11:05 A. M. The return trip is made in the afternoon, departing from Denver at 2:45 P. M., coming to Lafayette at 3:38 P. M. and arriving at Lyons at 5:06 P. M. These trains do not pass through Louisville.

The Colorado and Southern Railway Company maintains what in railroad parlance is termed a "shuttle" service for passengers between Lafayette, Louisville and Coalton. Three trains, (Nos. 120, 122 and 126) leave Lafayette for Louisville each day at 7:40 A. M., 12:40 P. M. and 5:10 P. M. Nos. 120 and 126 go on to Coalton. Two trains, (Nos. 121 and 127), run from Coalton, through Louisville to Lafayette, passing Louisville at 9:02 A. M. and 6:55 P. M. No. 123 operates from Louisville to Lafayette, departing from Louisville at 12:55 P. M. In addition to The Colorado and Southern trains just mentioned it operates its Nos. 124 and 125 from Louisville to Coalton and return each day; making the round trip between 2:51 P. M. and 3:25 P. M.

By the application it is sought to discontinue operation of the Burlington trains Nos. 181 and 182 on the schedule mentioned, as well as Colorado and Southern trains Nos. 120, 121, 122, 123, 126 and 127. On the hearing, an amendment to the application was filed requesting discontinuance also of Colorado and Southern trains 124 and 125, inadvertently omitted from the original application.

The applicants, in place of the trains thus sought to be taken off, proposed operation by the Burlington Company of two passenger trains each way daily between Lyons and Louisville, via Lafayette, except that no Sunday service is proposed between Lafayette and Lyons. It is a part of this plan also to make connection at Louisville between the trains thus to be operated by the Burlington, and the electric cars of The Denver & Interurban Railroad Company, running between Denver and Boulder, via Louisville. It appears from the evidence that arrangements have been made with The Denver & Interurban Railroad Company to maintain a schedule suitable for such connection.

At the hearing it was shown, and indeed it is a matter of common knowledge, that in the locality involved a very large amount of local passenger traffic, which formerly went by railroad, now moves in private automobiles and in public busses. The proof adduced on the hearing discloses that the number of passengers carried on the Burlington trains between Denver and Lyons, and on the numerous Colorado and Southern trains between Lafayette, Louisville and Coalton, is extremely small in view of the service furnished. The expense of maintaining such service is far out of proportion to the revenue derived therefrom. The present situation would seem to be a proper subject for relief; particularly so, in view of the fact that a very material decrease in operating expenses can be effected by the changes suggested.

At the hearing several of the citizens of Lafayette expressed dissatisfaction with the service proposed in the

application for that part of the route between Lafayette and Louisville. In the course of the hearing the applicants proposed the following schedule, which, though not exactly agreeable to all, seemed generally satisfactory, to-wit:

G	E	C	A		B	D	F
	4:45 p	10:45 a	7:50 a	Ar Louisivlle Lv	7:55 a	12:55 p	4:55 p
7:30 p	4:35 p	10:35 a	7:40 a	Lv Lafayette Ar	8:05 a	1:05 p	5:10 p
6:25 p		9:30 a		Lv Lyons Ar	9:20 a		6:15 p

The trains in and out of Louisville are to make reasonable connection at that point with the cars of the Denver & Interurban Railroad Company operating between Boulder and Denver. In the judgment of the Commission, and so far as now appears, passenger train service in accordance with the foregoing time table, and with connections mentioned, will be reasonable and adequate for the communities involved.

On the Chicago, Burlington & Quincy road the station of Eversman, located about midway between Lafayette and Burns Junction, will be without passenger train service. It appears however, that there is in fact no town at this point. No railroad agency is maintained there. It has no post office, store or other business establishment. It is a flag stop only, and passengers but rarely take the train to or from this point. It is within approximately three miles of Louisville. Freight trains, carrying passengers, will serve it as heretofore. We hardly think the discontinuance of passenger service at Eversman will result in inconvenience of any moment.

Since the termination of Federal Control and the return of the railroads to the owning companies in 1920, a concerted effort has been put forth by the Government, both National and State, the Railroad Companies and a cooperating public, to eliminate waste, inefficiency and useless expense

in the operation of railroad properties, with a view to providing for the country at large a more adequate system of transportation. It is likewise true that in the end the cost of all railroading is therefore of benefit to all. The Commission believes these objects will be subserved in granting the order prayed.

ORDER

It is therefore ordered, That Chicago, Burlington & Quincy Railroad Company be, and it is hereby, permitted and authorized to discontinue its passenger train service, heretofore furnished by its trains Nos. 181 and 182, between Lafayette, Colorado, and the City and County of Denver, Colorado, and to cease operation of said trains between said places; and that The Colorado and Southern Railway Company be, and it is hereby, permitted and authorized to discontinue its passenger train service between Lafayette, Louisville and Coalton, Colorado, heretofore furnished by its trains Nos. 120, 121, 122, 123, 124, 125, 126 and 127, and to cease operation of said trains.

And it is further ordered, that in lieu of the service thus discontinued, and in lieu of the service heretofore furnished by its present trains Nos. 181 and 182, between Lafayette and Lyons, Colorado, said Chicago, Burlington & Quincy Railroad Company shall operate passenger trains between Lyons and Louisville, via Lafayette, Colorado, using the tracks of The Colorado and Southern Railway Company between Lafayette and Louisville, upon substantially the following schedule for the present, to-wit:

G	E	C	A			B	D	F
	4:45 p	10:45 a	7:50 a	Ar	Louisville	Lv 7:55 a	12:55 p	4:55 p
7:30 p	4:35 p	10:35 a	7:40 a	Lv	Lafeyette	Ar 8:05 a	1:05 p	5:10 p
6:25 p		9:30 a		Lv	Lyons	At 9:20 a		6:15 p

It is further Ordered, that said service shall be daily service, except that Sunday service shall not be required between Lyons and Lafayette; and that such passenger trains shall be so operated as to connect at Louisville, and there interchange passengers, baggage, mail and express with the trains or cars of The Denver & Interurban Railroad Company to and from Denver.

It is further ordered, that all tickets sold or issued by either Chicago, Burlington & Quincy Railroad Company or The Denver & Interurban Railroad Company for points between Denver and Lyons via Louisville and Lafayette shall be honored on the respective trains of either or both of said companies.

It is further Ordered, that this order shall become effective on the 28th day of September, A. D. 1924.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO,

By Grant E. Hall

H. A. Lamon

Otto Bock

Commissioners.

Dated at Denver, Colorado, this
12th day of September, A. D. 1924.

(Decision No. 746.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of Gailon Lewis, doing business as The Consolidated Truck Lines, for a certificate of convenience and necessity for the hauling of freight and merchandise between Denver and Fort Collins, Denver and Ault, and between Denver and Pueblo, Colorado and intermediate points.	APPLICATIONS NOS. 276, 277 & 278.

- - - - - - - - -

September 26, 1924.

- - - - - - - - -

Appearances: Arthur E. Aldrich, of Denver, Colorado, for Applicant;
J. Q. Dier, of Denver, Colorado, for Protestants, The Colorado and Southern Railway Company and Chicago, Burlington & Quincy Railroad Company;
E. G. Knowles, of Denver, Colorado, for Protestant Union Pacific Railroad Company;
J. W. Kelley, of Denver, Colorado, for Protestant C. L. Preston;
J. Paul Hill, of Brighton, Colorado, for County Commissioners of Adams County;
W. R. Kelly, of Greeley, Colorado, for County Commissioners of Boulder and Weld Counties;
George H. Shaw and Paul W. Lee, of Fort Collins, Colorado, for County Commissioners of Larimer County.

S T A T E M E N T

By the Commission:

On September 13, 1923, Gailon Lewis, doing business as The Consolidated Truck Lines, filed petitions, designated as Applications Nos. 276, 277 and 278, seeking a certificate of public convenience and necessity to operate a motor truck line as a common carrier of freight and merchandise between Denver and Fort Collins, Colorado and intermediate points, between Denver and Ault, Colorado and intermediate points, and between Denver and Pueblo, Colorado and intermediate points. The allegations in all three pe-

titions are practically the same with few minor exceptions.

The applicant states that he is engaged in the business of transporting and hauling freight and merchandise by means of auto trucks between the cities above mentioned; that the post office address of applicant is 1745 Blake Street, Denver, Colorado; that applicant has invested about $12,000 in establishing a receiving depot and equipping moter trucks for service on the aforesaid routes; that he is an honorably discharged soldier of the United States, having served in the recent World War, and that his service in that espacity was in the motor truck transport corps; that the applicant has been engaged in hauling and trucking on the Ault and Fort Collins routes since November, 1922, and on the Pueblo route since July, 1923, and has operated continuously and regularly from the respective dates to the present time; that the territory served from the Fort Collins and Ault routes is a well populated and prosperous farming district, and that public convenience and necessity require frequent and abundant service in the transportation of perishable farm products, merchandise and supplies by motor truck in addition to the present authorized service; that the service on the Pueblo route is through a number of small towns, and also through and to the cities of Colorado Springs and Pueblo, and that public convenience and necessity require frequent and abundant service in the transportation of perishable goods, merchandise and supplies by moter truck service, which service is best performed by motor truck in the manner aforesaid.

Applicant further alleges that on the Fort Collins and Pueblo routes there are at the present time no motor truck lines, within the knowledge of the applicant, operating thereover under the authority of a certificate of convenience and necessity issued by this Commission; that there is at present one motor truck line operated by one C. L. Preston, doing business as The Northern Transfer Company, over the Ault route to Greeley, Colorado, under the authority of a certificate of convenience and necessity issued by this Commission in the month of May, 1922; that the schedule of rates and operating

schedule of the applicant is attached to each of the petitions as an exhibit.

Upon the filing of the application copies of same were served on The Colorado and Southern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, American Railway Express Company, C. L. Preston, and The Atchison, Topeka and Santa Fe Railway Company, which resulted in the answer and protest filed by these parties. The Commissioners of Weld, Adams, Boulder and Pueblo Counties also appeared as protestants but filed no written pleadings.

The answer and protest of The Colorado and Southern Railway Company is typical of all other answers and protests filed herein and we shall, therefore, confine ourselves to a recitation of the same. The answer alleges that the application filed does not state facts sufficient to constitute grounds justifying the issuing or granting of the certificate of public convenience and necessity applied for; that in applying for said certificate the applicant has failed to comply with the statute in such case made and provided, as well as the Rules of Procedure of this Commission, in that the applicant has failed and omitted to show that he has received the required consent, franchise, permit, ordinance, vote or other authority of the proper county, municipal, state or other public authorities within and under whose jurisdiction said proposed truck line will be operated; that the protestant operates and owns a line of railroad in competition with the route designated in the application herein and is now operating, and at all times in the past has operated, regular freight trains between said termini which are, and always have been, more than adequate to supply and take care of the reasonable requirements and needs of the communities and territory located along and tributary to said line of railroad; that the railroad of this protestant furnishes, and in the future will continue to furnish, adequate facilities for the transportation of freight amply sufficient to accommodate the present and future needs for such transportation between said termini and the intermediate territory.

The matter was set down for hearing February 18, 1924, at 10:00 o'clock A. M., at the Hearing Room of the Commission, 305 State Office Building, Denver, Colorado, at which time testimony in support of the application and in opposition thereto by protestants was submitted, in connection with other applications for certificates of convenience and necessity for automobile transportation. The testimony on the applications for the routes north of Denver was taken up first, and the hearing of the testimony on the application for the southern route was taken up on February 20, 1924.

The applicant testified at the hearing that he is conducting a depot for freight and express at 1745 Blake Street, Denver, Colorado, formerly a vacant store, upon which he has a lease from month to month; that he is the owner of two auto trucks which are in use on the route between Denver and Fort Collins; that his entire investment consists of the lease on said depot and the necessary fixtures therein contained and the two automobiles above mentioned, the approximate amount of the investment being $3,500; that a great amount of his business has been of a private nature under special contract; that over the Denver and Fort Collins route there are in use four trucks; that over the route between Denver and Ault there is in use one truck; that over the route to Pueblo there are in use three trucks; that all of the trucks in use in the above routes for which the applicant requires a certificate of public convenience and necessity (except the two trucks belonging to the applicant) belong to other parties than the applicant; that the applicant has entered into an oral agreement with the owners of the other trucks by which they are to receive 85 per cent of all sums collected from freight and express, and the applicant is to receive the other 15 per cent; that this percentage basis, however, only applies to freight and express in and out of Denver; that the moneys received from any shipments originating between intermediate points are retained by the respective owners of the trucks, and the applicant does not receive any amount therefrom; that the business which the applicant conducts at the depot in Denver may be termed a commission business in freight and express; that the insurance

on all of the trucks is not carried by the applicant, but is carried by the respective owner of the truck in the sum of $1,500 to the load; that except as to the two trucks above mentioned, each truck driver owns his own truck, operates it, pays the license and is liable for any damages sustained. The applicant assumes no liability on any losses except on his two trucks, and assumes no responsibility after the trucks leave the receiving station. Any loss occurring thereafter is assumed by the driver; that the adjustment of any loss is not the applicant's concern, but is solely the concern of the owner of the truck; that the applicant does not carry insurance on any trucks except the two in which he has ownership; that the applicant desires that the certificate asked for shall cover all trucks, including those that do not belong to him; that the owners of the other trucks are working for themselves purely on a commission basis, and that they are in the business conducted by the applicant to the extent of 85 per cent. The applicant further testified that he never read any of the policies of insurance carried by the other truck owners and, therefore, was not familiar with the exact conditions and terms thereof; that the additional service offered by the applicant in his motor truck business consisted in the special contracts which he offered to certain shippers.

In the opinion of the Commission, it is very doubtful whether the applicant is engaged in the transportation business; in fact, the evidence tends to show that the applicant is engaged in a brokerage business for the shipment of freight and express over truck lines from which he receives 15 per cent of the total receipts. The Commission, however, prefers to base its opinion upon another ground.

It is apparent from the evidence that the applicant is not the owner of all of the equipment and trucks to be used under the certificate which he seeks. In fact, he admits that his personal service in connection with the transportation system sought may be termed a commission business.

In granting a certificate of convenience and necessity the Commission must have some assurance that the utility to be operated will prove reasonably stable and permanent and lend itself to control and regulation by the Commission. Furthermore, the public using the utility and any person who may suffer injury in any way by the operation thereof has a right to feel that the same is reasonably responsible for any loss or damage. The evidence is clear that the applicant, under his form of organization, is not responsible for any loss or damage in the operation of the trucks while in transit. This, in our opinion, is the main hazard experienced in such a utility. The applicant's arrangement with the truck owners who really operate the utility has not been reduced to writing and is rather uncertain. The most that can be said for applicant's form of organization is that it is a loosely jointed cooperative scheme without any definite legal liability or obligation. In the opinion of this Commission, such organization and operation as is proposed by the applicant is difficult to control, unstable, with hardly any assurance of continuity, and generally unsatisfactory.

No authority has been submitted by the applicant in which the issuance of a certificate of convenience and necessity was granted where the scheme of organization and operation is similar to the one in the instant case. In fact, all the authorities called to our attention are opposed to the granting of a certificate of convenience and necessity under similar circumstances.

The California Railroad Commission, in an investigation of the practices and methods of automobile transportation companies, entered an order to the effect that the practice of automobile transportation companies of leasing equipment or employing drivers or operating cars on a percentage basis of compensation dependent on the gross receipts per trip is unreasonable; and that such companies must either own their equipment or lease it for a specified amount on a trip or term basis, the leasing not to include the services of a driver or operator, such services to be made on the basis of a contract by which the driver or operator becomes an employee of the transportation company.

In re Transportation Companies, P.U.R. 1918-E, 782, 792.

In re James W. Gray, P.U.R. 1923-A, 600.
In re Mark R. Monzie, et al., P.U.R. 1923-B, 209.

Other authorities to the same effect are:

In re Buffalo Jitney Owners Association, P.U.R. 1923-C, 645, 649.
In re Jacobson, P.U.R. 1923-E, 481, 483.

The evidence indicates that most of applicant's transportation business, especially over the Ault route, is conducted under special contract. A common carrier, within the meaning of the Public Utilities Act of Colorado, includes every corporation or person affording a means of transportation by automobile or other vehicle whatever similar to that ordinarily afforded by railroads or street railways and in competition therewith, by indiscriminately accepting, discharging and laying down freight or express between fixed points or over established routes. Insofar as transportation under any special contracts of the applicant is concerned, until he has obtained a certificate of convenience and necessity he is not a common carrier and does not require a certificate of convenience and necessity for such transportation because he does not indiscriminately accept and carry freight or express. All contracts, special or otherwise, of a common carrier by auto transportation as defined above, are subject to the supervision and control of this Commission. Such contracts of a common carrier give rise to a great deal of discrimination and favoritism, and are not looked upon with favor by the Commission.

Under all the evidence submitted in these applications, and for the reasons above stated, the Commission is of the opinion that the public interest requires that no certificate of convenience and necessity be issued to the applicant herein. Other questions have been raised in this matter which, owing to the conclusions reached, it is not deemed necessary to further discuss.

O R D E R

IT IS THEREFORE ORDERED, That the public interest requires that no certificates of convenience and necessity be issued to the applicant, Gailon Lewis, and that the applications for certificates of public convenience and necessity as prayed for in Applications Nos. 276, 277 and 278 be, and the same are hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Halderman,

By J. L. Lamon

Otto Bock

Commissioners.

Dated at Denver, Colorado,
this 26th day of September, 1924.

(Decision No. ~~717~~)
(747)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of W. M. Fuller for a certificate of public convenience and necessity for the operation of a motor truck line for the transportation of freight between Denver and Fort Lupton, Colorado, and intermediate points.

APPLICATION NO. 239

September 24, 1924

Appearances: Grant LeVeque, of Brighton, Colorado, for Applicant;
E. G. Knowles, of Denver, Colorado, for Protestant Union Pacific Railroad Company;
W. R. Kelly, of Greeley, Colorado, for Board of County Commissioners of Weld County.

STATEMENT

By the Commission:

On April 2, 1923, W. M. Fuller, the above named applicant, filed a petition seeking a certificate of public convenience and necessity to operate as a common carrier by motor truck between Fort Lupton, Weld County, Colorado, and Denver, Colorado, for the carrying of freight and express. The applicant states in his application that he is engaged in the business of carrying freight and express by motor truck between Denver and Fort Lupton, Colorado; that his post office address is Brighton, Colorado; that since the first day of June, 1915, the applicant has conducted the business of carrying freight and express between Denver and Fort Lupton and any and all intermediate points along or adjacent to the main route of travel followed by the trucks of the applicant; that he operates over the streets and alleys of the City and County of Denver to the extent that it is necessary to collect or deliver freight and express and operate as a public carrier of freight and express; that he maintains a depot at 1940 Wazee Street, Denver, for receiving and setting down freight and express at Denver; that he uses the shortest

route to reach the main thoroughfare between Denver and Fort Lupton, which is the Lincoln Highway, passing in a northeasterly direction through Adams County to the city of Brighton, thence northerly to Fort Lupton in Weld County, and for such operation he has obtained the necessary license or permit from the respective authorities interested for the use of the streets, alleys and public thoroughfare within the boundaries of the particular municipality interested; that the route followed by the applicant may be considered as parallel with the right-of-way of the Union Pacific Railroad Company between Denver, Colorado and Cheyenne, Wyoming; that said railroad carrier is a carrier of freight and that the American Railway Express Company, a carrier of express, operates over the Union Pacific Railroad between the points above named; that in addition to the above named rail carrier, there are bus and truck carriers of persons, freight and express operating over the route used by the applicant as follows: Colorado Motor Way, Chase Motor Company and C. L. Preston, operating as the Northern Transfer Company; that all of the aforementioned carriers are competitors of the applicant over his route, so far as the applicant is able to determine.

The applicant then sets forth his schedule of operation and the tariff charged on freight and express hauled; that the rates charged, as per tariff schedule, cover transportation charge from the consignor's sending point to the consignee's receiving point, no extra charge being made for picking up freight or express at points served by the applicant or to deliver to the consignee or as directed by the consignor; that during the time the applicant has been serving as a public carrier of freight and express for hire a convenience and necessity existed, and exists at this time, for the following reasons: Because direct delivery from consignor to consignee is provided; that it saves trouble to the consignor of taking shipments to carrier's depot or in going to carrier's depot to receive shipments, and saves expense connected with deliveries to and from the depot of the applicant and saves time for both the shippers and the consignee; afternoon delivery to all points out of Denver to Brighton permits consignee to have goods on the same day ordered with least possible delay in delivery after

placing order; allows consignee of perishable freight and express to have same the same day it is ordered; applicant calls at farms along his route to receive farm products for delivery at Denver, such as milk and cream, and to deliver to the country patrons shipments destined to them, eliminating the trouble and time to such consignors and consignees of taking the shipments to the nearest rail depot and of calling at a rail depot to receive shipments that otherwise must come to such rail depot were this service of the applicant not available to the country patrons; that the applicant's patronage consists chiefly of business that originates in or is destined to points within easy access of the route covered by the applicant, without requiring the trucks of applicant to go much out of the way of the outlined route of regular travel; that the public convenience and necessity is further shown by continued and growing patronage of the service offered by the applicant, and that delivery is made during business hours when the consignor, or agent, and the consignee, or his agent, can personally attend to the details incident to shipping freight or express and of receiving it.

The applicant further alleges that he has an investment in his trucks of $5,000, using in the operation of his service three two ton trucks; that maps have been filed showing the route used by the applicant, and that public convenience and necessity has in the past required, and public convenience and necessity now requires, applicant to operate a motor truck freight and express service over the route now covered by him.

Upon the filing of the application copies of the same were served on the Union Pacific Railroad Company and the American Railway Express Company, which resulted in the answer and protest filed by these parties. The Commissioners of Weld County and Adams County also appeared as protestants, but filed no written pleadings.

The answer of the Union Pacific Railroad Company recites that said railroad is being operated between Denver and Fort Lupton; that the line of said railroad is paralleled by the state highway over which the applicant desires to operate his motor trucks; that it regularly operates railroad trains, both passenger and freight, over and along said line, and that the residents, citizens and people of the towns and territory adjacent and intermediate to said termini have been, and will be at all times, properly,

adequately, reasonably, sufficiently, promptly and conveniently served with respect to passengers, parcels, small packages and freight at reasonable charges; that it pays annually to the State of Colorado a large sum of money as taxes; that this revenue is used in part to build and maintain roads and highways; that the state highways should not be unnecessarily burdened with heavy traffic, such as is contemplated in the application herein, because such traffic will add enormously to the wear and deterioration of the highways, and by reason thereof there will be imposed on the respective counties and the State an increased burden of expenses for road repairs and construction, and that as a result of such use of the highways there will be heavy and continuous assessments against the tax payers for the benefit and assistance of a private enterprise conducted for gain and in direct competition with the respondent; that the use of the highway by the applicant will interfere with the use thereof by the public for personal business and pleasure and will add materially to the danger and hazard to the public in its own use of the highway; that said motor truck line, if established, will receive increased patronage and will thereby deprive the railroad company of a substantial amount of its business and of the income derived therefrom, to which revenue it is alleged it is justly entitled and should be permitted to retain in view of its prior entry into the field, the great investment of its railroad property, the high cost of operation, taxes paid and the general benefit to the communities served as a result of the operation of said line of railroad.

It is further alleged that the applicant has admitted that, in defiance and disregard of the law and without waiting to obtain the authority of the Commission, he has been, and is now, operating a motor truck line for the carriage of freight for hire between Denver and Fort Lupton in competition with the respondent.

The answer of the American Railway Express Company alleges that neither the present nor future public convenience and necessity requires, or will require, the continued operation of a motor truck line for the transportation of express and freight; that the Express Company has service on

trains of the Union Pacific Railroad Company Denver to Fort Lupton, and setting out its schedule; that the present train service is adequate for the public convenience and necessity, and that this locality is better served by passenger trains than is true of any other part of the State except between Denver and Colorado Springs; that there are no public demands to require the continuance of a motor truck line paralleling the rail line, Denver to Fort Lupton. It also alleges, in practically the same language as the railroad company, the payment of taxes and the deterioration of the roads by reason of heavy traffic.

The matter was set down for hearing February 18, 1924, at the Hearing Room of the Commission, State Office Building, Denver, Colorado, upon due notice to all parties, at which time testimony in support of the application and in opposition thereto by protestants was submitted. At the hearing the applicant testified that he was engaged in operating a truck line between Denver and Fort Lupton, and had been operating this line for ten years. He testified at some length relative to the necessity and convenience of the service which he was giving to the farmers and business men between Denver and Fort Lupton. Other witnesses were produced by him who testified as to the convenience and necessity of the service rendered. The protestants introduced some testimony as to the service rendered by them, introducing their schedule of train and freight service.

The evidence of the applicant and his witnesses as to the convenience and necessity of the truck line, briefly, was reliable, rapid and prompt service, especially where perishable goods were involved; that merchandise ordered under the service rendered by the applicant could be delivered from Denver to the consignee on the same date of ordering; that the service given by the railroad, while in the main satisfactory, was not sufficiently prompt to meet present day demands; that door to door delivery, a great convenience to the consignee as well as an economic saving, could not be furnished as adequately by the railroad or express company. The undisputed fact that the applicant has conducted his truck line successfully

even prior to the enactment of Section 35 of the Public Utilities Act carries some weight that a public convenience and necessity exists.

It may be stated that the motor vehicle carrier, as an important element in our transportation system, is evidently here to stay, and its presence can not and should not be ignored; that it is destined to find its place in the general transportation scheme as the short haul medium for the transportation of both persons and property in populated areas heretofore served by railroads is generally recognized. Store door collection and delivery of freight in less than carload lots has already passed the experimental stage in many communities. The Commission is of the opinion that the applicant has shown that a public convenience and necessity exists in the service which he has rendered and is rendering as a common carrier over the line alleged in his application.

The question of taxes and the use of a common carrier for hire of the public highways, raised by the protestants, is one which in our opinion is purely legislative, requiring the attention of the legislative branch of the government. The Commission has heretofore expressed its sympathy with such legislation. It is powerless to consider this question under the present status of our laws.

The protestants also raised the much discussed and argued question of the necessary consent of the respective counties before a certificate of public convenience and necessity can be issued to the applicant. The point involved was decided by this Commission September 15, 1923, in the case of The Colorado Motor Way, Inc., Application No. 191, to the effect that neither the board of county commissioners nor any other county officer has the power under the State law to grant or refuse any person the right to the legitimate use of the public highways, and not having this authority it was not necessary to obtain any consent therefor. The Commission regrets that its decision in Application No. 191 was not pressed for judicial interpretation by the protestants. While this is a question not free from doubt, yet the Commission adheres to its former opinion in the Colorado Motor Way case.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity

requires, and will require, the operation of an automobile line for the transportation of freight and express between the City and County of Denver and Fort Lupton, Colorado, by W. M. Fuller, applicant in the above entitled proceeding, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That applicant shall file with the Commission within twenty days from the date hereof a schedule of his rates and the time of arriving and departure from the various communities he serves.

IT IS FURTHER ORDERED, That applicant shall operate said automobile transportation line as set forth in his schedule throughout the year, except when prevented by the Act of God, the public enemy, or unusual and extreme weather conditions, and this order is made subject to compliance by applicant with the rules and regulations now in force or to be hereafter adopted by this Commission with reference to automobile common carriers, and also subject to any legislative action that may in future be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 26th day of September, 1924.

Commissioners.

(Decision No. 748)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - - - -

In the Matter of the Application of The Camel Truck Line Company for a Certificate of Public Convenience and Necessity for the Operation of a Motor Truck Transportation System between the City of Pueblo and the Town of Holly in the State of Colorado.

APPLICATION NO. 360.

- - - - - - - - - - - -
September 26, 1924.
- - - - - - - - - - - -

Appearances: Frank J. Hannix, Denver, Colorado, for applicant; Todd C. Storer, Pueblo, Colorado, for protestant, Missouri Pacific Railroad Company; Erl.H. Ellis, Denver, Colorado, for protestant, The Atchison, Topeka and Santa Fe Railway Company; F. O. Reed, for protestant, American Railway Express Company.

STATEMENT

By the Commission:

On July 10, 1923, the above named applicant filed its petition for a certificate of public convenience and necessity to operate a motor truck transportation system between the City of Pueblo and the town of Holly, in the State of Colorado, for the carrying of goods, wares and chattels as freight and express. The applicant states in its application that it is a corporation organized under the laws of the State of Colorado, with power and authority to conduct a general trucking business, as evidenced by its certified copy of Articles of Incorporation affixed to its petition; that since June 12, 1922, one Geo. B. Kurtz and one D. A. Kurtz have been conducting a motor truck line operating from the town of Holly, County of Prowers, State of Colorado, over the established public highway known as the "Santa Fe Trail" to the City of Pueblo, through territory, towns and cities intervening; that, in the operation of the motor truck line, said persons have had in service six to eight trucks at all times engaged in the transportation of goods, farm products, livestock, wares and chattels, generally for hire; that the applicant herein is now the

owner of the equipment so used by said persons, and has succeeded to the good will and established business of same and will, subject to the direction of this Commission, maintain and operate said transportation business.

Applicant states in its application that the principal office of applicant and its postoffice is maintained at Rocky Ford, Colorado; that the line of travel served by the applicant and the route proposed for the consideration of the Commission is over the established highway between Holly and Pueblo, as shown by a map marked Exhibit B; that the proposed route includes the towns of Holly, Granada, Swink, Manzanola and Fowler, and the Cities of Lamar, Las Animas, La Junta, Rocky Ford and Pueblo, all in the State of Colorado, and the Counties of Prowers, Bent, Otero and Pueblo, in the State of Colorado. That none of said cities or towns have any rule, law or ordinance that prohibits or limits the conduct through or within their limits of the transportation business proposed by the applicant; and that there is no requirement on the part of the applicant in the laws or ordinances of any of said towns or cities for applicant to obtain any consent for the operation of said motor transportation system; that the conduct of said transportation system may compete with The Atchison, Topeka and Santa Fe Railway Company, American Railway Express Company and for a short distance with the Missouri Pacific Railroad Company. That no other person or corporation is engaged in such business over said route. The applicant further alleges that said railways and express company do not and can not meet all the demands, needs and convenience of the public for transportation in said section, in that the shipping or delivery points on said railways are frequently removed from the source and destination of such shipments; that the loading or unloading of merchandise and farm products is destructive and damaging thereto; that shipments by rail are delayed by lack of car space and infrequency of service. That the requirements of crating and packing imposed by the railways and express company are arduous, expensive and sometimes prohibitive; that the source or destination of many shipments are removed considerable distances from stations established by said railway companies; that the territory is well populated and will hereafter increase in population and in its needs for transportation facilities; that there is now, and hereafter will continue to be, an urgent necessity for

a frequent, quick, timely and reliable method of transportation for supplies, farm products, meats, food and other chattels over said route and from point to point thereon. That the business experience of applicant's predecessor in said territory shows a steady and growing demand for transportation facilities over and above the prevailing service; that a sound, permanent and well established business has been built, and is now maintained with general patronage among merchants, farmers, stock raisers and consumers of the district. That the applicant can make and does make night trips where desired for speed or in carrying perishable goods. It is further alleged that applicant has available for use in such motor truck system six motor trucks together with equipment, storage room, loading stations and other necessary supplies. That it is desirous of enlarging and improving said system and said equipment, and of maintaining a regular and frequent service to all points involved. That rates satisfactory to the patrons and consistent with the direction of this Commission will be maintained.

Upon the filing of the application, copies of same were served on The Atchison, Topeka and Santa Fe Railway Company, Missouri Pacific Railroad Company and American Railway Express Company, resulting in the answers and protest of The Atchison, Topeka and Santa Fe Railway Company being filed on July 25, 1923, and the Missouri Pacific Railroad Company filed on July 25, 1923, and the American Railway Express Company filed July 17, 1923.

The answer and protest of the Missouri Pacific Railroad Company sets forth that the protestant is a corporation duly organized under the laws of the State of Missouri, and operates a line of railroad from Pueblo through the stations of Baxter, Vineland, Nyberg, Avondale, Nepesta, Boone, Fowler, and other stations easterly thereof; that its regular passenger and freight trains have been, are, and will be adequate to meet and care for the needs of the communities along said railroad; that the operation of the proposed motor truck line from Holly to Pueblo will, unjustly and unreasonably, interfere with and affect the business, operations and revenues of the protestant, for the reason that the said motor truck will directly compete in an unfair manner with the protestant's line of railroad between Pueblo and Fowler and intermediate points, and will indirectly compete with protestant's line of railroad beyond Fowler as far as Ordway and Sugar City. That protestant's railroad was constructed about thirty-five years ago, and has been continuously maintained and operated since that time, and that the cost of such

construction and the upkeep of said line has been very heavy as compared with the expense which would be necessary to the establishment of motor routes and the running of motor trucks; that the protestant has invested very large sums of money in its said line and necessary equipment. That the territory served by the railroad is sparsely settled, and the passenger and freight traffic therefrom is comparatively very light and the revenue thereof is very small; that said territory has been opened and developed by protestant by means of its said line of railroad, and it is justly entitled to handle all freight traffic therefrom. That protestant annually pays to the counties, cities, towns, school districts and drainage districts through which it runs large sums of money for taxes, a large portion of which is expended for the construction and maintenance of public highways, including the highway upon which the applicant proposes to operate its motor truck line; that the applicant will necessarily pay a very small amount of taxes as compared with the protestant, and the applicant proposes to operate over the highways several motor trucks which will add enormously to the wear and deterioration of said highways, as a result whereof the amount necessary to be expended for maintenance will be increased and additional taxes will have to be levied therefor. That the use of the highways by applicant will interfere with the use thereof by the public, and will add materially to the danger and hazard to the public; that the motor truck line, if established, will certainly receive more or less patronage which would otherwise fall to the protestant and to which protestant is justly entitled in view of prior establishment, great investment, taxes paid and the general benefit to the communities served as a result of its existence and operation. Protestant denies that the shipments by rail over its line of railroad are delayed by lack of car space or infrequency of service, and denies that the requirements of crating and packing imposed are arduous or prohibitory. Further denial is made that there is now, or will hereafter continue to be, urgent necessity for additional facilities for transportation over the route proposed by applicant.

Protestant, The Atchison, Topeka and Santa Fe Railway Company, recites that the public convenience and necessity does not, and will not in the future, require the operation of such a truck line; that the service

and facilities rendered and offered by protestant are adequate and sufficient for the needs and purposes of the public. That any inadequacy may be easily remedied by order of the Commission if, upon hearing, such railroad service is properly found insufficient or inadequate.

Protestant, American Railway Express Company, sets forth practically the same objections, and also recites its schedule of express service between Holly and Pueblo.

The matter was set down for hearing at the Court House in Pueblo on Friday, February 15, 1924, at which time the applicant produced testimony in support of its application, and testimony was offered by the protestants in opposition thereto. The railway carriers, in their protest, very strenuously urge the adequacy of their service and offer in their pleadings to remedy any inadequacy in service if, upon hearing, the Commission so decides.

The motor truck transportation system, while still in an experimental stage, is, nevertheless, an evolution that soon will reach more permanency. In fact, it is generally conceded now by most railway carriers that motor truck transportation is here to stay until such time as it is substituted by other more convenient, rapid and expeditious transportation. It would, in our opinion, be impossible and unwise to place a straight-jacket on any transportation system.

No railway carrier in this state has offered to supplant its freight or express service by motor truck transportation, and until the railway carrier does so, this service by motor truck must be furnished by other substantial and reliable persons or corporations.

The applicant produced a number of witnesses who testified on the question of public convenience and necessity. Practically all of this testimony, except the applicant's, was confined to the route between Pueblo and Rocky Ford. This particular territory between Rocky Ford and Pueblo is thickly populated with people following agricultural pursuits. A number of the withesses of applicant were farmers who testified that this truck service permitted them to obtain the middleman's profit on their livestock, as well as receive prompt returns on the sale of their livestock. That this service given by the applicant to the farmers is a great convenience can not, in our opinion, be questioned. The testimony of the witnesses from Rocky Ford was the same as similar testimony introduced in other like communities where

business men find it a great accommodation to have a door to door delivery, and to have this delivery more direct, rapid and expeditious than can possibly be given by the railway carriers. This is especially true as affecting the people of the villages of both Vineland and Avondale, towns quite remote from either the Missouri Pacific or Santa Fe Railroads. These places have several business houses, postoffices, etc., and are trading centers for large and populous rural communities, and for them truck service is now, and probably will continue to be, both a public convenience and a necessity. In our opinion, therefore, a public convenience and necessity exists for applicant's truck line between Rocky Ford and Pueblo.

While some very slight testimony was introduced by the applicant as to the territory lying east of Rocky Ford, the protestants offered substantial evidence to the effect that convenience and necessity did not require such a truck service. The evidence of the protestants in this respect was, in our opinion, more convincing than the evidence of the applicant.

Since the Commission is of the opinion that the certificate of public convenience and necessity to be granted to the applicant should be limited to the territory between Pueblo and Rocky Ford, it is not necessary to pass upon the resolution passed by the City Countil of La Junta objecting to the issuance of a certificate.

The necessity of obtaining the consent of the counties under Section 35 (c) of the Public Utilities Act was passed upon in the application of The Colorado Motor Way, Inc., No. 191, September 15, 1923, which in effect was that no authority existed on the part of counties to give the "required" consent. Admitting that there is some doubt on this point, the Commission, nevertheless, adheres to its former opinion, at least until such time as judicial interpretation by the courts of this state decide otherwise.

Under Section 35 (c) of the Public Utilities Act, the Commission has the power, after hearing, to issue a certificate of public convenience and necessity of a portion only of any contemplated facility, line or system, or for the partial exercise only or a right or privilege. Having in mind this statutory authority, the Commission has concluded to issue a certificate

of public convenience and necessity from Pueblo to Rocky Ford and to deny a certificate of public convenience and necessity from Rocky Ford easterly to Holly.

O R D E R

IT IS THEREFORE ORDERED, That a certificate of public convenience and necessity be issued to the applicant, The Camel Truck Line, for the operation of its line for the carrying of freight and express between Pueblo and Rocky Ford, Colorado, and all other intermediate places it may be able to serve, and that this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That a certificate of public convenience and necessity between Rocky Ford and Holly, Colorado, be, and the same is hereby, denied.

IT IS FURTHER ORDERED, That the applicant shall file with the Commission within twenty days from the date hereof a schedule of its rates and the time of leaving and departure from the various communities it serves.

IT IS FURTHER ORDERED, That the applicant shall operate its motor transportation line as provided by its schedule to be filed by the applicant, as above provided, throughout the year except when prevented by the Act of God, the public enemy or unusual and extreme weather conditions, and this order is made subject to compliance by applicant with the rules and regulations now in force or to be hereafter adopted by this Commission with reference to automobile common carriers, and also subject to any legislative action that may, in the future, be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

(S E A L)

F. P. LANNON

OTTO BOCK

Commissioners.

Dated at Denver, Colorado,
this 26th day of September, 1924.

(Decision No. 749)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of the Board of County Commissioners of Kiowa County, Colorado, for the opening of a public highway crossing at grade across the main line track of the Missouri Pacific Railroad about one-half mile west of Haswell, Colorado Station and on the east line of Section 36, Township 18 South, Range 52 West of the sixth Principal Meridian.	)	APPLICATION NO. 330.

- - - - - - - -
Sept. 26, 1924.
- - - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Kiowa County, Colorado, in compliance with Section 29 of the Public Utilities Act as amended April 16,1917, for the opening of a public highway crossing at grade over the main line track of the Missouri Pacific Railroad about one-half mile west of the Town of Haswell and on the east line of Section 36, Township 18 South, Range 52 West of the sixth Principal Meridian.

The application of the Board of County Commissioners bears the date of May 8, 1924, and was referred to the attorney for the Missouri Pacific Railroad on May 12th for his consideration.

On May 22, 1924, objections to the establishment of this crossing were filed by the respondent railroad alleging the crossing to be unnecessary and the location both unsuitable and unsafe due to the depth of cut at this point.

On June 27,1924, W.L.Reynolds, Engineer for the Commission, in company with J.O.Walker and John Rebel, Commissioners of Kiowa County, Colorado, made an inspection of the site and found the location to be unsuitable for the establishment of a crossing, and the Engineer brought to the attention of the two County Commissioners the large amount of work in grading that would be necessary to meet the requirements of a satisfactory grade crossing. At their request, the matter was held in abeyance in order that they might consider the matter further and on September 10, 1924, the Commission received a letter from the Board of County Commissioners of Kiowa County withdrawing the application.

The Commission will therefore issue its order dismissing the application without prejudice as herein set forth.

O R D E R

IT IS THEREFORE ORDERED, that the application of the Board of County Commissioners of Kiowa County, Colorado, for the establishment of a grade crossing over the main line track of the Missouri Pacific Railroad about one-half mile west of Haswell and on the east section line of Section 36, Township 18 South, Range 52 West of the sixth Principal Meridian, be dismissed without prejudice to the rights of either applicant or respondent, leaving the matter in the same status as if the application had not been made and withdrawn by the applicant.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Emmons

H. L. Lamson

Otto Bock

Commissioners.

Dated at Denver, Colorado,
this 26th day of September, 1924.

(Decision No. 750)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of the Board of County Commissioners of Weld County, Colorado by Dan C. Straight, Commissioner, for the opening of the public highway crossing over the right-of-way and tracks of the Union Pacific Railroad, near Decker Station, and on the south line of Section 11, Township 10 North, Range 67 west of the sixth Principal Meridian.	)	APPLICATION NO. 355.

- - - - - - - - -
Sept. 26, 1924.
- - - - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Weld County, Colorado, by Dan C. Straight, one of said Commissioners, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track of the Union Pacific Railroad at a point where said railroad crosses the south line of Section 11, Township 10 North, Range 67 West, of the sixth Principal Meridian.

This crossing is petitioned for the purpose of opening a highway on the section line east and west over said tracks, which will eliminate a private crossing 500 or 600 feet north of the section line.

The application bears the date of June 24,1924, and was referred on June 25, 1924 to the attorney for the Union Pacific Railroad for his consideration.

On July 27,1924, W. L. Reynolds, Engineer for the Commission, in company with W.H.Lowther, Division Engineer for the Union Pacific Railroad, and Messrs. Straight, Powers and Hewitt, Commissioners of Weld County, visited the proposed site and found the location to be a satisfactory one, being in level country, where the view from each direction is unobstructed.

It was observed that the use of the private crossing north

of Deckers had been the direct cause of several instances of damaged fence lines, thereby permitting stock to enter the fields as well as the right-of-way of the railroad.

The assent of the railroad was received by the Commission in a letter dated September 10, 1924, in which Mr. C.C.Barnard, Superintendent, approved the installation.

The Commission will therefore issue its order granting permission for the opening of this crossing as set forth.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, the public highway crossing at grade shall be, and the same is hereby, permitted to be opened and established over the main line track of the Union Pacific Railroad south of Decker Station and on the south line of Section 11, Township 10 North, Range 67 West of the sixth Principal Meridian; conditioned, however, that prior to the opening of said crossing to travel, it shall be constructed in accordance with the plans and specifications prescribed in the Commission's order, in re: Improvement of Grade Crossing in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of construction and maintenance of grading the roadway of said new crossing, including the necessary drainage therefor, shall be borne by Weld County, Colorado, and that all other expense in the matter of installation and maintenance of said crossing shall be borne by The Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 26th day of September, 1924.

Commissioners.

(Decision No. 751)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of the Board of County Commissioners of Arapahoe County, Colorado, for the opening of a public highway crossing at grade over the main line track of the Union Pacific Railroad, about one mile west of Byers, Colorado, and on the north and south line between Sections 7 and 8, Township 4, South, Range 61 West of the sixth Principal Meridian.

APPLICATION NO. 361.

- - - - - - - -
Sept. 26, 1924.
- - - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises on the application of the Board of County Commissioners of Arapahoe County, Colorado, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track of the Union Pacific Railroad at a point one mile west of Byers, Colorado, where said railroad crosses the north and south line between Sections 7 and 8, Township 4 South, Range 61 West of the sixth Principal Meridian.

The crossing is petitioned as a necessity and convenience for the farmers and residents in that section.

The application of the Board of County Commissioners bears the date of July 21,1924, and was referred on July 24,1924 to the attorney for the Union Pacific Railroad for his consideration.

The site was examined by W.L.Reynolds, Engineer for the Commission, on July 24,1924. He found it acceptable and satisfactory for the establishment of a crossing, there being a road already constructed on the north side of the railroad on the section line. The state highway runs parallel with the railroad on the north side and a private road leads to the right-of-way from the south. Some grading will be necessary

on the south side, but with a nominal amount of work, the crossing can be built, using slight grades and with no obstructions to view.

The Union Pacific Railroad, through its Superintendent, Mr. C.C.Barnard, assented by letter, dated September 10, 1924, to the construction of the crossing.

The Commission will, therefore, issue its order granting permission for the opening of this crossing as herein set forth.

O R D E R

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway crossing at grade shall be, and same is hereby, permitted to be opened and established over the main line track of the Union Pacific Railroad about one mile west of Byers, Colorado station and on the north and south section line between Sections 7 and 8, Township 4 South, Range 61 West, of the sixth Principal Meridian; conditioned, however, that prior to the opening of said crossing to travel, it shall be constructed in accordance with the plans and specifications prescribed in the Commission's order, in re: Improvements of Grade Crossings in Colorado, 2 Colorado P.U.C. 128.

IT IS FURTHER ORDERED, that the expense of construction and maintenance of grading the roadway at said new crossings, including the necessary drainage therefor, shall be borne by Arapahoe County, and that all other expense in the matter of installation and maintenance of said crossing shall be borne by the Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 25th day of September, 1924.

(Decision No. 722)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of)
Robert A. Arnett for a certificate of)
public convenience and necessity, au-)
thorizing permission to operate as)
common carrier, automobile stage carry-) APPLICATION NO. 329.
ing passengers, baggage and express)
between Steamboat Springs and Craig,)
Colorado.)
-)

Sept. 26, 1924.

By the Commission:

On August 26, 1924, the Commission rendered its decision and order in the above application, wherein applicant was granted a certificate of public convenience and necessity for the transportation of baggage, freight and express between Steamboat Springs and Craig, Colorado.

At the hearing in Steamboat Springs, on June 23, 1924, the applicant desired the certificate to cover the transportation of passengers, as well as baggage, freight and express between said two points; and there was some testimony of applicant in support of such purpose.

On August 30, 1924, a motion for re-hearing was filed by applicant asking that the order aforesaid be modified so as to specifically grant applicant a certificate of public convenience and necessity for the transportation of passengers over said automobile route, as well as baggage, freight and express; and the motion is supported by a statement of counsel for applicant that the evidence adduced at the hearing entitled the applicant to a certificate to include passenger transportation, and that the evidence disclosed the alleged fact that there was not business sufficient to warrant the establishing of two automobile carriers between said two points, and that unless the order was so modified as to include to applicant the right to transport passengers as well as baggage, freight and express, one of the main objects desired by applicant would be frustrated, with the

doubt expressed that applicant would not be justified in conducting the bus line with the privilege of transporting passengers eliminated.

The Commission has re-read the record concerning which the motion for re-hearing involves. The testimony that was adduced was from the applicant himself and it plainly appears from his testimony that he is equipped with but one light Dodge express truck; that he can seat four passengers in the express truck by providing an extra seat back of the driver's seat, and may accommodate one passenger in the driver's seat. From the testimony of applicant with reference thereto, it quite clearly appears that his primary object and purpose in seeking a certificate of public convenience and necessity is for the transportation of baggage, light freight and express between Steamboat Springs and Craig and intermediate points, and that what passengers he transports, or has been transporting, has been something in the nature of an accommodative service, though for compensation.

If there is a sufficient demand of the public convenience and necessity to be served in the carrying of passengers between said points, as represented, certainly one engaged in so doing would require passenger accommodations for more than four persons, and to be carried along with express, light freight and other commodities.

The provisions of sub-section (c) of Section 35 of the Public Utilities Act, expressly provides that,

> "The Commission shall have power, after hearing, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated facility, line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate, such terms and conditions as in its judgment the public convenience and necessity may require."

It was in the exercise of the power thus conferred that the Commission eliminated from the application that part of it that pertains to the carrying or transportation of passengers, as the Commission believed, under the evidence submitted, and still is of the opinion,

that no such showing of public convenience and necessity was made as would warrant the inclusion therein of applicant engaging in the transportation of passengers in addition to the carrying of baggage, light freight and express.

For the reasons hereinabove expressed, the Commission adheres to its former decision, and it now being fully advised in the premises, is of the opinion that the petition for re-hearing should be denied.

O R D E R

IT IS THEREFORE ORDERED, that the petition of applicant Robert A. Arnett, for re-hearing, filed in the above entitled cause, be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 25th day of September, 1924.

(Decision No. 723.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - -

In the matter of the application of)
A. J. Johnston for a certificate of)
public convenience and necessity to) APPLICATION NO. 283.
operate a motor truck line engaged)
in hauling freight.)
- - - - - - - - - - - - - - - - - - - -

- - - - - - - - -
September 29, 1924.
- - - - - - - - -

Appearances: James E. Garrigues, of Denver, Colorado, for Applicant;
J. Q. Dier, of Denver, Colorado, for Protestants, The Colorado and Southern Railway Company and Chicago, Burlington & Quincy Railroad Company;
E. G. Knowles, of Denver, Colorado, for Protestant, Union Pacific Railroad Company;
J. W. Kelley, of Denver, Colorado, for Protestant, C. L. Preston;
J. Paul Hill, of Brighton, Colorado, for County Commissioners of Adams County;
W. R. Kelly, of Greeley, Colorado, for County Commissioners of Boulder and Weld Counties;
George H. Shaw and Paul W. Lee, of Fort Collins, Colorado, for County Commissioners of Larimer County;
D. Edgar Wilson, of Denver, Colorado, for Protestant, The Chicago, Rock Island and Pacific Railway Company;
F. O. Reed, of Denver, Colorado, for Protestant, American Railway Express Company;
Thomas R. Woodrow, of Denver, Colorado, for T.H. Beacom, Receiver of The Denver and Rio Grande Western Railroad System.

S T A T E M E N T

By the Commission:

On September 26, 1923, A. J. Johnston, doing business under the name of The Midwest Transit Company, filed an application with the Commission seeking a certificate of public convenience and necessity to operate a system of motor truck lines engaged in hauling freight over the following routes: From Denver to Ault, Colorado; from Denver to Pueblo, Colorado, and from Denver to Arriba, Colorado. The application included two

other routes; namely, from Greeley to Fort Morgan and from Colorado Springs to Canon City. These latter two routes, however, were withdrawn and abandoned by the applicant at the hearing.

The applicant alleges in his petition that he is operating motor truck lines in Colorado engaged in the business of hauling freight and merchandise, generally, under the name of The Midwest Transit Company, not incorporated, and maintains stations, docks or loading platforms at Denver, Colorado Springs and Pueblo where he assembles freight for transportation; that his northern line extends from Denver to Ault and intermediate points; that his southern line extends from Denver to Pueblo and intermediate points; that his eastern line extends from Denver to Arriba and intermediate points, and that these several lines extend through the following counties: Denver, Arapahoe, Douglas, El Paso, Adams, Weld, Elbert, Lincoln and Kit Carsen; that there is a great demand for the system, and that it may be extended into other counties throughout the State; that his business address is 1420 18th Street, and that he resides at the Wynne Hotel, Denver, Colorado.

Applicant further alleges that he is engaged in the business of collecting, assembling, hauling and delivering freight for and to the public generally, and particularly for and to wholesale and retail business houses in the counties and at the places and points named in the application and along the route of said lines, as shown by a map attached to his petition; that a public necessity exists for said system, and the public receives quicker, more accommodating and better detailed service than it would have or receive if such service should be discontinued; that he collects freight for shipment directly from the consignor and transports and delivers the same direct to the consignee within a few hours time; that he collects in the various towns freight, general merchandise of all kinds and character, including all kinds of food stuffs and groceries generally and perishable articles which require quick delivery, such as fresh meat, fruits and vegetables; that he assembles with light trucks the articles for shipment and transports and delivers

direct to the consignee, thereby making a saving in time as well as affording a great convenience in the service over the old system of transportation; that many of the wholesale houses, storekeepers and people generally encourage and patronize this kind of service and desire its continuance for their convenience and accommodation, and that it has become a modern necessity in the business world for the immediate transportation of merchandise.

Applicant also alleges that said lines of transportation conflict with certain railroads, as shown on the map attached to the application, and also with The Northern Transfer Company, a truck system owned and operated by one C. L. Preston; that public convenience and necessity require competing lines, and that the public service is stimulated and maintained on a higher, more efficient, reliable and satisfactory standard by competition than where no competition exists, and that with only one truck line without competition there would be danger of the service deteriorating; that the service is improved by competition, and the amount of business done by the lines shows that there is a demand and necessity for the same.

Upon the filing of the application, copies were served on The Denver and Rio Grande Western Railroad System, Union Pacific Railroad Company, C. L. Preston, doing business as The Northern Transfer Company, The Colorado and Southern Railway Company, Chicago, Burlington & Quincy Railroad Company, The Atchison, Topeka and Santa Fe Railway Company and The Chicago, Rock Island and Pacific Railway Company. Protests were also made by the County Commissioners of Larimer, Weld, Adams, El Paso and Pueblo Counties.

The answer and protest of T. H. Beacom, as Receiver of The Denver and Rio Grande Western Railroad System, is typical of all other answers and protests filed herein and we shall, therefore, confine ourselves to a recitation of the same. The answer alleges that neither the present nor future public convenience and necessity require, nor will require, the operation of motor trucks for the transportation of freight and merchandise in the territory in question; that the various railroads now competing furnish, and will

continue to furnish, adequate facilities for the transportation of freight and merchandise amply sufficient to accommodate the present and future needs in said localities; that the establishment and operation of a motor truck line for transportation of freight and merchandise as prayed for, will unjustly and unreasonably interfere with and injuriously affect the operation, traffic, revenue and business of the protestant; that the applicant has failed to set forth either in his petition or in exhibits attached thereto copies of franchises or permits from the proper public authorities necessary to show that he has been authorized by the municipalities through which he intends to operate.

The matter was set down for hearing February 18, 1924, at 10:00 o'clock A. M., at the Hearing Room of the Commission, 505 State Office Building, Denver, Colorado, at which time testimony in support of the application and in opposition thereto was submitted, in connection with other applications for certificates of public convenience and necessity for automobile transportation. The testimony in support of the application for the routes north of Denver was heard first, and the testimony in the application for the southern route was heard on February 20, 1924.

The applicant testified at the hearing that he is conducting a freight depot at 1634 Wazee Street, Denver, Colorado, upon which he has a lease; that he is the sole owner of the business conducted at that place, that he commenced to operate the Denver-Ault route about August 8, 1923, on which there are in use two trucks; that he commenced the operation of the Denver-Pueblo route some time in September, 1923, upon which there are in use six trucks, and that he commenced to operate the Denver-Arriba route in the same month, on which there is in use one truck, and on occasion two trucks; that his ownership extends only to the depot and equipment at Denver, which he purchased some time in August, 1923, for the sum of $500.00, and that his entire investment connected with all of the routes amounts to between $1200 and $1300; that the trucks used on the various routes are not owned by the

applicant, but by others who, in most instances, drive and operate the respective trucks; that the applicant has entered into an oral arrangement with the owners of the trucks by which the freight received is divided on a percentage basis of 85 per cent to the truck owner and 15 per cent to the applicant on all freight originating and terminating at Denver, except any freight transported between intermediate points, any freight between Colorado Springs and Pueblo and any freight from Arriba and intermediate points to Denver, in which instances the owners of the trucks receive and retain all sums collected for freight; that each truck owner carries insurance on the respective truck under the direction of the applicant, and that the premium of insurance is paid by the truck owner; that the liability of the applicant to the shipper for loss or damage caused in transportation is limited to the freight transported, but the applicant is reimbursed for such loss or damage by the respective truck owner, the applicant holding the owner of the truck responsible for any loss on goods; that the applicant has no responsibility whatsoever of any damage caused by a driver through collision or otherwise (except as to goods transported) as to persons or property; that the 15 per cent obtained by the applicant on the freight business is paid to him for getting business, maintaining headquarters, and for superintendence; that the truck drivers are not required to furnish any bond to the applicant; that the applicant does not know whether the bills of lading upon which goods are transported over his route state anything as to his responsibility for the completion of the delivery of the shipment.

Applicant further testified that the depots at Pueblo and Colorado Springs are taken care of and the rent is paid by others than the applicant, and although the applicant receives no percentage from the transportation business between Pueblo and Colorado Springs, it is his desire that the certificate applied for shall cover this operation; that if personal judgment should be obtained against him for any loss growing out of truck operations, the only assets of his that could be reached would be his investment in the

depot at Denver, amounting to about $1200; that the applicant has never made a trip over the Greeley route but has made one or two trips to Colorado Springs; that the applicant carries no bank account in his name, the nature of the business being such that this is not considered necessary; that in case of loss the driver ordinarily settles the same immediately upon complaint; that although the applicant is not the owner of any of the trucks used under his transportation system, it is his desire that the certificate of convenience and necessity prayed for shall permit the transportation of freight by such trucks as he has made arrangements with on the percentage basis mentioned above.

The facts in this application are practically similar to the facts adduced in the applications of Gailon Lewis, Nos. 276, 277 and 278. What we said in the Gailon Lewis case applies with even more force in the instant case. Not only is the Commission asked to issue a certificate of public convenience and necessity over lines from which the applicant receives a percentage, but also over certain territory in which the applicant does not share in any of the freight collected. As we stated in the Gailon Lewis case, it is very doubtful whether, under such arrangement as the evidence shows in this application, Johnston is in the transportation business. In our opinion, the most that can be said is that he is in the business of assembling and soliciting freight to be transported by trucks not owned by him on a percentage basis. The Commission, however, prefers to base its opinion upon the same reasoning stated in the Gailon Lewis case.

The public interest requires that the Commission have some assurance before issuing a certificate of public convenience and necessity that the applicant's transportation business is such as will insure stability and a reasonable degree of continuity. The arrangement existing between the applicant and the truck owners who would transport the freight in the event that a certificate of convenience and necessity would issue, is such as would make the obligations and liabilities of the applicant very doubtful. The evidence discloses that the applicant's knowledge as to freight rates charged

and to be charged is very uncertain. It is reasonable to assume that the respective truck driver could know but very little more than the applicant himself in regard thereto. Having in mind the percentage division between the applicant and the truck drivers in the event of an overcharge of rates, and having in mind the uncertain evidence as to the financial liability of the applicant as well as the respective truck drivers, the refund on such overcharge of rates to the shipper would cause endless complications. If any refund should amount to a considerable size, the financial responsibility of the parties would make its collection very doubtful. Numerous other liabilities may arise, and do arise, in the transportation business for which there is no reasonable assurance that the same can be properly taken care of, either by the applicant or by the respective truck driver.

All the authorities to which the attention of this Commission has been called are opposed to the granting of a certificate of convenience and necessity under circumstances as disclosed by the evidence in this case.

In re Transportation Companies, P.U.R. 1918-E, 782, 792.
In re James W. Gray, P.U.R. 1923-A, 600.
In re Mark R. Monzie, et al., P.U.R. 1923-B, 209.
In re Buffalo Jitney Owners Association, P.U.R. 1923-C 645, 649.
In re Jacobson, P.U.R. 1923-E, 481, 483.

Under all the evidence submitted in this application and for the reasons above stated, the Commission is of the opinion that the public interest requires that no certificate of public convenience and necessity be issued to the applicant herein. Other questions have been raised in this matter which, owing to the conclusions reached, it is not deemed necessary to discuss.

O R D E R

IT IS THEREFORE ORDERED, That the public interest requires that no certificate of convenience and necessity be issued to the applicant, A.J. Johnston, and that the application for a certificate of public convenience

and necessity as prayed for in Application No. 283 be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of September, 1924.

(Decision No. 754)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the matter of the closing of Pinneo as an agency station, filed by The Chicago, Burlington and Quincy Railroad Company.

APPLICATION NO. 173.

Appearances:

John L. Rice, Esq., of Denver, for Applicant, Chicago, Burlington & Quincy Railroad Company,
J. B. White, Esq., of Akron, Chairman of the Board of County Commissioners of Washington County, Colorado, for Protestants.

Sept. 30,1924.

S T A T E M E N T

By the Commission:

In March, 1922, the Chicago, Burlington & Quincy Railroad Company, filed its application for permission to close Pinneo,Colorado, as an agency station, setting forth therein the reasons or grounds therefor. It complied with General Order 34, of the Commission, with reference to posting of notices at said station, and the Commission also served copies of said application to interested parties thought to be affected by the proposed closing of said agency.

Protests were filed to the application in the month of March, 1922, and the matter was allowed to rest in abeyance without any action being taken by any party in interest, until the 3rd day of April, 1924, and more than two years having elapsed since the filing of the application, the Commission upon its own motion entered its order dismissing the above application, without prejudice.

On July 27,1924, there was lodged with the Commission a petition to re-open the above numbered application, and asking authority to close the station of Pinneo as an agency station.

The petition recites that Pinneo is a station on its line of railroad in Washington County, Colorado, about midway between the towns of Brush, in Morgan County, and Akron, in Washington County, approximately 25 miles distant; that applicant allowed the former application to remain dormant upon the dockets of the Commission for the purpose of giving the patrons of said station an opportunity of patronage sufficient to justify or warrant the withdrawal of its application; but that as grounds or justification for the filing of the petition in July, 1924, applicant alleges that, instead of the conditions of the rail carrier at Pinneo getting better, that they are continually growing worse, until there is substantially no railroad business transacted at said station; and alleges that there is no town nor business of any kind at said place, and that the population living contiguous to said station is quite meager.

Applicant further alleges in its petition that the expense of maintaining the station as an agency station involves approximately $200.00 a month, and that the entire gross receipts from all business tendered applicant at Pinneo, including freight, express, ticket sales, and other items of receipts, average about 50% of the expense incurred in keeping an agent at said station of Pinneo; and it is therefore alleged that, under the circumstances, it is unreasonable, unjust and unfair to require applicant to maintain an agent at said Station, as there is no public need or necessity for an agent thereat under the conditions in its petition set forth.

The Commission, upon receipt of said petition to re-open the above application, required that notice be posted at the depot at Pinneo, as required by General Order No. 34, and in addition thereto the Commission served notice of the filing of said petition upon the postmaster at Pinneo, and in other ways endeavored to give the widest publicity to the community affected of said application.

The matter was set for hearing for Friday, September 5, 1924, at 2 o'clock in the afternoon at the City Hall, Brush, Colorado, notice thereof having been duly given to all parties in interest.

At the hearing testimony was submitted by applicant railroad in detail showing the amount of business transacted at Pinneo Station for the Calendar year,1923, and for the seven months of 1924, January to July inclusive; and also a statement of passenger traffic originating at and destined for Pinneo during the month of August,1924.

It appears from the evidence, that trains No. 14 and No. 15 are the only passenger trains that make Pinneo a station stop, No. 14 being eastbound, leaving Denver at 1:15 P.M. daily, arriving Pinneo at 3:45 P.M., and No. 15 westbound, leaving Akron at 2:15 P.M., passing Pinneo at 2:33 P.M. and arriving Denver 5:20 P.M. According to exhibit 8, submitted by applicant, during the month of August,1924, there was one passenger boarded and nine passengers alighted from No.14 at Pinneo station, while eight passengers boarded and one alighted from No. 15 during said month.

Exhibit 9, of applicant company, disclosed that for the calendar year,1923, and the seven months period in 1924, there were 168 shipments of all kinds from Pinneo, which yielded a total revenue of $164.00 for the 19 month period. Exhibit 1 is a detailed statement of freight forwarded, freight received, passenger revenue, and the total of freight and passenger revenue, at Pinneo station for the 19 month period, January, 1923, to July, 1924, inclusive, which shows:

Total freight forwarded	$787.75
Total freight received	443.59
Total passenger revenue	230.55
GRAND TOTAL--------	$1461.87

which gives for the 19 month period a total average revenue from all sources of $76.94 per month, a total average earning per month for the calendar year,1923, of $84.86, and a total average earning per month for the 7 month period, 1924, of $63.36.

In the matter of carload movements from Pinneo during the period, January,1923, to and including August,1924, Exhibit 3 discloses that there was no carload movement to that station in the 20 month period noted, while Exhibit 2 discloses that during the 19 month period, there was a total of twelve carloads forwarded from Pinneo station, yielding a total revenue of $693.00, consisting of eleven cars of cattle and one car of hogs. By Exhibit 4 it is disclosed that in the matter of L.C.L. shipments, during the 19 months period aforesaid, a total revenue of $94.73 was received for freight forwarded from Pinneo; by Exhibit 5 a total revenue of $443.59 L.C.L. was derived for freight destined to Pinneo, which comprises the total revenue derived by the carrier at Pinneo station, regardless of destination. By the two exhibits, however, it is disclosed that the revenue actually prepaid on carload freight at Pinneo during the 19 months period was $75.08, and the actual revenue prepaid for L.C.L.freight a like period at Pinneo was $26.78.

Exhibit 7, shows that the salary paid the agent at Pinneo for the 19 month period aggregated $3156.51, cost of stationery and supplies at such agency for a like period $52.34, and cost of fuel during the same period $64.96, or a total cost of maintaining Pinneo as an agency station for the year,1923, and the seven months period of 1924, of $3273.81, which is an average cost per month of maintaining an agency at said station of $172.30.

For the Protestants one witness testified, Herman Luers, who is an extensive owner of land surrounding said station, and probably the chief patron of the station at Pinneo. His testimony briefly stated is to the effect that it would be a convenience, particularly during unseasonable weather, for the transaction of his business, and others of the sparsely settled community, to have an agent at Pinneo, but that there were good roads in either direction, practically paralleling the rail carriers' lines, to Akron and Brush, and that the witness himself transacted most of his business at Brush. This witness was quite frank and fair, and

his testimony seemed to be predicated upon the fact that, while he did not pretend that the agency station at Pinneo was self-supporting, yet because of the profits being made by the rail carrier at other of its stations, was justification for the deficit being incurred by keeping the agent at Pinneo. If the witness premise be true, which is not in evidence, it would be no legal justification for continuing the expense of an agent at Pinneo at the expense of the public. Each community, as a general rule, must sustain the privileges and conveniences it enjoys; and if, in the given case, the public does not afford the utility sufficient revenue to at least pay the operating expenses of a specified service, as a matter of law, there is no sufficient public need and necessity for the continuance of such a burden to the utility.

It was established at the hearing that the country contiguous to Pinneo station was sparsely settled and that most of the inhabitants of the so called community were engaged in the railroad service, such as section men, the agent and other employees.

Viewed in the most favorable light possible, the Commission is not without hesitation in stating that the further continuance of an agent at Pinneo Station is unwarranted and not justified.

The apprehension was expressed that if the agent were removed, the privilege of loading and unloading stock at Pinneo station would be eliminated. To protestants the assurance is given,however, that permission for the closing of Pinneo as an agency station only, is the matter made the subject of this decision and order, and the only matter that is embraced within this application. In the event the carrier should desire to abandon its facilities at Pinneo, such as depot,stockyards,etc., it will be necessary for such matters to be made the subject of a new application, when notice will be given and a hearing held thereon with all parties given ample opportunity to be heard. Assurance is given that in the matter of carload consignments of stock, either in or out of Pinneo, arrangements may be made with the agent of the carrier at either Brush or Akron, for

the placement of cars at Pinneo siding, to be billed from the adjoining station, with no additional inconvenience except a trip to either town, or by telephonic communication. So far as the Commission is able to discern, no great hardship will be borne by the few people who have been patrons of Pinneo station. Other stations in this state, which do a much greater business than Pinneo seems to have done, are not provided with the convenience of an agent.

It is therefore the opinion of the Commission that the permission sought for the closing of Pinneo as an agency station should be granted at such time as the carrier desires, not earlier than October 1, 1924.

O R D E R

IT IS THEREFORE ORDERED, that applicant, Chicago, Burlington and Quincy Railroad Company, be, and it hereby is, authorized and permitted to withdraw its agent at the station of Pinneo, Washington County, Colorado, and to close such station as an agency station at such time as applicant shall elect so to do, not earlier, however, than October 1, 1924.

IT IS FURTHER ORDERED, that in the event of changed conditions, whereby revenues to the carrier are materially increased, any party in interest, whether a party to the record of this proceeding, or otherwise, may apply to the Commission for the re-installation of an agent at said Pinneo station.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Halderman,
A. P. Lannon
Otto Bock

Commissioners.

Dated at Denver, Colorado,
this 30th day of September, 1924.

(Decision No. 725)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of The Colorado and Southern Railroad Company for an order authorising discontinuance of regular train service between Denver and Morrison, Colorado.

APPLICATION NO. 331

SUPPLEMENTAL ORDER

- - -

October 1, 1924.

- - -

WHEREAS, on June 13, 1924, Decision No. 714 was entered in the above proceeding, which decision and order in part reads as follows:

> "IT IS FURTHER ORDERED, That the above application be suspended but remain on the dockets of this Commission for further proceedings should this order be not fairly complied with, or at the expiration of the period hereinabove stated, to-wit: October 1, 1924."

and,

WHEREAS, the meaning and intent of that portion of said order hereinabove referred to was to permit of complaints to the Commission up to October 1, 1924, in the event that carrier should not comply with the terms of said decision and order, or in the event the service in said order provided for by said carrier should not prove to be reasonably satisfactory to the public affected; and,

WHEREAS, since the rendition of said decision and order up to the first of October no complaint of any character or description has been called to the attention of the Commission, or any complaint in any manner lodged with the Commission;

It is, and will be, assumed that the terms and conditions specified in said order of June 13, 1924, are reasonably being complied with by the carrier, and are satisfactory to the public affected thereby.

O R D E R

NOW, THEREFORE, IT IS HEREBY ORDERED, That the suspension contained in the said decision and order of June 13, 1924, in the proceeding above designated, be removed, and that the order of this Commission aforesaid, being Decision No. 714, become the same, and hereby is declared to be the permanent order of this Commission in the premises.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hall Chairman

W. F. Lamson

Otto Brock

Commissioners.

Dated at Denver, Colorado,
this 1st day of October, 1924.

(Decision No. 756.)

756

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of The Camel Truck Line Company for a Certificate of Public Convenience and Necessity for the Operation of a Motor Truck Transportation System between the City of Pueblo and the Town of Holly in the State of Colorado.	APPLICATION NO. 260. Order Denying Application for Rehearing.

- - - - - - -

October 6, 1924.

- - - - - - -

Appearances: Frank J. Maumix, Denver, Colorado, for applicant; Todd C. Stover, Pueblo, Colorado, for protestant, Missouri Pacific Railroad Company; Earl H. Ellis, Denver, Colorado, for protestant, The Atchison, Topeka and Santa Fe Railway Company; F. O. Reed, for protestant, American Railway Express Company.

STATEMENT

By the Commission:

On September 26, 1924, the Commission entered its Decision No. 748 in this case granting to the applicant a certificate of public convenience and necessity for the operation of a motor truck line for the carrying of freight and express between Pueblo and Rocky Ford, Colorado, and all other intermediate places it may be able to serve, and denying to said applicant such certificate of public convenience and necessity for the operation of a motor truck line between Rocky Ford and Holly, Colorado.

On the 30th day of September, 1924, protestant, The Atchison, Topeka and Santa Fe Railway Company, filed its application for a rehearing in said case.

Now on this 6th day of October, 1924, after considering all matters presented in the original hearing, the Commission is of the opinion that there is no valid reason why this application should be

reopened, and the Commission being now fully advised in the premises, the petition for rehearing aforesaid will be denied.

O R D E R

IT IS THEREFORE ORDERED By the Commission that the application for rehearing by respondent herein be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT H. HALDERMAN

F. P. LANNON

OTTO BOCK

Commissioners.

(S E A L)

Dated at Denver, Colorado,
this 6th day of October, 1924.

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.

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 by Sanford D.Buster,)
Chairman, for the opening of a public)
highway crossing over the right-of-way) APPLICATION NO. 345.
and track of The Chicago,Burlington &)
Quincy Railroad Company on its Lyons)
branch, near Marnett spur, in Section 4,)
T. 2, N., Range 69 W.)
- -

- - - - - - - - -
October 7, 1924.
- - - - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Boulder County, Colorado, by Sanford D. Buster, Chairman, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public highway crossing at grade over the branch line of the Chicago, Burlington & Quincy Railroad, between Denver and Longmont, Colorado, near Marnett, in Section 4, Township 2, North, Range 69, West, of the Sixth Principal Meridian.

The crossing is petitioned for the purpose of eliminating a condition in the present highway whereby vehicular traffic from the south on the section line road between Sections 4 and 5 is now forced to make an unusual and dangerous turn of more than 90 degrees north and east of said railroad track in order to enter the east and west road leading to Longmont. This condition is produced by the peculiar circumstance of the railroad crossing the northwest quarter of Section 4 in a diagonal manner a very short distance from the west quarter corner of Section 4.

The petition requests the establishment of a second set of planking on a re-located piece of highway about 100 feet east of the

present north and south crossing and involves the purchase of a small tract of privately owned land for said re-located highway.

The application of the County Commissioners bears the date of June 2,1924, and was referred to the legal department of the respondent railroad on June 6th, for their consideration.

The location of the proposed change was inspected by W. L. Reynolds, Railway Engineer for the Commission, and was found to be satisfactory with respect to grades and unobstructed view in all directions.

An answer from the railroad, received by the Commission on June 26,1924, assented to the re-located piece of highway being established upon the condition that the present north and south crossing be closed.

On September 18th,1924, a letter from J.H.Barwise, General Solicitor of the Chicago, Burlington & Quincy Railroad, addressed to the Commission, gave assent to all matters contained in the petition if, in the judgment of the Commission, two crossings are really needed. It appears to the Commission that two crossings at this location will not increase the hazard of accident or collision, involving both vehicles and trains upon said branch line, due to the light traffic upon the railroad, but it is of the opinion that the probability of accidents occurring involving only vehicles upon said highway may be reduced by improving the highway layout in this instance where vehicular traffic is rather heavy.

The Commission will therefore issue its order granting permission for the opening of this new crossing as set forth herein.

O R D E R

IT IS THEREFORE ORDERED, that in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, a public highway crossing at grade shall be, and the

same is hereby, permitted to be opened and established over the branch line track of the Chicago, Burlington & Quincy Railroad 158 feet east of the point of switch leading to Marnett spur on the Denver-Longmont branch, in Section 4, Township 2, North, Range 69, West of the Sixth Principal Meridian, as shown upon the plat that accompanies the application, conditioned, however, that prior to the opening of said crossing to travel, it shall be constructed in accordance with the plans and specifications prescribed in the Commission's order, in re: Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, that the existing crossing on the north and south line between Sections 4 and 5, Township 2, North, Range 69, West, shall be retained and maintained as heretofore.

IT IS FURTHER ORDERED, that the expense of construction and maintenance of the grading of the roadway of said new crossing, including the necessary drainage therefor, as well as the expense of acquiring all necessary right-of-way, shall be borne by Boulder County, Colorado, and that all other expense in the matter of installation and maintenance of said crossing shall be borne by the Chicago, Burlington & Quincy Railroad.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 7th day of October, 1924.

(Decision No. 758)

At a General Session of the Public Utilities Commission of the State of Colorado held at its office in Denver, Colorado, on the 8th day of October, 1924.

INVESTIGATION AND SUSPENSION DOCKET NO. 63.
IN re RATES AND CHARGES AS PUBLISHED IN AMENDMENTS NOS. 10 and 11 TO C. & S. TARIFF NO. 1290-K, COLO. P.U.C. NO. 411, EFFECTIVE OCTOBER 15 and 31, 1924, RESPECTIVELY.

- - - -

IT APPEARING, That The Colorado and Southern Railway Company filed with the Commission, on September 13, 1924, Amendment No. 10 to Colo. P.U.C. No. 411, effective October 15, 1924, cancelling Amendment No. 9 concerning switching charge, local, at Denver, Colorado, applicable on intrastate traffic only, and on October 1, 1924, filed with the Commission Amendment No. 11 to said local and joint freight tariff, effective October 31, 1924, concerning the same switching charge and in explanation of Amendment No. 10, same being C. & S. Tariff No. 1290-K, Colorado P.U.C. No. 411; and,

IT APPEARING, October 4 there was filed with the Commission protest of The Victor-American Fuel Company, objecting and protesting against the increase in the switching rates proposed by the above numbered Amendment No. 10, wherein, in said protest is set forth, among other things, that said proposed increase will be unduly prejudicial, unjust, and unduly discriminatory against the protestant and all other shippers of Routt County, Colorado.

IT IS THEREFORE ORDERED, That the rates and charges, as published in the above numbered Amendments, be, and they are hereby, suspended for a period of one hundred twenty (120) days, from October 15, 1924, or until February 12, 1925.

IT IS FURTHER ORDERED, That said rates and charges appearing to be injuriously affecting the rights and interests of the public, the same be made/subject of investigation and determination by the Commission within the

the said period of time, or within such further time as the same may be suspended.

IT IS FURTHER ORDERED, That the rates and charges now in effect shall be, and remain, in effect until such investigation be made and until the further order of the Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Frank E. Hall Truman,

H. D. Lamson

Otis Bock

Commissioners.

Dated at Denver, Colorado,
this 8th day of October, 1924.

(Decision No. 759.)

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 discontinuance of passenger trains numbers 22 and 23 between Greeley and Fort Collins, Colorado.) APPLICATION NO. 369.

- - - - - - -
October 8, 1924.
- - - - - - - -

S T A T E M E N T

By the Commission:

IT APPEARING, That on October 4, 1924, applicant requested to withdraw its application for authority to discontinue Colorado and Southern passenger trains 22 and 23 between Greeley and Fort Collins, it is the opinion of the Commission that this cause should be dismissed.

O R D E R

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed without prejudice at request of applicant.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 8th day of October, 1924.

(Decision No. 760)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

In the matter of the application of the Trinidad Electric Transmission Railway and Gas Company to abandon certain portions of its operated line and to take up and dispose of said abandoned portions.

APPLICATION NO. 243

- - - - - - - -

October 8, 1924.

- - - - - - - -

S T A T E M E N T

By the Commission:

IT APPEARING, That a stipulation was filed October 6,1924, by attorneys for applicant and protestant asking that the protest of The Jeffrey Fuel Company in the above entitled cause be dismissed.

O R D E R

IT IS THEREFORE ORDERED, that the above cause be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 8th day of October,1924.

(Decision No. 761)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of T. H. Beacom as Receiver of the property and assets of The Denver and Rio Grande Western Railroad Company for leave to take up and remove approximately three miles of track from Leadville, Colorado, to Leadville Junction, Colorado.

APPLICATION NO. 368

- - - - - - - -

October 9, 1924.

- - - - - - - -

Appearances: J. A. Gallaher, A. C. Shields and Hugh Wilson for T. H. Beacom, Receiver of The Denver and Rio Grande Western Railroad Company.
R. D. McLeod, City Attorney of Leadville, H. R. Pendery, County Attorney of Lake County, H. W. Crawford and C. D. Bonner for Protestants, the City of Leadville, Lake County Commissioners, Leadville Chamber of Commerce and Leadville Lions Club.

S T A T E M E N T

By the Commission:

The initiation of the proceedings herein began August 22, 1924, when Mr. J. A. Gallaher, representing T. H. Beacom, Receiver of the property and assets of The Denver and Rio Grande Western Railroad Company, filed an application for the removal of that part of its railway tracks between Leadville and Leadville Junction, Colorado.

On the assurance of Mr. Gallaher that there would be no curtailment of service and no objections from the people of Leadville, so far as he knew, this Commission, in its Decision No. 737 on August 22, authorized the abandonment of the 2.70 miles of trackage between the points named.

August 27, 1924, at a mass meeting of citizens of Leadville, including the County Commissioners of Lake County, the Leadville City Council, the Chamber of Commerce and Lions Club of that city, resolutions were passed requesting this Commission to prevent any action by the railroad company in dismantling its line between Leadville and Leadville Junction, and also ask-

ing that the matters be held in status quo until the citizens of Leadville could prepare and present their case to the Commission in a formal hearing.

On receipt of the action taken by the citizens of Lake County, the Commission, on August 28,1924, by its Decision No. 743, rescinded its order No. 737 and ordered that the trackage be not removed,if at all, until the further order of the Commission. It was also further ordered that a public hearing in the matters involved in the railroad's application be held in the city of Leadville, September 18, 1924.

In accordance with the latter order, a full and complete hearing was held at the Court House in Leadville, before all members of the Commission on the date specified. A number of the most prominent citizens of Leadville and Lake County were in attendance, and those who testified were unanimously opposed to the abandonment of the tracks of the applicant between Leadville and Leadville Junction.

The testimony presented showed that Leadville was served by four passenger trains daily, Nos. 15 and 16 passing through the city, while stub trains connected with Nos. 1 and 2 at Malta, carrying passengers destined to and from Leadville, and also to points both east and west of Malta on the main line of the Denver and Rio Grande Western Railroad.

The applicant gave as a reason for abandonment the fact that the rails now in use were needed for repairs at other places and for relaying purposes on its narrow gauge lines. This line of argument did not impress the Commission, as it savored too much of a "rob Peter to pay Paul" policy. It was also stated by applicant that if it were allowed to abandon that part of its line between Leadville Junction and Leadville, then it would operate its trains to Leadville and return via Malta.

The applicant introduced testimony to the effect that the track is now laid with sixty-five pound rails which are too light to operate large engines over, and to do so with safety it would be necessary to relay with eighty-five pound steel, which would cause an additional outlay of about ten thousand dollars per mile, or approximately $28,500

for the 2.85 miles. Of course, to get at the exact amount of the expenditure, credit would have to be given for the value of the sixty-five pound rail taken up, which would materially reduce the cost of making the change. No positive evidence was introduced to show cost or saving to the applicant.

The hearing brought out the further fact that there are several elements that have an important bearing on the effect of the changes sought. Among these would be the mileage involved in operation, the altitude to which trains would have to be lifted, the turning around of trains on wye at Leadville, the difference in time consumed, and last, but not least, there is the convenience and necessity of the traveling public that must be at all times seriously considered when changes in train service are contemplated.

As now operated, train No. 16 from the west leaves the main line at Leadville Junction at an altitude of 9,757 feet and arrives at Leadville at an altitude of 10,200 feet after traversing 3.28 miles and raising 443 feet. This train then goes on to Malta, which has an elevation of 9,580 feet, and in its descent has a fall of 620 feet in the 5.04 miles traversed from Leadville to Malta. Thus it will be seen that train No. 16 now traverses 8.32 miles from Leadville Junction to Malta via Leadville, with the rise and fall in elevation as before stated.

Train No. 15 from the east, operates in the reverse direction between Malta and Leadville Junction via Leadville with same mileage and gradients as mentioned in the preceding paragraph, and would operate under exactly the same handicaps as train No. 16.

If the plan of operation as put forth by the applicant were allowed, then train No.16 would have to travel from Leadville Junction to Malta, 2.76 miles, and thence to Leadville and return, 10.08 miles, or a total mileage of 12.84 miles. To this the extra travel incurred by turning train on wye would add approximately one more mile, which would make the mileage 13.84 as against 8.32 miles as now operated. In addition to this increased mileage, it would have to overcome the great handicap of hauling its heavy trains to an altitude 177 feet higher than is now the case under

the present operation of these trains in and out of Leadville, both from the east and west via Malta and Leadville Junction. Also to the extra mileage involved and the heavier grade made necessary in the proposed mode of operation, it would make the turning around of passenger trains on a wye at Leadville imperative, and because of these several changes it would increase the time schedule of trains by at least twenty-five minutes. During winter months the hazard of turning trains on a wye at Leadville, where snows fall at great depths, would be greatly increased, and at times might become impossible, or at least cause very serious delays.

After listening to all the evidence presented in this case and giving full credence to it, and especially to that part of it relating to the longer route and added altitude to which trains would have to be elevated, persuades the Commission that, outside of expenditure for heavier rails, the proposed change would be a decided detriment to the public affected, and a much more inconvenient service than that given under existing conditions.

The Commission now being fully advised, and taking into consideration all the facts heretofore presented, including the lengthening of the time required to get into Leadville and to points both east and west of Leadville on the main line, deems that public convenience and necessity requires, and will require, the operation of passenger trains into and out of Leadvills as they were prior to the date of the application herein.

O R D E R

IT IS THEREFORE ORDERED, That Application No. 368 of T.H.Beacom, Receiver of the property and assets of The Denver and Rio Grande Western Railroad Company, be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Emman,

H. D. Lamon

Wm. Bock

Commissioners.

Dated at Denver, Colorado,
this 9th day of October, 1924.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of The Camel Truck Line Company for a Certificate of Public Convenience and Necessity for the Operation of a Motor Truck Transportation System between the City of Pueblo and the Town of Holly in the State of Colorado.	APPLICATION NO. 260 Order Denying Application for Rehearing.

- - - - - - - -

October 8, 1924.

- - - - - - - -

Appearances: Frank J. Mammix, Denver, Colorado, for applicant; Todd C. Storer, Pueblo, Colorado, for protestant, Missouri Pacific Railroad Company; Erl H. Ellis, Denver, Colorado, for protestant, The Atchison, Topeka and Santa Fe Railway Company; F. O. Reed, for protestant, American Railway Express Company.

S T A T E M E N T

By the Commission:

On September 26, 1924, the Commission entered its Decision No. 748 in this case granting to the applicant a certificate of public convenience and necessity for the operation of a motor truck line for the carrying of freight and express between Pueblo and Rocky Ford, Colorado, and all other intermediate places it may be able to serve, and denying to said applicant such certificate of public convenience and necessity for the operation of a motor truck line between Rocky Ford and Holly, Colorado.

On October 8, 1924, protestant, Missouri Pacific Railroad Company, filed its application for a rehearing in said case.

Now on this 8th day of October, 1924, after considering all matters presented in the original hearing, the Commission is of the opinion that there is no valid reason why this application should be reopened, and the Commission being now fully advised in the premises, the petition

for rehearing aforesaid will be denied.

O R D E R

IT IS THEREFORE ORDERED By the Commission that the application for rehearing by respondent herein be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hall Ermon,

G. L. Lamon

Allen Bock

Commissioners.

Dated at Denver, Colorado,
this 8th day of October, 1924.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the discontinuance of College spur track located at Mile Post 636.65, Denver Subdivision, Union Pacific Railroad, and the location of a spur track .7 mile east thereof.

APPLICATION NO. 375.

- - - - - - - -
October 15, 1924.
- - - - - - - -

S T A T E M E N T

By the Commission:

The Union Pacific Railroad Company, in compliance with General Order No. 34 of the Public Utilities Commission of the State of Colorado, filed with the Commission, a petition to discontinue and remove the spur track known as College in the Denver subdivision at Mile Post 636.65 on its main line track between Denver and Kansas City.

In lieu thereof, the petitioner proposes to locate and construct a spur track of approximately the same length at Mile Post 635.96 on the same line which is .69 of a mile east of the present facility.

The petition sets forth that the present spur is used infrequently as a loading track and that the change in location will not deprive its patrons in the adjacent community of either the service or convenience that is enjoyed under present conditions.

It is further alleged that the recently established Lowry Aviation Field of the Colorado National Guard requires contiguous siding facilities and that the relocated spur will conveniently serve this institution in addition to other ordinary service.

The application was filed on September 23,1924, and referred on the same date to Rice Means, Attorney for the City and County of Denver, for an expression of attitude in the matter. An answer from Mr. Means received October 1st, stated that no objections were entertained by the city to the granting of the petition.

The required notice of application in the matter was posted on the station sign at College spur on September 22,1924, and the matter was made the subject of news items in the various daily papers of Denver, but no objections have been filed with the Commission.

Both the present and the proposed locations of the spur were inspected on September 23rd by W. L. Reynolds, Railway Engineer for the Commission, and he reported that the change would not inconvenience patrons in the neighborhood.

Inasmuch as the City and County of Denver assent and no objections have been filed by other interested parties, and since the matter of the petition seems to possess definite merit, the Commission will issue its order granting the railroad permission to change the location of the spur track without a hearing in the matter.

O R D E R

IT IS THEREFORE ORDERED, That the spur track on the Union Pacific Railroad in Denver Subdivision at Mile Post 636.65, and known as College spur, be permitted to be abandoned and discontinued for use and removed from its present location, conditioned, however, upon the construction of similar facilities by the installation of a spur track for public use at Mile Post 635.96.

The discontinuance of the present facility at College spur is permitted to take effect on November 1, with the stipulation that the new siding shall be provided and put into service with as little delay as possible after that date.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 15th day of October, 1924.

Commissioners.

(Decision No. 764.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of)
The Colorado Gas and Oil Pipe Line)
Company, a corporation, for a cer-)
tificate of public convenience and) APPLICATION NO. 303. ✓
necessity.)

- - - - - - - -

October 18, 1924.

- - - - - - - -

S T A T E M E N T

By the Commission:

On November 27, 1923, The Colorado Gas and Oil Pipe Line Company, a corporation, filed with this Commission an application for a certificate of public convenience and necessity to operate and construct a natural gas and oil pipe line for the transportation as a common carrier of natural gas and oil in the State of Colorado.

A hearing was had on this application before Commissioners Grant E. Halderman, Frank P. Lannon and the late Tully Scott on March 17, 1924. Prior to the hearing a number of protests were filed against the granting of this application by The Public Service Company of Colorado, The Union Oil Company of California, and others. The Commission rendered its decision and order herein on July 30, 1924, granting to applicant a certificate of public convenience and necessity for the construction of the oil and gas pipe line aforesaid.

Between the date of the hearing as aforesaid, and before the rendition of the decision and order as above mentioned, the late Commissioner Scott became ill and on, to-wit: May 4, 1924, died. On May 16, 1924, he was succeeded on the Commission by Commissioner Bock. Upon consideration of the above case, the two commissioners who had heard the evidence were not in agreement, and Commissioner Bock was requested to prepare and submit his views thereon to the Commission, which culminated in the decision and order

of July 30, 1924, participated in by Commissioners Bock and Halderman.

Motions for rehearing were duly filed by all protestants, which motions were set down for argument for October 14, 1924, and fully argued before the Commission by protestants and applicant on October 14 and 15, 1924, at its Hearing Room, State Office Building, Denver, Colorado.

At the argument it was seriously and urgently contended by counsel for the city of Fort Collins and Larimer County, Colorado, that since Commissioner Bock was not a member of the Commission when the hearing was held in March, 1924, and thus had not heard the evidence nor seen the witnesses on the stand, that for this reason, if for none other, it was only fair to the protestants that a rehearing be granted in order that Commissioner Bock may have the full benefit and opportunity of personally hearing the evidence, and reaching a conclusion after having heard the same and seen the various witnesses testifying herein.

The Commission is of the opinion that there is some merit in the above contention, having in mind the seeming importance of the application as affecting the public interest.

For the above reason, the Commission is of the opinion that a rehearing of the above application for a certificate of public convenience and necessity for the purposes therein embraced should be granted.

O R D E R

IT IS THEREFORE ORDERED, That a rehearing of the matters and things involved in the above application be, and the same is hereby, granted.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Halderman

C. D. Lamon

Allen Bock

Commissioners.

Dated at Denver, Colorado,
this 18th day of October, 1924.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of)
Delmar L. Miller, doing business as)
The Aurora Truck Line, for a certi-) APPLICATION NO. 289
ficate of public convenience and)
necessity.)

- -

- - - - - - - - -
October 23, 1924
- - - - - - - - -

Appearances: Chas. C. Sackman, of Denver, Colorado, for applicant;
E. G. Knowles, of Denver, Colorado, for protestant, Union Pacific Railroad Company.

S T A T E M E N T

By the Commission:

On October 17, 1923, Delmar L. Miller, the above named applicant, doing business as The Aurora Truck Line, filed an application seeking a certificate of public convenience and necessity to operate and transport by automobile freight between Deer Trail and Denver, Colorado, and all intermediate points.

The material allegations contained in the application are that the applicant is desirous of establishing, and engaging in, and maintaining a freight transportation business by means of automobile trucks between the cities of Aurora and Denver, Colorado, and Deer Trail and Denver, Colorado, and all intermediate territory; that the postoffice address of said applicant is Aurora, Colorado, and 1940 Wazee St., Denver, Colorado; that the applicant is in the business of and is desirous of continuing the hauling of milk and other freight, as a common carrier, by means of automobile trucks in, and through, and immediately adjacent to the territory set forth, over a practically fixed

route and time schedule as set forth in the application; that the applicant has for about seven years been maintaining a truck service from Denver to about two miles west of Watkins, Colorado, covering the territory about six miles north and two miles south of Colfax Avenue, as the same runs out of Denver due east; that the applicant has for about two years maintained an automobile truck service from Denver to Deer Trail, Colorado, and intermediate points, for the carrying of general merchandise, freight, and also for the delivery of milk to Denver, Colorado, such service being maintained every day in the week except Sundays; that the applicant is informed, and believes, and so states the fact to be that said territory is now served, as to its railroad freight transportation facilities, only at Watkins and Deer Trail, Colorado, by the Union Pacific Railroad Company, this being a steam railroad line, and that all territory covered by the applicant west of Watkins, Colorado, has no railroad service for the carrying of freight whatsoever; that the applicant is informed, and believes, that the territory between Denver and Deer Trail is sufficiently large, improved, developed and inhabited, and originates enough freight business that is not, and can not be, provided for or taken care of by the railroad; and that the necessity and convenience of the farmers and merchants in said territory warrant and require the operation of motor truck transportation, to assist and supplement and provide additional service to that of the railroad now serving said territory, in order to furnish speedy and adequate facilities for the handling of the freight of said territory; that the applicant owns, or has in his possession, a sufficient number of trucks to satisfactorily take care of the automobile transportation to be furnished; that the applicant is a man of good, moral character, and has been in the motor truck business about eight years.

Upon the filing of the application, copies of the same were served on the Union Pacific Railroad Company and the American Railway Express Company, which resulted in a protest being filed by the Union Pacific Railroad Company on December 21, 1923. In said answer, it is alleged that said railroad is being operated between Denver and Deer Trail, and the said line of railroad is

paralleled by the state highway of the State of Colorado, over which the applicant desires to operate; that the protestant regularly operates trains, both passenger and freight, over and along its said lines of railroad, and all the residents, citizens and people of the towns and territory adjacent and intermediate to the termini of said line of railroad have been, are, and will be, at all times, properly, adequately and conveniently served by the protestant with respect to the transportation of parcels, small packages and all freight, including milk, at reasonable, lawful rates and charges; that said motor truck line, if established, will receive more or less patronage, and will thereby deprive said protestant of a substantial amount of its business and of the income derived therefrom, to which revenue said protestant is justly entitled, and it should be permitted to retain the same in view of its prior entry into the field, the great investment in its railroad property, the high cost of operation, and the general benefit to the communities served as a result of the existence and operation of said lines of railroad; that the applicant has failed to show or allege that he has received the required consent, franchise, permit, ordinance, or other authority of the proper county, etc., for the operation of a motor truck line for which a certificate of public convenience and necessity is sought.

The matter was set down for hearing on March 5, 1924, at the Hearing Room of the Commission, 305 State Office Building, Denver, Colorado, upon due notice to all parties, at which time testimony in support of, and in opposition to, the application was submitted.

At the hearing, the applicant testified that he has conducted a motor truck business from Denver to about two miles west of Watkins for the past eight years, and from Denver to Deer Trail, Colorado, for about the past two years; that his tonnage of shipment per annum has been about 700 tons; that his equipment is composed of five trucks, including a receiving depot at 1940 Wazee St., Denver, Colorado; that his investment in this truck business amounts to about $14,000, and that he is personally financially responsible to the sum of $20,000; that there is no railroad competition over the

route in question up to a point about two miles west of Watkins, Colorado. The applicant's testimony was supplemented by other witnesses to the effect that the service given by the applicant was a public convenience and necessity to the territory in question; that service by local freight from Denver was only three times a week; that merchandise ordered up to about 6:00 o'clock P.M. could be delivered the next morning at the door of the consignee; that the railroad company could give no such expeditious service; that related as to time, saving of drayage, as well as of spillage, motor truck transportation is more adaptable to the shipment of milk than railroad transportation, and that the shipment of milk by automobile transportation has been very much more satisfactory.

A witness for The Chicago, Rock Island and Pacific Railroad Company, at the same hearing, testified that it is hardly practical for a railroad to furnish the service given by motor truck transportation, and that the truck service is, in fact, a new industrial condition arising out of the advent of the automobile. It was further admitted by one of the witnesses of the same railroad that the service furnished by motor truck transportation, in many cases, was a convenience. There was some evidence to the effect that three or four years ago there was more service furnished by the railroad company than at the present time, but this evidence, however, was not very definite, nor was there any definite evidence presented showing any substantial loss of income by the railroad company since the operation of the truck line in question.

In his brief, the applicant seemingly contends that the auto transportation business, as conducted by him, is not that of a common carrier within the meaning of the Public Utilities Act; that part of Section 2 (e) of the Act applicable reads as follows:

> "The term common carrier, when used in this Act, includes * * * * * * * and every other corporation or person affording a means of transportation by automobile or other vehicle whatever, similar to that ordinarily afforded by railroads or street railways and in competition therewith, by indiscriminately accepting, discharging and laying down either passengers, freight, or express, between fixed points or over established routes; * * * * * * * etc."

The applicant in his business affords a means of transportation by automobile

similarly performed by railroads in the transportation of freight at an established rate. He testified that he cares for everyone who desires the service. The fact that his service includes the additional accommodation of a door to door delivery does not exclude him as a common carrier. His main object of transporting freight indiscriminately is clear from his testimony. Furthermore, his testimony shows that he is transporting between fixed points (Deer Trail and Denver), and his application expressly alleges this. The fact that he leaves an established route to make a door delivery, in view of the other circumstances, is not controlling.

It appears from the evidence that the route of the applicant to a point about two miles west of Watkins does not adjoin the railroad but that east from that point it does. The fact that for a greater distance his route does adjoin the railroad, together with the further fact that his terminals are railroad points, sufficiently establishes that he is in competition with the railroad. To hold otherwise would materially affect supervision and control by the Commission of the proposed transportation system. Unless the Commission assumes control over the entire system, there could not be proper and satisfactory public control and supervision.

Applicant also contends that his operation of a motor transportation system is not a "CONSTRUCTION" of a new facility, plant or system within the meaning of Section 35 of the Act. Hence applicant argues that said Section 35 never contemplated the granting or not granting of a certificate of public convenience and necessity for the use of the common public highways of Colorado, either as to automobile freight or passenger carriers. We can not agree with this contention. The word "CONSTRUCTION" as contained in this Section is synonymous with the words "Installation" or "Operation." The Act expressly declares an automobile line in competition with a railroad to be a common carrier, and that the term "Public Utility" includes every common carrier. Section 35 expressly includes every public utility. This particular question was raised in the case of The Atchison, Topeka and Santa Fe Railway Company vs.

Inter-City Automobile Line, Inc., P.U.R. 1923-B, 323. While the Commission in that opinion did not make any special reference to the word "CONSTRUCTION" as contained in Section 35, nevertheless the same was argued in the briefs. We quote from that case the following language:

> "From a careful reading of the law the Commission can find nothing wherein it would be justified in holding that carriers by automobile, in any sense, should be regarded in a different class than other public utilities as far as the granting or withholding of certificates of public convenience and necessity is concerned."

The protestant contends that applicant has not made a sufficient showing as to public convenience and necessity for his transportation system. In our opinion he has. As to the meaning of the phrase "public convenience and necessity," this was fully discussed by the Commission in the case of re Over-Land Motor Express Company, P.U.R. 1920-B, 551. The sufficiency of evidence as to convenience and necessity was ruled upon in the case of re C. L. Preston, P.U.R. 1922-C, 844. The facts in that case are very similar to the facts in the instant case. In the Preston case we found that the evidence introduced was sufficient to show a public convenience and necessity. Our attention has been called to the case of re Ralph McGlochlin, P.U.R. 1922-C, 215, decided by this Commission on March 8, 1922. The language therein defining public convenience and necessity is entirely too indefinite and incomplete, and no attempt was made therein to define the same. The Commission, therefore, adheres to the definitions contained in the Over-Land Motor Express Company case, supra, and in re C. L. Preston, supra.

On the question of the necessity of consent from a county before issuance of a certificate of public convenience and necessity, the Commission adheres to its opinion in the case of Colorado Motor Way, Inc., P.U.R. 1924-A, 56.

The Commission finds, therefore, that the applicant is a common carrier requiring a certificate of public convenience and necessity under the Public Utilities Act, and that the facts are sufficient to show that a public convenience and necessity exists for the motor truck transportation system

proposed by the applicant between Denver and Deer Trail, Colorado.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires, and will require, the operation of an automobile line for the transportation of freight and express between the City and County of Denver and Deer Trail, Colorado, by Delmar L. Miller, doing business as The Aurora Truck Line, the applicant in the above entitled proceeding, and this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

IT IS FURTHER ORDERED, That applicant shall file with the Commission within twenty days from the date hereof a schedule of his rates, and the time of arriving and departure from the various communities he serves.

IT IS FURTHER ORDERED, That applicant shall operate said automobile transportation line as set forth in his schedule throughout the year, except when prevented by the Act of God, the public enemy, or unusual and extreme weather conditions, and this order is made subject to compliance by applicant with the rules and regulations now in force or to be hereafter adopted by this Commission with reference to automobile common carriers, and also subject to any legislative action that may in future be taken with respect thereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 23rd day of October, 1924.

Decision No. 766

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the matter of the application of The Prairie Oil and Gas Company, a Kansas corporation, for authority to construct an oil pipe line extending from Craig, Colorado, in a northerly direction into Wyoming.

APPLICATION NO. 372

- - - - - - - - - - -
October 22nd, 1924
- - - - - - - - - - -

Appearances: George E. Brimmer, of Cheyenne, Wyoming, for Petitioner.

FINDINGS AND ORDER

BY THE COMMISSION:

The application of The Prairie Oil and Gas Company, a Kansas corporation, requesting The Public Utilities Commission of the State of Colorado to grant it a certificate of necessity and convenience authorizing the construction of pipe lines for the conveyance of oil from Section two (2) Township six (6) North, Range ninety-one (91) West of the Sixth Principal Meridian in a northerly direction to the Wyoming State line with the final northerly terminus of the line located at Parco, in Carbon County, Wyoming, was received by The Public Utilities Commission under date of September 10th, 1924, and the application was formally filed with The Public Utilities Commission as of that date.

On September 10th, 1924, the Commission ordered that public notice be given to the effect that on Friday, September 26th, at 10 o'clock A.M. at the State Office Building of the State of Colorado, in the City of Denver, Colorado, The Public Utilities Commission of the State of Colorado would hear evidence in support of and in opposition to the granting of the application.

At the appointed hour, the petitioner appeared by its counsel, George E. Brimmer, and appearances in opposition to the application were made as follows, to-wit:

Receivers of The Denver and Salt Lake Railroad Company,
by Elmer L. Brock, of Denver, Colorado.
F. E. Gregg, of Denver, Colorado.
The Denver Chamber of Commerce,
by George E. Collison, of Denver, Colorado.

The protestant, F. E. Gregg, made application for continuance of hearing and after consideration of the arguments advanced for and against the continuation, it was ordered by the Commission that the hearing be continued to the hour of 10 o'clock A.M. on October 22nd., 1924, at the hearing room of the Commission, and that any party desiring to protest, or object, to the granting of the application, within ten days from September 26th, 1924, file with the Commission written protest or objection.

At the appointed hour on Wednesday, October 22nd, 1924, the petitioner appeared by its counsel, George E. Brimmer, while no protestant made appearance or offered opposition to the granting of the application.

The Chairman of the Commission stated that F. E. Gregg had withdrawn his protest, that The Denver Chamber of Commerce had withdrawn its protest, and that

The Denver and Salt Lake Railroad Company had filed protest, stating that its protest was based upon the ground only that there had been produced so far an insufficient quantity of oil to warrant the construction of the pipe line.

The applicant presented evidence and testimony, under oath, in support of the allegations of the petition for the certificate, and no evidence was presented in opposition thereto, and the Commission being now fully advised in the premises,

DOTH FIND:-

1. That the applicant, The Prairie Oil and Gas Company, is a Kansas corporation, engaged in the business of producing, purchasing and marketing oil and gas.

2. That in the year 1924 The Prairie Oil and Gas Company, applicant herein, complied with the laws of the State of Colorado and obtained from said state full authority to transact business in and under the laws of the State of Colorado.

3. That the Hamilton Dome, so called, in Moffat County, Colorado, is controlled as to the oil and gas production, by the Texas Oil Company and the Transcontinental Oil Company, and oil has been and is being produced from the said dome in commercial quantities.

4. That The Prairie Oil and Gas Company, applicant herein, has entered into a contract with the Texas Oil Company and the Transcontinental Oil Company whereby The Prairie Oil and Gas Company purchased all of the production from the lands in the said dome controlled by the Texas oil company and the Transcontinental Oil Company.

5. That The Prairie Oil and Gas Company, applicant herein, is financially able to purchase the production from the said dome; is financially able to construct the said proposed pipe lines and to operate the same; controls and owns the control of the company that owns the refinery at Parco, Carbon County, Wyoming.

6. That The Prairie Oil and Gas Company arranged for the purchase of said production from the Hamilton Dome for the main purpose of assuring a supply of crude petroleum for its Parco refineries and that from an economic standpoint the said crude petroleum so produced from the Hamilton Dome and purchased by The Prairie Oil and Gas Company should, if production warrants, be conveyed from said Hamilton Dome to the Parco refineries through pipe lines.

7. That it is to the best interests of the people of Colorado that the pipe lines be constructed and that the Commission grant authority for the construction of said pipe lines.

O R D E R

WHEREFORE, IT IS ORDERED: That the applicant, The Prairie Oil and Gas Company, of Independence, Kansas, be and it is hereby granted a certificate of necessity and convenience authorizing it to construct pipe lines for the conveyance of oil as proposed along a right of way extending approximately along the line of survey made by The Prairie Oil and Gas Company from Craig, Colorado, to the Wyoming State line and thence to Parco, Wyoming, through the following sections of land to wit:-

Section	2,	Township	6	North,	Range	91	West.
"	35,	"	7	" ,	"	91	" .
"	26,	"	7	" ,	"	91	" .
"	23,	"	7	" ,	"	91	" .
"	14,	"	7	" ,	"	91	" .
"	11,	"	7	" ,	"	91	" .
"	2,	"	7	" ,	"	91	" .
Section	35,	Township	8	North,	Range	91	West
"	26,	"	8	" ,	"	91	" .
"	23,	"	8	" ,	"	91	" .
"	14,	"	8	" ,	"	91	" .
"	11,	"	8	" ,	"	91	" .
"	2,	"	8	" ,	"	91	" .
Section	35,	Township	9	North,	Range	91	West
"	26,	"	9	" ,	"	91	" .
"	23,	"	9	" ,	"	91	" .
"	14,	"	9	" ,	"	91	" .
"	11,	"	9	" ,	"	91	" .
"	2,	"	9	" ,	"	91	" .
Section	35,	Township	10	North,	Range	91	West
"	26,	"	10	" ,	"	91	" .
"	23,	"	10	" ,	"	91	" .
"	14,	"	10	" ,	"	91	" .
"	11,	"	10	" ,	"	91	" .
"	2,	"	10	" ,	"	91	" .
Section	35,	Township	11	North,	Range	91	West
"	26,	"	11	North,	"	91	" .
"	27,	"	11	" ,	"	91	" .
"	22,	"	11	" ,	"	91	" .
"	15,	"	11	" ,	"	91	" .
"	10,	"	11	" ,	"	91	" .
"	3,	"	11	" ,	"	91	" .
Section	34,	Township	12	North,	Range	91	West
"	27,	"	12	" ,	"	91	" .
"	22,	"	12	" ,	"	91	" .
"	21,	"	12,	" ,	"	91	" .
"	16,	"	12	" ,	"	91	" .
"	9,	"	12	" ,	"	91	" .

IT IS FURTHER ORDERED, That the said The Prairie Oil and Gas Company be and it is hereby granted authority to convey oil through the said pipe line when constructed, conveying its own oil and acting also as a common carrier when necessary.

IT IS FURTHER ORDERED, That The Prairie Oil and Gas Company report to this Commission as to the approximate cost of the said pipe lines by verified statement within forty-five (45) days after the final completion of the construction of the said pipe lines.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

By

Commissioners.

Dated at Denver, Colorado, this
22nd day of October, 1924.

(Decision No.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - -

Herbert Sommers, Complainant,	)	
vs.	)	CASE NO. 275.
The Midland Terminal Railway Company, Defendant.	)	

- - - - - - - -
October 27, 1924.
- - - - - - - -

Appearances: D. P. Strickler, of Colorado Springs, Colorado, for complainant;
C. C. Hamlin, and H. J. McCoy, of Colorado Springs, Colorado, for defendant.

S T A T E M E N T

By the Commission:

On December 27th, 1923, complainant herein filed his complaint against the defendant concerning the rates on ice from points between what is known as the Ute Pass district and Colorado Springs, alleging that said rates on ice were unreasonable, unjust and in excess of a reasonable compensation for the service rendered.

Defendant answered, and the case was set down for hearing and heard at the hearing room of the Commission, State Office Building, Denver, Colorado, January 26th, 1924, by Commissioner Lannon and the late Commissioner, Tully Scott.

Thereafter, and on April 22nd, 1924, the Commission rendered its decision and order in said cause. On April 25th, 1924, defendant filed its petition for rehearing and on July 2nd, 1924, filed its amended petition for rehearing wherein are alleged some thirteen grounds or reasons why a rehearing should be granted.

The matter was set for hearing on defendant's petition or motion for rehearing for October 17th, 1924, at the city hall, Colorado Springs, Colorado, but by agreement of counsel the hearing upon said motion was continued from time to time until finally the hearing on the motion for rehearing was duly heard, upon notice to all parties, at the State Office Building, Denver, Thursday, October 23rd, 1924.

At and prior to the time of the rendition of the decision and order herein on April 22nd, 1924, the late Commissioner Scott was ill and did not participate therein. He died on May 4, 1924, and shortly thereafter he was succeeded by Commissioner Bock.

At the argument on motion for rehearing on October 23rd,1924, as aforesaid, there seemed to be a serious contention made by the respective attorneys as to certain matters not appearing in the transcript of the record. Owing to the fact that neither Commissioners Bock nor Halderman heard the testimony, and thereby are compelled to rely upon the transcript of the record as made, and owing to the further fact that neither said two Commissioners in any manner participated in the hearing, it is thought to be deemed advisable that a rehearing should be granted herein. This conclusion is not based upon, nor must not be construed as intimating, that the record as made in January was incorrectly taken down by the reporter for the Commission; in fact the Commission has no hesitation in stating that the record as made and transcribed by its reporter is not subject to attack. The trouble seems to be that respective counsel contend that certain testimony was offered that the record does not show, which, of course, is a matter of opinion between counsel.

At any rate, it is thought to be the wise and expedient thing to do to grant a rehearing under circumstances such as are disclosed by the record in this case, and particularly when two of the Commissioners who must pronounce upon the motion for rehearing were not present to hear the

evidence submitted, and when one Commissioner who did so hear the evidence, subsequently and before the motion for rehearing is determined, dies.

ORDER

IT IS THEREFORE ORDERED, That defendant's petition or motion for rehearing of the matters involved in the above entitled case be, and the same is hereby, granted.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hoedemann,

H. L. Lamon

Otto Bock

Commissioners.

Dated at Denver, Colorado,
this 27th day of October, 1924.

(Decision No. 768.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the application of Delmar L. Miller, doing business as The Aurora Truck Line, for a certificate of public convenience and necessity.	APPLICATION NO. 289. Order Denying Application for Rehearing

- - - - - - - -

October 27, 1924.

- - - - - - - -

Appearances: Chas. C. Sackman, of Denver, Colorado, for Applicant;
E. G. Knowles, of Denver, Colorado, for Protestant, Union Pacific Railroad Company.

S T A T E M E N T

By the Commission:

On October 23, 1924, the Commission entered its Decision No. 765 in this case granting to the applicant a certificate of public convenience and necessity for the operation of a motor truck line for the carrying of freight and express between Denver and Deer Trail, Colorado, and all other intermediate places it may be able to serve.

On October 27 protestant Union Pacific Railroad Company filed its application for rehearing in said case.

Now on this 27th day of October, 1924, after considering all matters presented in the original hearing, the Commission is of the opinion that there is no valid reason why this application should be reopened; and the Commission, being now fully advised in the premises, the petition for rehearing aforesaid will be denied.

O R D E R

IT IS THEREFORE ORDERED By the Commission that the application for rehearing by respondent herein be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 27th day of October, 1924.

Commissioners.

(Decisio o. 769.)

PUC 23

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

- - - - -

In the matter of the application of W. M. Fuller for a certificate of public convenience and necessity for the operation of a motor truck line for the transportation of freight between Denver and Fort Lupton, Colorado, and intermediate points.

APPLICATION NO. 239

- - - - - - - - -
October 28, 1924
- - - - - - - - -

By the Commission:

In the above entitled matter the Commission on September 26th, 1924, rendered its Decision No. 747, granting to applicant a certificate of public convenience and necessity for the operation of a motor truck transportation line between Denver and Fort Lupton, Colorado.

Thereafter,and on October 6th, 1924, protestant, Union Pacific Railroad Company, filed motion for rehearing of the above matter, which, upon notice to all parties, was set for hearing before the Commission at its hearing room, State Office Building, at 10:00 o'clock a. m., Tuesday, October 28th, 1924.

The Commission having heard the argument of counsel upon said motion for rehearing,and it being now fully advised in the premises, and having given due consideration to the grounds of said motion, is of the opinion that said rehearing should be denied.

O R D E R

IT IS THEREFORE ORDERED, That the application or motion for rehearing aforesaid of the Union Pacific Railroad Company be, and the same is hereby,denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 28th day of October, 1924.

Dec. No. 770

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF COLORADO.

PUC-11 -2

IN THE MATTER OF THE APPLICATION OF W. E. CARVER TO OPERATE A PASSENGER STAGE LINE.) APPLICATION No. 197.

ORDER PERMITTING TRANSFER OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

On this 28th day of October, A. D. 1924, coming on to be heard the petition of Donald L. Carver, Administrator with Will Annexed of the Estate of W. E. Carver, Deceased, to have substituted for said W. E. Carver, the grantee in that certain certificate of public convenience and necessity issued by the Public Utilities Commission of the State of Colorado on December 18, A. D. 1922, granting permission to operate an automobile passenger stage line between Denver and Steamboat Springs, Colorado, the Denver and Steamboat Springs Stage Company, a corporation; and it appearing from evidence submitted to said Commission, that the said W. E. Carver died on the 10th day of May, A. D. 1924, leaving a will, admitted to probate in the County Court of the City and County of Denver, by the provisions of which together with the provisions of the law of descent, all of the interest possessed by the said W. E. Carver in and to the business of transporting passengers by motor car pursuant to said certificate and in and to all property connected therewith, passed to and is now vested in Annie M. Carver, widow, Clara Louise Monson, Donald L. Carver, Walter L. Carver, William T. Carver and Norman R. Carver, children, constituting all of the heirs at law of the said W. E. Carver, subject only to the lien of creditors who shall present valid claims against the estate of said W. E. Carver; and that said heirs have duly formed a

corporation organized under the laws of the State of Colorado, entitled the Denver and Steamboat Springs Stage Company, to which all of the said heirs have transferred their right, title and interest in said auto stage business and the property connected therewith; that during the month of July, A. D. 1924, the said County Court entered an order authorizing said administrator with will annexed to transfer to said corporation the automobiles shown upon the inventory of said estate together with such equipment, business and good will as may be appurtenant thereto, subject, however, to the consent of The Public Utilities Commission, to transfer to said corporation the certificate of public convenience and necessity above referred to; and that due notice of said petition and of the date set for the hearing thereof has been given The Denver and Salt Lake Railroad Company, the only respondent in the original application for said certificate, and that said respondent neither filed any protest to the petition upon which this order is based nor made any appearance at said hearing;

Now, Therefore, it is hereby ordered that the certificate of public convenience and necessity granted as aforesaid in the proceeding entitled "Application No. 197" to the said W. E. Carver, deceased, may be assigned and transferred to the Denver and Steamboat Springs Stage Company, such assignee to hold the same to the same extent and under the same terms as if said corporation had been named in said original order granting said certificate as the grantee therein.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO,

Commissioners.

Dated at Denver, Colorado,
this 28th day of October, 1924.

(Decision No. 771)

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 it to waive the collection of an undercharge of $4.93 on one carload of sand from Earth Products Company, Colorado City, Colorado, consigned to American Manganese Steel Company, Denver, Colorado, in the month of May, 1924.

APPLICATION NO. 387

- - - - -
November 6, 1924
- - - - -

STATEMENT

By the Commission:

This matter is before the Commission upon an application made informally by The Denver and Rio Grande Western Railroad Company for an order of the Commission authorizing it to waive an undercharge of $4.93 on one carload of sand from Earth Products Company, Colorado City, Colorado, consigned to American Manganese Steel Company, Denver, Colorado, in the month of May, 1924.

The application is supported by an affidavit from Mr. George Williams, General Freight Agent, The Denver and Rio Grande Western Railroad Company, that the legal rate and charges were exacted on the basis of 8½¢ cwt., as carried in Supplement No. 1 to D.& R.G.W. Tariff 4900-E, Colo. P.U.C. No. 80, effective April 1, 1924.

Prior to the time this shipment moved, the carrier had under consideration the establishment of a rate of 7¢ cwt. on sand, Colorado City to Denver. However, through an oversight, the reduced rate was not published until the publication of Amendment No. 32, D.& R.G.W. Tariff 4900-E, Colo. P.U.C. No. 80, effective July 12, 1924, or subsequent to this movement, and for this reason The Denver and Rio Grande Western Railroad Company feels that it would be doing an injustice to shipper in forcing collection of the rate

as in effect at the time shipment was made.

The Commission feels that the charges assessed on this shipment were excessive to the extent that they exceeded 7¢ cwt., and an order will be issued for the waiving of the collection of the undercharge amounting to $4.93.

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 the undercharge of $4.93 on one carload of sand from Earth Products Company, Colorado City, Colorado, consigned to American Manganese Steel Company, Denver, Colorado, in the month of May, 1924.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 6th day of November, 1924.

(Decision No. 772)

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 it to waive the collection of an undercharge of $34.85 on one carload of sand from Fountain Sand & Gravel Company, Pueblo, Colorado, consigned to American Smelting & Refining Company, Leadville, Colorado, in the month of April, 1924.	APPLICATION NO. 386

- - -

November 6, 1924

- - -

STATEMENT

By the Commission:

This matter is before the Commission upon an application made informally by The Denver and Rio Grande Western Railroad Company for an order of the Commission authorizing it to waive an undercharge of $34.85 on one carload of sand from Fountain Sand & Gravel Company, Pueblo, Colorado, consigned to American Smelting & Refining Company, Leadville, Colorado, in the month of April, 1924.

The application is supported by an affidavit from Mr. George Williams, General Freight Agent, The Denver and Rio Grande Western Railroad Company, that the legal rate and charges were exacted on the basis of 15¢ cwt., as carried in D.& R.G.W. Tariff 4900-E, Colo. P.U.C. No. 80 and Eugene Morris' Tariff 228, I.C.C. U.S. No. 1.

Prior to the time this shipment moved the carrier had under consideration the establishment of a rate of 9¢ cwt. on sand, carloads, Pueblo to Leadville. However, through an oversight, the reduced rate was not published until the publication of Amendment No. 28 to D.& R.G.W. Tariff 4900-E, Colo. P.U.C. No. 80, effective June 24, 1924, or subsequent to this movement, and for this reason The Denver and Rio Grande Western Railroad Company feels that

it would be doing an injustice to shipper in forcing collection of the rate as in effect at the time shipment was made.

The Commission feels that the charges assessed on this shipment were excessive to the extent that they exceeded 9¢ cwt., and an order will be issued for the waiving of the collection of the undercharge amounting to $34.85.

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 the undercharge of $34.85 on one carload of sand from Fountain Sand & Gravel Company, Pueblo, Colorado, consigned to American Smelting & Refining Company, Leadville, Colorado, in the month of April, 1924.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 6th day of November, 1924.

(Decision No. 773)

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 and The Denver and Rio Grande Western Railroad Company for an order authorizing them to waive the collection of an undercharge of $1,798.76 on fifty-seven carloads of dolomite from Dolomite Tipple consigned to Empire Zinc Company, Canon City, Colorado, in the months of March, April, May, June and July, 1923.

APPLICATION NO. 389

- - - -
November 6, 1924
- - - -

STATEMENT

By the Commission:

This matter is before the Commission upon an application made informally by The Atchison, Topeka and Santa Fe Railway Company and The Denver and Rio Grande Western Railroad Company for an order of the Commission authorizing them to waive an undercharge of $1,798.76 on fifty-seven carloads of dolomite from Dolomite Tipple, consigned to Empire Zinc Company, Canon City, Colorado, in the months of March, April, May, June and July, 1923.

The application is supported by an affidavit from Mr. George Williams, General Freight Agent, The Denver and Rio Grande Western Railroad Company and Mr. W. W. Strickland, Freight Auditor, The Atchison, Topeka and Santa Fe Railway Company, that the legal rate and charges were exacted on the basis of $1.04 per net ton, as carried in Consolidated Classification No. 3, Santa Fe Tariff No. 6851-J, Colo. P.U.C. 865, and D.& R.G.W. Tariff 4486-F, Colo. P.U.C. No. 16.

Prior to the time this shipment moved, the carriers had under consideration the establishment of a rate of 39¢ per net ton on this movement. However, through an oversight, the reduced rate was not published until the publication of D.& R.G.W. Tariff 4134-S, Amendment No. 13, effective July 19, 1923, or subsequent to this movement, and for this reason The Atchison, Topeka and Santa Fe Railway Company and The Denver and Rio Grande Western Railroad

Company feel that it would be doing an injustice to shipper in forcing collection of the rate as in effect at the time shipment was made.

The Commission feels that the charges assessed on this shipment were excessive to the extent that they exceeded 39¢ per net ton, and an order will be issued for the waiving of the collection of the undercharge amounting to $1,798.76.

O R D E R

IT IS THEREFORE ORDERED, That The Atchison, Topeka and Santa Fe Railway Company and The Denver and Rio Grande Western Railroad Company be, and are hereby, authorized and directed to waive the undercharge of $1,798.76 on fifty-seven carloads of dolomite from Dolomite Tipple, consigned to Empire Zinc Company, Canon City, Colorado, in the months of March, April, May, June and July, 1923.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Dated at Denver, Colorado,
this 6th day of November, 1924.

Commissioners.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - -

In the matter of the application of the State Highway Department of Colorado, for opening of a public highway crossing over the right-of-way and track of The Denver & Rio Grande Western Railroad Company at a point about 570 feet from point of switch on the Smelter Spur north of Salida, Chaffee County, Colorado, in Section 30, Township 50 North, Range 9 East, of the New Mexico Principal Meridian.

APPLICATION NO. 376.

- - - - - - - - -
November 8, 1924.
- - - - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the State Highway Department of Colorado by L. D. Blauvelt, State Highway Engineer, and in compliance with Section 29 of the Public Utilities Act as amended April 16, 1917, for the opening of a public highway crossing at grade over a spur track of the Denver & Rio Grande Western Railroad, north of Salida, in Section 30, Township 50 North, Range 9 East, of the New Mexico Principal Meridian.

This crossing is made necessary by the reconstruction of a section of the state highway on the southwest side of, and parallel to the right-of-way of said railroad upon which location the highway crosses the spur track at the point stated in the petition.

The petition alleges that the relocation of this section of highway eliminates two hazardous main line crossings at grade in the vicinity of this point.

The application bears the date of September 26, 1924, and was referred to the Legal Department of The Denver & Rio Grande Western Railroad Company on September 29th for an expression of their attitude in the matter. The Commission received a letter from E. N. Clark, General Attorney for the respondent railroad, bearing the date of October 3, 1924, consenting to the

establishment of this crossing with the stipulation that the Highway Department and the County of Chaffee agree to bear all expense in connection with the moving of switch, grading over right-of-way and tracks, and installation and maintenance of crossing planks, and necessary cattle guards.

This unusual apportionment of expense had been agreed upon in conference between the railroad and State Highway Department, and assent to the stipulation by letter dated October 7, 1924, and signed by L. D. Blauvelt, State Highway Engineer, was received by the Commission.

The site of the crossing was examined by W. L. Reynolds, Railway Engineer for the Commission, on October 24, 1924, and conditions were found to be satisfactory with respect to grades and unobstructed view in all directions.

The railroad traffic upon the spur line is very light, therefore the establishment of this new crossing in lieu of two grade crossings on the state highway over the main line track of The Denver & Rio Grande Western Railroad Company will reduce the hazard to travel in this vicinity. Therefore the Commission will issue its order granting permission for the opening of this new crossing, as set forth herein.

O R D E R

IT IS THEREFORE ORDERED, That in accordance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, the public highway crossing at grade shall be, and the same is hereby, permitted to be opened and established over the spur track of the Denver & Rio Grande Western Railroad, known as the Smelter Spur in the vicinity north of Salida in Section 30, Township 50 North, Range 9 East of the New Mexico Principal Meridian, and at a point approximately 570 feet from the point of switch and along said spur track, as shown upon the plat that accompanies the application, conditioned, however, that prior to the

opening of said crossing to travel, it shall be constructed in accordance with plans and specifications prescribed in the Commission's order, in re: Improvement of grade crossings of Colorado, 2 Colorado, P.U.C. 128.

IT IS FURTHER ORDERED, That the expense of the construction and maintenance of the grading of the roadway at said new crossing, including necessary drainage therefor, as well as the expense of installation and track changes as set forth in the stipulation referred to above, shall be borne by the State Highway Department of Colorado, as agreed upon by the state department and the respondent railroad.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 8th day of November, 1924.