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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

BRECKENRIDGE CHAMBER OF COMMERCE,

Petitioner,

-vs-

THE COLORADO & SOUTHERN RAILWAY
COMPANY, a corporation,

Defendant.

The Colorado Railroad Commission
Case No. 59.

The Public Utilities Commission
Case No. 74.

Submitted December 30, 1913,

Decided June 5th, 1916.

Appearances:

Barney L. Whatley, Esq., for Petitioner,
E. E. Whitted, Esq., for Defendant.

STATEMENT.

On September 23rd, 1913, the above named petitioner filed complaint before the State Railroad Commission of Colorado, and, eliminating the formal allegations, alleged: first, that the passenger fares charged by the defendant to and from points on its line of railroad located in Summit County, Colorado, and to and from other points on its line of railroad in Colorado, particularly between the Town of Breckenridge and the City of Denver, are unreasonable, excessive and discriminatory; second, that the defendant has and is maintaining and enforcing unjust and unreasonable freight rates on all commodity shipments and on ores, lumber, logs, hay, straw, etc., to and from points on its line of railroad west of Como, Colorado, and between points on its line of railroad situated wholly in Summit County; that said passenger fares and freight rates are wholly unreasonable, unfair

and unjustly discriminatory, and prayed for an order directing the defendant to cease and desist from demanding, collecting and receiving said unreasonable, unfair and unjust fares and rates, and further prayed that the Commission fix, by order, reasonable, fair and just fares and rates, and such other and further relief as to the Commission might seem meet and proper.

By way of answer, the defendant made a general denial of all the material allegations in the petition and particularly denied that any of its passenger rates, fares or charges between Leadville and Denver, or between Breckenridge and Denver, or between Breckenridge and Leadville, or between any other points, have at any time been unjust or unreasonable or unjustly discriminatory or unduly prejudicial; and for further answer alleged that at all times since it resumed operation of the line between Como and Leadville, said line from Denver to Leadville, as well as its branches, have been operated at a large monthly and annual loss to defendant; that both freight and passenger business over said line from Denver to Leadville, and from Breckenridge to Denver, and from Breckenridge to Leadville, as well as over all branches, have been carried on at a heavy monthly and annual loss; that said state of conditions had existed for a period of more than ten years prior to January 1st, 1912, and that said line from Denver to Leadville is at present being operated at a heavy monthly and annual loss in operating expenses alone, excluding both taxes and interest upon the value of the property employed by this defendant between Denver and Leadville; that to reduce any of the passenger or freight rates on said line would have the effect of increasing losses, which are already heavy and very unjustifiable, and that to reduce any of said rates and fares below the rates and fares which exist at present would be unjust to the defendant, would be

taking its property without due process of law, would compel the defendant to devote its property to public use without just compensation, and would be a denial of equal protection of the law to the defendant, in violation of both the Constitution of Colorado, and the Constitution of the United States, and prayed that said petition be dismissed.

The issues thus made up, the case came on for regular hearing before the State Railroad Commission of Colorado at its hearing room in the Capitol Building, Denver, Colorado, at 10 o'clock a. m., November 24th, 1913, the petitioner being represented by Barney L. Whatley, Esq., and the defendant by E. E. Whitted, Esq.

While the petition in this cause was filed and heard under the former Railroad Commission Act, which law was automatically repealed when the present Public Utilities Commission Law became effective on August 12, 1914, the final determination of the cause will be made under the provisions of the present Public Utilities Act, Section 66, chap. 127, Session Laws of 1913.

That part of the complaint referring to passenger fares having been heard and determined by the Commission, since the filing of this petition, in another action designated as Case No. 11, reported in 1 P.U.C., 35, it therefore is dismissed.

While the petition attacks the reasonableness of general and specific commodity rates as carried by the defendant carrier between points on its line into and out of points on its line in Summit County, and points wholly situated on its line of railroad in Summit County, it developed at the hearing that the principal complaint was directed to the rates on low grade ores from Breckenridge to Denver, and almost all of the testimony introduced concerned these particular rates. The identical rates involved in this case were attacked before the Interstate Commerce Commission also, in the case of The Wellington Mines Company vs.

The Colorado & Southern Railway Co., et al, 39 I.C.C., 202.

In that case the reasonableness of the proportion on the through rate on ore from Breckenridge to Denver, as applied to shipments moving from Breckenridge to Bartlesville, Oklahoma, was attacked. The testimony in that case was taken before an Examiner of the Interstate Commerce Commission, just prior to the hearing in this case, and much of the relevant testimony taken in that case was submitted in the form of exhibits to the State Railroad Commission for its consideration in this case. While no written stipulation was filed, it was agreed between all parties of interest that the findings and order of the Interstate Commerce Commission in the case above referred to would be followed by the Commission in this case. The case just cited was decided by the Interstate Commerce Commission on May 2nd, 1916, that Commission finding that a rate of \$2.25 per ton on ore, not exceeding in value \$12.00 per ton of two thousand pounds, would be a reasonable rate from Breckenridge to Denver, when applied as a proportion of a through rate to Bartlesville, Oklahoma.

On November 1st, 1910, the defendant herein ceased to operate that portion of its line between Como and Breckenridge. The Breckenridge Chamber of Commerce filed a complaint before the State Railroad Commission protesting against the closing of this portion of the line. The defendant was ordered to re-establish service between these points, but refused to comply. An action of mandamus was brought to enforce the order, which was sustained in both the District and Supreme Courts of the State (C.R.C. Biennial Report 1911-12, page 39; also 54 Colo., 64.)

It is contended by the petitioner, and admitted by the defendant, that the order in the above case was the direct cause of the increase in freight rates into and out of stations on its line of railroad in Summit County. It appears that when

the line between Como and Breckenridge was closed for traffic on November 1st, 1910, and for many years previous thereto, the defendant carried the following rates on ore, carloads, from Breckenridge to Denver:

Valuation per ten.....	\$8.00	\$12.00	\$18.00	Released to \$100.00	Over \$100.00
Rate per ton....	1.50	1.75	2.00	3.00	6.00

On January 20, 1913, subsequent to the opening and resumption of service of the line between Como and Breckenridge, the defendant filed with this Commission Supplement 16 to Tar-iff 1-I, C.R.C. 219, which provided for a rate of \$3.00 per ton on all grades of ore from Breckenridge to Denver. This sup-plement, however, made no change in the rate of \$1.50 per ton on low grade ore from Como, a point 22 miles east of Breckenridge, to Denver.

The testimony developed the fact that practically all of the ore produced in Summit County is low grade. This change in the rates therefore resulted in a substantial in-crease on every ton of ore shipped out of the district, which increase amounted to one hundred percent. in practically every case. The defendant introduced testimony showing the heavy operating expenses on its Leadville Division, that part of its line between Leadville and Como, in justification of the in-crease.

The testimony developed the fact, however, that the increase in rates made prohibitive the shipment of low grade ore, thereby greatly curtailing the output of that class of ore and materially decreasing the revenues of the defendant.

The Commission is inclined to the view that the practice of the carriers in making a graduated scale of rates on ores based on valuation is a reasonable one. The scale,

however, should be such as to permit the free movement of low grade, as well as high grade ores.

The Commission is of the opinion, and so finds, that the increase of the rate on low grade ore from Breckenridge and points in Summit County to Denver, to \$3.00 per ton, is unreasonable and unjustified and results in a charge in excess of the value of the service. The fact that the defendant for many years had carried a rate of \$1.50 per ton on ore, not exceeding in value \$8.00 per ton, from Breckenridge to Denver, raises a presumption that the rate was reasonable.

The Commission is of the opinion, and so finds, that a rate of \$2.25 per net ton on ore and concentrates of all kinds not exceeding in value \$12.00 per ton of two thousand pounds would be a reasonable rate to charge on shipments from Breckenridge and points on the line of the defendant railroad company in Summit County to Denver.

An order therefore will be entered in accordance with this opinion.

O R D E R.

IT IS ORDERED, that the defendant, The Colorado & Southern Railway Company be, and it is hereby notified and required to cease and desist on or before June 20, 1916, and thereafter to abstain from, publishing, demanding or collecting its present rates for the transportation of ore and concentrates of all kinds in carloads, when the value thereof does not exceed \$12.00 per ton of two thousand pounds, from Breckenridge, Colorado, and points on its line of railroad in Summit County, to Denver, Colorado, which rate has been found to be unreasonable.

IT IS FURTHER ORDERED, That The Colorado & Southern Railway Company be, and it is hereby, notified and required to established on or before June 20, 1916, upon notice to the Public Utilities Commission and the general public, by not less than five days filing and posting in the manner prescribed by law, and thereafter to maintain and apply to the transportation of ore and concentrates of all kinds from Breckenridge, Colorado, and points on its line of railroad in Summit County, to Denver, Colorado, a rate of not in excess of \$2.25 per ton of two thousand pounds, when the value thereof does not exceed \$12.00 per ton, which rate is found to be reasonable.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO,

S. S. Kendall
Geo. T. Bradley
W. H. G. [unclear]
Commissioners.

Dated at Denver, Colorado,
this 5th day of June, 1916.