(Decision No. 470)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of Application of the Town of Ault, Colorado, a municipal corporation, to sell its electrical distribution system. } APPLICATION NO. 140.

(August 8, 1921)

STATEMENT

By the Commission:

The petition of the above named petitioner was filed July 25, 1921, with the Commission, alleging in substance that petitioner is a municipal corporation under the laws of the State of Colorado, and that The Home Gas and Electric Company is a corporation organized under the laws of the State, and that the latter named corporation is engaged in the furnishing of electric energy for light, heat and power, with a distribution system in the Town of Ault and other territory in Weld County, Colorado; that for approximately two years, the Town of Ault, under authority of a certificate of convenience and necessity obtained from this Commission, had installed an electric light plant and distribution system for the furnishing of electric energy for heat, light and power in the said Town of Ault, and was a public utility with its schedule of rates on file with this Commission.

Said petition further sets forth that the town's electrical system is out of repair, and is not of sufficient size to meet the needs of itself and its inhabitants, and that to install such a system as will subserve the interests of said town and its inhabitants would require the expenditure of a large additional

sum of money; that the operation of its said electric system is now at a deficit or loss of more than Four Hundred ($400.00) dollars a month, and that the said town is in arrears in its obligations and is in need of ready cash to preserve its credit; and that the tax rate in said town is already high and there is no way of obtaining additional funds with which to repair and enlarge its electric system.

Petitioner further alleges that The Home Gas and Electric Company is ready and willing to purchase the property of the Town of Ault comprising its electric system, and to furnish it and its inhabitants with electric energy at the same rates that it has on file for its other consumers, and no higher than the rates filed and charged by said Town of Ault to its consumers; that a special election of the tax paying electors of said town was regularly called and held as provided by law, and upon due notice thereof having been given, said question of the town ceasing its functions as an electric utility and disposing of its electric light facilities and system to the said The Home Gas and Electric Company for the price of Ten Thousand ($10,000.00) dollars, was voted upon by said electors which was carried by a majority of more than two-thirds of the votes cast at said election.

Upon notice to the inhabitants of the Town of Ault and to the Ault Commercial Club, the matter was regularly set for hearing and heard at the Hearing Room of the Commission, Capitol Building, Denver, Colorado, at 10:00 o'clock A. M., August 4, 1921.

Evidence was introduced which fully sustained the allegations of the petition, and there were no protestants or objectors to the request of petitioner. M. A. Smith, Mayor of Ault, testified in detail as to the financial condition of the town, and also to the calling and holding of said election, and the result thereof, and there was also introduced certificates of the Clerk and Recorder of said town as to the result of said election and proof of publi-

cations of the notice of said special election being called.

The prayer of the petition is for authority on this Commission to said town to sell and dispose of its electrical distribution system, and that it be permitted to cease the business of distributing electrical energy. With the former question, the Commission has nothing to say, that having been determined in the affirmative by the vote the tax payers held thereon. With respect to the latter request, i.e., that said town be permitted to cease furnishing electrical energy as a public utility, the evidence fully justifies the granting of such authority, and particularly in view of the fact that an existing electric utility is now in the field and is capable and willing to serve said town and its inhabitants with electric energy for heat, light and power, at rates fixed by this Commission.

O R D E R.

IT IS THEREFORE ORDERED, That petitioner, the Town of Ault, be, and it is hereby, authorized and permitted to cancel its schedules and rates on file with this Commission as an electrical utility, and to cease engaging in the operation of an electrical utility.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDEMAN

(S E A L)

A. P. ANDERSON

F. P. LANNON

COMMISSIONERS.

Dated at Denver, Colorado,
this 8th day of August, 1921.

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.

A. L. LINDSAY
SECRETARY.

(Decision No. 471)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of an Investigation by the Commission upon its own Motion into the Reasonableness of the Rates of the American Railway Express Company upon Apricots, Pears, Cherries, Peaches and other perishable fruits from Montrose, Delta, Hotchkiss, Paonia, Grand Junction, Palisade and other points on the Western Slope to Pueblo, Colorado Springs and Denver.

CASE NO. 245.

(August 8, 1921)

STATEMENT and ORDER

By the Commission:

Service of the statement and order of the Commission in the above entitled cause having been made upon the American Railway Express Company, as well as upon the fruit growers in interest, upon the 30th day of July, 1921, with the result that on August 5, 1921, the American Railway Express Company by H. L. Lockwood, its Superintendent of Transportation and Traffic, appeared before the Commission in person, and proposed to satisfy the complaint of the Commission with reference to the express rates on perishable fruits and vegetables from the Western Slope into Pueblo, Colorado Springs and Denver by filing with the Commission, effective August 8, 1921, a rate thereon, any quantity, of $1.20 per hundred as an emergency or temporary rate, and to expire October 1, 1921; such rate being satisfactory to the fruit growers of the Western Slope, who so advised the Commission by telephone and otherwise, the institution of such rate was approved by the Commission, and the

same was filed in accordance with such proposition on, to-wit: August 6, 1921, effective as above stated, and thereby said complaint was satisfied.

ORDER.

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

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO.

GRANT E. HALDERMAN

(S E A L)

A. P. ANDERSON

F. P. LANNON

COMMISSIONERS.

Dated at Denver, Colorado, this 8th day of August, 1921.

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.

[illegible] MURRAY
SECRETARY

(Decision No. 4721)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of an Investigation by the Commission upon its own Motion into the Reasonableness of the Rates of the American Railway Express Company upon Apricots, Pears, Cherries, Peaches and other perishable fruits from Montrose, Delta, Hotchkiss, Paonia, Grand Junction, Palisade and other points on the Western Slope to Pueblo, Colorado Springs and Denver.

CASE NO. 245.

August 13, 1921.

SUPPLEMENTAL
STATEMENT AND ORDER.

By the Commission:

In the order made and entered herein, August 8, 1921, through inadvertence that order pertained only to express rates on perishable fruits and vegetables from the Western Slope to Pueblo, Colorado Springs and Denver, whereas, to prevent discrimination as against shippers of such classes of fruit to the use of the emergency rate therein provided for, who are in the same groups of Section 4 of Local Tariff No. 105 of said American Railway Express Company, the emergency rate therein provided for, should have applied from all points shown in Group No. 1 to all points in Group "A" of Section 4, Local Tariff No. 105.

This inadvertence and omission was called to the attention of the Commission by the Chamber of Commerce of Trinidad

and other shippers at Trinidad and Walsenburg, with the result that, upon the matter being called to the attention of the said express company, it has filed with the Commission as of August 13, 1921, and effective August 15, 1921, the same rate per hundred pounds as was specified in the original order herein to apply as an emergency rate on fruit and vegetables, (green or dried) from all points in Group No. 1 to all points in Group "A" of Section 4 of Local Tariff No. 105; and also the said rate to apply from intermediate points not shown in Group No. 1 to intermediate points not shown in Group "A".

As above stated, upon this being called to the attention of the said American Railway Express Company, it has filed with the Commission, notice to all agents in the above named groups, that effective August 15, 1921, the rates above mentioned will apply to and from all points in the respective groups as an emergency rate of $1.20 cwt., and to expire October 1, 1921. This will meet the discriminatory feature complained of in the original order and notice of August 8, 1921, and will more fully satisfy the complaint in this case.

No formal order is required, the above statement being deemed sufficient and in explanation of the order of dismissal heretofore entered herein, August 8, 1921.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

(S E A L)

A. P. ANDERSON

F. P. LANNON

Dated at Denver, Colorado,
this 13th day of August, 1921.

Commissioners.

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.

A. J. LINDSAY
SECRETARY.

~~COPY~~

(Decision No. 473)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

The Hygienic Ice & Coal Company, a corporation, Complainant, v. The Colorado & Southern Railway Company, a corporation, and Union Pacific Railroad Company, a corporation, Defendants.	CASE NO. 202

Aug 30 1921

ORDER DENYING MOTION FOR REHEARING

By the Commission:

The above entitled case was heard by the Commission, evidence was taken and the matter was inquired into.

Thereafter on August 5, 1921, an order was issued by the Commission wherein the coal rates from the Northern coal fields into the city of Boulder were reduced from $1.21½ per ton to 90¢ per ton.

Thereafter and on August 20, 1921, a petition for a rehearing was filed with the Commission by the above named defendants. In said petition there is set out thirteen different grounds, or reasons, why the said defendants contend they are entitled to a rehearing in this case.

Thereafter the Commission set a date for argument on said motion, and on August 29, 1921, oral arguments were heard at the hearing room of the Commission. At that time and subsequent thereto the Commission has given fullest consideration to the arguments of counsel and the reasons set forth therein.

The Commission has given particular attention to the third and sixth grounds as set forth in the petition, which in substance, are as follows:

That the enforcement of the order in this case will necessarily result in decreasing the intrastate revenues of the defendants herein, and will thereby necessarily result in decreasing the revenues of the carriers in the Western Group, and in consequence will necessarily result in creating an undue, unreasonable and unjust discrimination against and burden upon the interstate commerce of the carriers comprising the Western Group.

After careful consideration, the Commission is of the opinion that this contention is not well founded. There was evidence in the original record which was in part presented by the carriers themselves that a considerable part of the coal hauled from this field into Boulder was hauled by truck and at a less rate than that charged by the carriers.

If we admit, for the sake of argument, that the revenues of the carriers of the Western Group will be slightly decreased by the reduction of a single rate, we can see no justification for a continuance and we do not believe that it was the intention of the law, or is the intention of the Interstate Commerce Commission that a rate should be continued in effect, which appears to this Commission, to be unreasonably high and unjust.

It is possible that if the new rate of 90¢ proves effective in decreasing the amount of coal now hauled by truck the revenues to the defendants herein would not be decreased.

It was said in the original opinion the carriers herein were expected in that hearing to justify the rate of $1.21½

per ton. This they have not done and for the reasons above stated, and after careful consideration of the whole matter, the motion for a rehearing herein is hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

GRANT H. HALDEMAN

(SEAL)

A. P. ANDERSON

Commissioners.

Dated at Denver, Colorado, this
30th day of August, 1921.

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. 474)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

The Monte Vista Commercial Club, et al., Complainant,	)	CASE NO. 197
v.	)	
A. R. Baldwin, Receiver, The Denver and Rio Grande Railroad Company, et al., The Denver and Rio Grande Western Railroad Company substituted, Defendant.	)	SUPPLEMENTAL ORDER

September 15, 1921.

STATEMENT

By the Commission:

On October 2, 1920, the Commission entered its order and decision in the above entitled matter, after a hearing had concerning the matters involved therein on September 29, 1920, in the city of Monte Vista, Colorado where evidence was taken and all parties interested in the subject matter of such inquiry were heard.

Practically the only contention made the subject of inquiry in the hearing and embraced within the order aforesaid was Rule 6 of the then Carriers' Circular No. 61 revised, and upon due consideration the Commission, by its said order of October 2, 1920, abrogated the original Rule No. 6 in the said Circular 61 and substituted therefor Rule 6, which is set out in said order.

In a statement of the Commission preceding the promulgation of the order aforesaid appears this language:

> "It was further agreed and understood that if the Commission abrogated original Rule No. 6 and substituted therefor the rule substantially as suggested by the complainants, that then and in that event the growers, dealers and shippers would agree upon a system of equitable distribution of cars available for the potato movement which, when approved by the Commission, the carriers would put into effect."

Apparently the growers, dealers and shippers have never reached an agreement upon any system of distribution of cars available for the potato movement, or if so, no such plan has been approved heretofore by this Commission, with the result that the complainant, the Monte Vista Commercial Club, and the San Luis Valley Potato Growers Association and other interested parties in the said potato movement, have heretofore and in the early part of this month filed with the Commission a plan or system which embodies rules for the alleged equitable distribution of cars for the potato movement in the district west of Alamosa on the line of the Denver and Rio Grande Western Railroad and the San Luis Central Railroad. These rules have been given careful consideration and have been submitted to the carriers aforesaid, and with slight modification such plan of distribution and rules to govern the same, meet with the approval of said The Denver and Rio Grande Western Railroad Company and The San Luis Central Railroad Company, and is evidenced by a written statement to that effect filed with the Commission on to-wit: September 14, 1921.

On September 9, 1921, there was filed with the Commission a protest, in the nature of a petition, signed by a number of the potato dealers and shippers of Monte Vista, which protested and objected to the adoption of any other or different system or plan, and rules in pursuance thereof, as was in effect during the potato season of 1920. Said protest and objection has also received the careful consideration of the Commission, and statements of the representative of such protestants have been heard.

In the order of October 2, 1920, the Commission expressed the hope and expectation that some system or plan would be worked out by all those interested in the potato movement from said district, and that the same would be submitted to this Commission for its approval

as a measure of permanent guidance; that is to say, that such plan of car distribution, and rules governing the same, should be the permanent plan or system to be adopted by the carriers for the future movement of potatoes from the aforesaid district.

As hereinabove stated, the Commission has gone over all matters filed with it carefully, and has heard the statements and representations of all parties in interest, growers, owners, carriers and dealers, with the result that the plan or system, together with the rules submitted by the carriers in conjunction with the San Luis Valley Potato Growers Association, with slight modification, meets the approval of this Commission as being fair, just and equitable to the grower, owner, dealer, shipper and carrier of potatoes from the Monte Vista-Center-Del Norte District, and the following supplemental order is therefore entered herein.

SUPPLEMENTAL ORDER

IT IS THEREFORE ORDERED by the Public Utilities Commission of the State of Colorado, after due hearing had upon the merits of said controversy on October 2, 1920, and upon due consideration of the statements and representations subsequently made to the Commission by the parties interested in the subject matter of said proceeding, as follows:

During periods of shortage of cars available for potato loading and shipments in the district west of Alamosa, on The Denver and Rio Grande Western Railroad Company, and on The San Luis Central Railroad Company, the available cars shall be distributed only and exclusively to growers and owners of potatoes in car lot quantities equitably between such growers and owners on an acreage or tonnage basis.

A committee consisting of one member to be appointed by the Monte Vista Commercial Club of Monte Vista, Colorado, one member to be appointed by the Commercial Club of Del Norte, Colorado, one member to be appointed by the Commercial Club of Center, Colorado, one member to

be appointed by the San Luis Valley Potato Growers Association of Monte Vista, Colorado, and one member to be appointed by the Colorado Potato Shippers Association, shall make a survey of the total acreage of potatoes, growing in the above district and prepare lists and schedules showing the name of each grower, his acreage of potatoes and his loading station, such lists and schedules to be prepared especially for each loading or shipping district. Said lists and schedules shall be delivered to the railroads in Denver on or before August 20th of each year.

Said Committee shall make an additional survey each year for the purpose of ascertaining the tonnage expressed in car loads, of an average tonnage of 40,000 pounds per car of potatoes, in the hands of the growers or owners and prepare lists and schedules of each loading district showing the name of the grower or owner, the number of car loads and the loading station of each grower or owner, which lists or schedules shall be delivered to the Railroad Companies in Denver on or before the second Saturday of October of each year.

In event any one or more of the members of said Committee shall refuse to act, after five days' notice so to do, then the remaining member or members of such Committee may proceed to make the survey or surveys and prepare the lists and schedules.

Distribution of cars from the beginning of each shipping season up and to the first Monday following the second Saturday in October of each year, shall be to Growers on the basis of one car to each nine acres of potatoes.

On and after the first Monday following the second Saturday in October of each year, the distribution shall be made to growers and owners on the basis of tonnage in car lots.

The rules and regulations to govern the distribution and use of cars under this order shall be as follows:

1. All cars available for potato loading at the above described stations shall be distributed only and exclusively to growers or owners of potatoes in proportion that the acreage or tonnage of each grower or owner bears to the total acreage or tonnage of all growers or owners in said shipping district, as

shown in the lists and schedules or plats issued to agents and car distributors.

2. During the shipping period ending with the second Saturday in October of each year, cars shall be allotted to each grower on the basis of one car for each nine acres of crop as shown on the lists and schedules or plats approved and on file with the car distributor.

3. Commencing with the first Monday following the second Saturday in October of each year, cars shall be allotted and distributed to growers or owners on the basis of each grower's or owner's tonnage to the entire tonnage in such grower's or owner's district, as per tonnage survey approved and on file with the car distributor.

4. Cars shall be allotted to each loading station in the proportion the acreage or tonnage bears to the entire acreage or tonnage of all stations west of Alamosa on The Denver and Rio Grande Western Railroad Company and The San Luis Central Railroad Company, provided that if any loading station does not require or use in any one day its allotment of cars, the unused portion of its cars shall be distributed among all loading stations on basis of original allotment.

5. Each grower or owner of potatoes shall make written order on the Carrier's agent for cars wanted for potato loading during the following semi-weekly period, showing the following information:

(a) Date of Order.
(b) Point of Shipment.
(c) Total number of cars requested for semi-weekly period and number required for each day.
(d) Name of shipping owner.
(e) Whether shipments will move under "Carriers Protective Service" or "Shippers Protective Service."

Shippers having unfilled orders during any one Semi-weekly period shall renew their orders at the beginning of the next semi-weekly period and shall be given preference in the matter of car supply during such period.

No grower or owner to be allowed to make application for cars at any station except the one designated on his shipping or loading station as designated on the lists, schedules or plats furnished under Rule 1.

No grower or owner shall be allowed to place orders for cars in excess of his proportionate share as ascertained and established under Rules 2 and 3.

6. When the acreage or tonnage of each grower or owner shall be reduced to cars any fraction less than one half car shall be disregarded and any fraction of one half car or more shall be considered as an additional car.

7. Purchasers or owners of potatoes may have cars allotted to them in their name on delivery to the agent or car distributor, a statement or order in writing signed by the grower from whom the potatoes were purchased, stating quantity of potatoes in car lots sold, and directing the agent to charge the car or cars allotted on such order to the allotment of cars to which said grower would be entitled under Rules 2 and 3. Cars so allotted shall be used for the shipment of the potatoes sold as stated in the order above described.

8. Purchasers of potatoes in car lots from growers after allotted cars have been loaded and previous to billing by the growers may have such cars billed in the purchaser's name on the delivery to the proper agent of a written statement signed by the grower making the sale, that such sale was made to the purchaser, giving the line number of the car in which the potatoes were loaded.

9. Cars will not be furnished in excess of the grower's or owner's ability to load and ship promptly.

The term 'prompt loading' as used in these rules is intended to mean that the car or cars placed for loading must be loaded and billing instructions tendered within 24 hours from time of placement of cars, failing which such car or cars as placed will, if partially loaded, be charged against the shipper's allotment as an additional empty or empties for each succeeding day held for billing instructions and if shipper has not commenced to load at the expiration of 24 hours after car or cars are placed, the car or cars will be withdrawn from the shipper and allotted to the next shipper entitled to equipment.

10. In order to obtain the fullest possible use of cars, all shippers will be required to load to safe capacity of cars without danger of damage to contents of car or cars from heating or other similar causes.

11. Cars may be used only for the purpose for which allotted and assigned.

In event a grower or owner cannot use the car when allotted to him, the car shall be allotted to the next grower or owner on the list who is entitled to cars and who had order on file. When a grower has shipped or sold his entire crop his name shall be stricken from the lists.

12. Each agent or car distributor shall keep a record of the allotment and distribution of cars under these rules, which record shall be open to inspection by any interested party.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hardman,

A. P. Anderson

[illegible]
Commissioners.

Dated at Denver, Colorado, this
15th day of September, 1921.

Sept. 15, 1921. Rec'd Copy of above order at Denver, Colorado.

C. H. Kohler
atty for San Luis [illegible]

(Decision No. 475)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of The Uintah Railway Company for Permission to curtail its Passenger Train Service.) APPLICATION NO. 143.

(September 20, 1921)

STATEMENT

By the Commission:

Whereas, The Uintah Railway Company on September 1, 1921, filed its application with the Commission, by James H. Head, its General Manager, wherein it is represented and shown to the Commission that said railway operates a line of railroad from Mack, Colorado to Watson, Utah, and at the present time has daily passenger train service; that, such service is not warranted by the volume of traffic carried by said railway; and that, in the six months period ending June 30, 1921, said railway company has suffered the total deficit of approximately Ten Thousand ($10,000.00) Dollars; and that there is no necessity or need of a daily passenger train service over said line of railway, and that a tri-weekly service on Tuesdays, Thursdays and Saturdays would amply meet the needs and convenience of the public served thereby.

And, it appearing to the Commission from the representations of the petition and application that there is no apparent need for daily train service, and it further appearing that the traffic thereover will adequately be served by a tri-weekly train service as proposed in such application, effective October

1, 1921;

And, there appearing no reason to the Commission why said application should not be granted;

IT IS THEREFORE ORDERED, That the request of the applicant be, and the same is hereby, granted and that said, The Uintah Railway Company be, and it is hereby, authorized to discontinue its daily passenger train service and to substitute therefor a tri-weekly passenger train service on Tuesdays, Thursdays and Saturdays of each week as set forth in said application, the same to become effective October 1, 1921; that this order be the authority to said railway company for the diminution of its said train service as hereinabove set forth between Mack, Colorado and the boundary line between the States of Colorado and Utah, beyond which this Commission has no jurisdiction.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

GRANT E. HALDERMAN

(S E A L

A. P. ANDERSON

P. P. LANNON

COMMISSIONERS.

Dated at Denver, Colorado,
this 20th day of September, 1921.

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.

A. J. LINDSAY
SECRETARY.

(Decision No. 477)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

The Monte Vista Commercial Club, et al., Complainant,	
v.	CASE NO. 197
A. R. Baldwin, Receiver, The Denver and Rio Grande Railroad Company, et al., The Denver and Rio Grande Western Railroad Company substituted, Defendant.	SECOND SUPPLEMENTAL ORDER.

(September 24, 1921)

STATEMENT

By the Commission:

The Supplemental order issued by the Commission under date of September 15, 1921, in which was embodied a plan or system for the distribution of cars during periods of shortage in the potato growing district of the San Luis Valley west of Alamosa on The Denver & Rio Grande Western Railroad and The San Luis Central Railroad, and which supplemental order embraced rules governing such distribution of available cars during periods of car shortage, specifically referred to the district west of Alamosa on The Denver & Rio Grande Railroad and on the San Luis Central Railroad.

Since the issuance of said supplemental order, it has been brought to the attention of the Commission by written representation of The San Luis Valley Potato Growers Association, and of said carriers, The Denver & Rio Grande Western Railroad and The San Luis Central Railroad, as well as by a written report of an inspector for the Commission upon the matter hereinafter referred to with reference to such distribution of cars under the aforesaid supplemental order, that the plan of distribution of available cars as therein contemplated has been and is being violated by certain of the growers and dealers in the territory tributary to Center and Monte Vista, Colorado, by making

application for cars at the stations of Mesca and Hooper on the narrow gauge branch of the said The Denver & Rio Grande Western Railroad in which are loaded potatoes grown and hauled from said Center and Monte Vista territory, such cars being loaded at Hooper and Mesca being billed either via Salida or via Alamosa and there to be transferred to standard refrigerator equipment with the result that such practice will disrupt and destroy the plan or system embodied in the supplemental order of the Commission of September 15, 1921.

It clearly was the purpose of the carriers, growers, owners and of the Commission to propose a plan or system of distribution of available cars during periods of car shortage for the potato movement in the San Luis Valley district tributary to Center, Monte Vista and Del Norte, which would meet the practical requirements and needs of every legitimate person engaged in the growing, selling and marketing of potatoes either by growers, owners, dealers or shippers; obviously, if the plan being pursued as hereinabove referred to, of some of the dealers and shippers in conjunction with growers hauling potatoes from the Center and Monte Vista District to the narrow gauge stations of Mesca and Hooper and there applying for cars not being subject to the rules embodied in the said supplemental order, the whole plan or system of said supplemental order would seem thereby be defeated.

Upon the showing made concerning the practice that has developed since the issuance of said supplemental order, the Commission believes and finds it to be necessary in order to give said supplemental order a fair and impartial trial, that said plan or system embraced therein should be extended to include all stations on the narrow gauge branch of the said The Denver & Rio Grande Western Railroad Company between Alamosa and Salida; and that the committee charged in said supplemental order with the duty of making surveys of the potato acreage shall forthwith include in their survey such acreage as is contiguous to said narrow gauge branch of said railroad between Alamosa and

Salida, and that thereafter the same plan or system of car distribution for potatoes shall apply to the stations upon and along said narrow gauge branch of said The Denver & Rio Grande Western Railroad between Alamosa and Salida as is embraced and contained in said supplemental order of September 15, 1921.

ORDER

IT IS THEREFORE ORDERED, That the plan or system of car distribution of available cars during periods of shortage for the potato movement in the Monte Vista-Center-Del Norte district be, and the same is, hereby extended so as to embrace and include the district of and along the narrow gauge branch of The Denver & Rio Grande Western Railroad between Alamosa and Salida, and that with the inclusion of said narrow gauge railroad territory, the supplemental order of this Commission of September 15, 1921, shall apply in each and every particular.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

G. H. Halderman

(S E A L)

A. P. Anderson

W. P. Lennon
Commissioners.

Dated at Denver, Colorado,
this 24th day of September, 1921.

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.

(Decision No. 477½)

INVESTIGATION AND SUSPENSION DOCKET NO. 59.

In Re Advance in Rates of The Kiowa Telephone Exchange

(September 24, 1921)

By the Commission:

WHEREAS, On March 18, 1921, there was filed with the Commission by The Kiowa Telephone Exchange a schedule of rates effective May 1, 1921, effecting the rates for telephone service at said exchange in tariff designated as P.U.C. Colo. No. 3;

AND WHEREAS, Protest was made to said schedule of rates and tariff, and such schedule of rates as designated in said tariff were suspended by order of the Commission on April 19, 1921, to and until the 29th of August, 1921, that the Commission may enter upon an investigation and hearing as to the reasonableness of said schedule of rates;

AND WHEREAS, Said hearing and investigation not having been held, the Commission further suspended said rates on the 27th day of August, 1921, to and until the 29th day of February, 1922, unless otherwise ordered;

AND WHEREAS, There was filed with the Commission on September 11, 1921, a written statement by C. H. Greenley, who represented a committee of protestants, notifying the Commission that the patrons of said Kiowa Telephone Exchange and the protestants had come to a satisfactory settlement of the questions involved, and the said schedule of rates thereby has become void and of no effect;

ORDER.

IT IS THEREFORE ORDERED, That the schedule of rates for

telephone service filed March 18, 1921, on behalf of The Kiowa Telephone Exchange by T. E. McCausland, Owner and Manager, be, and the same is hereby, cancelled and permanently suspended, and that the rates for telephone service at said Kiowa Telephone Exchange be such as have been agreed upon by said Kiowa Telephone Exchange and the patrons thereof.

IT IS FURTHER ORDERED, That said T. E. McCausland, Owner of said Kiowa Telephone Exchange be, and he is hereby, required to file a schedule of such rates for telephone service to the patrons of said telephone exchange as has been agreed upon between said McCausland and his patrons, said schedule of rates to be filed forthwith and within fifteen (15) days of the date hereof, subject to the approval of the Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hedgman

A. P. Anderson

E. D. Lawson

COMMISSIONERS.

Dated at Denver, Colorado,
this 24th day of September, 1921.

~~COPY~~

(Decision No. 478)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of Mrs. J. E. McClure, Ada Mith, doing business as the "Montrose Auto Stage and Taxi Line" for a Certificate of Public Convenience and Necessity to carry on the Business of Transporting Passengers and Express between Montrose, Colona, Ridgway and Telluride and Intervening Points.

APPLICATION NO. 88

October 5, 1921

Appearances For Applicant: Moynihan, Hughes, Keous and Nesbet.
For Protestants: Alexander H. Baldwin, Receiver of the Property of The Denver & Rio Grande Railroad by H. H. Clark and Thos. H. Woodrow his attorneys by written protest.

STATEMENT

By the Commission:

This application was originally filed May 28th, 1920, by Henry F. Smith, asking for a certificate of public convenience and necessity to carry on the business of transporting passengers and express between Montrose and Grand Junction, Ouray and Telluride and intervening points.

This matter was set down for hearing and was duly heard at Montrose, Monday, July 25th, 1921.

Owing to the fact that the said Smith had sold out all his right title and interest in and to his auto bus line to Ada Mith, who afterward became Mrs. J. E. McClure, her attorneys asked and were granted permission to file an amended application substituting the name of Mrs. J. E. McClure for that of Henry F. Smith and also for eliminating that part of the line asked for between Montrose and Grand

Junction, and also that part between Ridgway and Ouray.

The testimony clearly shows that the operation of the railway trains between Montrose and Telluride is such that to do business between these two points, as well as in adjacent territory, entails a great deal of expense and a considerable loss of time by many people who use the railways. One wishing to do business in Telluride would leave Montrose at 2:25 P.M. and arrive at Telluride at 6:30 P. M. too late to attend to business the same day and compelling the person to stay over night and pay hotel bills. The train returning to Montrose leaves Telluride at 9:45 A. M. before business houses are open which precludes the transaction of any business before train departs. This necessitates one remaining over for twenty-four hours longer, or the staying in Telluride one day and two nights for the transaction of business that should be consumated in a brief period during business hours.

The applicant's automobile schedule provides for a round trip each day between Montrose and Telluride via Ridgway over the state highway between these points for the purpose of carrying passengers, suit cases and express packages. By this route one arrives in Telluride at 2 P. M. and as the stage does not leave for the return trip until 5 P. M. passengers can, in many instances, attend to such matters as they have and return to either Montrose, or any of the intermediate points the same day.

Placerville, 15 miles west of Telluride, is the gateway to the Paradox Valley, the medium mines in the west portion of Montrose and San Miguel Counties and the ranches in the vicinity of Norwood which are without railroads and are served exclusively by wagons and automobiles.

The equipment of the applicant's line consists of two automobiles. One a Buick, seven-passenger six is used daily in making the round trip over the entire distance and in case of

heavy travel the two cars are used either over the entire route or to intermediate points as is required.

The evidence shows that the territory between Montrose and Telluride is served by the Denver & Rio Grande Western and the Rio Grande Southern railroads connecting at Ridgway. The evidence also shows that the railway service, by reason of running only one train in each direction between Montrose and Telluride daily, is not adequate for either residents or traveling men in this district who wish to transact business in either Placerville or Telluride and return the same day.

The applicant has filed with the Commission the required consent, permit and authority of the various cities and towns to and through which it operates.

ORDER

IT IS THEREFORE ORDERED, That the present and future public convenience and necessity require and will require the operation of a motor bus line for the transportation of passengers and express between Montrose and Telluride, Colorado.

IT IS FURTHER ORDERED, That a certificate of public convenience and necessity be and is hereby issued to Mrs. J. E. McClure doing business as the "Montrose Auto Stage and Transfer Line" to carry on the business of transporting passengers and express between Montrose and Telluride and to all

intermediate points and this shall be her certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

(SEAL)

GRANT H. HAIRGROVE

L. P. ANDERSON

F. P. LAMSON

Commissioners.

Dated at Denver, Colorado, this
3rd day of October, 1921.

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. 479)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of Application of The Silverton Northern Railroad Company for permission to discontinue services temporarily

Supplemental Application No. 132.

(October 14, 1921)

Appearances: Frank L. Ross, Esq., Attorney for Applicant Railroad.

STATEMENT

By the Commission:

Supplemental application was filed by the above applicant, The Silverton Northern Railroad Company, September 29, 1921, for permission to discontinue temporarily the operation of said The Silverton Northern Railroad until not later than May 1, 1922, subject to any future order of the Commission with reference thereto as conditions and circumstances may be made to appear as be just and proper in the premises.

Accordingly upon the filing of said application, notice thereof was given to the citizens of Howardsville and Eureka, Colorado, by mailing to the postmaster at each said place, and by notifying The Sunnyside Mining and Milling Company and The Black Prince Mining Company, two of the principal shippers using said line of railroad, and

thereafter the matter was set for hearing at the Hearing Room of the Commission, Capitol Building, Denver, Colorado, on October 10, 1921, at 10:00 o'clock A. M., and continued to the 13th day of October at the same place by the Commission when the same was duly heard.

No protest or objection was raised by any person or party to such temporary discontinuance of service, and proof was duly submitted by said applicant company of the lack of business justifying the operation of said railroad at the present time and of a statement of its Auditor showing the cost of operation to be greatly in excess of its revenue during August and September, 1921, and testimony was submitted to the effect that during the ensuing winter period but little or no business would be received by the railroad were it to continue operations.

Written waiver and consent without prejudice were also filed by applicant railroad of said The Sunnyside Mining and Milling Company and The Black Prince Mining Company by their respective officers to the temporary discontinuance of service by said railroad company, subject to such reinstatement of service as may be shown to be necessary should conditions warrant to be exhibited to the Commission.

It further appears from the verified application and from oral statements made to the Commission that the territory served by the railroad is about 7½ miles in length extending from Silverton, Colorado to Eureka, Colorado, is very sparsely settled and that mine operation in said region is practically at a standstill; that a wagon road runs parallel to said line of railroad so that whatever supplies may be needed by the inhabitants of the territory affected may be delivered by wagon or automobile, and that coal supplies and other heavier tonnage has before this date been delivered in the territory by said railroad, sufficient to meet the needs of the mining companies until the Spring of 1922.

In short, such a showing was made, without going further into detail as it clearly appears to the Commission justifies the granting of the relief prayed for.

ORDER

IT IS THEREFORE ORDERED, That applicant, The Silverton Northern Railroad Company be, and it is hereby, authorized and permitted to discontinue all service over and upon its said line of railroad from the date of this order, to-wit: October 14, 1921, to and until May 1, 1922, subject, however, to such further order or direction of the Commission with reference thereto, as conditions and circumstances seem to warrant upon showing made at any time before said May 1, 1922, by any party or persons interested therein.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

GRANT H. HALDERMAN

(S E A L)

F. P. LANNON

Commissioners.

Dated at Denver, Colorado,
this 14th day of October, 1921.

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. 480

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Boulder Valley Light and Power Company, asking for a certificate of authority for the construction of a pole line as a matter of present and future convenience and necessity.	APPLICATION NO. 347

October 17, 1921

APPEARANCES: A. E. Stevenson, Esq., Attorney for Applicant, Denver, Colorado.

STATEMENT

By the Commission:

Applicant filed its petition with this Commission October 10, 1921, asking that a certificate of convenience and necessity be granted to it for the construction of a pole line for the transmission of electric energy along certain highways in Boulder County, State of Colorado, described as:

> Starting at the corner of Road No. 114 and Road No. 26 in Section thirty-four (34), Township one (1) north, Range seventy (70) west, and running north one (1) mile on said Road No. 114 to Road No. 26, or Valley Road, so-called; thence from the corner of Road No. 114 west one and one-half (1½) miles on said Road No. 26.

The petition states further the interporate capacity of the applicant company and its principal place of business as being in Boulder, Boulder County, Colorado, and postoffice address the same; that it desires to construct a pole line or lines for the transmission and distribution of electricity, to purchase and sell electricity to be used for light, heat and power; that the territory proposed to be served is a rural community and is without such facilities, and that such territory has not heretofore been served by any person or corporation with such facilities, and that the present and future public convenience and necessity requires and will require the construction of said transmission line.

Upon request of applicant, the matter was set for hearing and heard at the hearing room of the Commission on October 15, 1921, at which testimony was submitted supporting the allegations of the petition. There was also introduced in evidence a certificate of incorporation of said applicant company, and also a certified copy of a resolution of the Board of County Commissioners of Boulder County granting said company a permit for the use of said highways by applicant for installing said pole line for the transmission of electric energy; also that no other line or lines for such purpose are now constructed over said highways, and the territory aforesaid has been entirely unoccupied for such purpose.

The map or plat of the whole territory proposed to be served by the pole transmission line was also submitted, and the evidence discloses that arrangements were in progress for the procurement of such electric energy from The Western Light and Power Company; that a total investment as at present contemplated will amount to about $4500.00.

That a community heretofore not enjoying electricity for light, heat and power will be greatly convenienced by the installation of such facilities is a fact so well known that it need not be discussed, so that the future public convenience and necessity requires and will require the construction of the pole transmission line under discussion.

ORDER

IT IS THEREFORE ORDERED, That the applicant, The Boulder Valley Light and Power Company, be, and it is, hereby granted a certificate of public convenience and necessity for the construction of the pole transmission line described in its said application, and that the public convenience and necessity requires and will require the con-

struction of said line; and this order shall be taken, deemed and held as a certificate of public convenience and necessity therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT H. HALLENBECK

SEAL

F. P. LANDON

Commissioners.

Dated at Denver, Colorado,
this 17th day of October, 1921.

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.

J. P. Lowell
Secretary.

(Decision No. 481)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

\- - -

William E. Russell,

Complainant,

v.

The Colorado and Southern Railway Company, a Corporation,

Defendant.

CASE NO. 79

October 21, 1921

APPEARANCES: Ponsford, Carnine and Kavanaugh, Attorneys for Complainant.
E. E. Whitted, Attorney for Defendant.

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STATEMENT

By the Commission:

The above entitled case was filed before the Commission in May, 1918, and involved a question of reparation upon the shipments of coal by complainant over the lines of the defendant carrier.

The questions involved have been made the subject of litigation in other similar cases, with the result that this cause has lain dormant for several years and until the summer of 1921, when many similar causes were amicably adjusted between the parties and dismissed from further consideration by the Commission upon stipulation.

The above case, not having been settled, was set down for hearing on October 5, 1921, and then re-set by the Commission for November 10, 1921, at the hearing room, Capitol Building, Denver.

On October 18, 1921, there was filed with the Commission a written stipulation, signed by the attorneys for the respective parties, to the effect that all matters in controversy in said case had been amicably adjusted, and that the above entitled cause may be dismissed with prejudice. In accordance with said stipulation, such order will be made.

ORDER

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CHAS. E. HALLENBECK

S E A L

E. P. LARSEN
Commissioners.

Dated at Denver, Colorado,
this 31st day of October, 1921.

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. 482)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of W. H. Edmunds, as Receiver of The Denver & Interurban Railroad Company, The Denver & Interurban Railroad Company, by W. H. Edmunds, General Manager, substituted, for

1.

A Modification of the order made by said Commission, September 16, 1916, in Case No. 95, as to the maintenance of signals at, and the speed of electric trains over, certain crossings on the road of said Company.

2.

Authority to abolish the stop known as Madison on said road.

3.

An interpretation and ruling by said Commission as to whether or not the intersection of a cross-over track of the Chicago, Burlington & Quincy Railroad Company with the track of The Denver & Interurban Railroad Company at Burns' Junction, Colorado, constitutes a railroad crossing within the meaning of Title IX "Crossings" of Chapter 121, Sections 5499 to 5505, inclusive, C. S. 1908.

CASE NO. 95-A

(October 25, 1921)

Appearances: J. L. Rice, Esq., for Denver & Interurban Railroad Company.

STATEMENT

Edmunds, Chairman:

Complaint was filed August 26, 1920, by W. H. Edmunds, Receiver of The Denver and Interurban Railroad Company, which complaint sets forth, inter alia, the order of this Commission dated and entered herein on September 16, 1916, with reference to the installation of audible and visual signals to consist of a red

disc with the word "stop" painted thereon in white letters, in the center of which shall be a red electric light, to be suspended from an arm above the highway and on the right-of-way of said company, and which shall begin swinging across the highway when the trains of defendant company reach a point 1,500 feet distant from the railroad crossing at grade; and that the electric trains shall cross the nine railroad crossings at grade named in said order at a speed of not to exceed ten miles per hour, with the exception of the Broomfield crossing, at which crossing the electric trains shall come to a complete stop before crossing the highway thereat.

Said complaint further sets forth that the above order of September 16, 1916, was amended by an order of this Commission, dated December 2, 1916, so as to include an audible and visual signal at Rafael crossing, and an unnamed crossing three-fourths of a mile north of Superior, known as "Ball" crossing.

Said complaint alleges that the schedule time of electric trains making the run from Denver to Boulder, and vice versa, is one hour and twenty minutes; that the convenience of the public requires that said time be not lengthened, and that were it lengthened, it would materially impair the service of said railroad to the public, and that to maintain said schedule and comply with the orders of this Commission concerning slacking of speed at the crossings mentioned therein, it becomes necessary to operate said electric trains at a high rate of speed between said crossings and established stops.

That it became necessary for the said railroad, for economical and safety reasons, to change the gear ratio on its electric cars, which change of gear ratio materially reduces the maximum speed of its cars; that with such change of gear ratio it will be next to impossible to maintain such schedule and reduce speed at the crossings mentioned in accordance with the requirements of said orders.

It is further alleged that safety signals, as were required by said orders, were duly installed at a cost of about $15,000.00, and that said signals had been maintained at an average annual expense of about $5,000.00; and it is further alleged that by reason of said Railroad's compliance with said orders and the installation of said safety signals it is now unnecessary, either for the safety of the public, or for any other reason, to reduce the speed of its electric trains at said crossings to the rate of speed prescribed in and by said orders, and that if the speed of said trains should continue to be reduced at said crossings, as prescribed by said orders, it then is wholly unnecessary to the safety of the public to further maintain said safety signals.

The complaint then sets forth the alleged fact that other railroad carriers in this state are not subjected to the restrictions requiring reduction of speed at grade crossings such as are imposed upon said Interurban Railroad, and that under the circumstances said restrictions are unnecessary, unreasonable and discriminatory.

Then follows in said complaint a description of conditions surrounding each of said grade crossings with allegations that the safety of the public does not require or render necessary a further continuance of the restrictions as to reduction of speed at said crossings by The Denver & Interurban Railroad Company, owing to the installation and maintenance of said safety signals.

And applicant prays that the orders heretofore rendered herein be so modified as to permit the operation of electric trains over said crossings at speeds as follows:

Federal Boulevard crossing - 30 miles per hour in each direction.

Broomfield crossing - 20 miles per hour in each direction.

Burns' Junction crossing - 30 miles per hour in each direction.

Geddes crossing - 20 miles per hour southbound, with no restrictions as to speed for northbound trains.

Park Avenue crossing - without restrictions as to speed in either direction.

Marshall crossing - 20 miles per hour in each direction.

Ball crossing - 20 miles per hour southbound, with no restrictions as to speed for northbound trains.

Spicer's crossing - 15 miles per hour in each direction; or, in the alternative, that future maintenance of said signals may be dispensed with.

II

For a second cause of complaint it is alleged that it is now, and heretofore has been, the practice and custom to stop said electric trains at a place known as Madison; that said stop is located on a sharp curve, and is hard and inconvenient to make; that but few passengers board or depart from said trains at said Madison stop, and that there is no public highway leading to the same, and that there is no longer any reason why trains should stop at said Madison stop.

The applicant railroad, therefore, prays that this Commission make and enter its order discontinuing said stop at the place known as Madison.

III

For a third cause of complaint it is alleged, that at Burn's Junction, the Chicago, Burlington & Quincy Railroad Company has a cross-over track extending from its own line to the line of the Colorado & Southern Railroad Company, which cross-over track crosses the railroad of The Denver and Interurban Railroad Company,

and is used by said Chicago, Burlington & Quincy Railroad Company for the passage of its trains from its line to the said Colorado & Southern Railroad tracks; that said cross-over track at each point is for a short distance made up of the track of petitioner, and is protected by two switches, one on either end thereof, which are kept set and locked for the passage of electric trains upon and over the railroad of applicant.

Applicant prays that this Commission will make a ruling and an interpretation as to whether or not the intersection of said cross-over track with the line of road operated by applicant, constitutes a railroad crossing within the meaning of Title IX "Crossings" of Chapter 121 (Sections 5499 to 5505, inclusive) C. S. 1908, and to determine if the same be governed by the provisions and requirements of said statute.

The above matter was regularly set for hearing before the Commission at its hearing room, Denver, Colorado, at 10 o'clock A. M., Monday, February 28, 1921, and at said time and place was duly heard, testimony being taken on behalf of said applicant only, no notice thereof having been given to the public, except through the newspapers, and no other appearance entered.

The prior orders of the Commission hereinabove and in said complaint referred to, were introduced in evidence as the same were reported in 2 Colo. P. U. C. 247, 3 Colo. P. U. C. 22, and 4 Colo. P. U. C. 115.

The Receiver of said railroad testified somewhat at length as to operating conditions, and as to the view obtainable by the traveling public and the motorman at each of said highway crossings, and also with reference to the stop at Madison, and the cross-over at Burns' Junction.

The Receiver's evidence was supported by the testimony of Assistant Train Master Whitefoot, J. V. Kelsher, Fred Spencer and A. L. Comley, the latter three being motormen in the employ of said company for a number of years, and who are now engaged as motormen in the operation of said electric trains.

The testimony submitted upon all three phases of the complaint clearly supports the allegations of the complaint.

The writer lives at Boulder and for the past two years has traveled over said line of railroad an average of twice each week day, and is, therefore, quite familiar with conditions as testified to; so that by the testimony and reinforced by the writer's own observation, the respective causes of complaint will be taken up and reviewed in their order:

PART ONE

Federal Boulevard crossing: Applicant asks that 50 miles per hour in each direction be permitted at this crossing, and the testimony indicates that such speed would ordinarily be a safe rate of speed at said crossing; but the testimony also discloses that, although there are no obstructions to a view of approaching trains in either direction for at least one-fourth of a mile, yet in the last few years a number of fatal accidents have occurred at said crossing.

In view of the fact that the highway track at said Federal Boulevard crossing is upon the main Lincoln Highway, and frequently is quite dense in amount of travel, it is believed that a speed of 30 miles per hour over said Federal Boulevard crossing would better meet safety requirements and not seriously interfere with speed operation of said trains.

Brownfield Crossing: This crossing is over the same Lincoln Highway, and is but 30 or 40 feet from Brownfield station. Safety requirements will be adequately served if Brownfield station be made a regular stop for all trains, in which event, no restrictions as to speed of the crossing 30 or 40 feet distant is required.

Rogers' Junction: This crossing is unobstructed in either direction as to view for a long distance, and a rate of speed 25 miles per hour in either direction will meet the requirements of safety to the traveling public.

Goodview Crossing: This crossing is in plain view to northbound trains for a long distance, and no restriction as to speed of trains northbound is necessary to be observed in the interest of safety. Southbound trains are somewhat obstructed by a sharp curve and a cut near to said crossing, so that ordinary safety requirements will require speed of southbound trains to not exceed 15 miles per hour.

Park Avenue Crossing: The view at Park Avenue crossing is unobstructed for some distance in either direction; a visible wig-wag signal is installed thereat, so that a restriction as to speed over said crossing would seem to be unnecessary to the safety of the traveling public.

Marshall Crossing: This crossing is located 75 to 100 feet from Marshall station, a regular stop. The crossing is not frequently used, except in the summer season by patrons of Eldorado Springs resort. In order to make the station stop northbound, it is necessary to pass over the crossing at a reduced rate of speed, and it is impossible to attain a high rate of speed southbound upon leaving Marshall station. A bell signal is also installed at this crossing, hence a speed of 20 miles per hour in either direction is such speed as the requirements of safety reasonably make necessary.

Unnamed or Bell crossing, north of Superior: At this crossing there is an audible bell signal and the crossing is very rarely traveled. Trains northbound are in plain view of this crossing for at least one-half mile, so that no restriction as to northbound trains are required in the interest of safety. Southbound trains approach this crossing through a cut and on a curve so that a speed of 20 miles per hour for southbound trains is reasonably required for safety requirements.

Spicer's crossing, three-fourths of a mile south of Superior. This crossing is on a somewhat well traveled highway, and though protected by a wig-wag visible signal is at the apex of a hill and upon a sharp curve with the railroad, which somewhat obstructs the view in either direction. A rate of speed of 15 miles per hour in each direction at said Spicer's crossing will be required to reasonably safeguard public travel.

PAGE 2½0

This part of the complaint has reference to the stop known as Madison. The testimony discloses that a number of years ago this stop was thought to be necessary for the accommodation of certain patrons of the road who then lived near to the sign-board stop designated as Madison. This stop is about one-half mile north of the station of College Hill, the latter station being upon a highway, while no road or highway leads to the stop called Madison.

Heretofore there might have been reasonable need of a stop at Madison, but the testimony now shows that scarcely any passengers now, or for a considerable period of time prior hereto, have either embarked or disembarked from said trains at said Madison stop.

In view of the fact that it is not reasonable to the

general public, and that the station of College Hill is so accessible and within so short a distance from Madison, there would appear to be no further necessity or need for the stop known as Madison. The Commission will, therefore, permit the discontinuance of said Madison stop.

PART THREE

With reference to cross-over of the Chicago, Burlington and Quincy Railroad Company to the Colorado & Southern Railway tracks at Burns' Junction, the testimony quite clearly shows as well as the observation of the writer, that this cross-over is used by the Burlington railroad, Lyons Division, in operating trains from Denver to Burns' Junction over the Colorado & Southern Railroad, thence over its own line to Lyons, Colorado.

At Burns' Junction the Colorado & Southern Railway and line of the Denver & Interurban Railroad parallel each other within 10 or 12 feet, and at this point the Burlington has established a cross-over from its line to the line of the Colorado & Southern, using not to exceed 25 feet of the Denver & Interurban track in so doing, at each end of said Interurban track being a switch that is at all times locked and closed to all trains but those of the Denver & Interurban Railroad Company, and said cross-over crosses the Denver & Interurban Railroad in what might be called an oblique or cat-a-cornered direction, using a short space of Interurban track for such purpose.

The statute governing crossings, being Section 5499 to 5505, General Statutes, 1908, was passed at an early date, and it seems plain that it then was meant to apply to a railroad crossing proper; that is, where the tracks of one railroad crosses the tracks of another railroad by means of crossing frogs and without intervention

of any switch or switches. Such crossings were required to be protected by some safety device, either a gate or block signal, or sometimes by manual signals.

Whial I have no doubt that the cross-over herein being discussed is not a railroad crossing, in the purview of the statute, yet at the same time, in view of the fact that Burlington trains use this cross-over at irregular intervals, and as occasion may require, for all of its regular and extra trains to and from Denver, Lyons and Lafayette, I believe the existent conditions should be continued, which are, that all electric trains should come to a full stop at the stop signal board located about 400 feet from said cross-over, before proceeding.

This method of operation, as I understand, is a railroad operating rule or regulation, and as it appears to me, a wise and salutary method of handling such a situation. No order will be made therefore with reference thereto.

The condition of this statement and order has been long delayed, for the reason that the condition of the Interurban tracks were such as made necessary a number of "slow orders", for the safe running of such electric trains. I am informed by officials of the Company, that the tracks have now been repaired, leveled, re-tied in many places, and other betterments made, so that "slow orders" are no longer issued by the operating department of the Railroad Company. Also, since the filing of the petition, the Receiver has been discharged, the receivership having been terminated, and W. H. Edmunds, the former Receiver, now being General Manager of the property. The statement and order, therefore, will be issued as upon the application of The Denver & Interurban Railroad Company, by W. H. Edmunds, General Manager.

ORDER

IT IS THEREFORE ORDERED, with reference to Part One of the complaint, as follows:

All trains of The Denver & Interurban Railroad Company crossing Federal Boulevard, shall observe a maximum speed of not more than 20 miles per hour.

Broomfield crossing: All trains shall cross there over at not to exceed 20 miles per hour.

Burns's Junction crossing: All trains shall cross thereover at not to exceed 35 miles per hour.

Goodview crossing: All southbound trains shall cross thereover at not to exceed 15 miles per hour; northbound trains, no restriction.

Park Avenue crossing: All trains may cross thereover without restriction as to speed in either direction.

Marshall crossing: All trains shall cross thereover at not to exceed 20 miles per hour in each direction.

Ball crossing: All southbound trains shall cross thereover at not to exceed 20 miles per hour. No restriction as to speed of northbound trains.

Spinney's crossing: All trains shall cross thereover at not to exceed 15 miles per hour, either direction.

IT IS FURTHER ORDERED, With reference to Part Two of said complaint, that the stop called Madison, about one-half mile north of College Hill station, may be, and the same is hereby, permitted to be discontinued.

IT IS FURTHER ORDERED, That with reference to Part Three of the above complaint, no change in the present method of operating trains of The Denver & Interurban Railroad, over the cross-over at Burns' Junction, is permitted, and that the prayer of applicant in its said Third Part of complaint is hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

(SEAL)

GRANT E. HALDERMAN

F. P. LANNON.

Commissioners

Dated at Denver, Colorado, this
25th day of October, 1921.

(Decision No. 4831

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

Fortunh Fuel & Ice Company, Complainant, v. The Denver and Rio Grande Railroad Company, A. E. Baldwin, Receiver, Defendant.	CASE NO. 247

November 8, 1921

APPEARANCES: R. L. Mills of Pueblo, for Complainant;
J. G. McMurray of Denver, for Defendant.
McMurray

STATEMENT

By the Commission:

On July 21, 1921, the Fortunh Fuel & Ice Company filed with the Commission an informal complaint against The Denver and Rio Grande Railroad Company and Alexander E. Baldwin, Receiver, alleging as its basis of complaint that it shipped seven carloads of lump and mine run coal from Crested Butte, Colorado, to Nicada, Colorado, over the line of the defendant carrier between September 28, 1920, and October 26, 1920; that six cars of said coal were originally billed to Pueblo, Colorado, but were diverted to the United States Zinc Company at Nicada, Colorado; that complainant paid a through rate of $5.07½ a ton on said six cars of coal and on one car a rate of $5.06½ to Pueblo and $1.80 per ton from Pueblo to Nicada; that the six cars of coal were moved through from Crested Butte to Nicada, and that the one car of coal was held in the Pueblo yards from September 28, 1920, to October 5, 1920.

Complainant further alleges that at the time shipments moved there was in effect a rate on lump or mine run coal of $5.06½ per ton

applying between Crested Butte and Pueblo, as per authority of D. & R. G. Tariff No. 5913, P.U.C. No. 491, and a rate of $2.00 per car applying on coal from Pueblo to Blende upon which the defendant carrier had theretofore received a line haul and that when the defendant carrier had not theretofore received a line haul a charge was made at the rate of $7.50 per car, as per Authority Item 550 of D. & R. G. Tariff 4466-E, C. P.U.C. No. 555, and complainant sets out the provision of the last named authority in its complaint.

The complainant further alleges that the defendant carrier collected on six cars of coal a through rate applying from Crested Butte to Blende of $3.87½, as per authority hereinbefore stated, and that on the seventh car of coal the rate charged was $5.00½ per ton to Pueblo, plus $1.50 per ton from Pueblo to Blende, as per the authority before referred to.

Complainant then alleges that Item 550 aforesaid taken in connection with D. & R. G. Tariff 5913, P.U.C. No. 491, named a through rate from Crested Butte to Blende of $5.00½ per ton plus $2.00 per car, and that the through rate from Crested Butte to Blende should not exceed the local rate to Pueblo plus the switching rate from Pueblo to Blende, and that any rate in excess of this is unjust and unreasonable and in violation of Section 15 of the Public Utilities Act.

Then follows the allegation that by reason of the foregoing facts complainant has been subjected to the payment of rates for transportation which were when exacted, and still are, in violation of Section 17, Paragraph 6 of the Public Utilities Act, and are unjust and unreasonable and in violation of Section 15 of the same Act, by reason whereof complainant has been injured and damaged in the sum of $290.89;

And complainant prays that upon hearing, the Commission make its order awarding to complainant by way of reparation for the unlawful charge alleged, the sum of $290.89, or such other sum as in view of the evidence the Commission may consider proper in the premises.

Subsequently, and on failure to have the matter adjusted informally, the complaint of complainant was docketed as a formal case, No. 847, and on to-wit: August 15, 1921, the answer of The Denver and Rio Grande Western Railroad Company was filed with the Commission, which alleges that it now owns and operates the property heretofore operated by A. R. Baldwin as Receiver of The Denver and Rio Grande Railroad; denies the allegations in Paragraph Three (3) of the complaint for want of sufficient knowledge or information upon which to base a belief; admits the references to tariffs, subject to check for accuracy, but denies the inferences and interpretations put upon the same by complainant; and finally denies the conclusions and inferences stated in Paragraphs Four (4) and Five (5) of complaint, and denies that the rates as published and intended are unjust and unreasonable and otherwise in violation of law, and denies that complainant has been damaged as alleged or at all and prays that the complaint be dismissed.

The matter was, upon due notice to parties in interest, set for hearing and heard at the hearing room of the Commission on Thursday, September 29, 1921, at 10:00 o'clock A.M. of said day with the appearances as above noted. Before any testimony was taken Mr. McMurry made the statement for the record that he appeared for the Receiver, Alexander R. Baldwin, of The Denver and Rio Grande Railroad Company, and at the same time appeared for The Denver and Rio Grande Western Railroad Company, but that while The Denver and Rio Grande Western Railroad Company has filed an answer because it now is the corporation that has to do with the carrying out of the rates, publication and abeyance of the former corporation, it is not responsible for the reparation phase of the present case because that phase occurred during the receivership of Alexander R. Baldwin, and that inasmuch as the reparation phase of the matter is concerned that he appeared for the Receiver who will be responsible for any reparation and will defend any rate structure attacked.

From the testimony introduced at the hearing it seems to be clearly established, if not conceded, that at the time the six cars of

coal moved from Crested Butte to Blende there was in effect a through rate of $5.67½ per ton thereon, and that at the same time there was a rate from Crested Butte to Pueblo of $5.06½ per ton on lump or mine run coal.

It also appears from the testimony and the exhibits introduced, that the present rate on lump and mine run coal from Crested Butte to Blende is $5.39 per net ton named in supplement No. 2 to D. & R. G. Tariff 2015-A, Colo. P.U.C. No. 868, effective February 28, 1921; also that the switch charge Pueblo to Blende at time shipments moved and at the present time is 54 cents per ton named in D. & R. G. Tariff 4486-E, Colo. P.U.C. No. 855.

The Commission is of the opinion that the rates charged were unreasonable, that complainant is entitled to reparation, and that the basis on which reparation should be made is the rate of $5.39 per net ton, supra, on the six cars moving from Crested Butte to Blende, and switching charge of 54 cents per ton, supra, on the one car rehilled at Pueblo.

Under all the circumstances of the case the Commission believes that complainant is entitled to reparation in the amount of the difference actually collected on the six cars of coal at $5.67½ per ton and the amount properly collectible at $5.39 per ton, which is the rate subsequently established; and on the seventh car, D. & R. G. 18116, the difference between the amount collected and the amount properly collectible at $5.46½ per ton made by using $5.06½ per ton to Pueblo plus switch charge of 54 cents per ton Pueblo to Blende, and the same will accordingly be ordered.

O R D E R

IT IS THEREFORE ORDERED, That the Denver and Rio Grande Railroad Company, A. R. Baldwin, Receiver, and the Denver and Rio Grande Western Railroad Company be, and they are, hereby authorized and directed to pay unto complainant, Fairbank Fuel & Ice Company, on or before February 7, 1922, the difference between the amount actually collected on the six cars of coal at $5.67½ per ton and the amount properly collectible at $5.39 per ton; and on the seventh car, D. & R. G. 18116, the difference between

the amount collected and the amount properly collectible at $3.46½ per ton, which is arrived at by using the $3.36½ per ton rate to Pueblo plus a switch charge of 24 cents per ton Pueblo to Rlando.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT H. HALDERMAN

(S E A L)

A. P. ANDERSON

F. P. LANNON

Commissioners.

Dated at Denver, Colorado this
8th day of November, 1921.

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. 484)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of the Incorporated Town of Seibert, Colorado, for permit to build, manage, and operate an electric light and power plant within its corporate limits.	APPLICATION NO. 150.

November 14, 1921.

STATEMENT AND ORDER

By the Commission:

WHEREAS, On October 31, 1921, the above named applicant filed application for a certificate of convenience and necessity for the purposes therein named, and

WHEREAS, on the 9th day of November, 1921, Bert A. Douglas, filed objections and protests thereto on the grounds set forth in the protest, and a copy of same having been heretofore served upon the town of Seibert, and

WHEREAS, November 14, 1921, said town of Seibert, by its Attorneys, C. W. Kleinschmidt and C. L. Engee, request that said application be withdrawn by said town of Seibert,

IT IS THEREFORE HEREBY ORDERED, That Application No. 150 filed by said the town of Seibert, October 31, 1921, be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

GRANT H. HALDEMAN

(SEAL)

A. P. ANDERSON

F. P. LARSON

Commissioners

Dated at Denver, Colorado, this
14th day of November, 1921.

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. 485)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of The Canon-Reliance Coal Company for an Order for 300 Additional K. V. A. Capacity.	APPLICATION NO. 136

November 22, 1921.

Appearances: Hughes and Dorsey, E. I. Thayer and Berrien Hughes, Attorneys for Applicant; E. E. Whitted, Attorney for Respondent.

STATEMENT

By the Commission:

On June 3, 1921, The Canon-Reliance Coal Company, hereinafter referred to as the Coal Company, filed its application herein for an order from this Commission against The Trinidad Electric Transmission Railway and Gas Company, hereinafter referred to as the Power Company, authorizing and directing said Power Company to immediately and forthwith install additional equipment necessary to supply and furnish said Coal Company at its property, the Reliance Mine, located at Ojo, Huerfano County, Colorado, 300 additional K. V. A. capacity. The Power Company is operating both in Las Animas and Huerfano County, with its main offices in Trinidad, Colorado.

Answer was filed by the Power Company on July 6, 1921. Thereafter, the cause was set for hearing and was heard before the Commission at its Hearing Room, Capitol Building, Denver, Colorado, on August 9, 1921. At the hearing thereon it was conceded by all parties hereto that no additional transformer capacity is required, for the reason that at

the time of the original installation in 1917, sufficient transformer capacity was then installed. It was also admitted that the original transmission line was installed as a Number 4 galvanized iron wire. It was also conceded that this transmission line is now insufficient to carry the additional load asked for. The real issue, therefore, is, is it the duty of the Power Company to reconstruct the 22.7 miles of transmission line with the copper wire, or other equally sufficient installation for the purpose of supplying the 300 K. V. A. additional capacity to the Coal Company. The Power Company is now supplying 150 K. V. A. capacity. The Coal Company contends that it is the duty of the Power Company to furnish the funds and reconstruct said line, while the Power Company contends that before it should be compelled to reconstruct said line the Coal Company should be required to advance the sum necessary for said reconstruction.

In November, 1916, a contract was entered into between The Alliance Coal Company, the predecessor of the present company, and the Power Company, which contract was afterward assigned to the present Coal Company. Said contract was for a period of ten years, from the time power was first supplied by the Power Company which was on June 14, 1917. According to the contract, The Alliance Company advanced $10,000.00 to the Power Company for building said line, which was to be paid back in monthly rebates on bills together with 6% interest on the balance unpaid. About $6,300.00 of the $10,000.00 has been thus paid, leaving a balance of approximately $3,700.00 due. The contract called for 150 K. V. A. installation, and in Paragraph 2 thereof contained the following provision:

> "In the event that the consumer shall require greater capacity than that specified herein the company will, upon written application and within four (4) months of the receipt of such application, furnish and install the necessary additional transformer capacity; provided, however, that the company shall not be required to install additional transformer capacity or make any other additional capital expenditure during the last two years of this agreement."

At the time of the first installation a 450 K. V. A. transformer was installed by the Power Company. The Coal Company also at that time installed a 350 K. V. A. electric hoist. Said electric hoist has never been used on account of the lack of electric power, although said Coal Company has, according to the evidence, frequently tried to use the same. It seems that at the time of the first installation on account of high prices of copper a Number 4 iron wire was installed, as above stated, which it is now admitted by all will not carry the additional 300 K. V. A. demanded.

The above terms in the contract are referred to here that a better understanding may be had of the merits of this case. The Commission in no sense will undertake to enforce the specific performance of this contract, but it deemed that it was material evidence in determining the questions involved; and by the contract itself the Commission has determined that the Power Company itself has already voluntarily entered the field in question and is now operating therein. The Commission also finds that the 300 additional K. V. A. demanded by the Coal Company is in reality a demand for additions and betterments rather than a new extension in a new field. Also from the fact that at the time the field was entered the Power Company installed a 450 K. V. A. transformer and the Coal Company installed a 350 K. V. A. electric hoist when only 150 K. V. A. was at that time called for by the contract; and also from Paragraph 2 of said contract the Commission finds that it was the intention of the parties at that time that additional power would be furnished by the Power Company on proper demand by the Coal Company. It is contended by the Power Company that it has, by its contract, limited its offer of service to the present amount furnished. This is not entirely clear to the Commission, for the reason that if we were to admit that the Power Company was at liberty to so limit the amount that it would furnish, the contract itself provides for additional service at any time prior to within two years of the ter-

mination of the contract, which has about six years yet to run, and as said heretofore the fact of the building of the hoist by the Coal Company and the 450 K. V. A. transformer by the Power Company does not bear out this contention.

From the facts adduced at the hearing, the Commission is bound to and will treat this application not as an application for extension into new territory but as an application for additions and betterments to equipment already furnished.

The Colorado Public Utilities Act of 1913 provides as follows:

> "(b) Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employes and the public, and as shall in all respects be adequate, efficient, just and reasonable." L. 1913, p. 468, Sec. 13.

> "Whenever the Commission, after hearing had upon its own motion or upon complaint, shall find that the rules, regulations, practices, equipment, appliances, facilities or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed and shall fix the same by its order, rule or regulation. The Commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and upon proper tender of rates such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules." L. 1913, p. 475, Sec. 24.

> Also "Whenever the Commission, after a hearing upon its own motion or upon complaint, shall find the additions, extensions, repairs or improvements to, or change in the existing plant, equipment, apparatus, facilities, or other physical property of any public utility, or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected to promote the security or convenience of its employes or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in such order." L. 1913, p. 476, Sec. 25.

It will thus be seen that there is no question as to the jurisdiction of the Commission to make such an order as the one herein

applied for, if in their judgment such an order is a reasonable one. In fact, the respondent, the Power Company, in their brief have conceded such jurisdiction, contending, however, that such an order by the Commission would be unreasonable.

The Coal Company contends that an adequate transmission line built of Number 3 aluminum wire could be constructed at an expense of $7,535.00. This, however, the engineers for the Power Company testified would not be suitable for this transmission line, and the engineers of the Power Company testified that they would not recommend the building of a line of this character. The testimony shows that the exact length of this transmission line is 22.7 miles. The Power Company's figures for the reconstruction of this line, using a Number 3 copper wire, is as follows:

Copper Wire No. 3	$11,000.00
Labor in removing old wire	600.00
Labor in installing new copper wire	2,000.00
Contingencies 5% and engineering expense 10%, making the total amount of	$16,036.17

The two items for removing old iron wire and installing new copper wire amount to $2,600.00 in the Power Company's figures. It seems to the Commission also that the item of engineering and contingencies which would amount to 15% is large, as estimated by the Power Company.

What is proposed is to purchase and re-string a new copper wire and take down the old iron wire, which should not require extensive engineering. The right of way for the line is acquired and the poles thereon are already located. The cost of stringing a Number 3 copper wire, including labor and all construction overheads, for a similar distance, as determined in a hearing of another utility which was had before this Commission is $12,175.00. By adding $600.00 for cost of removing old wire would give us a figure of $12,775.00. This item is a reasonable figure for this work. There is another item, however, which should be deducted from this amount. There are approximately 68 miles of old wire

now in use on this line which, in the opinion of the Commission, is of the value of $1.53 per 1,000 feet. The salvage thereon would be $544.00. Deducting this amount would leave the sum of $12,221.00, which the Commission believes would be a reasonable amount for the reconstruction of this line.

According to the Power Company's answer, the original cost of the present line was $26,542.00. If we add thereto $18,000.00 for power house capacity dedicated to the demand of 450 additional K. V. A. as contended for by the Power Company, we would have $44,542.00 in the investment. This, together with the $12,221.00, a reasonable cost for reconstruction with the copper wire, would make an investment of $56,763.00. A reasonable estimate of the revenues that would be obtained with the transmission line re-enforced is as follows:

450 K. V. A. Sub-station per year, Service Charge, (Schedule M).....	$5,400.00
450,000 K. W. H. @ 1-1/3 cents per K. W. H., Energy Charge (Schedule M).....	6,000.00
The Town of La Veta paid to the company in 1920....	2,200.00
Total Revenue...	$13,600.00

(The testimony shows that the only revenue actually received from this line outside of that obtained from the Coal Company was $2,200.00 from the town of La Veta. It is also contended by the Power Company that there is very little prospect of any additional revenue being obtained from this line in the future.)

Operating Costs with Re-enforced Copper Wire

Estimated amount of power to supply the Reliance Mine and the Town of La Veta for one year, allowing 10% loss in transmission.....	600,000 K.W.H.
Cost of 600,000 K.W.H. @ 1.4042 cents per K.W.H.....	$8,425.20

(The cost of generating a K. W. H. of the company as a whole, as taken from the reports of the Power Company to the Public Utilities Commission for 1920, was 1.196 cents.)

The switchboard cost on this branch, as testified to by the Power Company, per K.W.H. was 1.4042 cents. This cost, it is contended, is exclusive of maintenance and overhead expenses as per the following table submitted by the Power Company.

The Power Company submitted figures upon the present cost of operation of the transmission line from Mutual to Ojo for an average month, which are as follows:

Average Month, 1920, to Ojo only. (Tr. 49 and Respondent's "Exhibit A")

K.W.H. Consumption	20,000 K.W.H.	
Switchboard Costs	$ 280.84	
Maintenance Cost (Line and sub-station)	305.95	
Interest on Investment (8%)	176.95	
Taxes	253.26	
Total Costs	$1017.00	
Revenue	545.89	
Difference -	$ 471.00	
Switchboard Costs per delivered K.W.H.		1.4042¢

Also figures if the line was re-enforced and sufficient power was supplied to operate the large hoist, which are as follows:

Average Month, 1920, Ojo only. (Tr. 58, Respondent's "Exhibit B")

K.W.H. Consumption	26,000 K.W.H.	
Switchboard Costs	$ 373.52	
Maintenance Costs (line and substation)	305.95	
Interest on Investment (8%)	283.61	
Taxes	268.67	
Total Costs	$1231.75	
Revenue	899.53	
Difference -	$ 232.22	
Switchboard Costs per delivered K.W.H.		1.4042¢

These Exhibits "A" and "B" are far from satisfactory to the Commission in arriving at a conclusion as to actual money saved or lost to the Power Company by the re-enforcement of this line. However, from these two exhibits, which are as to Ojo only, (the property of the Coal Company) it seems the re-enforcement of this line by the Power Company would reduce the loss per month from $471.11 to $232.22, or a saving of $238.89 per month or $2,866.68 per year. If this saving can be accomplished by the further investment by the Power Company of $12,221.00 in this line, this would lift quite a burden from the other customers of the company as a whole, which it is contended by the Power Company they are now subjected to; and the Power Company would thus earn a better return on the total investment. The point is, it is admitted by the evidence that the actual loss to the Power Company would be less with

the line re-enforced than it now is even with the added investment. We have said that these Exhibits "A" and "B" offered to show losses sustained are unsatisfactory. The item of switchboard costs, $373.52 per month or 1.4042 per K.W.H., seems to be large. There is no testimony on the part of the Power Company concerning this item which is offered, informing the Commission as to just what general expenses are included in arriving at 1.4042 per K.W.H.

MAINTENANCE COST

The maintenance cost of the line and sub-station as given in respondent's Exhibit "B" is $305.95. It seems to the Commission that the time selected for the beginning and ending of the term on which these maintenance costs were computed is quite abnormal. The testimony shows that this period selected by the company was a period of storms of great severity, no other storm of equal severity having occurred, according to the evidence, since the erection of this line. The storm it seems occurred in October of 1920, and in that month there was spent in reconstructing $2,111.79 and in November of the same year $765.33 and in December $753.02, or a total for the three months of $3,630.14 which seems to have been pro-rated on the line from Mutual to Ojo. The average monthly maintenance of this line from Mutual to Ojo from August, 1919, to August, 1920, from the testimony introduced, would approximate $42.32 per month, while in the exhibit it will be noticed the estimate is $305.95 per month.

The item of interest is figured on the basis of 8% per annum. It will be noted that this item would have to be paid whether the line was re-enforced or not, with the exception of interest on the additional investment of $12,221.00 for re-enforcement.

TAXES

$253.26 per month. The valuation of the property in Huerfano County, in which this line is located, for taxes for 1920 was fixed by the Tax Commission at $289,870.00 on which the Power Company paid a total

tax to Huerfano County of $9,434.73 for all purposes. Approximately one-third of all the taxes paid by the Power Company in Huerfano County, or the sum of $3,039.12, is pro-rated by the Power Company to the transmission line from Mutual to Ojo.

From the tables herein given by the Commission on Page 7, designated estimate of revenues that would be obtained and operating costs with re-enforced copper wire, it will be noted that after operating costs are paid there still will remain a revenue of $5,174.80 per annum. These figures, of course, include only operating costs. It will be noted also that concededly, by the Power Company's own figures, the further investment of this $12,221.00 in betterments will reduce the loss to the company $238.89 per month or $2,866.68 per year, and it can not, therefore, be said that the ordering of this outlay for betterments on this branch would be adding an additional burden to the consumers of the whole system.

As a general rule, when a utility has voluntarily entered a field, as the Power Company seems to have done, and has undertaken to serve the customers therein it must thereafter continue to adequately serve them, which naturally involves the furnishing of all reasonably adequate facilities. A utility is not justified in enforcing a rule that all extensions or betterments will be refused where the income would not at once produce a return on the added investment, for the reason that such an invariable rule would retard the development of the industries of the state. In ordering any extension into new territory the Commission ought generally to be reasonably assured that the extension at the outset or within a reasonable time would produce a reasonable return on the investment. The improvement in question, however, as the Commission has already stated, can not be regarded as an extension into new territory but as addition and improvement of the facilities already extended into the territory. The Commission, therefore, has ample authority under the law and the rulings of the various commissions to order these improvements made at the expense of the Power Company. How-

ever, in this particular case there are other considerations which the Commission feels bound to consider. The evidence shows that this line of 22.7 miles in length extends westward in Huerfano County toward or near the western limits of the coal fields. The testimony shows that the Coal Company and the town of La Veta (which said town affords a revenue to the company from this line of approximately $2,200.00 per annum) are the only two customers of the company on this line; that there are only two other coal companies operating in this vicinity which other companies generate their own power and are not customers of the Power Company. It is contended by the Power Company there is no probability that it will be able to add any other customers on this line. This seems to be an important matter to the Commission. While it is possible that there might be in the future other companies springing up along this line, the Commission has no way of determining this at this time.

The Commission realizes the difficulty which utilities have at present in selling their securities to raise additional capital. It is, therefore, of the opinion and will so hold that the Coal Company itself shall bear its proportion of the burden of raising the additional capital necessary in re-enforcing this line, the same to be refunded to the said Coal Company monthly out of the revenues received from the payment by the Coal Company of its monthly power bills. Upon the payment, as aforesaid, to the Power Company of the sum herein specified, it is the opinion of the Commission and the Commission will so order that it is the duty of the Power Company to so improve and increase its facilities as to furnish to the Coal Company the 300 additional K. V. A. asked for in the petition herein, which said betterments and improvements shall include the re-enforcement of the line in question from Mutual to Ojo with a Number 3 copper transmission line.

O R D E R

IT IS HEREBY ORDERED, That the respondent, The Trinidad Electric Transmission Railway and Gas Company, on or before sixty days from

the date of this order supply and furnish the applicant, The Canon-Reliance Coal Company, on its property at its mine at Ojo, Huerfano County, Colorado, 300 additional K. V. A. capacity and to install, string, construct and maintain additional facilities, including the re-enforcement of its transmission line, for that purpose with a Number 3 copper wire from Mutual to Ojo in said county; that The Canon-Reliance Coal Company advance and deliver to said Trinidad Electric Transmission Railway and Gas Company the sum of $6,110.50 for the purpose of providing a portion of the capital for the reconstruction of said line, the same to be returned to it as hereinafter provided; that before the commencement of the reconstruction of said line the said Coal Company shall enter into a contract with the said Power Company for a term of ten years, providing for the furnishing of the said additional K. V. A. at the legal rates now in force and on file or that may hereafter be in force and on file with this Commission; that on the date of signing said contract the said Coal Company shall advance to the said Power Company the said sum of $6,110.50

IT IS FURTHER ORDERED, That the said Trinidad Electric Transmission Railway and Gas Company and its assigns shall refund to said Canon-Reliance Coal Company and its assigns said sum of $6,110.50 so advanced by returning monthly to said Coal Company 20% of each monthly bill, together with 6% interest on balances due on said $6,110.50, for all power furnished said Coal Company over and above the original 150 K. V. A. now being furnished under a contract entered into between the Power Company and the Coal Company on November 1, 1916, which said contract and the agreement for refund therein it is not the intention of the Commission by this order to disturb.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 22nd day of November, 1921.

(Decision No. 486)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In re Passenger Service on the Clear Creek Division of The Colorado and Southern Railway Company.) CASE NO. 231

November 29, 1921

Appearances: E. E. Whitted and J. Q. Dier, Attorneys for the Colorado and Southern Railway Company; E. D. De Soto, representing citizens of Silver Plume and Idaho Springs.

STATEMENT

By the Commission:

On March 15, 1921, The Colorado and Southern Railway Company filed with and gave notice to the Commission of its intention and desire to reduce its passenger train service on the Clear Creek Division operating between Denver and Silver Plume, by discontinuing train 51, leaving Denver in the morning, and train 54, leaving Silver Plume in the afternoon and arriving at Denver 5:15 P. M. Two other passenger trains are operated by the Railway Company known as trains 52 and 53, 53 leaving Denver in the afternoon for Silver Plume and 52 leaving Silver Plume in the morning for Denver.

The original application of March, 1921, was for the curtailment of such service until June 1, 1921. The matter was set for hearing and heard by the Commission at its hearing room on April 11, 1921, and on April 28, 1921, the Commission issued its order denying the permission sought, but in said order giving leave to the Railway Company to renew its request during the fall of 1921 should it be so advised.

Accordingly, on September 29, 1921, the Railway Company petitioned the Commission to reopen the above cause, and renewed thereby its request for the curtailment of its passenger train service upon said Clear Creek Division by the discontinuance of trains 51 and 54 aforesaid, with the connecting service with those trains between Forks Creek and Central City, and to continue the operation of trains 52 and 53 with suitable connecting service with those trains at Forks Creek for Black Hawk and Central City.

Upon the filing of said petition, notice thereof was given to the communities affected and interested, and the same was set for hearing at the hearing room of the Commission on November 22, 1921, at 2:00 O'clock P. M.

Prior to the date of the hearing, there was filed with the Commission, and upon the hearing introduced into evidence, letters from the Mayor of Central City, from the Mayor of Idaho Springs, from The Gilpin County Metal Miners' Association, by O. J. Duffield, President, and from the Mayor of Georgetown, to the effect that the respective communities would make no objection to the granting of the application for the curtailment of the train service mentioned during the winter months, provided that reasonably prompt and efficient service would be rendered by the Railway Company to the communities along the line through the morning eastbound and evening westbound trains 52 and 53, and the connecting trains therewith at Forks Creek for Black Hawk and Central City.

The testimony of the Railway Company by its General Auditor established the fact that upon the Clear Creek Division for the year 1920 the operating expenses of the Railway Company exceeded the operating income for the calendar year 1920, including taxes, by $174,996.55; and that for the first eight months of 1921, January to August both inclusive, the operating expenses of the Clear Creek Division exceeded the operating income, including taxes, by $105,299.57. The Vice-President

of the Railway Company, and other witnesses, testified as to the saving that would be effected during the winter months by the diminution of the train service desired and applied for, as amounting to the sum of $5,295.00 per month.

At the hearing there was no oral testimony submitted on the part of the protestants or citizens along the line of said Railway, but there were filed written protests by citizens of Silver Plume and of Idaho Springs. The Silver Plume protest gives no reasons except a bare protest against a discontinuance of the present passenger train service of said road between Denver and Silver Plume. The protest of Idaho Springs citizens expresses a belief that the elimination of one train per day each way as applied for, would work a material hardship on the people of that city, and protestants express a belief that present business conditions warrant the continuance of the present two passenger train per day service. Both of said protests were in the nature of petitions to the Commission, and, as stated, no oral testimony was submitted whatever.

In view of the testimony of the Railway Company's officials to the huge deficits incurred by the Railway Company in the operation of its Clear Creek Division trains, and of the saving of $5,295.00 a month that will be effected provided the train service is diminished to the extent asked for, it is difficult for the Commission to really appreciate the naked objection and the citizens believe present business conditions warrant continuance of present service.

At the hearing W. P. Hayden, Vice-President of the Railway Company, testified that his company was quite willing and anxious to cooperate with the communities affected in any reasonable way in affording passenger train facilities, and that were it desired a coach would be placed on the freight train for the accomodation of passengers leaving Denver or Golden in the morning for Clear Creek points , so that passengers from Denver to those communities might avail

themselves of the privilege of taking such freight train at Denver, or of using electric interurban service to Golden and thus have a means of traveling by said freight train to the Clear Creek district towns, and that in every other way the schedule of the train service for the winter months would be so arranged as would best subserve the convenience of a majority of the patrons of said Railway.

The sole question involved is whether or not, under all the circumstances and conditions shown to exist, the communities along the line of the Clear Creek Division would have reasonably adequate service during the winter months were the discontinuance of trains 51 and 54 permitted. It is not a case of abandonment where no service at all is proposed; merely a reduction of present passenger train facilities, and in view of the deficits sustained, according to the testimony, upon the Clear Creek Division and of the saving the Railway Company will thereby be able to make, the Commission is of the opinion that the trains 51 and 54 and connecting trains therewith at Forks Creek for Black Hawk and Central City asked to be discontinued should be allowed during the winter months beginning December 1, 1921, and ending June 1, 1922, unless upon proper showing the Commission will feel justified in ordering an earlier resumption of double daily passenger train service as the same now exists. It is understood, however, that in granting the permission sought, the Railway Company will use every reasonable endeavor to have the remaining train service adequate and efficient and the schedules so arranged as will meet with the convenience of the majority of the communities served; and that experimentally a passenger coach will be attached to the freight train leaving Denver in the morning for the Clear Creek District communities and returning to Denver the following day. In other words, the freight train service is run tri-weekly between Denver and Silver Plume and Georgetown, and passengers may either take such freight train service out of Denver or by electric car to Golden, there to connect with such freight train service. Of course, after sixty or ninety days should it prove that no passengers

avail themselves of the freight train coach service, the Railway Company would be privileged to discontinue attaching a coach to said freight train.

ORDER

IT IS THEREFORE ORDERED, That the Colorado and Southern Railway Company be, and it is, hereby authorized and empowered to discontinue its passenger trains No. 51, leaving Denver 8:10 A. M., and No. 54 arriving Denver from Silver Plume at 5:15 P. M., beginning December 1, 1921, with corresponding elimination of connecting service at Forks Creek for Black Hawk and Central City, for and during the winter months of 1921 and 1922, and until not later than June 1, 1922, reserving, however, the right of the Commission to order the restitution of the existing double daily passenger train service upon its own motion or upon complaint, should conditions warrant and justify such action earlier than June 1, 1922.

IT IS FURTHER ORDERED, That said Railway Company attach a passenger coach to its tri-weekly freight train running between Denver and Silver Plume for the accomodation of passengers for a period of ninety days from December 1, 1921, and to make report to the Commission at the end of each thirty days of the number of passengers that have availed themselves of such freight train coach service, that the Commission may be advised of the necessity therefor; and if at the end of such period it should appear that no reasonable number of persons avail themselves of such freight train coach service, then said Railway Company may discontinue the same.

IT IS FURTHER ORDERED, That said Railway Company arrange its schedules of trains 52 and 53 with the connecting service at Forks Creek for Black Hawk and Central City, as will meet the needs and convenience of a majority of its patrons on said Clear Creek Division, and that it use every reasonable effort for the operation of said trains 52 and 53

and connecting service upon schedule time.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT H. HALLENBAM

A. P. ANDERSON

S E A L

F. P. LANDON

Commissioners

Dated at Denver, Colorado,
this 29th day of November, 1921.

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. 4871)

~~BEFORE THE PUBLIC UTILITIES COMMISSION~~
OF THE STATE OF COLORADO.

The National Fuel Company, a corporation,

Complainant,

v.

Chicago, Burlington and Quincy Railroad Company, a Corporation,

Defendant.

CASE NO. 89

ORDER

December 5, 1921

Whereas, on May 9, 1916 Complainant filed its complaint before the Commission asserting a claim for reparation against the Defendant, and

Whereas, the above entitled cause is one of a number of such reparation claims as have been made the subject of amicable settlement by the respective parties in interest subsequent to the decision of the Supreme Court of Colorado heretofore rendered in one of such reparation cases, and

Whereas, on December 2, 1921 there was filed with the Commission a stipulation advising that all matters involved in the above entitled cause had been amicably adjusted and stipulated that the Commission may enter its order herein of dismissal.

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Halderman

(S E A L)

A. P. Anderson

F. P. Lannon.
Commissioners.

Dated at Denver, Colorado,
this 5th day of December, 1921.

(Decision No. 488)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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APPLICATION NO. 155

In the Matter of the Application of the Receivers of The Denver & Salt Lake Railroad for the Establishment of Tri-Weekly Passenger Train Service, effective December 18, 1921.

ORDER

December 16, 1921

Appearances: Charles R. Brock, Attorney for Applicant.

STATEMENT

By the Commission:

On December 1, 1921, applicant, by W. R. Freeman, Receiver, advised the Commission in writing that effective December 11th applicant Railroad Company would establish tri-weekly passenger train service between Denver and Craig, for the reason that it was necessary to effect every possible economy in view of the financial condition of said Railroad, and of the further fact that a suit was pending in the District Court in and for Adams County, Colorado, brought by the Bankers Trust Company of New York, for the alleged protection of the interests of bond holders of said Denver & Salt Lake Railroad Company.

Under general order No. 34 of this Commission, notice of at least thirty days of such change in service is required to be given, so that the Commission treated the notice of December 1st as being a thirty day notice and so notified the Receiver on December 3, 1921.

Thereafter, and on December 6, 1921, the attorney for the Receiver appeared informally before the Commission and conceded an oversight in the practice pursued, and represented to the Commission, that, in view of the aforesaid court proceeding, it was quite desirable

that the establishment of tri-weekly passenger train service be permitted to become effective prior to December 19, 1921, the date upon which said court proceeding would be argued; that, if permitted, the court would be advised of a substantial saving in the operation of train service, which would approximate $5,000 to $6,000 per month; and further representations were made that the patrons upon and along the line of said applicant Company would not object or protest thereto.

The Commission, upon its own motion, on said December 6th, notified the various civic and commercial organizations, and various firms and individuals, in the towns and cities along said Railroad, of the application, and of the desire to establish tri-weekly passenger train service to become effective December 18, 1921; and that if any protest or objection was desired to be made, the same must be one of merit, and be filed with the Commission on or before December 15th, 1921; and that on said December 15th, 1921, the matter would be heard by the Commission at its Hearing Room, Capitol Building, Denver, Colorado, for final determination. In said notice, the Commission requested that if assent were to be given to such tri-weekly service, that the same be made, in writing, to the Commission before December 15, 1921.

On December 13th, the applicant filed his formal petition and the same was docketed as a formal application in said matter, wherein was set forth the salient facts hereinabove mentioned.

The matter came formally to be heard at the Hearing Room of the Commission at 10:00 o'clock A. M., December 15, 1921, pursuant to notice duly and legally theretofore given. At the hearing there was introduced of record Commission's "Exhibit 1," which comprises letters and telegrams marked "A" to "T," both inclusive, from the various civic and commercial organizations, individuals, associations and firms interested as patrons of said Denver & Salt Lake Railroad, giving assent to the establishment of tri-weekly passenger train service on the same schedule as was heretofore in operation in the winter of 1920 and 1921

permitted to be inaugurated; such tri-weekly passenger train service to be continued not later than May 1, 1922. No protest or objection was made thereto from any source.

In consideration of all the facts and circumstances made to appear to the Commission, it deems it such a case of emergency as to permit the modification of the rule requiring thirty days' notice, and as will justify inauguration of such tri-weekly train service upon less than thirty days' notice. The Commission has always endeavored to take any step that will in anywise aid in the continued operation of the Moffat Railroad in the interest of the people generally of this State, and of that vast empire which it traverses particularly, and so it will do in this case; and, having duly considered all the matters before it and being now fully advised in the premises, an appropriate order will issue.

O R D E R

IT IS, THEREFORE, ORDERED that applicant, the Denver & Salt Lake Railroad Company, and its Receivers, be, and they hereby are, permitted to establish and inaugurate tri-weekly passenger train service, effective December 18, 1921, to be operated upon a schedule as follows: West bound, leaving Denver 9:00 A. M., Mondays, Wednesdays and Fridays; East bound, leaving Craig at 6:00 o'clock A. M., Tuesdays, Thursdays and Saturdays to arrive in Denver at 7:45 P. M. as now scheduled.

That the establishment of said tri-weekly passenger train service is permitted to continue to and until May 1, 1922, when daily passenger train service shall be resumed according to the usual summer schedule.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hael Emmons

A O Anderson

E. P. Lamm

Commissioners.

Dated at Denver, Colorado,
this 16th day of December,
1921.

(Decision No. 489)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of The Atchison, Topeka and Santa Fe Railway Company for Publication of Rates on Coal from Starkville and Morley, Colorado to Minnequa, Colorado, via La Junta, Colorado.

APPLICATION NO. 198

ORDER

December 27, 1921.

WHEREAS, on March 7, 1921, The Atchison, Topeka and Santa Fe Railway Company made application to the Commission for permission to publish rates on coal from Starkville and Morley, Colorado, to Minnequa, Colorado, via La Junta, Colorado, without making same applicable at intermediate points; and,

WHEREAS, on December 26, 1921, the applicant filed with the Commission a request that the above application be withdrawn;

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT H. HALDERMAN

A. P. ANDERSON

F. P. LANDON

Commissioners.

SEAL

Dated at Denver, Colorado,
this 27th day of December, 1921.

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.

Assistant Acting Secretary.

(Decision No. 491)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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The Breckenridge Chamber of Commerce, Complainant, v. The Colorado and Southern Railway Company, Defendant.	CASE NO. 87 Petition for Modification of Order Entered May 27, 1919.

December 29, 1921.

Appearances: Barney L. Whatley and Carl A. Kaiser, Attorneys for Complainant; E. E. Whitted and J. Q. Dier, Attorneys for Defendant.

STATEMENT

By the Commission:

On April 19, 1921, the Colorado and Southern Railway Company filed its petition with this Commission for a modification of the order heretofore entered by this Commission on May 27, 1919, in the above entitled cause.

On December 29, 1911, effective January 1, 1912, the Commission entered an order in the above entitled cause requiring said Railway Company to operate and maintain a through and exclusive passenger train service daily, excepting Sunday, from Denver to Leadville by the way of Como and Breckenridge, and a through and exclusive passenger train service daily, excepting Sunday, from Leadville to Denver by the way of Breckenridge and Como.

Under the then existing law, such orders of the Commission could be made only for the period of two years. On February 3, 1914, the said Railroad Commission continued or extended said order for a

further period of two years from March 4, 1914. On October 28, 1915, this Commission continued or extended said order until the further order of the Commission, the two year limitation as to time having been changed by law. On May 27, 1919, this Commission entered an order against the said Railway Company to maintain, operate and conduct a through and continuous passenger train service daily, except Sunday, from Denver to Leadville and from Leadville to Denver via Como and Breckenridge.

Since January 1, 1918, the said Railway Company at all times has fully complied with said orders and has operated the passenger trains between Denver and Leadville as required by the orders of the Commission.

This action filed on April 19, 1921, is for a modification of the said order entered May 27, 1919.

A number of protests were filed by the towns, commercial bodies and individuals whose interests and business are located along the line of said Railway; and an answer was filed with the Commission by the Breckenridge Chamber of Commerce which said answer set up and recited to the Commission the inconveniences, injury and damage that would be done to the various protestants by the re-opening of the aforesaid pass and the allowing of the operation of this line of railway by the operation of three trains a week each way between Denver and Leadville as asked for by the Railway Company.

A hearing was held in the town of Breckenridge and a final hearing was held herein on November 22, 1921, at the Hearing Room of the Commission, Denver, Colorado. Much evidence was taken and briefs were filed, which has enabled the Commission to go into this matter very carefully which has been done.

After the entering of said order on November 29, 1911, the said Railway Company at that time appealed from the decision

of the said Railroad Commission to the District Court, which said Court in all respects affirmed the order of the Commission. From this order of the District Court, the said Railway Company, being dissatisfied therewith, appealed to the Supreme Court of the State of Colorado, and thereafter the said Supreme Court reaffirmed and sustained the order of the District Court entered therein. Said decision of the Supreme Court, entitled "The Colorado and Southern Railway Company v. the State Railroad Commission," is reported in Fifty-fourth Colorado, page 64.

In the original order entered in 1911, petitioner asked that the Railway Company be ordered to operate exclusive passenger service between Denver and Leadville, excepting Sunday. (See page 69 of the above entitled case.) The Supreme Court in that opinion, after stating the issues therein, says that one of the contentions in the case was as to whether the Commission had any authority to order the operation of exclusive passenger trains, and the court then proceeded to discuss this question and then says:

> "Clearly then, if a railroad company does not operate a sufficient number of trains to reasonably serve the needs of shippers, the Commission has the power to direct it to increase its service in this respect." (See page 76).

And on page 79 of the above opinion the Supreme Court expressly passes on the question of the directing of the running of passenger trains. On pages 87 and 88 of the above opinion the Court says:

> "The evidence establishes that for the years 1908 to 1911, both inclusive, the net earnings of the company on its entire system range from $3,897,000.00 to $2,576,000.00, and that during this period the following dividends were paid: In 1908, $960,000.00; in 1907, $880,000.00, and that for each of the years 1908 to 1911, inclusive, $1,200,000.00."

In the original case in the Supreme Court cited above, the Court uses the following language:

> "In brief, under the facts of the case at bar, an order requiring a railroad company in the possession and enjoyment of its charter powers and privileges to furnish a necessary service does not, even though a compliance with the order entails a loss, deprive it of its property without due process of law, or compel it to devote its property and revenues to a public use without just compensation, for the obvious reason that such an order merely requires it to discharge its legal obligations. Of course, that a service ordered will entail a loss is a circumstance to consider in determining the reasonableness of the order; but a common carrier cannot successfully complain that a loss will thus be occasioned when it appears that the ordered service requires nothing more than necessary transportation facilities."

The evidence in this case, it seems to the Commission, discloses a real necessity for the operation of a daily, except Sunday, passenger train service. At the present only two freight trains are operated each week. The Commission believes that by the operation of a passenger train only three times a week, especially over heavy runs and for a distance of about twenty miles, it will not be possible at all times, and especially in times of storms and snow, to keep this part of the road open; and by the method of operation as asked for in the petition for a modification it will be difficult at such times, if at all possible, by this method of operation to maintain the three trains a week over this road.

On page 99 in the above cited case the Court uses the following language:

> "If, however, we assume the record discloses that a compliance with the order of the Commission will entail a substantial loss in excess of the revenues derived from the operations of the trains ordered, then we think that neither this fact nor any of the propositions to be considered in connection with it justify a reversal of the judgment. In considering losses, we deem it pertinent to suggest that interest on bonds and investment should not be taken into account as the amounts representing these items would not be materially different whether the road was operated or not. Taxes might be less on an abandoned road than one in operation."

In protestant's "Exhibit C," which is the twenty-second annual report of the board of directors of the Colorado and Southern Railway Company, for the year ended December 31, 1920, the gross corporate income of the company is given as $5,098,344.47. After deducting $2,140,438.47 for interest on funded debt and other smaller deductions, there still remained a net income of $2,605,906.30. Out of this sum $600,000.00 was paid in dividends and $1,925,064.30 was transferred as a profit to the profit and loss account.

It seems to the Commission that one train each way a day, except Sunday, is no more than an adequate service to accommodate the traffic between Denver and Leadville, and on this subject the Court in the above cited case, on page 98, says:

> "The question of loss must be considered in connection with its duties and the productiveness of its corporate business as a whole. The law imposes upon it the duty of furnishing adequate facilities to the public on its entire system, not a part; and it cannot be excused from performing its full duty merely because by ceasing to operate a part of its system the net revenue would be increased."

From the report of the Commission's Statistician, Mr. Wallis, introduced as the Commission's Exhibit, which is a report on the entire system from August 1, 1920, to August 1, 1921, the net operating revenue during this period was $2,977,070.12, and after deducting railway tax accruals as shown by this report for that period, amounting to $990,017.00, there still remained an operating income of $1,988,267.65, nor does this include the non-operating income received by the company which is not given in his report, but which in 1920 amounted to $2,938,851.76. It will be noted that the Supreme Court in the opinion cited above says:

> "The question of loss must be considered in connection with its duties and the productiveness of its corporate business as a whole."

If we consider the corporate business as a whole, non-operating revenue should be considered as a part of the corporate income. The Commission is of the opinion, however, that in estimating the probable income for the year 1921, that it should not include the $250,467.92 estimated by the company as due from the government under the guarantee by the Transportation Act of 1920.

The evidence clearly discloses that at the time of the original hearing, the Railroad Commission found that the present schedule was a reasonable one, and that the District Court and the Supreme Court thereafter sustained the order; that the Supreme Court held that the Commission had the jurisdiction and power to make the order, and that under the then existing conditions the order was a reasonable one.

From the above, it appears that the condition of the corporate business as a whole of the said Railway Company is in no worse condition at least than it was when the original case was heard in the Supreme Court, and the decision returned to above was announced.

The Commission does not intend to say by this order that it can not order the reduction of an unreasonable or an unnecessary service when the corporate business as a whole is a profitable one, but that necessary service must be furnished whether or not it entails a loss for that particular service when the corporate business as a whole is profitable. The Commission is of the opinion that the present passenger service is a necessary service. In Case No. 351, known as the Clear Creek Case, recently decided by this Commission, the Commission did allow the elimination of a passenger train one way each day by this same company under pres-

tically the same conditions as to its corporate business as exist at this time, but in that case after the said reduction the company still maintained and is now maintaining one passenger train each way each day for the accommodation of the public.

It is the opinion of the Commission that the petition of the Colorado and Southern Railway Company for a modification of the order entered herein May 27, 1919, should be denied.

ORDER

IT IS THEREFORE ORDERED, That the petition of the Colorado and Southern Railway Company for a modification of the order entered herein May 27, 1919, and for the substitution of a tri-weekly passenger service between Denver and Leadville, be, and the same is, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDEMAN

ATTEST: A. P. ANDERSON

E. P. LAMBIE
Commissioners.

Dated at Denver, Colorado,
this 20th day of December, 1921.

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.

Assistant Acting Secretary.

492

(Decision No.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of The Denver & Salt Lake Railroad Company for an Order Authorizing it to Close its Agency at Rollinsville, Colorado.

APPLICATION NO. 187

December 30th, 1921

Appearances: Elmer L. Brock, of Smith, Brock & Ferguson, for Receivers of The Denver & Salt Lake Railroad Company. For Protestants, George W. Summers and S. B. Wenger, Postmaster at Rollinsville.

STATEMENT

By the Commission:

On December 1st, 1921, there was received from The Denver & Salt Lake Railroad Company an application for the discontinuance of its agency at Rollinsville, Colorado, until May 1st, 1922.

This case was set down for hearing and was heard at the Hearing Room of the Commission, Tuesday, December 27th, after notices had been posted in the railway station and post office at Rollinsville, notifying the public of the said proposed discontinuance. In response to the application, there was served upon this Commission a numerously signed petition of the residents of Rollinsville asking that the petition be denied. Another petition, somewhat smaller, asking that in view of the desperate financial condition of The Denver & Salt Lake Railroad Company, the said Company be allowed to discontinue their said agency. was filed.

The evidence introduced in this hearing clearly showed there was a large falling off in the receipts at this station; and that, for the next few months, it was predicted the shrinkage would be consider-

ably augmented.

As a result of the hearing, Mr. M. L. Phelps and Mr. S. R. Wenger met with Messrs. Smith, Brock & Ferguson and Mr. F. J. Toney, Traffic Manager of The Denver & Salt Lake Railroad Company, and it was agreed that for a nominal consideration, Mr. Wenger would act as a caretaker for this station. He would be furnished a key to the depot, which would be used by him for the accommodation of passengers and shippers of freight. It was also agreed that freight shipped to Rollinsville will be placed in the depot by the trainmen and that freight to be shipped out of Rollinsville can be placed in the depot by obtaining the key from Mr. Wenger. The telephone will remain in the depot under an arrangement whereby Mr. Wenger shall have the privilege of using it for the purpose of ascertaining the time of arrival of trains, which information will be posted on the depot bulletin board for the public's information.

In view of the financial condition of this road and the necessity for the most rigid economy to be exercised in order to prevent the cessation of operations, which would cause great injury to all interests along this line, this Commission is of the opinion this application should and will be allowed.

ORDER

IT IS, THEREFORE, ORDERED That the railroad agency of The Denver & Salt Lake Railroad Company at Rollinsville, Colorado, be, and the same is, hereby discontinued from and after January 1st, 1932, to and until May 1st, 1932.

IT IS FURTHER ORDERED, That a caretaker be provided for the depot at Rollinsville in accordance with a letter filed by The Denver & Salt Lake Railroad Company, dated December 28th, 1931, and signed

by Messrs. Smith, Brock & Ferguson, M. L. Phelps, S. E. Wenger and F. J. Toner.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

GRANT E. HALDERMAN

A. P. ANDERSON

(S E A L)

F. P. LANNON
Commissioners.

Dated at Denver, Colorado,
this 30th day of December, 1921.

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.

Assistant and Acting Secretary.

(Decision No. 493)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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The Town of Fairplay, et al., Complainant, v. The Colorado and Southern Railway Company, Defendant.	CASE NO. 242

December 30, 1921

Appearances: Barney L. Whatley and M. J. O'Malia, for the Town of Fairplay; E. E. Whitted and J. Q. Dier, for The Colorado and Southern Railway Company.

STATEMENT

By the Commission:

On March 15, 1921, The Colorado and Southern Railway Company filed a notice with this Commission that effective March 27, 1921, they proposed to discontinue their mixed freight and passenger service daily, excepting Sunday, between Como and Alma, and to substitute therefor a mixed service between said points, making the round trip on Tuesdays, Thursdays and Saturdays of each week. As a reason for said change in the service, they alleged that both the freight and passenger receipts had been falling off and were being operated at a heavy loss.

Subsequently thereto, protests were filed by different protestants to the said change in the service, and a written protest was thereafter filed by the town of Fairplay on April 28, 1921.

The branch line under consideration and on which the above changes in service were proposed to be made extends from the town

of Como, a point on the South Park Division of The Colorado and Southern Railway, through Garo and Fairplay to Alma in Park County, Colorado.

At the time the said notice was filed and as a part of the same, notice was also given of a change in the service from a daily passenger train each way each day to a tri-weekly passenger service on the South Park line of the said company, extending from Denver to Leadville, Colorado.

The cause on the line from Denver to Leadville was thereupon treated as a re-opening of the original Case No. 37, decided in 1911, and which was known as the Breckenridge Case. The above case was given a separate number (No. 242) and the two cases were consolidated for the purpose of hearing.

A hearing was held in this case at Fairplay on the 19th day of October, 1921, where evidence was taken and at which time the protestants, the town of Fairplay and all others, were heard. The hearing was then adjourned until November 22, 1921, at the Hearing Room of the Commission in Denver, Colorado.

An order has been entered in the said Case No. 37, involving defendant's line from Denver to Leadville, on December 28, 1921. In that order the application of the Railway Company was denied, and the reasons for denying said application were fully discussed. The operating conditions of the Railway Company in that case were also introduced in the present case, and the reasons for denying said Application No. 37 are practically as applicable to this case as they are in said Case No. 37. However, in this case the company is not operating a separate passenger train service, but is now operating only a mixed passenger and freight train each way each day, and this service, it seems to the Commission, is only

a reasonable and necessary service. For this reason and for the further reasons set forth in said order in Case No. 37, the application of the defendant Railway Company should be denied.

O R D E R

IT IS THEREFORE ORDERED, That the application of The Colorado and Southern Railway Company as contained in their notice of March 15, 1921, be, and the same is, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Chairman

A P Anderson

H. L. Lannon
Commissioners.

Dated at Denver, Colorado,
this 30th day of December, 1921.

(Decision No. 494)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of the Board of County Commissioners of Morgan County, State of Colorado, for the Opening of a Public Highway over the Right of Way and Track of the Chicago, Burlington & Quincy Railroad on the Section Line between Sections 5 and 6 in T 3 N, R 59 W, of the 6th Principal Meridian.

APPLICATION NO. 142

January 4, 1922

STATEMENT

By the Commission:

The proceeding arises upon the application of the Board of County Commissioners of Morgan County in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 15, 1917, for the opening of a public highway crossing at grade over the main line track of the Chicago, Burlington & Quincy Railroad, on the section line between sections 5 and 6, township 3 north, range 59 west, of the 6th P. M.

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's Engineer on November 15, 1921. In his report to the Commission, he recommends that the crossing be opened under certain terms and conditions.

The County Commissioners of Morgan County having consented to these terms and conditions, and the Chicago, Burlington

& Quincy Railroad Company, being fully advised of these matters, having requested through its General Manager, Mr. W. F. Thiehoff, that authority be granted to construct said crossing and no objections having been filed, the Commission will, therefore, issue its order granting permission for the establishment of the crossing as requested.

ORDER

IT IS THEREFORE ORDERED, That in accordance with Section 29 of the Public Utilities Act 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 and right of way of the Chicago, Burlington & Quincy Railroad on the section line between sections 5 and 6 in township 3 north, range 59 west of the 6th Principal Meridian, in Morgan County, Colorado.

IT IS FURTHER ORDERED, That prior to the opening of said crossing, the County Commissioners of Morgan County shall perform or bear the expense of performing the work of grading, including such drainage as may be necessary under the highway, to establish proper approaches and to remove obstructions to view of approach as hereinafter specified.

IT IS FURTHER ORDERED, That the crossing at the point above described shall be constructed in accordance with plans and specifications prescribed in the Commission's order, In re Improvement of Grade Crossings in Colorado, 8 Colo. P.U.C. 128, and furthermore that the cut made to the south of the track on the highway be "opened" to the west and that the bank to the east be cut back a reasonable amount.

IT IS FURTHER ORDERED, That as soon as the above work is completed to the acceptance of the Railway Engineer of this Commission, the Chicago, Burlington & Quincy Railroad Company shall open and establish said crossing and bear all additional expense thereof.

IT IS FURTHER ORDERED, That in view of the establishment of said public highway crossing, a private crossing in the vicinity thereof will be abolished.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

GRANT E. HALDEMAN

(S E A L)

A. P. ANDERSON

F. P. LANNON

Commissioners.

Dated at Denver, Colorado,
this 4th day of January, 1922.

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.

Acting Secretary.

Decision No. 495

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In re. Advance in Rates for Water for The Leadville Water Company. } I. & S. No. 44

January 4, 1922.

Appearances: John A. Ming and Paul W. Crawford, for Petitioner; R. D. McLeod and John A. Rush, for the City of Leadville.

STATEMENT

By the Commission:

On April 15, 1921, the Commission issued its order in this cause to become effective May 1, 1921, settling all the questions at issue in said case.

On April 30, 1921, the said The Leadville Water Company filed with this Commission an application for a rehearing; and, as grounds for such motion, alleged error on the part of the Commission.

On April 30, 1921, The American Smelting and Refining Company, a consumer affected by the said order, also filed with the Commission its motion for a rehearing herein; and, as grounds for such motion, also alleged error on the part of the Commission.

The Commission, having considered each of the said applications for a rehearing separately, and now being fully advised in the premises, is of the opinion that the said application for a rehearing on the part of The American Smelting and Refining Company and also the said applica-

tion for a rehearing on the part of the Leadville Water Company, should be denied.

ORDER

IT IS, THEREFORE, ORDERED That the application for a rehearing of The Leadville Water Company, filed with the Commission April 30, 1921, and also the application of The American Smelting and Refining Company for a rehearing, filed April 30, 1921, be, and each of them are, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRAHAM H. MAIDENMAN

A. E. ANDERSON

(S E A L)

E. P. LANDON
Commissioners.

Dated at Denver, Colorado,
this 4th day of January, A.D. 1922.

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.

Assistant and Acting Secretary.

(Decision No. 496)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

The Cripple Creek District Citizens and Mining Interests, Petitioners, v. The Midland Terminal Railway Company, The Denver and Rio Grande Railroad Company, A. E. Baldwin, Receiver, The Atchison, Topeka and Santa Fe Railway Company, The Chicago, Rock Island and Pacific Railway Company, Defendants.	CASE NO. 502 ORDER OF DISMISSAL

January 4, 1922

WHEREAS, it appears from the records and files in the above entitled cause that all matters and things at issue therein have heretofore been amicably adjusted and settled by and between the respective parties thereto; and,

IT FURTHER APPEARING, that on March 19, 1921, a request and motion to dismiss the above entitled proceeding was filed herein by petitioner and the same was acquiesced in by the above named defendants;

ORDER

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

A. P. ANDERSON

F. P. LANNON
Commissioners.

ORAL

Dated at Denver, Colorado,
this 4th day of January, 1922.

(Decision No. 497)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

William E. Russell, Complainant, v. Chicago, Burlington & Quincy Railroad Company, a corporation, Defendant.	CASE NO. 68 ORDER OF DISMISSAL

January 7, 1922.

STATEMENT

By the Commission:

The above entitled case was filed before the Commission in May, 1916, and involved a question of reparation upon shipments of coal by complainsmt over the lines of the defendant carrier.

The questions involved have been made the subject of litigation in other similar cases, with the result that this cause has lain dormant for several years, and until the summer of 1921, when many similar causes were amicably adjusted between the parties, and dismissed from further consideration by the Commission.

The above case, not having been settled, was set down for hearing on October 3, 1921, and then re-set by the Commission for November 10, 1921, but before date of hearing, however, same was postponed.

On January 4, 1922, there was filed with the Commission a written notice that all matters in controversy in said

case had been amicably adjusted, and that the above entitled cause may be dismissed. In accordance with said notice, such order will be made.

O R D E R

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

S E A L

A. P. ANDERSON

F. P. LANNON
Commissioners.

Dated at Denver, Colorado,
this 7th day of January, 1922.

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.

Assistant Acting Secretary.

(Decision No. 498)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

American Smelting and Refining Company,
Complainant,

v.

Chicago, Burlington & Quincy Railroad Company,
Defendant.

CASE NO. 80

January 12, 1922

ORDER

A stipulation duly signed by the parties to the above cause having been filed on January 11, 1922, advising that all matters involved therein have been settled and disposed of and that the said cause may be dismissed;

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

A. P. ANDERSON

(S E A L)

F. P. LANNON
Commissioners.

Dated at Denver, Colorado,
this 12th day of January, 1922.

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.

Assistant or Acting Secretary.

(Decision No. 499)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

The Grand Junction Electric, Gas and Manufacturing Company, and Holly Sugar Corporation, Complainants,	
v.	CASE NO. 168
The Denver and Rio Grande Railroad Company, Defendant.	

- - - - - - -

January 12, 1922

- - - - - - -

WHEREAS, on January 27, 1919, there was filed by complainants a complaint against the above named defendant; and,

WHEREAS, no steps have been taken in said cause since April 4, 1919, to advance the same upon the calendar of the Commission for disposition; and,

WHEREAS, on January 4, 1922, notice was sent to all parties to the above entitled cause that unless some step was taken within fifteen days from the date of such notice to advance said cause upon the calendar of the Commission same would be stricken from the docket; and,

WHEREAS, in response thereto the above entitled complainants, by S. G. McMullin their General Attorney, filed with the Commission on January 9, 1922, a statement to the effect that there appears to be no reason why the same should not be stricken from the docket of the Commission, with leave to reinstate;

O R D E R

IT IS THEREFORE ORDERED, That the above entitled cause be, and the same is, hereby dismissed from the dockets of this

Commission, with leave to complainants to reinstate the same should they be so advised.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

(S E A L)

A. P. ANDERSON

F. P. LANNON

Commissioners.

Dated at Denver, Colorado,
this 12th day of January, 1922.

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.

Assistant & Acting Secretary.

(Decision No. 500)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

The Midwest Coal and Iron Company, The Palisade Coal and Supply Company, The Garfield Coal and Transportation Company,	)	
Complainants,	)	CASE NO. 169
v.	)	
The Denver and Rio Grande Railroad Company,	)	
Defendant.	)	

- - - - - - -
January 12, 1922
- - - - - - -

WHEREAS, on January 27, 1919, there was filed by complainants a complaint against the above named defendant; and,

WHEREAS, no steps have been taken in said cause since April 4, 1919, to advance the same upon the calendar of the Commission for disposition; and,

WHEREAS, on January 4, 1922, notice was sent to all parties to the above entitled cause that unless some step was taken within fifteen days from the date of such notice to advance said cause upon the calendar of the Commission same would be stricken from the docket; and,

WHEREAS, in response thereto the above entitled complainants, by S. G. McMullin their General Attorney, filed with the Commission on January 9, 1922, a statement to the effect that there appears to be no reason why the same should not be stricken from the docket of the Commission, with leave to reinstate;

O R D E R

IT IS THEREFORE ORDERED, That the above entitled cause be, and the same is, hereby dismissed from the dockets of this

Commission, with leave to complainants to reinstate the same should they be so advised.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

(S E A L)

A. P. ANDERSON

F. P. LANNON
Commissioners.

Dated at Denver, Colorado,
this 12th day of January, 1922.

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.

Assistant & Acting Secretary.

(Decision No. 501)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

The Craig Commercial Association,
Complainant,

v.

W. R. Freeman and C. Boettcher, as Receivers of The Denver and Salt Lake Railroad Company,
Defendants.

CASE NO. 191

- - - - - - -

January 12, 1922

- - - - - - -

WHEREAS, on July 24, 1920, formal complaint was filed in the above entitled matter with the Commission; and,

WHEREAS, though having been at issue upon answer filed since September 22, 1920, and no steps have been taken by any party thereto; and,

WHEREAS, on January 4, 1922, notice was served upon all parties to said cause that unless steps were taken within fifteen days of that date as to advance the cause upon the calendar of the Commission for disposition, same would be dismissed; and,

WHEREAS, there was filed on January 11, 1922, by complainant above named a statement in writing asking for the dismissal of said cause:

O R D E R

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

(S E A L)

A. P. ANDERSON

F. P. LANNON

Commissioners.

Dated at Denver, Colorado,
this 12th day of January, 1922.

(Decision No. 502)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of The Glenwood Springs Chamber of Commerce,
Complainant,
-vs-
A. R. Baldwin, Receiver, The Denver & Rio Grande Railroad Company,
Defendant.

CASE NO. 512

January 12, 1922.

Appearances: W. F. Hoeman, for The Glenwood Springs Chamber of Commerce and other Applicants;
T. R. Woodrow, for A. R. Baldwin, Receiver of The Denver & Rio Grande Railroad Company.

STATEMENT

By the Commission:

This complaint was filed with the Commission December 15th, 1920, and was set down for hearing and was heard at Glenwood Springs, March 9th, 1921. The petition recited the fact that train No. 1 of The Denver & Rio Grande Railroad Company did not make stops at New Castle, Silt, Rifle, Grand Valley and De Beque, with the exception that Rifle had a flag stop only. All these stations are in Garfield county and immediately west of Glenwood Springs.

After hearing the testimony of the railroad in this case, Messrs. Joseph Bellis and J. L. Renwick, representing the town of Grand Valley, asked leave and were granted permission to withdraw their request for the stoppage of No. 1 at Grand Valley.

The petition in this case presented the fact that Glenwood Springs being the county seat, many people from stations below Glenwood, having

business in the county seat, are unable to return to their homes the same day because train No. 1, which leaves Glenwood at 10:16 P. M., does not stop at any point in the county west of Glenwood.

It would undoubtedly be a great convenience, on numerous occasions, to people to have No. 1, the "Scenic Limited," stop at the small towns mentioned in the complaint. If this were done, however, it would logically follow that other towns, some much larger and a great many smaller ones, in order not to be discriminated against would have to be given the same stop privileges, and this would apply to all towns on the Denver & Rio Grande Western Railroad between Denver and Ogden. This, of course, would be the means of slowing up the time of this train and would consequently disrupt the schedules of connecting trains at Pueblo, Salt Lake City and Ogden. Again, if such stops were allowed and it were possible for the railway company to hold its business, this so-called fast train would be divested of its right to be considered a "fast limited" and would be reduced to the level or worse condition than an ordinary local. On account of the size of this train, and taking into consideration the many stops, it is very doubtful if this train could even make as good time as those trains considered purely local.

Several factors enter into a consideration of cases of this character. First, the reasonableness of the service now rendered the communities affected must be taken into consideration. Secondly, should the rights and demands of the traveling public for a fast through service be denied them? Third, should the traveling public on these trans-continental passenger trains be removed from the inconveniences and petty annoyances it would be subjected to in being compelled to make stops at all or many of the smaller towns?

In connection with this matter, it must be kept in mind that The Denver & Rio Grande Western No. 1 is the heaviest as well as the fastest westbound train on this road. It consists of from six to twelve coaches, sleepers, diner, mail and baggage cars. It makes close connections at

Denver with the westbound Chicago, Burlington & Quincy railway trains and carries through sleepers from both St. Louis and Chicago. It also connects with the Missouri Pacific at Pueblo, as well as other connections at both Salt Lake City and Ogden, Utah.

The stopping and starting of this train at every station would be a very serious problem and would entail added expense and the lengthening of its time schedule would afford a vexatious and regrettable feature to the traveling public that is eliminated as far as possible by all other railways operating fast trans-continental trains.

Rifle, the largest town mentioned in the application herein, has already a flag stop for westbound No. 1; and, in addition to this, has a regular stop for the "Scenic Limited" eastbound No. 2. All the other applicant towns have accessible Nos. 5 and 15 westbound trains, and Nos. 4 and 16 eastbound.

The operation of limited non-stop trains for long distance traveling came into use not for the benefit or accommodation of the railways of this country, but because of a deep-seated feeling and insistant demand of the general public that they be not subjected to the irritations and discomforts caused by so many petty delays at the numerous small towns and villages.

Had the petitioners stopped to consider that they already had available two trains from the east and two from the west each and every day in the year, and then had considered the handicaps that would ensue to through travel and also the losses such stops would cause to the railroad company, we believe they would have been just as magnanimous as the citizens of Grand Valley and have withdrawn their request.

In any event, the trans-continental fliers have become the heritage of the people as well as of the railways. The traveling public demand fast trains and, in response to this well known desire, every trunk line in the country is running luxurious and commodious equipment in response to a desire for speed and limited non-stop privileges.

The defendant's attorney has very properly called the attention of this Commission and has cited several authorities where state courts and the United States Supreme Court have held that "where reasonable or adequate service was furnished, the stoppage of interstate trains at certain stations was an unreasonable burden on interstate commerce and void under the commerce clause of the Federal Constitution." In this case, where the evidence shows clearly that the complainants have the benefit of two trains each way daily, it seems that for the size of the towns and amount of business offered, the reasonable requirements of these places are fairly well taken care of.

Were these requests for stoppage of fast trains heeded by this Commission, it would result in a serious handicap to the public in general; and, further than this, would drive a large portion of the traveling public from the road of this defendant to that of its competitors, thereby causing said defendant serious and irreparable financial losses.

Comparing the time tables of The Denver & Rio Grande Western Railroad with that of its nearest competitor, the Union Pacific, it will be seen that the Union Pacific operates over a mileage of 509 miles between Denver and Ogden, and makes only eight stops and averages over seventy-three miles for each train stop. On the other hand, The Denver and Rio Grande Western No. 1 (the Scenic Limited), operates over a line of 782 miles between Denver and Ogden and makes in this distance twenty-five stops, or a trifle over thirty-one miles per stop.

With this kind of a showing, it is not to be wondered at that this defendant seriously resists the attempt to compel it to make further concessions in the stoppage of its fast through trains. This Commission thinks the objection well taken and will accordingly deny the petition.

O R D E R

IT IS THEREFORE ORDERED, That the application for the stoppage of westbound train No. 1 of The Denver & Rio Grande Western Railroad Company

at New Castle, Silt, Rifle, and De Beque, be, and the same is, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT H. HAINSWORTH

(S E A L)

A. P. ANDERSON

F. P. LARSON
Commissioners.

Dated at Denver, Colorado,
this 11th day of January, 1922.

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.

Assistant and Acting Secretary.

(Decision No. 503)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

The Midland Terminal Railway Company,
Complainant,

v.

Hall's Transfer Line..) and
H. B. Hall .....)

William Ryall.....,
Defendants.

CASE NO. 248

- - - - - - -
January 12, 1922
- - - - - - -

WHEREAS, on January 10, 1922, a written statement was filed with the Commission by F. C. Matthews, representing the complainant in the above entitled cause, that the defendant therein had ceased operation of the auto freight line complained of, and in compliance with notice from the Commission on January 4, 1922, complainant advises that said cause may be dismissed without prejudice to the right to file a new complaint in the event defendant resumes the operation of said auto bus line.

O R D E R

IT IS THEREFORE ORDERED, That the above entitled cause be, and the same is, hereby dismissed without prejudice, however, to the right of complainant to file another complaint concerning the matters involved herein should it become necessary so to do.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

(S E A L)

A. P. ANDERSON

F. P. LANNON

Commissioners.

Dated at Denver, Colorado,
this 12th day of January, 1922.

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.

Assistant & Acting Secretary.

(Decision No. 504)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the)
Custer Water and Power Company, by)
George A. Batchelor its General Manager,) APPLICATION NO. 100
for Permission to Cease Operation of its)
Electric Plant and System at Westcliffe.)

- - - - - - -
January 13, 1922
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STATEMENT

By the Commission:

After the filing of the petition herein by the said company, the cause was set for hearing July 28, 1920. A stipulation was then filed by the applicant and protestants asking that the hearing herein be postponed until new rates that had been agreed upon were given a fair trial.

On January 10,1922, the Commission received and placed on file a communication from the Custer Water and Power Company asking that this case be dismissed.

O R D E R

IT IS THEREFORE ORDERED, That the application herein of the Custer Water and Power Company for permission to cease the operation of its electric light plant and system at Westcliffe be, and the same is, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

A. P. ANDERSON

F. P. LANNON

Commissioners.

(S E A L)

Dated at Denver, Colorado,
this 13th day of January, 1922.

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.

Assistant & Acting Secretary.

(Decision No. 504-A)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of the Board of County Commissioners of Adams County for the establishment of a public highway crossing at grade over the main line track of the Union Pacific Railroad on the section line between Sections 35 and 36, T. 3 S., R. 66 W., in Adams County, Colorado.

APPLICATION NO. 102

MODIFIED ORDER

January 24, 1922.

STATEMENT

By the Commission:

On May 11, 1921, Decision No. 454 was rendered in Application No. 102, Since this order was issued, there have been objections made to it on the part of the Union Pacific Railroad Company. It is claimed by the railroad company that each party interested in the establishment of the crossing herein designated should maintain that portion which, in the order, they are required by the Commission to construct.

After due consideration, the Commission is of the opinion that this is a reasonable requirement and will so order. Consequently, the Order in Decision No. 454 will be modified to read as follows:

O R D E R

IT IS THEREFORE ORDERED, That a public highway at grade be constructed and installed over the main line track of the Union Pacific Railroad, on the section line between Sections 35 and 36, Township 3 South, Range 66 West, in Adams 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 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 Adams County, and that all other expense in the manner of installation and maintenance of said crossing, as herein provided, shall be borne by the respondent, Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

GRANT E. HALDERMAN

(S E A L)

A. P. ANDERSON

Commissioners.

Dated at Denver, Colorado,
this 24th day of January, 1922.

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

Asst. & Acting Secretary.

(Decision No. 504-B)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of Adams County for the establishment of a public highway crossing at grade over the main line track of the Union Pacific Railroad on the line between Sections 25 and 26, T. 3 S., R. 64 W., Adams County, Colorado.

APPLICATION NO. 103

Modified Order

January 24, 1922.

S T A T E M E N T

By the Commission:

On May 11, 1921, Decision No. 455 was rendered in Application No. 103. Since this order was issued there have been objections made to it on the part of the Union Pacific Railroad Company. It is claimed by the railroad company that each party interested in the establishment of the crossing herein designated should maintain that portion which, in the order, they are required by the Commission to construct.

After due consideration, the Commission is of the opinion that this is a reasonable requirement and will so order. Consequently, the Order in Decision No. 455 will be modified to read as follows:

O R D E R

IT IS THEREFORE ORDERED, That a public highway crossing at grade be constructed, and installed over the main line of the Union Pacific Railroad on the section line between Sections 25 and 26, Township 3 South, Range 64 West, in Adams County, Colorado; conditioned, however, that prior to the opening of said crossing, sufficient grading must be done on the hill, to the east thereof, so that the view of

approaching trains will be unobstructed. It is understood that this grading will be done by Messrs. McKenzie and Huhn, under the supervision of the Union Pacific Railroad and to the satisfaction of the railway engineer of this Commission. It is further conditioned, that the expense of construction and maintenance of the grading for the crossing, including the necessary drainage for the highway, be borne by Adams County, and that the grading will be done prior to the opening of said crossing to public travel, and in such manner as to make the crossing, when 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 all other expense of installation and maintenance of said crossing, not herein provided, shall be borne by the respondent, Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

(S E A L)

A. P. ANDERSON

Commissioners.

Dated at Denver, Colorado,
this 24th day of January, 1922.

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.

Assistant and Acting Secretary.

504½

(Decision No.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of Adams County for the establishment of a public highway crossing at grade over the main line track of the Union Pacific Railroad on the section line between Sections 35 and 36, T. 3 S., R. 66 W., in Adams County, Colorado.

APPLICATION NO. 102

MODIFIED ORDER

January 24, 1922.

S T A T E M E N T

By the Commission:

On May 11, 1921, Decision No. 454 was rendered in Application No. 102. Since this order was issued, there have been objections made to it on the part of the Union Pacific Railroad Company. It is claimed by the railroad company that each party interested in the establishment of the crossing herein designated should maintain that portion which, in the order, they are required by the Commission to construct.

After due consideration, the Commission is of the opinion that this is a reasonable requirement and will so order. Consequently, the Order in Decision No. 454 will be modified to read as follows:

O R D E R

IT IS THEREFORE ORDERED, That a public highway at grade be constructed and installed over the main line track of the Union Pacific Railroad, on the section line between Sections 35 and 36, Township 3 South, Range 66 West, in Adams 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 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 Adams County, and that all other expense in the manner of installation and maintenance of said crossing, as herein provided, shall be borne by the respondent, Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Erwin

A. P. Anderson

Commissioners.

Dated at Denver, Colorado,
this 24th day of January, 1922.

(Decision No. 505)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of The Canon-Reliance Coal Company for an Order for 300 Additional K. V. A. Capacity.	APPLICATION NO. 136 Order denying application for a re-hearing.

January 24, 1922

Appearances: Hughes and Dorsey, E. I. Thayer and Berrien Hughes, Attorneys for Applicant; E. E. Whitted, Attorney for Respondent.

STATEMENT

By the Commission:

On November 22, 1921, the Commission entered its order herein ordering the respondent to furnish the applicant 300 additional K. V. A. capacity, and that the applicant, The Canon-Reliance Coal Company, advance and deliver to said Trinidad Electric Transmission Railway and Gas Company the sum of $6,110.50 for the purpose of providing a portion of the capital for the reconstruction of said line. The order contained other provisions to be complied with by the parties hereto.

On January 5, 1922, a petition for a re-hearing was filed with the Commission on the part of the Power Company. The said petition contained some eighteen reasons set forth therein why the said petition should be granted. A hearing on said petition was held before the Commission in the Commission's Hearing Room at the State Capitol on Monday, January 23, at 9:30 A. M.

At this time the Commission heard the arguments on the part of the attorneys for the applicant as well as the attorneys for the respondent Power Company. At the time of the argument, the respondent Power Company presented its reasons in full as to why the re-hearing should be granted, and also presented certain papers in the form of statistics and data which, it was contended by the Power Company, contained certain statistics and facts which, if allowed to be introduced and presented in a re-hearing, were sufficient reasons to show to the Commission that the order entered herein should be vacated and set aside.

The Commission has examined the said papers for the purpose of ascertaining what effect, if any, the same would have if the case was re-opened and a re-hearing granted. One item was that the Commission used in its conclusion the wrong figure as a switchboard cost per delivered kilowatt hour. The Commission, on examining its order, finds that it used the figure of 1.4042¢ per kilowatt hour, and that this was the figure submitted to the Commission as the cost on the branch in question as testified to by the witness on the part of the Power Company. Another contention presented at the time of the re-hearing and contended for by the Power Company was that the cost of the investment of the Ojo line in the item of power house capacity absorbed in the operation of this line was improperly figured by the Commission. In the estimate offered at the re-hearing and in the statement filed by the company for that purpose, it is contended that the power house capacity absorbed would amount to $36,630.00. On examining its order the Commission finds that at the time of the original hearing the Power Company itself introduced testimony to the effect that $18,000.00 was the power house capacity which would be dedicated to the demand of 450 K. V. A.

While the said papers prepared by the Power Company and offered to be introduced as new evidence if the Commission granted a new hearing contained some new matters, and at the same time contained a great deal of corroborative testimony, the Commission can see nothing therein which would cause it to change its mind as to the original order. In fact, some of the statements therein tended to contradict the testimony as introduced in the original hearing.

The Commission has carefully considered the reasons set forth in the petition for a re-hearing, and has carefully considered what effect the proposed additional evidence would have if the case was re-opened and the same was allowed to be presented. The Commission has also reviewed a great deal of the testimony in the original hearing and can see no reason why the case should be re-opened or a re-hearing granted.

ORDER

IT IS THEREFORE ORDERED by the Commission, that the application of the respondent herein, The Trinidad Electric Transmission Railway and Gas Company, for a re-hearing and re-opening of this case be, and the same is, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Frank E. Hardeman

A P Anderson

Commissioners.

Dated at Denver, Colorado,
this 24th day of January, 1922.

(Decision No. 5051/21)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

The Manitou and Pikes Peak Railway Company,
Complainant,

-vs-

The Midland Terminal Railway Company, Walker D. Hines, Director General of Railroads, The Denver and Rio Grande Railroad Company, The Colorado and Southern Railway Company,
Defendants.

CASE NO. 174

ORDER

January 25, 1922.

STATEMENT

By the Commission:

WHEREAS, on April 11, 1919, the above named complainant filed its complaint before the Commission against the above named defendants; and,

WHEREAS, on April 28, 1919, the above named defendant, The Midland Terminal Railway Company, filed its answer therein, and the other defendant carriers never having been served and no further steps having been taken therein by any party thereto; and,

WHEREAS, on January 4, 1922, notice was given to all parties to said cause by the Commission that unless within fifteen days of said date some party to said cause took some action therein that would result in the advancement of said cause upon the calendar of this Commission for final determination, the same would be dismissed by the Commission upon its own motion without prejudice; and,

WHEREAS, no party thereto has taken any step, and the complainant therein having filed with the Commission, on January 18, 1922,

notice that it does not desire to take any action to secure a hearing;

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

GRANT E. HALDEMAN

(S E A L)

A. P. ANDERSON

F. P. LANDRY

Commissioners.

Dated at Denver, Colorado,
this 25th day of January, 1922.

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.

Assistant and Acting Secretary.

(Decision No. 506)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of)
The Platner Telephone Company of)
Platner, Colorado, for a Certificate)
of Public Convenience and Necessity) APPLICATION NO. 156
for the Construction and Operation)
of a Telephone System.)

- - - - - - - - - -
February 3, 1922
- - - - - - - - - -

Appearance: O. F. Sarsfield, Secretary of The Platner Telephone Company.

S T A T E M E N T

By the Commission:

On December 14, 1921, there was received by this Commission an application for a Certificate of Public Convenience and Necessity for the construction and operation of a telephone line within the territory described as within the following boundaries: Beginning at a point three miles due west from the center of the Town of Platner, running thence north eighteen miles, thence due east at right angles six miles, thence due south at right angles thirty-three miles, thence due west at right angles six miles, thence due north at right angles fifteen miles to the point of beginning.

This case was set down for hearing at the hearing room of this Commission Monday, January 16, 1922, at 10:00 o'clock A. M., and was duly heard at said time.

The purpose for which the Platner Telephone Company is formed is the carrying on of a general telephone business; also

the acquisition of lands, buildings, equipment and such other property as may be necessary for the carrying on of said business, and to do such other acts as are usually done in connection with the management of a telephone business. The applicant is a corporation duly organized and existing under the laws of the State of Colorado, and a copy of the articles of incorporation has been filed with this Commission. It is understood that this company is to take over a line running in a northerly direction from Platner for about nine miles, owned by the Mountain States Telephone and Telegraph Company.

At this hearing an amended plat was filed with this Commission and asking for permission to extend its line within the following boundaries: Beginning at the center of the Town of Platner thence south a distance of ten miles, thence east to the county line, and from said point on the county line south to the county line between Kit Carson and Washington Counties, or the southeastern corner of Washington County, thence west to the divisional line between Ranges 52 and 53 west of the Sixth Principal Meridian, thence north on said line to a point one mile north of the base line, thence due east ten miles, thence north to the point or place of beginning.

The testimony brought out at this hearing showed that the Platner Telephone people have a tentative arrangement or mutual agreement as to the territory involved with the Mountain States Telephone and Telegraph Company, and the testimony further showed that the Platner Telephone Company does not seek in any manner to invade the territory of any other existent telephone company, confining themselves to a territory unoccupied by any other telephone service corporation.

O R D E R

IT IS THEREFORE ORDERED, That the Platner Telephone Company of Platner, Colorado, is hereby granted a Certificate of Convenience and Necessity to operate in the territory heretofore described.

IT IS FURTHER ORDERED, That the Platner Telephone Company use reasonable diligence in the prosecution and building of its proposed lines, and if this is not done, then and in that event, this certificate shall be null and void as to the extending or operation of any other bona fide operator of a line or lines within the limits of the territory described herein.

IT IS FURTHER ORDERED, That in the operation within the territory described, that the said Platner Telephone Company shall not, in any way, invade the rights or territory of any now existing telephone company, either mutual or otherwise.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 3rd day of February, 1922.

(Decision No. 507)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of)
Edward L. Garing for a Certificate of)
Public Convenience and Necessity for)
the Establishment of an Automobile)
Truck Line for the Hauling of Freight) APPLICATION NO. 124
between the City of Grand Junction and)
the Town of Loma and Interjacent Points)
in Mesa County, State of Colorado.)

(February 10, 1922)

STATEMENT

By the Commission:

Owing to the fact that Edward L. Garing, residing in the Town of Fruita, County of Mesa, State of Colorado, did make application to this Commission for a certificate of public convenience and necessity for the operation of an automobile freight truck line between the City of Grand Junction and the Town of Loma, including all interjacent points in the County of Mesa, State of Colorado, and considering the further fact that the said Edward L. Garing, the above named applicant, under date of January 31, 1922, has requested that his application be cancelled and dismissed, the said application is hereby dismissed.

O R D E R

IT IS THEREFORE ORDERED, That application No. 124 of Edward L. Garing, for a certificate of public convenience and necessity for the establishment of an automobile truck line for the hauling of

freight between the City of Grand Junction and the Town of Loma be, and the same is, hereby dismissed and disallowed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

GRANT E. HALDERMAN

(S E A L)

A. P. ANDERSON

F. P. LANNON

Commissioners

Dated at Denver, Colorado, this
10th day of February, A.D. 1922.

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

Asst. & Acting Secretary.

the acquisition of lands, buildings, equipment and such other property as may be necessary for the carrying on of said business, and to do such other acts as are usually done in connection with the management of a telephone business. The applicant is a corporation duly organized and existing under the laws of the State of Colorado, and a copy of the articles of incorporation has been filed with this Commission. It is understood that this company is to take over a line running in a northerly direction from Platner for about nine miles, owned by the Mountain States Telephone and Telegraph Company.

At this hearing an amended plat was filed with this Commission and asking for permission to extend its line within the following boundaries: Beginning at the center of the Town of Platner thence south a distance of ten miles, thence east to the county line, and from said point on the county line south to the county line between Kit Carson and Washington Counties, or the southeastern corner of Washington County, thence west to the divisional line between Ranges 52 and 53 west of the Sixth Principal Meridian, thence north on said line to a point one mile north of the base line, thence due east ten miles, thence north to the point or place of beginning.

The testimony brought out at this hearing showed that the Platner Telephone people have a tentative arrangement or mutual agreement as to the territory involved with the Mountain States Telephone and Telegraph Company, and the testimony further showed that the Platner Telephone Company does not seek in any manner to invade the territory of any other existent telephone company, confining themselves to a territory unoccupied by any other telephone service corporation.

O R D E R

IT IS THEREFORE ORDERED, That the Platner Telephone Company of Platner, Colorado, is hereby granted a Certificate of Convenience and Necessity to operate in the territory heretofore described.

IT IS FURTHER ORDERED, That the Platner Telephone Company use reasonable diligence in the prosecution and building of its proposed lines, and if this is not done, then and in that event, this certificate shall be null and void as to the extending or operation of any other bona fide operator of a line or lines within the limits of the territory described herein.

IT IS FURTHER ORDERED, That in the operation within the territory described, that the said Platner Telephone Company shall not, in any way, invade the rights or territory of any now existing telephone company, either mutual or otherwise.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 3rd day of February, 1922.

(Decision No. 507)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of)
Edward L. Garing for a Certificate of)
Public Convenience and Necessity for)
the Establishment of an Automobile)
Truck Line for the Hauling of Freight) APPLICATION NO. 124
between the City of Grand Junction and)
the Town of Loma and Interjacent Points)
in Mesa County, State of Colorado.)

(February 10, 1922)

STATEMENT

By the Commission:

Owing to the fact that Edward L. Garing, residing in the Town of Fruita, County of Mesa, State of Colorado, did make application to this Commission for a certificate of public convenience and necessity for the operation of an automobile freight truck line between the City of Grand Junction and the Town of Loma, including all interjacent points in the County of Mesa, State of Colorado, and considering the further fact that the said Edward L. Garing, the above named applicant, under date of January 31, 1922, has requested that his application be cancelled and dismissed, the said application is hereby dismissed.

O R D E R

IT IS THEREFORE ORDERED, That application No. 124 of Edward L. Garing, for a certificate of public convenience and necessity for the establishment of an automobile truck line for the hauling of

freight between the City of Grand Junction and the Town of Loma be, and the same is, hereby dismissed and disallowed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

GRANT E. HALDERMAN

(S E A L)

A. P. ANDERSON

F. P. LANNON

Commissioners

Dated at Denver, Colorado, this
10th day of February, A.D. 1922.

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

Asst. & Acting Secretary.

(Decision No. 508)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of C. E. Bradford, of Glendevey, Colorado, for a Certificate of Convenience and Necessity to Operate a Jitney Bus Stage Line between Greeley and Ault, in Weld County, Colorado.

APPLICATION NO. 141

February 10, 1922.

Appearance: E. G. Knowles, of the Union Pacific Railroad Company, Respondent.

S T A T E M E N T

By the Commission:

This application was received by the Commission on August 9, 1921, and was set down for hearing and was heard at the Hearing Room of the Commission, Capitol Building, Denver, Colorado, on Thursday, January 19, 1922.

In this matter no schedule of rates was filed in this application and no description of the route supposed to be followed. No map was filed showing the route or territory to be served by the applicant.

At this hearing, the applicant failed to put in an appearance and neither did he give any reason for his non-appearance.

O R D E R

IT IS THEREFORE ORDERED, That the application of C. E. Bradford for a certificate of convenience and necessity for the operation

of a jitney bus stage line between Greeley and Ault, in Weld County, Colorado, be, and the same is, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hardman

A P Anderson

E. D. Lamm

Commissioners.

Dated at Denver, Colorado,
this 10th day of February, 1922.

(Decision No. 509)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of William G. Lawhead for a Certificate of Public Convenience and Necessity to Operate a Motor Stage Line between Glenwood Springs and Aspen, Colorado.

APPLICATION NO. 137

February 10, 1922.

Appearance: Thomas R. Woodrow, for The Denver and Rio Grande Western Railroad Company, Respondent.

STATEMENT

By the Commission:

This application was filed with this Commission June 3, 1921; and, pursuant to notice duly given to all concerned, the above entitled matter was set down for hearing and was heard before this Commission at its Hearing Room on Thursday, January 19, 1922.

At this hearing, there were no appearances for the applicant or at all in his behalf. Mr. Woodrow, for the respondent company, asked that this application be dismissed for want of prosecution, which was allowed by the Commission.

ORDER

IT IS THEREFORE ORDERED, That the application for a certificate of convenience and necessity asked for in the afore-

said application be, and the same is, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 10th day of February, 1922.

(Decision No. 510)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of the Board of County Commissioners of Morgan County of the State of Colorado for the Opening of a Public Highway over the Right-of-Way and Track of the Union Pacific Railroad, 100 Feet West from Where the Section Line between Sections 32 and 33, T. 5 N., R. 55 W., intersects the Main Line of the Union Pacific Railroad.

APPLICATION NO. 148

(February 9, 1922)

STATEMENT

By the Commission:

The proceeding arises out of the application of the Board of County Commissioners of Morgan County in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public crossing at grade over the main line track of the Union Pacific Railroad, 100 feet west from where the section line between Sections 32 and 33, Township 5 North, Range 55 West intersects said railroad track.

An investigation as to the necessity and convenience for a public highway crossing at this point was made by the Commission's engineer on November 15, 1921. At the time of his inspection, the view of approaching trains was good in all directions. As noted in Application No. 148, the crossing is not asked for on the section line between Sections 32 and 33, Township 5 North, Range 55 West, but 100 feet west from the point where this line intersects the main line of the Union Pacific Railroad. This is done to avoid the necessity of a bridge over an irrigation ditch coming from the northeast and crossing the track just east of the proposed crossing.

The road asked for in this application parallels this ditch for a short distance before crossing the railroad. Between the highway and the irrigation ditch as described above is a dirt fill or embankment which is not high enough to obstruct the view of approaching trains unless weeds are allowed to grow to a considerable height on this embankment, in which case it would seriously cut off the view to the east, as the crossing is approached from the north.

It is understood in the following order that the maintenance of the roadway and drainage on the part of the County Commissioners will include also the cutting of weeds when necessary in order that the view of approaching trains will at all times be unobstructed.

The County Commissioners of Morgan County having consented to the construction and maintenance of the roadway and drainage, and the Union Pacific Railroad Company being fully advised in these matters and having consented to bear the expense of construction and maintenance of those things pertaining to the railroad property, and no objections having been filed, the Commission will therefore issue its order granting permission for the establishing of said highway crossing at grade.

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, 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 Union Pacific Railroad, 100 feet west from where the section line between Sections 32 and 33, Township 5 North, Range 55 West, intersects said railroad, all in Morgan County, Colorado; conditioned, however, that prior to the opening of said crossing to public 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 the crossing, including the necessary drainage therefor, be borne by Morgan 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, Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 9th day of February, 1922.

(Decision No. 511)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of the Board of County Commissioners of Lincoln County, in the State of Colorado, for the Opening of a Public Highway over the Right-of-Way and Track of the Union Pacific Railroad at a point where the Township Line between Townships 11 and 12 South, Range 53 West intersects said Railroad Track in Lincoln County, Colorado.

APPLICATION NO. 130.

(February 9, 1922)

STATEMENT

By the Commission:

The proceeding arises upon the application of the Board of County Commissioners of Lincoln County, in compliance with Section 29 of the Public Utilities Act of Colorado, 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 on the township line between Townships 11 and 12 South, Range 53 West of the 6th Principal Meridian.

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's engineer on April 20, 1921. In his report to the Commission, he states that the view of approaching trains is good in all directions and, in his judgment, the crossing is a necessity.

The County Commissioners of Lincoln County and the Union Pacific 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 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, 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 Union Pacific Railroad Company at the township line between Townships 11 and 12 South, Range 53 West of the 6th Principal Meridian, Lincoln County, Colorado, conditioned, however, that prior to the opening of said crossing to public 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 the crossing, including the necessary drainage therefor, be borne by Lincoln 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 Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 9th day of February, 1922.

(Decision No. 512)

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 Permission to Abandon Parts of its Railway.

APPLICATION NO. 152

- - - - - - - -
February 8, 1922.
- - - - - - - -

Appearances: E. E. Whitted of Denver and James McKeough of Trinidad for Applicant; Frank H. Hall for City of Trinidad and the Trinidad Las Animas County Chamber of Commerce, Senator S. W. DeBusk of Trinidad for himself and others similarly situated, H. L. Anderson of Trinidad for himself and other residents and property owners of West Main Street, Protestants.

S T A T E M E N T

By the Commission:

This matter is before the Commission upon a petition of applicant, The Trinidad Electric Transmission Railway and Gas Company, filed November 17, 1921, whereby applicant seeks permission of the Commission to abandon certain portions of its existing street railway system in the City of Trinidad, Colorado.

The petition alleges, in addition to the incorporate capacity of applicant, that it has operated and is now operating a street railway system in the said City of Trinidad along San Juan Street from Pine Street to Baca Street; Baca Street from San Juan Street to Arizona Avenue; Arizona Avenue from Pine Street to Baca Street; Baca Street from Arizona Avenue to San Pedro Street; San Pedro Street from Baca Street to race track and fair grounds and

city limits, and on Stonewall Avenue from San Juan Street to applicant's bridge across the Las Animas River, thence over said bridge to intersection on Main and Water Streets; Main Street from Water Street to Beach Street; Animas Street from Main Street to Fourth Street, and on Grant Avenue from Fourth Street to Monroe Street.

Attached to the petition and made a part thereof is a map or plat of the City of Trinidad, upon which is shown the location of the lines of street railway and the location of those portions or part of said line which applicant desires to abandon, which are indicated by blue lines, and that part which is desired not to abandon is indicated by red lines on said map. It appears therefrom that those portions of said street railway line desired to be abandoned, under the allegations of the petition, embrace all the street railway lines within the City of Trinidad except the following: From the city limits at the southwesterly corner of said City of Trinidad where the interurban line of said applicant enters the City of Trinidad from Sopris and Starkville, paralleling the right-of-way of the Santa Fe and Colorado and Southern Railways to San Juan Street, thence on San Juan Street to Pine Street, thence on Pine Street to Commercial Street, thence on Commercial Street to Main Street, thence west on Main Street to Ash Street, and from the intersection of Commercial and Main Streets east on Main Street to Beach Street.

At the hearing, however, by agreement made a part of the record, it was agreed between applicant and protestants interested, including the city, that that portion of the line extending west on Main Street from the intersection of Commercial Street with Main Street to Ash Street would be abandoned, and in lieu thereof applicant would operate its cars from the intersection of Commercial Street with Main Street east on Main Street to Water Street, so that the petition for abandonment will be considered as being modified to that extent.

The applicant company operates, as above indicated, an interurban electric street railway from the coal camps of Sopris and Starkville, some miles distant from Trinidad, and the operation desired to be continued is merely such operation as is afforded by said interurban service; so that if the abandonment of the strictly urban or city lines is permitted, the only street car service that will thereafter be maintained by applicant is such as is afforded by the interurban lines entering the city from the coal camps, and such method of operation would be that the cars entering the city from the city limits on the route above described would end at the intersection of Main and Water Streets, and to traverse in returning to the coal camps the same route as was traversed in entering the city to the point of termination at Main and Water Streets.

The applicant bases its request for permission to abandon upon the ground set forth in the fifth paragraph, as amended, of the petition, that it is impracticable for it to continue operating the portions of its lines indicated in blue on the map, and that the maintenance and operation of said portion of its lines or system is a useless expense and far exceeds the revenue derived therefrom and is an economic loss; and that there is no demand for the service now, nor will there be in the future such demand as will be sufficient to pay operating expenses or justify a continuance of the operation of said lines.

In the sixth and last paragraph of the petition applicant alleges that it is practicable for it to use the lines shown in red on the map, and hereinbefore outlined, to bring its interurban cars into the city over these lines, and that it may perhaps continue local or interurban service over these lines to serve the public.

Upon the filing of the petition, service thereof was made upon the City of Trinidad and upon its Chamber of Commerce, with the result that on December 5, 1921, The Trinidad-Las Animas County Chamber of Commerce filed its answer to the petition, wherein, in addition to the allegation of its capacity as an association of the citizens residing in the City of Trinidad organized to promote the welfare of the people of the city and of Las Animas County, admits the allegations of the first four paragraphs of the application, denies the allegation in paragraph five, admits the allegation in paragraph six, but denies that the city will, in any way, be benefited by running interurban cars into the city over said lines.

For further and separate defense it is alleged that the applicant owns and operates a street railway line within the city, and in addition thereto and as a part of its street railway system it owns and operates interurban lines extending from said city to outlying towns and mining camps; that said street railway system in its entirety consists of two separate branches or lines, an urban line accommodating the citizens of the City of Trinidad and an interurban line accommodating the residents of outlying towns and mining camps, and that each of said lines caters to a separate and distinct group of patrons.

It is further alleged that the interurban line serves the patrons along its route at hourly intervals, while the urban or city cars run on a twenty-minute schedule for the accommodation of its city patrons; and that the abandonment of said lines, as prayed for, would mean the abandonment of the entire urban or city lines within the City of Trinidad, and that the retention of the interurban line can in no way serve the patrons of the lines asked to be abandoned.

In the fourth and concluding paragraph of said separate defense it is alleged that said street railway system, and particularly that part thereof sought to be abandoned, has become a necessity to accommodate the people of the City of Trinidad, and the discontinuance of operation of any portion or branch thereof will cause great inconvenience and hardship upon the inhabitants of said city. Wherefore, respondent prays that the application of the petitioner be denied.

The City of Trinidad, though having been served with a copy of the petition, made no answer thereto.

Upon due notice given to all parties interested, including the City of Trinidad, the matter was set for hearing before the Commission on Monday, January 9, 1922, 9:30 o'clock A. M., at the City Hall in the City of Trinidad, Colorado, upon which date the same was duly heard.

At the conclusion of the hearing, time and ten days was given applicant to file its brief from the completion of the transcript, and time and ten days given protestant, The Trinidad-Las Animas County Chamber of Commerce, to file its brief from the date of the reception of a copy of the brief of applicant.

Applicant duly filed its brief herein on January 30, 1922, and a copy of same was served upon protestant Chamber of Commerce, who, on February 1, 1922, by its letter of advice dated January 31, 1922, notified the Commission that neither the City of Trinidad nor the Las Animas County Chamber of Commerce would file a brief in the above matter, and were willing that the matter should be decided on the record as made.

In May, 1920, the above applicant applied to this Commission for authority to abandon a portion of its street railway

service in the City of Trinidad on Pine Street from San Juan Street to Commercial Street, a distance of approximately five blocks.

Upon a hearing of that case and in September, 1920, the Commission rendered its decision denying the application on the principle that has frequently heretofore been announced by this and other commissions, that before a public utility may abandon its service it may be permitted to do so only when the carrier proves to the Commission that, after a fair trial under an increase in rates as permitted by the Commission commensurate with the value of the service, the same will not increase the revenue of the utility sufficiently to meet its legitimate operating expenses; and permission was therein given for an increase in fares to a seven cent fare. Hence, it will be seen that the line has been operating under a seven cent fare from September, 1920, until the date of the hearing in January, 1922, a period of about sixteen months.

Applicant submitted a statement of its gross operating revenues and operating expenses for the years 1914 to and including eleven months of the year 1921, marked applicant's "Exhibit 1," which did not include anything for interest or depreciation and shows the net operating revenue as follows:

Year	Gross Operating Revenue	Operating Expenses	Net Operating Revenue
1914	$38,402.59	$33,121.45	$ 5,281.14
1915	32,068.92	35,366.53	3,297.41*
1916	41,773.51	56,626.09	14,852.58*
1917	49,881.03	59,677.15	9,866.12*
1918	51,333.43	60,874.45	9,541.02*
1919	50,670.20	59,660.77	8,990.57*
1920	60,363.83	64.877.67	4,513.84*
1921 (11 months)	42,550.25	55,962.01	13,411.76*

* Asterisk denotes deficit.

From the above exhibit it will be observed that the entire system suffered a deficit in each of the above years save 1914, and

that although an increased fare was allowed and charged from September, 1920, throughout the period subsequent to that time to include eleven months of 1921, the deficit was more apparent, and this, without any inclusion of interest on capital invested or any amount by way of depreciation. In other words, for the period 1915 to and including eleven months of 1921, there was a total loss of approximately $60,000 in operating expenses alone on the entire street railway system.

The system of applicant, for purposes of hearing, was designated in three parts or divisions; viz, the line running to the Country Club and Animas Street, the Baca Street line and the Interurban or Camp lines; and, as shown by applicant's "Exhibit 2," during the period 1919 and 1920 and eleven months of 1921, the Country Club and Animas Street line suffered a loss of $25,512.73, the Baca Street line suffered a loss during the same period of $17,422.67, while the Interurban or Camp lines during the same period show a net gain of $13,720.23. By the same exhibit it is shown that the net per cent of revenue derived and the number of passengers carried by the three divisions was as follows:

Country Club and Animas Street Line

Year	Net Per Cent Revenue	Number of Passengers Carried
1919	10	101,988
1920	11	103,681
1921 (11 months)	11	74,579

Baca Street Line

Year	Net Per Cent Revenue	Number of Passengers Carried
1919	16	134,594
1920	16	144,273
1921 (11 months)	14	94,415

Interurban or Camp Lines

Year	Net Per Cent Revenue	Number of Passengers Carried
1919	74	535,530
1920	73	562,658
1921 (11 months)	75	417,915

From applicant's "Exhibit 2," as above shown, it is observed that the strictly urban lines of the system contributed a small net per cent of revenue as compared with the net per cent of revenue derived from the operation of the interurban or camp lines; and that, comparatively, the patronage of the city lines was not sufficient during the period mentioned to overcome the cost of operating the same, while the only branch of the system that did pay its way during the period mentioned was the Interurban or Camp lines; and this, despite the fact that for almost half of the period of 1920 and eleven months of 1921 an increased fare was in effect.

By applicant's "Exhibit 3," it is shown that during the period 1914 to and including the first eleven months of 1921, the gross earnings, per capita, on the entire system never exceeded 4.25 per cent, which was for the eleven months of 1921, while the average for the period 1914 to 1919, inclusive, was approximately 2.5 per cent.

Other exhibits were introduced by applicant which uniformly show that during the periods mentioned therein from 1914 to and including the first eleven months of 1921, the operation of the street car system, as a whole, has been conducted at a loss, except when the exhibit shows the segregation of the urban and interurban lines the interurban lines have been operated at a profit, but not at such profit as by any means would overcome the losses from operation of

the strictly city or urban lines.

The protestants sought to defeat applicant's petition for the right to abandon the portions of its system hereinabove designated almost entirely upon two grounds. First, that the applicant being also engaged in the furnishing of electrical energy to the citizens and inhabitants of the City of Trinidad and its environs for commercial, domestic and power purposes, and also in the furnishing of gas to the citizens of Trinidad, that the operation of the entire business of the company should be taken into consideration in this proceeding. So that if the entire operation of the company in all its departments shows a gain, the street car system should not be permitted to be abandoned. Second, that by virtue of the original contracts and franchises granted to the predecessors of applicant and in turn assigned to and being used and enjoyed by applicant, there was a contractural duty or obligation resting upon applicant to continue to serve the City of Trinidad with street car service until the expiration of such franchise period.

With reference to the first contention, it has been decided by this Commission in several instances, the last of which was in September, 1920, where applicant sought to abandon its Pine Street line of railway only and was denied, that when a utility operates distinctive classes of service each branch or class of its business must be considered separately for purposes of rate making or discontinuance of service. This is a general rule and has been pronounced by the courts and commissions throughout the country, including the United States Supreme Court.

In re Trinidad E. T. R & G. Co., P.U.R. 1920 F 707.
In re D. B & W. Ry. Co. v. Pub. Util. Comm., P.U.R. 1921 B 607.
In re D. B. & W. Ry. Co., 5 Colo. P.U.C. 54, 742.
Brooks-Scanlon v. Ry. Comm., 251 U. S. 396.

The reason of the rule is quite obvious. A gas user ought not to be required to maintain an electric light service nor an electric light service a street railway service. The users of each utility must support it whether it be owned by one entity or by three distinct entities. If, in Trinidad, three different utilities entirely distinct from each other were operating a street railway, a gas plant and an electrical utility, no one would even suggest that the street railway utility should contribute from its earnings anything toward the operation of the gas or electrical utility, nor in such case would one suggest the contribution by the electrical or gas utility of any amount to the street railway utility. The mere fact that the three distinctive classes of service are owned and operated by one person or corporation in no wise changes the principle that each operation must stand or fall by its own patronage.

Under this rule, therefore, no testimony or evidence was received as to the gas or electric operations of the applicant company as being relevant and material to the subject matter of the inquiry under consideration.

With reference to the second contention. 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.

Denver and South Platte Railway Co. v. Englewood, 62 Colo. 229; 161 Pac., 151 P.U.R. 1916 E 134.

The above case was carried to the Supreme Court of the United States by the City of Englewood, wherein the decision of the Supreme Court of Colorado was affirmed.

Under the rule of law thus announced, such an agreement or understanding as made and entered into would be entirely irrelevant and immaterial in this proceeding.

It is with a sense of reluctance that the Commission feels it necessary, under the showing made in this case, to grant the relief asked for by applicant, for it undoubtedly will entail a hardship and inconvenience upon many of the people of Trinidad to be deprived of a street car service that has been so long enjoyed by them; but in obedience to its duty, as it understands the law as applied to the facts in this cause, the Commission will allow the abandonment of the particular portions of said street car system as above and hereinafter set forth.

The Commission finds that the operating revenue of applicant derived from its city or urban lines is, and has been under an increased fare, grossly inadequate to meet the operating expenses thereof during the period embraced within the testimony submitted in this cause, 1914 to and including the first eleven months of 1921.

It further finds that, as a matter of law, the prayer of applicant's petition should be granted, save as the same was modified by agreement of parties in interest at the hearing as shown by the record.

O R D E R

IT IS THEREFORE ORDERED, That applicant, The Trinidad Electric Transmission Railway and Gas Company, be, and it is hereby

authorized and permitted to abandon all service over its lines of track designated as follows, to-wit: On San Juan Street from Pine Street to Baca Street; on Baca Street from San Juan Street to Arizona Avenue; on Arizona Avenue from Baca Street to Pine Street; on Main Street from Commercial Street to Ash Street; on Animas Steeet from Main Street to the intersection with Animas Street and Grant Avenue; and on Grant Avenue from said intersection to Monroe Street; on Water Street from Main Street to Stonewall Avenue; on Stonewall Avenue from the intersection of the Water Street line to San Juan Street; and on Baca Street from Arizona Avenue to San Pedro Street; and on San Pedro Street to the end of the line at or near the race track and fair grounds.

IT IS FURTHER ORDERED, That such permission to abandon said portions of its street railway lines may be exercised by said applicant upon the giving of thirty days notice to its patrons through the public press of the City of Trinidad of its intention so to do.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 8th day of February, 1922.

(Decision No. 513)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of the Board of County Commissioners of Kit Carson County to Establish a Road Crossing in the SW 1/4 of Section 9, T. 9 S., R. 50 W. of the Sixth Principal Meridian, Over the Tracks of The Chicago, Rock Island and Pacific Railway Company.

APPLICATION NO. 138

(February 21, 1922)

Appearances: Paul B. Godsman, Burlington, Colorado, Attorney for the Board of County Commissioners of Kit Carson County, applicants; D. Edgar Wilson, Denver, Colorado, Attorney for The Chicago, Rock Island and Pacific Railway Company, respondents.

STATEMENT

By the Commission:

On April 7, 1920, application was made by the Board of County Commissioners of Kit Carson County for the opening of a public highway crossing at grade over the main line track of The Chicago, Rock Island and Pacific Railway Company in the southwest one-fourth of Section 9, Township 9 South, Range 50 West of the Sixth Principal Meridian. The point of this crossing being about 800 feet easterly from where the section line between Sections 8 and 9, Township 9 South, Range 50 West crosses said track of the Chicago, Rock Island and Pacific Railway and approximately three miles west of Flagler, Colorado.

Service of said application was made upon The Chicago, Rock Island and Pacific Railway Company on April 25, 1921, and on June 3, 1921, the Commission received a letter from Mr. T. H. Beacom, Vice President and General Manager of said railway, wherein he objects to a grade crossing on

account of the dangerous location and he states that the railway company would prefer an under-grade crossing, but asks that action on this be deferred owing to present financial conditions. On August 12, 1921, Mr. J. G. Bloom, Division Engineer of the Chicago, Rock Island and Pacific Railway wrote the Railway Engineer of the Commission, advocating the use of an ordinary standard trestle to be used as a subway for this proposed crossing at a cost of from $3000 to $3500. He also stated that "To put in a grade crossing where it is proposed by the County Commissioners about 800 feet east of the section line would require very little grading and very little expense, but on account of the danger from eastbound trains, I do not think a grade crossing should be put in at that point."

The above matter was set down for hearing by the Commission for Wednesday, February 1, 1922, at 2:00 o'clock P.M., at Flagler, Colorado, and was heard on that date in Seal Hall, all parties to the proceeding having been given notice of the time and place of hearing.

This proceeding arose out of the application of the Board of County Commissioners of Kit Carson County in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917. There is also involved the question of the necessity of this application as a public crossing.

From observation made on the ground by the Commission and from testimony given by witnesses, it appears that one A. C. Ranney, who lives on a public highway about one quarter of a mile south of the railroad track near the proposed crossing is the principal person, if not the only one at this time that would be particularly benefitted by the opening of this crossing.

The Town of Flagler is one mile north and three miles west of Mr. Ranney's residence. To reach Flagler on the public highway, not using the present private crossing, requires him to travel two miles south, thence three miles west and thence three miles north, making an additional travel of four miles more than if the private crossing were used. Between his residence and the cross-road two miles south, there

are at present no dwellings. While it was stated by some witnesses that other persons than Mr. Ranney occasionally used this crossing, it does not appear as though this is done of necessity but rather as a matter of choice between two routes.

It was conceded by all witnesses except Mr. Ranney that the view of approaching trains is obstructed in certain directions.

The testimony at the hearing and correspondence to the Commission shows that, if the crossing is a public necessity, The Chicago, Rock Island and Pacific Railway Company would prefer to go to considerable expense to install an under grade crossing rather than the grade crossing asked for in this application, inasmuch as they consider grade crossings generally, and more particularly this one, dangerous both to the railway company and the public. Mr. Huntley, County Commissioner of Kit Carson County, testified that, regarding an under grade crossing, he did not consider it feasible "outside even of the expense which we do not feel we can stand at this time." Both the Division Engineer for the railway and the Railway Engineer for the Commission expressed the opinion that a feasible site for an under crossing was available.

Paragraph one of Section 29 of the Public Utilities Act as amended April 16, 1917, after citing the authority conferred on this Commission ends by saying "to the end, intent, and purpose that accidents may be prevented and the safety of the public promoted."

After viewing the site of this proposed crossing and considering the fact and testimony in this case, the Commission is of the opinion that there is no present public necessity that a crossing be established in this vicinity. If the necessity should arise in the future for a public crossing at this point, then in that case it should be made an under crossing.

The Commission is also of the opinion that the facts as viewed on the ground and the testimony as given at the hearing indicate that the proposed grade crossing is dangerous, and furthermore that the use is not

at present a public use but restrictedalmost wholly to one A. C. Ranney, who is now served by a private crossing at the point where the public crossing is requested. While it is true that to establish this grade crossing would greatly benefit Mr. Ranney, this Commission can not under the law establish a dangerous grade crossing apparently for the sole benefit of a private citizen.

In view of these facts, Application No. 158 to establish a highway crossing at grade across the Chicago, Rock Island and Pacific Railway, at a point 800 feet east of where the section line between Sections 8 and 9, Township 9 South, Range 50 West intersects the main track of said railway, will be denied and the application dismissed.

O R D E R

IT IS THEREFORE ORDERED, That the application herein for the opening of a public highway crossing at grade, over the main line track and right of way of the Chicago, Rock Island and Pacific Railway at a point 800 feet east of where the section line between Sections 8 and 9 in Township 9 South, Range 50 West of the Sixth Principal Meridian intersects the said track in Kit Carson 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.

Commissioners.

Dated at Denver, Colorado,
this 21st day of February, 1922.

(Decision No. 514)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of the Board of County Commissioners of Cheyenne County, for the Opening of a Public Highway at Grade over the Right-of-Way and Track of the Union Pacific Railroad on the section line between Sections 19 and 20, T. 14 S., R. 44 W. of the Sixth Principal Meridian.

APPLICATION NO. 154

(February 23, 1922)

STATEMENT

By the Commission:

This proceeding arises out of the application of the Board of County Commissioners of Cheyenne County, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public crossing at grade over the main line track of the Union Pacific Railroad on the section line between Sections 19 and 20, Township 14 South, Range 44 West of the Sixth Principal Meridian, being about one mile west of Cheyenne Wells in Cheyenne County, Colorado.

On February 15 and 16, the Commission's Railway Engineer viewed this crossing, and states that the view is good of approaching trains in all directions, and that there appears a necessity for this proposed crossing.

This application was filed with the Commission on December 2, 1921. In paragraph two, the applicant refers to a certain agreement entered into by the County Commissioners of Cheyenne County and the officials of the Union Pacific Railroad Company under date of September 20, 1921. Paragraph two of said agreement states "the licensee shall pay to the railroad company within thirty days after the rendition of

properly itemized and certified bills therefor by the railroad company, any and all expense incurred by the railroad company for labor and materials, supervision or otherwise, in connection with the construction and subsequent maintenance, repairs and renewal of said public road crossing and its appurtenances." On December 17, 1921, the Union Pacific Railroad Company, through its Attorneys, C. C. Dorsey and E. G. Knowles, filed an answer to the above application wherein they cite the agreement of September 20, 1921, and state in substance "They are willing to install said crossing if authorized to do so by this Commission, under the terms specified in said agreement."

Section 29 of the Public Utilities Act, referring to highway crossings, among other things relating to the powers of this Commission, says "and to determine, order and prescribe the terms and conditions of installation and operation, maintenance and protection of all public crossings." This Commission has always held that the authority to divide the expense of installation and prescribe the terms of maintenance is a matter to be decided by it. While no fixed rule or order has been made as to how this will be done in all cases, the Commission has stated that for the county to assume the cost of installation and maintenance of the highway, including such drainage as may be necessary under the highway, and for the railroad company to bear all other expense of installation and maintenance seemed reasonable and just terms relative to the division of the expense.

After some informal discussion of this subject with the officials of the Union Pacific Railroad Company, an understanding was had and on February 1, 1922, the Commission received a letter from Mr. A. F. Vickroy, Superintendent of the Colorado Division of the Union Pacific Railroad, stating that the management of the Union Pacific Railroad Company is agreeable to bearing the expense as suggested by this Commission.

The County Commissioners of Cheyenne County having consented to the construction and maintenance of the roadway, including the drainage therefor, the Union Pacific Railroad Company, after being fully advised

in these matters having consented to bear the construction and maintenance of those things pertaining to the railroad property, and no objections having been filed, the Commission will, therefore, issue its order granting permission for the establishment of said highway crossing at grade.

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 of the Union Pacific Railroad, on the section line between Sections 19 and 20, Township 14 South, Range 44 West of the Sixth Principal Meridian, in Cheyenne County, Colorado; conditioned, however, that prior to the opening of said crossing to public 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 the crossing, including the necessary drainage therefor 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 respondent, Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Dated at Denver, Colorado,
this 23rd day of February, 1922.

Commissioners.

(Decision No. 515)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of the Board of County Commissioners of Logan County, State of Colorado, for the Opening of a Public Highway Over the Right-of-Way and Tracks of the Union Pacific Railroad on the Section Line between Sections 4 and 5, Township 10 North, Range 48 West of the 6th Principal Meridian, in Logan County, Colorado.

APPLICATION NO. 144

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February 28, 1922.

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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 in compliance with Section 29 of the Public Utilities Act of Colorado, 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 on the section line between Sections 4 and 5, Township 10 North, Range 48 West of the 6th Principal Meridian in Logan County, Colorado.

On January 14, 1922, Mr. W. C. Reid, Inspector for this Commission, viewed the site of the proposed crossing. He states that the view of approaching trains is good in all directions and that there appears to be a necessity for this crossing.

The County Commissioners of Logan County and the Union Pacific 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 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, 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 Union Pacific Railroad on the section line between Sections 4 and 5, Township 10 North, Range 48 West of the 6th Principal Meridian 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 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 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, Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Ervas

Commissioners.

Dated at Denver, Colorado,
this 28th day of February, 1922.

(Decision No. 576)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of the County Commissioners of Adams County, in the State of Colorado, for the Opening of a Public Highway over the Right-of-Way and Tracks of the Union Pacific Railroad on the Section Line between Sections 27 and 28, T. 3 S., R. 63 W., of the 6th Principal Meridian.

APPLICATION NO. 101

March 1, 1922.

Appearances: J. Paul Hill, Brighton, Colorado, County Attorney of Adams County, for the Board of County Commissioners of Adams County, Applicants; C. C. Dorsey, by E. G. Knowles, Attorney for the Union Pacific Railroad Company, Respondent.

S T A T E M E N T

By the Commission:

On July 19, 1920, application was made by the Board of County Commissioners of Adams County for the opening of a public highway crossing at grade over the tracks and right-of-way of the Union Pacific Railroad Company on the section line between Sections 27 and 28, Township 3 South, Range 63 West of the 6th Principal Meridian, in Adams County, Colorado.

Service of the application was made upon the Union Pacific Railroad Company on August 17, 1920. The railroad company filed its answer, wherein it states that the railroad company has no objection to the proposed crossing, providing the entire expense of the construction of said crossing is borne by Adams County. To this, the Board of County Commissioners of Adams County did not agree.

The above matter was set down for hearing by the Commission for Monday, March 21, 1921, at 10:00 o'clock A. M., at Denver, Colorado, and was heard on that day in the Hearing Room of the Commission at the Capitol Building; all parties to the proceeding having been given notice of the time and place of the hearing.

At the hearing the Union Pacific Railroad Company, through its attorney, made objections to all proceedings looking to the opening of this crossing; and, on April 22, 1921, an amended answer of the Union Pacific Railroad Company was filed wherein the authority of this Commission to establish this crossing without condemnation and to divide the cost or apportion any part of it to the railroad company was questioned.

The principal issue to be considered in this case is the necessity and convenience of a grade crossing to be established at this point as being a just and reasonable requirement. The action of this Commission must be guided by the fact that the special authority conferred upon it in the matter of railroad crossings by Section 29 of the Public Utilities Act, as amended April 16, 1917, was "to the end, intent, and purpose, that accidents may be prevented, and the safety of the public promoted."

The testimony of Messrs. Tiffany and Flanders, County Commissioners of Adams County, was to the effect that the residents to the north and west of this crossing would be conveniened traveling toward Denver, and would not be compelled to make this detour of 1600 feet through Bennett. Furthermore, this crossing, if opened, would relieve the congested condition of the present crossing during the period of grain hauling to the elevator. They also stated that the present crossing was dangerous on account of the close proximity to buildings, etc.; but testified, however, that it was

necessary for travel to the elevator and could not be abolished.

Mr. W. H. Lowther, Division Engineer of the Union Pacific Railroad Company, testified that the site of the proposed crossing is about 1600 feet west of the present crossing in the Bennett yard. While admitting the present crossing was more or less hazardous on account of obstructions to the view of approaching trains, he stated that the railroad company had gone to considerable expense to install a bell and wigwag signal in order to protect the public. He was of the opinion that to establish another crossing at the point requested would not relieve present conditions but would increase the hazard on account of the fact that the highway would cross both the main line and the passing tracks.

The report and testimony of the railway engineer of the Commission was that to establish another crossing about 1600 feet west of the present crossing at Bennett would be but slight convenience to residents in that vicinity and that it would increase the hazard both to the public and the railroad. His statement was made in consideration of the fact that the proposed highway would cross both the main line and the passing tracks. He was also of the opinion that the present crossing was capable of handling the traffic at this point, and stated that there were several towns in this State much larger than Bennett where the traffic was, and in all probability would be, much greater that were using only one highway crossing through the railroad yard.

Following the hearing, Commissioner F. P. Hennon and C. D. Vail, railway engineer for the Commission, in company with the county and railroad officials, inspected the site of the crossing requested in this application.

The state highway parallels the railroad on the south for several miles west of Bennett and runs in an easterly and westerly direction. There is also an east and west road on the section line

about 3/4 of a mile north of the railroad. The County Commissioners of Adams County originally asked for a crossing, in Application No. 105, one mile west of the crossing asked for in this application, connecting these two parallel roads. At the hearing on March 21, 1921, this application No. 105 for this crossroad was withdrawn.

At the time of the inspection on the ground, it was suggested by officials of the Union Pacific Railroad Company that if the residents of the vicinity and the County Commissioners desired, the railroad company would not object to the opening of the crossing as asked for in the original application No. 105 in lieu of application No. 101. As viewed on the ground, it was evident that if the crossing asked for in application No. 105 was opened to travel that all the benefits and relief sought in both applications, Nos. 101 and 105, would be had, providing the county would build one mile of highway on the north side of the railroad right-of-way through Section 28, Township 3 South, Range 63 West. It was also evident that a crossing at this point would be as safe and as unobjectionable as any grade crossing that could be constructed. There is only the main line track to cross at this point and the view of approaching trains in all directions would be unobstructed.

After viewing the site and considering the testimony in this case, the Commission is of the opinion that the convenience and necessity of the public highway crossing asked for in this application is not sufficient to justify the establishment of a second crossing through the Bennett yard 1600 feet from the present established crossing. The Commission is of the opinion that new crossings should be established only where necessity of, or great inconvenience to, the traveling public demands. The testimony shows that there are comparatively few people who would be compelled to make this detour of 1600 feet and in all probability they would make this detour in any event, in order to go through the town of Bennett. It is also of the opinion that if reasonable care

is exercised by grain haulers that the present crossing is ample for all ordinary needs of the public.

Consideration must be given the fact that if a new crossing is opened at the point asked for in this application, it would be a dangerous crossing on account of it crossing both the main line and the passing tracks. Crossings through railroad yards at any station are made dangerous on account of cars that may be standing on the sidings in close proximity to the crossing. These cars will obstruct the view of approaching trains and, in general, such crossings should be denied unless no other site is available.

As viewed on the ground, it would appear as though the principal object of the new crossing is to divert the tourist travel through the main street of the town of Bennett. To this the Commission has no objection, providing it could be done without the establishment of this dangerous crossing, to which the Union Pacific Railroad Company protest.

This Commission would favorably consider the suggestion made by the Union Pacific Railroad Company to open a crossing one mile west of this point in lieu of this application, providing the county is willing to build the highway through said Section 28. In discussing this proposal with the County Commissioners of Adams County, it appears they do not consider that the benefits derived will justify them in this expenditure.

In view of these facts, application No. 101 to establish a highway crossing at grade across the Union Pacific Railroad Company tracks and right-of-way on the section line between Sections 27 and 28, Township 3 South, Range 63 West of the 6th Principal Meridian, in Adams County, Colorado, will be denied and the application dismissed.

O R D E R

IT IS THEREFORE ORDERED, That the application herein for the opening of a public highway crossing at grade over the main line track

and right-of-way of the Union Pacific Railroad Company on the section line between Sections 27 and 28, Township 3 South, Range 63 West of the 6th Principal Meridian, in Adams 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

Commissioners.

Dated at Denver, Colorado, this
1st day of March, A. D. 1922.

(Decision No. 5171)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of the Board of County Commissioners of Logan County, State of Colorado, for the Opening of a Public Highway Over the Right-of-Way and Tracks of the Chicago, Burlington & Quincy Railroad on the Section Line between Sections Two and Three, Township Seven North, Range Fifty-three West of the Sixth Principal Meridian.

APPLICATION NO. 146

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March 6, 1922.
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STATEMENT

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Logan County, in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, for the opening of a public highway crossing at grade over the Sterling-Cheyenne branch of the Chicago, Burlington & Quincy Railroad on the section line between Sections Two and Three, Township Seven North, Range Fifty-three West of the Sixth Principal Meridian in Logan County, Colorado.

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's engineer on January 13, 1922. He states to the Commission that the view of approaching trains is good in all directions, and in his judgment the crossing is a necessity.

The County Commissioners of Logan County and the Chicago, Burlington & 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 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, 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 Company on the section line between Sections Two and Three, Township Seven North, Range Fifty-three West of the Sixth Principal Meridian 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 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 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

Commissioners.

Dated at Denver, Colorado,
this 6th day of March, 1922.

(Decision No. 518)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of)
Ralph McGlochlin for a Certificate)
of Public Convenience and Necessity)
for the Operation of an Automobile) APPLICATION NO. 134
Passenger and Freight Line between)
Glenwood Springs and State Bridge,)
Colorado, via Wolcott.)

March 8, 1922.

Appearances: For the Applicant, Leroy J. Williams; for The Denver and Rio Grande Western Railroad Company, Thomas R. Woodrow.

STATEMENT

By the Commission:

The application herein was filed with this Commission April 25, 1921, and was set down for hearing and was heard in the Hearing Room at the State Capitol, Denver, Colorado, Thursday, January 19, 1922.

Alexander R. Baldwin, receiver of the property of The Denver and Rio Grande Western Railroad Company, by his attorneys, E. N. Clark and Thomas R. Woodrow, filed, May 10, 1921, protest on behalf of the railroad company against the granting of a certificate under this application. Since the filing of the protest, the Receiver has been discharged and the railroad has passed into the hands of The Denver and Rio Grande Western Railroad Company.

The applicant, Ralph McGlochlin, asks that the Commission grant him a certificate of convenience and necessity for the establishment and operation of an automobile passenger line between Glenwood Springs and State Bridge, via Wolcott, all of which points

are within the confines of Garfield and Eagle counties, Colorado. The proposed line, starting at Glenwood Springs, would run over the State highway through Garfield county, to the county line in Eagle county, thence through Eagle county through the towns of Dotsero, Gypsum, Eagle and Wolcott and terminate at State Bridge, Colorado, on the Denver and Salt Lake Railroad.

More than $600,000.00 has been expended on about fifteen miles of State highway through the canyon, along the Colorado river, east of Glenwood Springs. It forms an important link in the highways between eastern Colorado and Utah and California and for scenic beauty is unsurpassed in the western country.

It was brought out at this hearing that the petitioner intended to limit the operation of his auto busses to only four months in the year; namely, June, July, August and September, when he could operate at the minimum of expense and maximum of profit.

This service is claimed to be not only a convenience but a necessity as well. Obviously when roads are muddy in spring and fall and also when deep snows have to be contended with by the traveling public in winter, it is at these times, if ever, when passenger conveyances become not only a convenience but an absolute necessity as well. Right at this time is when this applicant proposes to cease to function as a common carrier, which leads this Commission to the conclusion that this certificate is sought not so much to meet the conveniences and necessities of the traveling public as it is for private gain.

This hearing brought out the fact that this railroad company actually loses money on its through travel, while the profitable haul comes from its local passenger travel. Even at this, the fare by rail from Wolcott to Glenwood Springs is only $2.22, while the applicant proposes to charge $3.00, by auto bus, between the same points.

One of the important reasons alleged for a certificate, by this applicant, was the fact that No. 1, the "Scenic Limited" of the Denver and Rio Grande Western, did not stop at Wolcott, thus compelling passengers coming over from State Bridge and bound westward to remain over night at Wolcott and pay hotel bills. February 28, 1922, the railroad company issued an order, effective at once, that train No. 1 will stop on flag at Wolcott for passengers, so that this feature of the argument for a certificate has been eliminated.

The evidence introduced in this case shows that the railroads in Colorado paid in 1921 State road taxes aggregating $159,875.42. Of this amount The Denver and Rio Grande Western Railroad contributed for roads for the 1921 period, $45,207.12. In 1921 this road paid in taxes in Eagle county $61,240.09 and of this amount The Denver and Rio Grande Western contributed to the county road tax of said Eagle county, $16,709.89.

The testimony also shows that The Denver and Rio Grande Western Railroad Company paid Garfield county in 1921 taxes to the amount of $92,656.85, and of this amount $21,314.05 was for the upkeep and construction of roads.

The vehicle registration report of Colorado, compiled by the Secretary of State, for 1921, shows that Eagle county had seven trucks and paid in revenue to the State the sum of $54.25. Also, that Garfield county had sixty-one trucks and paid into the State treasury $765.02, or a total for the two counties of only $819.27 for the use of the State and county highways that the trucks use, while the Denver and Rio Grande Western Railroad had to pay in the same two counties, for the same period, more than forty-six times as much, or $38,023.94 for roads they do not use at all.

As to the adequacy of service for the town of Wolcott, we find No. 16 eastbound Denver and Rio Grande Western train makes a regular stop at Wolcott at 6:06 P. M. No. 4, also eastbound ,

stops on flag at 11:59 P. M., while No. 2 eastbound at 7:55 A. M. stops on flag to discharge passengers from Glenwood Springs and points west. There is also a freight train, No. 94, eastbound daily, excepting Sunday, that picks up and discharges passengers at all stations between Glenwood Springs and Wolcott.

Westbound No. 15 stops on flag at Wolcott at 9:28 A. M. to pick up passengers for Eagle, Gypsum, Glenwood Springs and other intermediate points as far as Grand Junction. No. 3 westbound has a flag stop at Wolcott at 4:36 A. M. and has a regular stop at Eagle and a flag stop at Gypsum and a regular stop at Glenwood Springs and all other points of considerable importance as far as Grand Junction. No. 1, the Scenic Limited, also stops on flag at Wolcott at 8:45 P.M., thus taking care of passengers from State Bridge, whose destination is westward on The Denver and Rio Grande Western. In addition to the aforesaid service, freight train No. 93 leaving Wolcott daily, excepting Sunday, at 1:38 P. M., picks up and discharges passengers at all stations westward and arrives in Glenwood at 5:20 P. M.

Taking into consideration the size of the town of Wolcott and the fact that the traveling public have access to three trains in each direction on Sunday and that there are four available trains both east and west every other day in the year, it would seem that there is no need for additional passenger service between Glenwood Springs and Wolcott. In fact, we believe these people are far better off than those of many more populous communities in not only this but other states as well. A reflex of the conditions is found in the fact that the total ticket sales from Wolcott to all points west, including Glenwood Springs, for 1921, amounted to only $664.77.

The record in this case shows The Denver and Rio Grande Western, in 1921, paid in Garfield and Eagle counties taxes totalling $153,896.94 and that over $38,000.00 went into the road fund of these counties. Viewing this whole matter from the point of present adequacy of transportation facilities and in the light of a decent regard for the rights of others, it would seem unequitable and unjust

that the vast sums wrung from the railroads, especially in the shape of road taxes, should be used to provide means to encompass their own destruction.

Looking at all the facts in this case, it would seem manifestly unfair for this Commission to grant a certificate to this applicant that he may skim off the cream of the passenger traffic during the summer months and then leave the railroad to battle with the elements during the balance of the year when railroad operations are a heavier financial burden and passenger travel is exceedingly light.

But leave the railroad entirely out of the case and view it only from the standpoint of the farmer and city home owner. They pay a very large proportion of taxes assessed for highway construction and maintenance. Some of them own and operate automobiles and some do not. If they do, the damage to roads from the occasional operation of their light, pneumatic tired cars is practically negligible. They seldom use the roads under weather conditions such that their use is destructive, while at certain seasons the heavily loaded freight and passenger trucks plough back and forth making great furroughs in the roads regardless both of conditions and consequences. Under weather conditions producing softened roadbeds, the passage of a single heavily loaded truck will do greater damage to a highway than would the passage of hundreds of ordinary cars. The farmer and the city home owner pays the bill and the 136,336 passenger car owners of the State are grievously wronged.

Public convenience and necessity, by which must be understood the convenience and necessity of the people at large as contradistinguished from the convenience and necessity of a very small number of persons who seek to derive a profit from the farmers' and home owners' investment in roads, never contemplated that the truck

driver should destroy that, to the cost of construction of which he contributed little or nothing, or that he should reap where he has not sown.

When the taxing laws of this State are so amended that the truck driver operating over state highways shall contribute his due proportion to the cost of construction and maintenance of our highways, then, and not until then, can this Commission regard his use, under proper conditions and restrictions, of a great and tremendously expensive public facility as of equal dignity and equal benefit to the people with the moderate use thereof by the ordinary taxpayer.

Viewing this case in all its aspects, this Commission finds there is no existing necessity for an auto bus passenger line between Glenwood Springs and Wolcott. It also finds that the service furnished by The Denver and Rio Grande Western Railroad Company between Glenwood Springs and Wolcott is fully adequate to meet the reasonable necessities of the traveling public during the entire year.

The Colorado Public Utilities Act limits the Commission's authority over the issuance of certificates of convenience and necessity to automobiles in competition with railroads. As there is no such competition between Wolcott and State Bridge, the Commission holds it has no authority over this part of the route.

For the aforesaid reasons, this Commission will deny the prayer of the applicant for a certificate for that part of the proposed route between Wolcott and Glenwood Springs on the grounds that there is no necessity shown to exist for such automobile passenger line.

O R D E R

IT IS THEREFORE ORDERED, That the application of Ralph McGlochlin for a certificate of convenience and necessity for the

operation of an automobile passenger line between Glenwood Springs and State Bridge, Colorado, be, and the same is, hereby denied over any and all that portion of the proposed route between Glenwood Springs and Wolcott, Colorado.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
8th day of March, A. D. 1922.

(Decision No. 519

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the Town of Eckley, Yuma County, Colorado, for a Certificate of Convenience and Necessity Authorizing the Construction and Operation of a Municipally Owned Electric Light and Power System.) APPLICATION NO. 169

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March 17, 1922.
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Appearances: Dan J. McQuaid, Engineer and Agent for Town of Eckley; A. E. Shea, Mayor of Eckley.

S T A T E M E N T

By the Commission:

On March 4, 1922, there was filed with the Commission the aforesaid application for the Town of Eckley, Yuma County, Colorado. This matter was set down for hearing and was heard at the Hearing Room of the Commission at the State Capitol, Denver, Colorado, Tuesday, March 14, 1922.

At a duly authorized election held at Eckley on the 5th day of April, 1921, the people of the Town of Eckley empowered and instructed the Board of Trustees of the town to proceed and do everything necessary toward the construction of a municipally owned transmission line, distribution, electric light and power system. The people also, at this election, voted for the issuance of $10,000.00 of bonds by the town for the purpose of building and putting the said plant in operation.

The evidence in this case shows that the authorities of Eckley have entered into a contract with the Town of Yuma for furnishing the electric current over a transmission system, about twelve miles in length, to be built by the Town of Eckley along and following, for the most part, the Golden Rod Highway between the two points.

The testimony introduced shows that the Town of Eckley has met all the legal requirements; that there is at this time no other electric public utility operating in the town; that public convenience and necessity require the installation of this electric utility.

O R D E R

IT IS THEREFORE ORDERED, That the present and future public convenience and necessity require and will require the construction and operation of a municipally owned electric light and power system by the Town of Eckley.

IT IS FURTHER ORDERED, That a Certificate of Public Convenience and Necessity be, and the same is, hereby granted to the Town of Eckley, Yuma County, Colorado, for the construction and operation of a municipally owned electric light and power system and all appurtenances thereunto belonging, and this shall be deemed a certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 17th day of March, 1922.

(Decision No. 529

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the Town of Eckley, Yuma County, Colorado, for a Certificate of Public Convenience and Necessity Authorizing the Construction and Operation of a Municipally Owned Water Works System.

APPLICATION NO. 170

- - - - - - - -
March 17, 1922
- - - - - - - -

Appearances: Dan J. McQuaid, Engineer and Agent for the Town of Eckley; A. E. Shea, Mayor of Eckley.

S T A T E M E N T

By the Commission:

On March 4, 1922, there was filed with the Colorado Public Utilities Commission the aforesaid application for the Town of Eckley, Yuma County, Colorado. This matter was set down for hearing and was heard at the Hearing Room of the Commission at the State Capitol, Denver, Colorado, Tuesday, March 14, 1922.

At a duly authorized election held at Eckley on the 5th day of April, 1921, the people of the Town of Eckley empowered and instructed the Board of Trustees of the town to proceed and do everything necessary toward the construction of a municipally owned water works system. At this same election the people, by a vote of forty-two for, to twenty-four against, adopted and ordered a bond issue of $10,000.00 for the building and construction of the said water works system for fire and domestic purposes in and for the said Town of Eckley.

The evidence shows that there is no utility operating in this town for the furnishing of a supply of water, and that the said town is wholly without any public service water system and that the people are

now being supplied through individual wells; also there is no public water supply for the extinguishing of fires. The evidence introduced at this hearing also shows that the Town of Eckley has met all the legal requirements and that public convenience and necessity require the installation of a water works system for domestic and fire purposes.

O R D E R

IT IS THEREFORE ORDERED, That the present and future public convenience and necessity require and will require the construction and operation of a municipally owned water works system by the Town of Eckley.

IT IS FURTHER ORDERED, That a Certificate of Public Convenience and Necessity be, and the same is, hereby granted to the Town of Eckley, Yuma County, Colorado, for the construction and operation of a municipally owned water works system and all appurtenances thereunto belonging, and this shall be deemed a certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 17th day of March, 1922.

(Decision No. 5321)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of The Canon-Reliance Coal Company for an Order for 300 Additional K. V. A. Capacity.

APPLICATION NO. 136

To The Trinidad Electric Transmission Railway and Gas Company, a Corporation, and to W. P. Southard, General Manager Thereof:

WHEREAS, on November 22, 1921, the Commission issued its order in the above entitled cause in and by which the Commission ordered, inter allia,

> "That the respondent, The Trinidad Electric Transmission Railway and Gas Company, on or before sixty days from the date of this order supply and furnish the applicant, The Canon-Reliance Coal Company, on its property at its mine at Ojo, Huerfano County, Colorado, 300 Additional K. V. A. capacity and to install, string, construct and maintain additional facilities, including the re-enforcement of its transmission line, for that purpose with a Number 3 copper wire from Mutual to Ojo in said county; that The Canon-Reliance Coal Company advance and deliver to said Trinidad Electric Transmission Railway and Gas Company the sum of $6,110.50 for the purpose of providing a portion of the capital for the reconstruction of said line, the same to be returned to it as hereinafter provided; that before the commencement of the reconstruction of said line the said Coal Company shall enter into a contract with the said Power Company for a term of ten years, providing for the furnishing of said additional K. V. A. at the legal rates now in force and on file or that may hereafter be in force and on file with this Commission; that on the date of signing said contract the said Coal Company shall advance to the said Power Company the said sum of $6,110.50;" and,

WHEREAS, it has been made to appear to this Commission by a petition duly verified by the Receiver of the above named applicant, The Canon-Reliance Coal Company, copy of which said petition is hereto attached, that respondent, The Trinidad Electric Trans-

mission Railway and Gas Company, by W. P. Southard, its General Manager, has refused, for reasons set forth in a certain "Statement and Notice" heretofore and on or about March 21, 1922, filed by said Power Company in the office of the Public Utilities Commission, to enter into the contract ordered by the Commission in its said order of November 22, 1921; and that, by reason of said refusal so to enter into said contract, said Power Company and its said General Manager are in contempt of the order aforesaid of this Commission and are made thereby subject to punishment and the penalties as prescribed by the Public Utilities Act, for the alleged reasons and grounds as are more particularly set forth in the petition of said applicant above referred to, hereto attached.

ORDER

IT IS THEREFORE ORDERED, That the respondents, The Trinidad Electric Transmission Railway and Gas Company, and W. P. Southard, its General Manager, be, and they are hereby, required and notified to appear before the Public Utilities Commission of the State of Colorado, on Thursday, the 13th day of April, 1922, at 9:30 o'clock in the forenoon of said day, at the Hearing Room of said Commission, Capitol Building, Denver, Colorado, or at the Hearing Room of said Commission in the State Office Building, contiguous thereto, according to where the Commission is located upon said date, and then and there show cause to the Commission why, if any reason there be, the Commission should not subject the respondents, and each of them, to the penalties provided in Section 61 of the Public Utilities Act of 1913, Chapter 127, for a failure to comply with the aforesaid order of the Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 31st day of March,
A. D. 1922.

Commissioners.

(Decision No. 5284)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Missouri Pacific Railroad Company to Abandon the Present Highway Across their Pueblo Yard and Main Line Track about 250 ft. West from the Point Where their Main Line Track Intersects the North and South Center Line of Section 32, T. 20 S., Range 64 W., and to Open in Lieu Thereof a Crossing over their Main Line Track at a Point about 1600 ft. East of Where Said Center Line of Section 32 Intersects their Main Line Track, all in Pueblo County, Colorado.

APPLICATION NO. 174

April 1, 1922

STATEMENT

By the Commission:

On March 17, 1922, application was made by the Missouri Pacific Railroad Company for permission to abandon the present highway crossing over their main line about 250 feet west from the point where their main line intersects the north and south center line of Section 32, Township 20 South, Range 64 West, and to open in lieu thereof a crossing over their main line track at a point about 1600 feet east of where said center line of Section 32 intersects their main line, all in Pueblo County, Colorado.

On August 30, 1921, Mr. W. L. Ekstrom filed Informal Complaint No. 1168 wherein he states that since the flood of June 3, 1921, the Missouri Pacific Railroad Company has built a yard in the vicinity of their present crossing and on that account public travel at this crossing has become very dangerous.

On September 16, 1921, and also at a later date, an investigation was made by the Commission's railway engineer. He states

that the present crossing is dangerous and recommended that the crossing be moved to the point asked for in this application. It may be stated that both the present and the proposed highway cross the Atchison, Topeka and Santa Fe main line tracks just north of where they cross the Missouri Pacific tracks.

In view of the benefits derived and the desire of the Missouri Pacific Railroad Company to eliminate this crossing from their terminal yard, they have agreed to pay the entire cost of making this change.

The County Commissioners of Pueblo County, The Atchison, Topeka and Santa Fe Railway Company and the Missouri Pacific 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 abandoning the present crossing and establishing the crossing as asked for in this application.

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, 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 Atchison, Topeka and Santa Fe Railway Company and the Missouri Pacific Railroad Company at a point about 1600 ft. east of where the north and south center line of Section 32, Township 20 South, Range 64 West intersects the main line track of the Missouri Pacific Railroad in Pueblo 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 Improvements of Grade Crossings in Colorado, 2 Colo. P. U. C. 128.

IT IS FURTHER ORDERED, That the expense of constructing said crossing will be borne by the Missouri Pacific Railroad Company.

IT IS FURTHER ORDERED, That, as soon as the above crossing is established and opened for public travel, the present crossing about 250 feet west of where the north and south center line of said Section 32 intersects the main line of the Missouri Pacific Railroad be, and is, hereby abandoned and closed to public travel.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated this 1st day of April,
A. D. 1922, at Denver, Colorado.

(Decision No. 522)

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, State of Colorado, for the Opening of three Highway Crossings over the Right-of-Way and Tracks of the Union Pacific Railroad, one about one mile east of Yoxall Station and two in the St. Vrains yard, all in Weld County, Colorado.

APPLICATION NO. 167

(April 10, 1922)

STATEMENT

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Weld County, in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, for the opening of three public highways at grade over the right-of-way and tracks of the Union Pacific Railroad Company at the following points: (a) At a point about one mile east of Yoxall Station where the section line between Sections 34 and 35, Township 1 North, Range 67 West of the 6th Principal Meridian intersects the main line track of the Boulder Branch of the Union Pacific Railroad.

(b) At St. Vrains Station where the Denver and Northern Branch and the Boulder Valley Branch of the Union Pacific Railroad Company intersects, two crossings:

(1) At a point 105 feet east of the east derail switch on the Boulder Valley Branch of the Union Pacific Railroad at St. Vrains Station in Section 24, Township 1 North, Range 68 West of the 6th Principal Meridian;

(2) At a point on the Denver and Northern Branch of the Union

Pacific Railroad 700 feet south from the point where said Denver and Northern Branch intersects the Boulder Valley Branch of the Union Pacific Railroad at St. Vrains Station in Section 24, Township 1 North, Range 68 West of the 6th Principal Meridian.

In order that the parties to the south of St. Vrains Station may have access to depot facilities, it is agreed that the Union Pacific Railroad Company will lease, at a nominal rental, a strip of land 30 feet in width along the west side of their right-of-way from the point of said crossing No. 2 south to the south line of Section 24, Township 1 North, Range 68 West of the 6th Principal Meridian; said lease to be made with the usual understanding that it will be vacated without expense to the railroad company if the leased ground is needed for railroad use.

An investigation as to the necessity and convenience of these highway crossings was made by the Commission's engineer on March 11, 1921. In his report to the Commission, he states that the view of approaching trains at these crossings is good in all directions and in his judgment they are a necessity.

The County Commissioners of Weld County and the Union Pacific 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 crossings 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, the following public highways at grade be, and the same are, hereby permitted to be opened and established over the tracks and right-of-way of the Union Pacific Railroad Company at a point about one mile east of Yoxall Station where the section line between Sections 34 and 35, Township 1 North, Range 67 West of the 6th Principal Meridian intersects the main line track

of the Boulder Branch of the Union Pacific Railroad; also, at St. Vrains Station where the Denver and Northern Branch and the Boulder Valley Branch of the Union Pacific Railroad Company intersects, two crossings, as follows: (1) At a point 105 feet east of the east derail switch on the Boulder Valley Branch of the Union Pacific Railroad at St. Vrains Station in Section 24, Township 1 North, Range 68 West of the 6th Principal Meridian; (2) at a point on the Denver and Northern Branch of the Union Pacific Railroad 700 feet south from the point where said Denver and Northern Branch intersects the Boulder Valley Branch of the Union Pacific Railroad at St. Vrains Station in Section 24, Township 1 North, Range 68 West of the 6th Principal Meridian; all in Weld County, Colorado; conditioned, however, that prior to the opening of said crossings to public travel they 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 the crossings, including the necessary drainage therefor, be borne by Weld County; and that all other expense in the matter of installation and maintenance of said crossings as herein provided shall be borne by the respondent, the Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hardeman.

A. P. Anderson

Commissioners.

Dated Denver, Colorado,
this 10th day of April, 1922.

(Decision No. 523)

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, State of Colorado, for the opening of a Public Highway over the Right-of-way and Track of the Missouri Pacific Railroad at a point where the Section Line between Sections 13 and 14, T 18 S, R 50 W intersects said Railroad Track in Kiowa County, Colorado.

APPLICATION NO. 160

(April 11, 1922)

STATEMENT

By the Commission:

The 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 of Colorado 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 on the section line between Sections 13 and 14, Township 18 South, Range 50 West of the 6th Principal Meridian.

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's engineer on March 28, 1922. In his report to the Commission, he states that the view of approaching trains is good in all directions, and in his judgment the crossing is a necessity.

The County Commissioners of Kiowa County and the Missouri Pacific 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 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 Missouri Pacific Railroad Company on the section line between Sections 13 and 14, Township 18 South, Range 50 West of the 6th Principal Meridian, Kiowa 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 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 the crossing, including the necessary drainage therefor, be borne by Kiowa 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 Missouri Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Paul E. Hall Duncan

A. A. Anderson

By W. P. Lawson

Commissioners.

Dated at Denver, Colorado,
this 11th day of April, 1922.

(Decision No. 3241

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, State of Colorado, for the opening of a Public Highway over the Right-of-way and Track of the Missouri Pacific Railroad at a point where the Section Line between Sections 13 and 14, T 18 S, R 49 W intersects said Railroad Track in Kiowa County, Colorado.

APPLICATION NO. 162

(April 11, 1922)

STATEMENT

By the Commission:

The 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 of Colorado 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 on the section line between Sections 13 and 14, Township 18 South, Range 49 West of the 6th Principal Meridian.

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's engineer on March 28, 1922. In his report to the Commission, he states that the view of approaching trains is good in all directions, and in his judgment the crossing is a necessity.

The County Commissioners of Kiowa County and the Missouri Pacific 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 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 Missouri Pacific Railroad Company on the section line between Sections 13 and 14, Township 18 South, Range 49 West of the 6th Principal Meridian, Kiowa 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 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 the crossing, including the necessary drainage therefor, be borne by Kiowa 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 Missouri Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 11th day of April, 1922.

(Decision No. 5285)

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, State of Colorado, for the opening of a Public Highway over the Right-of-way and Track of the Missouri Pacific Railroad at a point where the Section Line between Sections 19 and 20, T 18 S, R 42 W intersects said Railroad Track in Kiowa County, Colorado.

APPLICATION NO. 163

(April 11, 1922)

STATEMENT

By the Commission:

The 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 of Colorado 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 on the section line between Sections 19 and 20, Township 18 South, Range 42 West of the 6th Principal Meridian.

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's engineer on March 28, 1922. In his report to the Commission, he states that the view of approaching trains is good in all directions, and in his judgment the crossing is a necessity.

The County Commissioners of Kiowa County and the Missouri Pacific 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 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 Missouri Pacific Railroad Company on the section line between Sections 19 and 20, Township 18 South, Range 42 West of the 6th Principal Meridian, Kiowa 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 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 the crossing, including the necessary drainage therefor, be borne by Kiowa 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 Missouri Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 11th day of April, 1922.

(Decision No. 5261)

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, State of Colorado, for the opening of a Public Highway over the Right-of-way and Track of the Missouri Pacific Railroad at a point where the Section Line between Sections 20 and 21, T 18 S, R 42 West intersects said Railroad Track in Kiowa County, Colorado.

APPLICATION NO. 161

(April 11, 1922)

STATEMENT

By the Commission:

The 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 of Colorado 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 on the section line between Sections 20 and 21, Township 18 South, Range 42 West of the 6th Principal Meridian.

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's engineer on March 28, 1922. In his report to the Commission, he states that the view of approaching trains is good in all directions, and in his judgment the crossing is a necessity.

The County Commissioners of Kiowa County and the Missouri Pacific 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 requested.

ORDER

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 Missouri Pacific Railroad Company on the section line between Sections 20 and 21, Township 18 South, Range 42 West of the 6th Principal Meridian, Kiowa 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 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 the crossing, including the necessary drainage therefor, be borne by Kiowa 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 Missouri Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 11th day of April, 1922.

(Decision No. 5281

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In re Proposed Advance of Rates of Colorado Power Company in Special Power Agreement with The Denver Gas and Electric Light Company.) I. & S. DOCKET NO. 50

- - - - - - -

April 26, 1922.

- - - - - - -

S T A T E M E N T

By the Commission:

On October 6, 1920, there was filed with this Commission by The Colorado Power Company in compliance with the Public Utilities Act a special power agreement cancelling their power agreement with The Denver Gas and Electric Light Company dated July 19, 1920, which was filed with the Commission July 20, 1920. On November 5, 1920, the same was suspended and later was further suspended until a hearing and decision was had thereon.

On June 13, 1921, this case together with I. & S. Docket No. 51 was consolidated for hearing with what was known as the Colorado Power Case, I. & S. Docket No. 40.

On April 19, 1922, a final decision was rendered and filed by the Commission in said I. & S. Docket No. 40, in which all of the issues involved herein were determined and in which order The Colorado Power Company was allowed to dispose of surplus power to the respondent, The Denver Gas and Electric Light Company for the best price that could be agreed upon.

For the above reason the above case is hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 26th day of April, 1922.

(Decision No. 529

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In re Proposed Advance of Rates of Colorado Power Company in Special Power Agreement with The Western Light and Power Company.

I. & S. DOCKET NO. 51

- - - - - -

April 26, 1922

- - - - - -

S T A T E M E N T

By the Commission:

On October 6, 1920, there was filed with this Commission by The Colorado Power Company in compliance with the Public Utilities Act a special power agreement cancelling their power agreement with The Western Light and Power Company dated December 1, 1919, which was filed with the Commission June 29, 1920. On November 5, 1920, the same was suspended and later was further suspended until a hearing and decision was had thereon.

On June 13, 1921, this case together with I. & S. Docket No. 50 was consolidated for hearing with what was known as the Colorado Power Case, I. & S. Docket No. 40.

On April 19, 1922, a final decision was rendered and filed by the Commission in said I. & S. Docket No. 40, in which all of the issues involved herein were determined and in which order The Colorado Power Company was allowed to dispose of surplus power to the respondent, The Western Light and Power Company, for the best price that could be agreed upon.

For the above reason the above case is hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 26th day of April, 1922.

(Decision No. 4[illegible])

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of Application of)
The Silverton Northern Railroad)
Company for Permission to Discon-)
tinue Services Temporarily.)

SUPPLEMENTAL APPLICATION NO. 122

O R D E R

April 25,1922.

S T A T E M E N T

By the Commission:

The above named applicant, The Silverton Northern Railroad Company, filed its supplemental application herein April 12, for a supplemental order to permit and authorize a continuance of the discontinuance of operation of its said line of railroad from May 1, 1922, to not later than July 1, 1922.

In the order of the Commission issued October 14, 1921, permission was granted said applicant to discontinue operation of its railroad to May 1, 1922, subject to such further order or direction of the Commission as conditions and circumstances might seem to warrant upon application of any party or person in interest.

The supplemental application asks for permission to continue discontinuance of service to not later than July 1, 1922, and represents and shows that conditions and circumstances remain the same as they were during the fall of 1921, and that there is no necessity of resuming operation of said railroad for the accommodation of its patrons or the public earlier than July 1, 1922; and that, on account of unusually severe winter weather conditions in the territory through which such railroad runs, it would require large and unnecessary expense to remove snow and ice to

permit the resumption of operation on May 1.

Said petition further shows that The Sunnyside Mining and Milling Company and The Black Prince Mining Company are practically all of the patrons of said railroad upon which it relies for any great amount of tonnage, and that, by virtue of conditions in the mining districts, these two companies are not now desirous of shipping ore and will not be inconvenienced by the extension of time within which said railroad may not operate.

Said supplemental petition is duly verified, and attached thereto is the written consent of said The Sunnyside Mining and Milling Company and The Black Prince Mining Company, whereby each waive any right or objection against the further discontinuance of service by said applicant company until July 1, 1922; but, upon the express understanding that should conditions justify or the needs of either said company require, it shall have the right at any time to apply to the Commission for the resumption of operation of said railroad.

From the circumstances surrounding the situation and from the representations made heretofore in said application for temporary discontinuance of operations, and in view of the fact that the mining companies aforesaid are practically the only shippers upon which said railroad company can depend for any substantial amount of tonnage, and they each having consented to the continuance of cessation of operation of said railroad until July 1, 1922, the Commission will authorize and permit said applicant to continue the cessation of operations from May 1, 1922, to July 1, 1922, upon the conditions set forth in the order.

O R D E R

IT IS THEREFORE ORDERED, That applicant, The Silverton Northern Railroad Company, be, and it is hereby, authorized and permitted to cease operation of its line of railroad from May 1, 1922, to July 1, 1922; subject,

however, to the right of any person or corporation to make a proper showing at any time to the Commission that the needs of the patrons of said railroad will require a resumption of service by it, prior to July 1, 1922.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Frank E. Hall Erman,

A. J. Anderson

H. J. Lamon

Commissioners.

Dated at Denver, Colorado,
this 25th day of April, 1922.

(Decision No. 531)

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, State of Colorado, for the Opening of a Public Highway Over the Right-of-way and Track of the Missouri Pacific Railroad at a Point About 80 Rods West of the Northeast Corner of the Northwest Quarter of Section 1, Township 19 South, Range 46 West of the 6th Principal Meridian in Kiowa County, Colorado.

APPLICATION NO. 178

- - - - - - -

April 29, 1922.

- - - - - - -

S T A T E M E N T

By the Commission:

The 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 of Colorado, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main track of the Missouri Pacific Railroad at a point about 80 rods west of the northeast corner of the northwest quarter of Section 1, Township 19 South, Range 46 West of the 6th Principal Meridian in Kiowa County, Colorado.

An investigation was made as to the necessity and convenience of a public highway crossing at this point by the Commission's engineer on March 28, 1922. He informs the Commission that this crossing is made necessary by a change in the state highway at this point. He also states that the view of approaching trains is good in all directions, and that the crossing is necessary in order that this change in the state highway may be made.

The County Commissioners of Kiowa County and the Missouri Pacific 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 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 Missouri Pacific Railroad Company at a point about 80 rods west of the northeast corner of the northwest quarter of Section 1, Township 19 South, Range 46 West of the 6th Principal Meridian in Kiowa 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 roadway at the crossing, including the necessary drainage therefor, be borne by Kiowa County, and that all other expense in the matter of installation and maintenance of said crossing as herein provided shall be borne by respondent, Missouri Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of April, 1922.

(Decision No. 532)

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, State of Colorado, for the Opening of a Public Highway Over the Right-of-way and Track of the Missouri Pacific Railroad at a Point Where the Section Line between Sections 22 and 23, Township 18 South, Range 42 West Intersects Said Railroad Track in Kiowa County, Colorado.

APPLICATION NO. 179

- - - - - - -
April 29, 1922.
- - - - - - -

S T A T E M E N T

By the Commission:

The 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 of Colorado, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main track of the Missouri Pacific Railroad on the section line between Sections 22 and 23, Township 18 South, Range 42 West of the 6th Principal Meridian in Kiowa County, Colorado.

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's engineer on March 28, 1922. He states that the view of approaching trains is good in all directions, and in his judgment the crossing is a necessity.

The County Commissioners of Kiowa County and the Missouri Pacific 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 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 Missouri Pacific Railroad Company on the section line between Sections 22 and 23, Township 18 South, Range 42 West of the 6th Principal Meridian, Kiowa 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 roadway at the crossing, including the necessary drainage therefor, be borne by Kiowa County, and that all other expense in the matter of installation and maintenance of said crossing as herein provided shall be borne by respondent, Missouri Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hardeman

A P Anderson

W. R. Lamm

Commissioners.

Dated at Denver, Colorado,
this 29th day of April, 1922.

Petitioners Ex 8 Protestant Preston Ex 9

(Decision No. 533) 2/18/24

PUC-8

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of)
C. L. Preston, Doing Business Under)
the Name of The Northern Transfer) APPLICATION NO. 96
Company, for a Certificate of Public)
Convenience and Necessity.)

(May 1, 1922)

Appearances: M. B. Waldron, of Denver, for Applicant;
E. G. Knowles, of Denver, for Union Pacific
Railroad Company.

STATEMENT

By the Commission:

On June 30, 1920, applicant, C. L. Preston, doing business under the name of The Northern Transfer Company, filed his petition with the Commission for a certificate of public convenience and necessity to engage in the transportation of freight by motor truck between Denver and Greeley, Colorado, and intermediate points. The petition sets forth by appropriate allegations the equipment which he proposes to use in his motor truck transportation, and proposes to operate each day of the week in either direction, and that the territory through which he operates is thickly populated and the necessity for further service in the transportation of freight, and that public convenience and necessity require the proposed operation. Attached to said petition are the rates proposed to be charged, which includes delivery charges for the service rendered.

Union Pacific Railroad Company was served with a copy of said petition, and on July 16, 1920, filed its motion and objection and answer thereto.

The motion to dismiss the application is based upon a number of reasons therein set forth, most of which are for the alleged failure of the applicant to comply with the rules of procedure of the Commission with regard

to filing applications for a certificate of public convenience and necessity, except the second ground thereof, which is upon the alleged ground that this Commission is without power or jurisdiction to entertain said application or to grant any relief in respect thereto.

The objection and answer filed contemporaneously with said motion to dismiss by Union Pacific Railroad Company, enumerates a number of reasons why the certificate should not be granted and the application dismissed, the important ones of which are:

It is alleged in paragraphs three and four that the respondent railroad regularly operates trains over its line of railroad between Denver and Greeley and intermediate points, and that the people affected are, and will be, at all times properly, adequately, reasonably, sufficiently, promptly and conveniently served by respondent railroad in the transportation of freight at reasonable rates and charges, and that public convenience or necessity does not require the proposed operation of said automobile track line, for that the public is already served in a complete, satisfactory and efficient manner by the operation of its trains between the cities aforesaid.

The matter was set for hearing at the Hearing Room of the Commission, Capitol Building, Denver, Colorado, on Thursday, March 24, 1921, at 10:00 o'clock A. M. Upon said day, by agreement of counsel and the Commission, the matter was continued from March 24, 1921, to May 27, 1921, at the same place, and the applicant was given leave to file, not less than ten days prior to the date to which the hearing was continued, such additional data as was required to be filed under the rules and practice of the Commission, and to furnish to said Union Pacific Railroad copies thereof.

On the date to which the same was continued, to-wit: Friday, May 27, 1921, the matter was duly heard, at which applicant testified, in substance, that The Northern Transfer Company was merely the trade name under which the applicant had been doing, and proposed to continue to do, business as a motor truck line for the transportation of freight between Denver and Greeley; that he was then operating three trucks and would provide such further equipment as the business justified; that he had a license for the

operation of his trucks in the City of Denver, but that no other or further licenses were required to operate such trucks through the towns between Denver and Greeley nor in Greeley; that he proposed to operate as nearly on schedule time as possible so as to deliver freight from Denver into Greeley at 6:00 o'clock in the morning, a good deal earlier than freight could be delivered by the rail carrier, and that the service comprised pick-up and delivery from consignor to consignee's door; that the business men of Greeley, of which there were about one hundred fifty, were his patrons and that it was a convenience and a necessity to them in the matter of prompt delivery of their goods at their doors, and particularly with reference to perishable commodities.

The testimony of the railroad was to the effect that a freight train ran daily, except Sunday, between Denver and Greeley, and that departure from Denver was in the night time to arrive at Greeley the next morning, where freight was delivered from Denver to the consignee at Greeley about 8:00 o'clock in the morning; and that, therefore, the rates and charges being as low, if not a trifle lower, than those proposed by the motor truck line, there was no necessity or convenience of the public for the operation of said motor truck freight line.

The answer of the rail carrier and the testimony upon its behalf embraced a number of other matters, such as the amount of taxes paid by the rail carrier, the damage to the highway done by the motor freight trucks, and so on, all of which the Commission deems to be immaterial under the statute in this regard.

As this Commission stated in re Overland Motor Express Company, P.U.R. 1920-B, 551, the necessity and convenience of the public can not be deemed to be an absolute necessity else the statute would be meaningless. In that case the question of construction of the phrase "convenience and necessity," as used in Section 35 of the Public Utilities Act, was carefully considered, and upon the authorities therein cited we concluded that the phrase "convenience and necessity" can not be split in two, for obviously anything that is a necessity would be a convenience, while, on the other hand, a convenience of the public is not necessarily a necessity; so that the conclusion was reached in the Overland case cited above, that all that an applicant was required to show was a reasonable convenience and necessity of the public to

be afforded through the establishment of the proposed service, as compared with the service already existing in the particular field.

The merchant at Greeley who orders merchandise from the Denver merchant, may have the same picked up by the motor truck company at the door of the Denver merchant and delivered to his door in Greeley at practically the same cost of service as the rail freight rate, or less, for if the same merchandise is transported by the rail carrier the same must bear the expense of the haulage from the Denver merchant's place of business to the freight depot, there to be transferred to a freight car, conveyed to Greeley, there delivered to the freight depot, and there to be loaded into some vehicle for carriage to the Greeley merchant's place of business. The latter service is not the convenience, surely, to the Greeley merchant as the service proposed and which has been maintained by applicant in taking the merchandise from the door of the consignor and delivering it to the door of the consignee.

Before the motor truck means of transportation came in use no other necessity or convenience was known; and while the service proposed by applicant is not an absolute necessity, the Commission is of the opinion that it is a reasonable necessity and convenience to the public. It must be borne in mind that during the period of Federal control of rail carriers, covering a period of two or three years, the establishment of truck lines was encouraged on account of lack of equipment and necessity of the government for all available rail equipment for the use of the government in the transportation of the sinews of war; and during that period the carriers by rail made no protest or objection to the motor truck transportation lines, and only within the past year and a half have such objections been made.

Such matters as injury to the highways of the State by truck transportation lines and of the taxes paid by rail carriers, which proportionately are used for the construction and maintenance of highways, and all such kindred questions are matters for legislative action, by the enactment of such statute laws as will invest the Commission with authority to, in the proper case, give such matters due consideration.

At the hearing on May 27, applicant introduced, over objection of respondent, a paper writing dated May 23, 1921, signed by some fifty of the mercantile and business firms of the City of Greeley, expressing their satisfaction at the service rendered by applicant and a desire that such service be continued.

Taking all the circumstances surrounding this proceeding into consideration, it is the opinion of the Commission that an appropriate order be entered granting the certificate to applicant sought in his application.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity require and will require the operation of the motor truck freight transportation line of the applicant, C. L. Preston, doing business as The Northern Transfer Company, between the Cities of Denver and Greeley, Colorado, and intermediate points, and that this order shall be 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 1st day of May, 1922.

Commissioners.

(Decision No. 534

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the Motor Transportation Company, a Corporation, Operating The White Bus Line, for a Certificate of Public Convenience and Necessity to Carry on the Business of Transporting Passengers and Express between Grand Junction and Montrose and Intervening Points.

APPLICATION NO. 151

- - - - - -
May 2, 1922.
- - - - - -

Appearances: For the Applicant, Lee W. Burgess, Lawrence Bothwell and Moynihan, Hughes, Knous & Fauber; for The Denver and Rio Grande Western Railroad Company, Protestant, Thomas R. Woodrow.

S T A T E M E N T

By the Commission:

This application was filed with this Commission November 5, 1921, and was set down for hearing at the city council chamber at Grand Junction, February 23, 1922, and was heard on that date. On the following day, the protestant railroad offered several exhibits. Exhibit "D" showed that, for the year 1921, there were sold to and from all points between Grand Junction and Montrose, inclusive, 20,800 railroad tickets, from which was derived a total revenue of $37,790.80. Exhibits "A" and "B", prepared by James Corey, Tax Agent of The Denver and Rio Grande Western Railroad Company, were statements showing taxes paid by this company as follows, for 1921:

State road tax, $45,207.12; Delta County road tax, $8,659.85; Mesa County road tax, $16,522.11; Montrose County road tax, $4,354.47, or a total in the three counties named, for road taxes alone, of $29,536.43. These exhibits also show that this railroad company paid in general taxes, for the year 1921, to Delta County $49,461.62, to Mesa County $94,577.96,

and to Montrose County $41,726.47, or a total payment to these three counties of $185,766.05. Exhibit "B" also shows that The Denver and Rio Grande Western Railroad will pay, for the building and upkeep of county roads in Colorado for 1921, the sum of $162,374.20.

The figures presented by the railroad company are very illuminating and far reaching as affecting the vital financial interests of The Denver and Rio Grande Western Railroad Company; but are of no legal effect in a determination of the matters involved in this application, which revolve around the words "public convenience and necessity" of Section 35 of the Colorado Public Utilities Act. If there are inequalities or inconsistencies laid on the railroads of Colorado by levying heavy taxation on their property for the building and upkeep of county and state highways they do not use, but are used by their competitors in hauling both freight and passenger traffic, these are matters over which this Commission has no control. Consequently, they can not be adjudicated by this Commission, and can be altered only by legislative enactment.

A copy of the papers filed herein by the applicant shows that V. DeMerschman, N. R. Carver and Albert DeMerschman, of Mesa County, Colorado, have regularly incorporated under the name of "The Motor Transportation Company," with a capitalization of $20,000.00, but that only $10,500.00 of which has been issued, and that the principal place of business is Grand Junction, Colorado. They also show that they own and operate three seven passenger auto busses and make two complete round trips between Grand Junction and Montrose each day, carrying both passengers and express. In connection with their business, this company has filed a time schedule showing arrival and departure of their auto busses from the various points, and also a schedule of rate charges for express and passengers.

The applicant herein presented a petition, signed by ninety-eight citizens of Grand Junction, Olathe, Delta and Montrose, praying that the

certificate asked for by this applicant be granted. They also filed a map of the route to be followed, and showed that no permission was required for operation from any of the towns or municipalities from or through which they operated. They also showed that their operations would be over and along the state highway known as the "Rainbow Route," between Grand Junction and Montrose.

The evidence in this case shows that train 316-16 of The Denver and Rio Grande Western leaves Grand Junction daily at 9:35 A. M. and arrives at Montrose at 12:40 P. M., and that train 315-15 leaves Montrose at 2:20 P. M. and arrives at Grand Junction at 5:35 P. M. The operation of only one train each way each day on the present schedule makes the arrival and departure of trains so close together that it doesn't give sufficient time for the transaction of business in the various towns so that one can return the same day. It was shown that if the railroad service was used, it often necessitated the laying over night of passengers in either Olathe, Delta, Montrose or Grand Junction. On this question, the railroad company presented their time schedule as the only evidence of furnishing adequate service and providing the public convenience and necessity contemplated by the statute.

Several witnesses for the applicant went into detail over the passenger traffic between Grand Junction and Montrose, and testified that the railroad service was insufficient to meet the needs of the traveling public between the points named. They also introduced a preponderance of evidence showing that the auto bus line was not only a convenience but a necessity as well. This would seem to be borne out by the fact that while the auto bus line charges for both passengers and express in excess of that charged by the railroad company, still the auto line hauled, in 1921, on an average of between eight and twelve hundred passengers per month over a period of nine months, and from two to eight hundred passengers per month

during the remaining three months of the year. The total revenue derived by the auto line for this service, during the year 1921, was slightly more than $23,000.00. This large revenue, however, was partly attributable to the fact that The Denver and Rio Grande Western Railroad was only partially functioning for several weeks on account of washouts caused by extremely high water.

The plain and unmistakable duty of the Commission is to be guided by the law and the facts presented. In this case, nearly all the evidence given at the hearing was submitted by the applicant herein. All of the applicant's six witnesses testified there was a necessity for the operation of the auto bus line, and that it was a great convenience to traveling men and the public generally. This Commission also finds that the public convenience and necessity require and will require such operation.

_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 an auto bus line for the purpose of transporting passengers and express matter between Grand Junction, Mesa County, Colorado and Montrose, Montrose County, Colorado, and intermediate points, be, and the same is, hereby granted, and this shall be considered a certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Ernan,

A P Anderson

H. L. Lamson

Commissioners.

Dated at Denver, Colorado,
this 2nd day of May, 1922.

(Decision No. 5335

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

APPLICATION OF THE TOWN OF STRATTON)
)
FOR A MUNICIPAL WATER WORKS SYSTEM.)

APPLICATION NO. 183

May 17, 1922.

Appearances: E. W. Tarrant, Mayor, and J. F. White, Clerk, for Applicant, the Town of Stratton.

S T A T E M E N T

By the Commission:

The Town of Stratton, Kit Carson County, Colorado, by its duly constituted officers, filed with the Commission, on April 17, 1922, its application for a certificate of public convenience and necessity for the construction of a municipally owned and operated system of water works.

The matter was set for hearing at the Hearing Room of the Commission, 305 State Office Building, Denver, Colorado, on Friday, May 12, 1922, and duly heard.

The testimony submitted established the following facts: That there is not now and has not been any water utility in said Town of Stratton; and that the Town of Stratton has complied with the requirements of the statutes of this State in the matter of holding an election of the qualified electors under the law, at which the question of contracting an indebtedness for such purpose was duly submitted, and also the further question authorizing the Board of Trustees of said town to issue and negotiate municipal coupon bonds for such purpose in the aggregate sum of $50,000 with which to construct said water works system. The election was called and held on August 23, 1921, and resulted in the passage of

both questions by a majority vote of said electors. Thereafter, ordinances were duly passed and adopted by said Town Board, certified copies of which were introduced in evidence, in pursuance of the authority conferred by the voters at said election, as above stated.

The mayor testified that the construction of said water works system will require approximately $45,000 of the moneys so authorized; that it was necessary for the preservation of the public health, convenience and safety that such system of water works should be constructed for the purpose of furnishing said town of Stratton and its inhabitants with water; and that there was no water utility operating in said town.

The furnishing of water to the town and its inhabitants is, of course, not only a convenience but a necessity in some manner or form, and as the evidence submitted indicates that the town has followed the legal requirements for such purpose, an appropriate order granting such certificate will be issued.

ORDER

IT IS, THEREFORE, ORDERED That the public convenience and necessity require, and will require, the construction of a system of water works for the Town of Stratton to be owned, operated and managed by said town, and that this order shall be taken, deemed and held to be a certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hadsman

A P Anderson

J. D. Lannon

Commissioners.

Dated at Denver, Colorado,
this 17th day of May, 1922.

(Decision No. 5361)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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National Supply Company, Complainant, v. The Denver and Intermountain Railroad Company and Union Pacific Railroad Company, Defendants.	)	CASE NO. 214

- - - - - - - - -
May 17, 1922.
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Appearances: A. H. Laws, for The Denver and Intermountain Railroad Company; E. G. Knowles, for Union Pacific Railroad Company; Nat. C. Brooks, for National Supply Company.

O R D E R

By the Commission:

On February 16, 1921, the National Supply Company filed its petition herein. Answer was filed March 2, 1921, and on March 30, 1921, a motion to dismiss was filed by the defendants, without prejudice to the answer theretofore filed.

The cause of action herein is based upon an alleged overcharge made by the defendants for a shipment of slack coal on or about September 4, 1918, the period while the railroads of the country were being operated by the Director General of railroads. The relief sought is reparation for the difference between the charges assessed on a shipment of slack coal from Frederick, Colorado, to Golden, Colorado, and a through rate on lump coal between the same points. The rate actually charged was made on the basis of the sum of the locals from Frederick to Denver, and from Denver to Golden. It also appears

that these were the only legal rates then in existence for the shipment of slack coal between the said points; that while there was a through rate on lump coal, there was no through rate on slack coal. The alleged unreasonable charge for which reparation is asked amounts to $20.14.

The defendants moved to dismiss the complaint herein, and the case was set for hearing at the Hearing Room of the Commission, Wednesday, April 6, 1921, at 10:00 o'clock A. M. At the end of the hearing the Commission requested that memorandum briefs be filed, and the carriers were given twenty days to file a brief in support of their motion and the plaintiff was given ten days thereafter in which to file its brief. The defendants filed their brief on May 18, 1921; the plaintiff has failed to file any brief in support of its claim.

A through rate from Frederick to Golden on lump coal, then in existence, seems to have been $1.40 per ton, and it would seem that the equity herein would lie with the plaintiff. However, the Commission is immediately confronted with the fact, and must take notice, that this shipment moved during the period when the railroads of the country were not being operated by their own organizations, but were being operated by the president under the Federal Control Act of March 21, 1918. Under the terms of the president's proclamation of December 26, 1917, the possession, use, control and operation of these roads were taken over by the government; and thereafter the corporations owning the railroads had no authority or control over the operation thereof, and no power to initiate or in any way fix the rates thereof, and any cause of action based upon an alleged overcharge arising during the period of Federal control must be brought against the agent of the president, as designated in the Transportation Act of 1920, in Section 206. In this case the action has been brought against the two railroad

corporations and not against the representative of the president as required. By General Order No. 50 of the Director General it was provided that all actions which, but for Federal control, would have been brought against the corporation must, during the period of Federal control, be brought against the Director General; and the Transportation Act has definitely provided for the bringing of such suits since the termination of Federal control.

It seems to the Commission that, under the Transportation Act of 1920, such actions as the one set forth in the complaint herein are provided for specifically in Section 206-C:

> "Complaints praying for reparation on account of damage claimed to have been caused by reason of the collection or enforcement by or through the president during the period of Federal control of rates, fares, charges, classifications, regulations or practices (including those applicable to interstate shipment or intrastate traffic) which were unjust, unreasonable, unjustly discriminatory or unduly or unreasonably prejudicial or unwise, in violation of the Interstate Commerce Act may be filed with the Commission within one year after the termination of Federal control against the agent designated by the president, under sub-division (a), naming in the petition the railroad or system of transportation against which such complaint would have been brought if such railroad or system had not been under Federal control at the time the matter complained of took place. The Commission is hereby given jurisdiction to hear and decide such complaints in the manner provided in the Interstate Commerce Act; and all notices and orders in such proceedings shall be served upon the agent designated by the president under sub-division (a)."

This action, therefore, should have been brought before the Interstate Commerce Commission, and against the agent designated by the president.

In Section 208-A of the Transportation Act, Congress specifically says that the rates established by the Director General shall not be reduced prior to September 1, 1920, unless such reduction or charge is approved by the Interstate Commerce Commission.

Clearly the intention is that rates that were in effect during Federal control should not be reduced by a state commission.

For the above reasons, the complaint herein is hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 17th day of May, 1922.

(Decision No. 537)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the Board of County Commissioners of Adams County, Colorado, for the Granting of a Crossing for Marty Road Over the Right-of-Way and Tracks of Union Pacific Railroad Company.

APPLICATION NO. 104

- - - - - - -
May 22, 1922.
- - - - - - -

STATEMENT

By the Commission:

On July 20, 1920, the Board of County Commissioners of Adams County, Colorado, made application to the Commission for the opening of a county road crossing over and across the Union Pacific Railroad right-of-way in the said Adams County at what is designated the "Marty Road."

Thereafter, several steps were taken therein with the result that the Union Pacific Railroad Company filed its amended answer to said application, and a hearing at the Hearing Room of the Commission was held in said matter on March 21, 1922, upon notice to all parties.

Since that time the county authorities and the railroad company have been conducting negotiations with reference to said road crossing, with the result that there was filed with the Commission on May 18, 1922, a certified copy of a resolution passed by applicant Board of County Commissioners on May 17, 1922, asking that the said Application No. 104 be withdrawn, with leave that the same may be refiled at some future date in the event that it appears to the Board of County Commissioners that such step should be taken, and asking that the application be withdrawn without prejudice to the rights of petitioner, in any respect.

O R D E R

IT IS THEREFORE ORDERED, That said application may be withdrawn by applicant as requested, and that the said application is hereby dismissed without prejudice, however, to the right of the Board of County Commissioners of Adams County, Colorado to renew such application as it shall be advised.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 22nd day of May, 1922.

(Decision No. 538)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

PUC-10

In the Matter of the Application of Robert E. Israel and L. J. Gibson, Doing Business as The Ridgway Garage, for a Certificate of Public Convenience and Necessity to Carry on the Business of Transporting Passengers and Express between Ridgway and Ouray, Colorado, and Intermediate Points.

APPLICATION NO. 142

(May 9, 1922)

Appearances:

For the Applicant, Burgess & Lawrence and Moynihan, Hughes, Knous & Fauber.

For The Denver and Rio Grande Western Railroad Company, Thomas R. Woodrow.

For The American Railway Express Company, C. W. Faucett.

STATEMENT

By the Commission:

This petition was received by this Commission August 1st, 1921, and was set down for hearing and was heard at Grand Junction, Friday, February 24th, 1922. The parties hereto are unincorporated but are doing business as co-partners under the firm name of "The Ridgway Garage," and are engaged in transporting for hire by auto bus and truck both passengers and express between Ridgway and Ouray, over the county roads and including service to and from intermediate points between Ouray and Ridgway and covering a distance of 10.3 miles, all within the County of Ouray, Colorado.

A map of the entire route was filed, and the applicant developed the fact that no license or franchise to operate was required by any of the towns from or through which operations were carried on. Schedules showing time of arrival and departure of busses were filed. There were filed also schedules of rates for both passengers and express between all of the points

involved. Protests to granting the certificate asked for were filed by the American Railway Express and The Denver and Rio Grande Western Railroad Companies.

These applicants have been operating their auto bus line between Ridgway and Ouray for the past four years. There are used in this service one seven passenger Buick, two five passenger Pans and one five passenger Overland. They charge for the 10.3 miles between Ridgway and Ouray $1.50, or about fifteen cents per mile and a proportionate charge to intervening points.

The testimony presented in this hearing shows that where railroad service is depended on, the traveling public is subject to long delays and oftentimes have to lay over night and pay hotel bills before being able to return.

The territory between Ouray and Ridgway is served by means of the Denver and Rio Grande Western Railroad by the operation of one passenger train each way each day. Train No. 319 leaves Ridgway at 3:45 P.M. and arrives at Ouray at 4:40 P.M. Owing to this late arrival, it is impossible generally to transact any business the same day, compelling passengers to remain over and transact their business at an early morning hour in order to leave on No. 320 which departs at 10:05 A.M. and arrives in Ridgway at 10:50 A.M. Train No. 319 makes connection at Ridgway with the Rio Grande Southern Railroad train No. 7 which leaves at 3:45 P.M. for Placerville, Sawpit, Vanadium, Vance Junction and Telluride where further connection is made with train No. 5, Rio Grande Southern for Durango. Passengers arriving in Ridgway on Rio Grande Southern Railroad train No. 8, whose destination is Ouray, must remain in Ridgway from 10:50 A.M. until 3:45 P.M., a period of about five hours. If this same passenger has business to transact in Ouray, he will have to stay overnight and pay hotel bills and then transact his business the following morning, and take train No. 320 from there at 10:05 and will then arrive in Ridgway at 10:50. He will then have to remain in Ridgway until 3:45 P.M. when train No. 7 of the Rio Grande Southern leaves for his destination. On the other hand, passengers

from Ridgway who have business to transact in Ouray in using the railroad can not leave the latter point until 3:45 P.M. and are unable to return by train until the following day.

Taking into consideration the fact that the railroad charges between these points a fare of 54¢, and the further fact that between the same points the auto bus line makes a charge of $1.50 for the same service, then it can be readily understood that the patronage that this auto bus line gets must be and is not only a convenience but a real necessity for the traveling public.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity require, and will require, the operation of an auto bus line between Ridgway and Ouray, Ouray County, Colorado.

IT IS FURTHER ORDERED, That the application of Robert E. Israel and L. J. Gibson, doing business as "The Ridgway Garage," for a certificate of public convenience and necessity for the operation of an auto bus line for the purpose of transporting passengers and express between Ridgway and Ouray, Ouray County, Colorado, and intermediate points be, and the same is, hereby granted, and this shall be considered a certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 9th day of May, 1922.

(Decision No. 539)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Town of Simla for a Certificate of Convenience and Necessity authorizing the construction and operation of a municipally owned electric system.

APPLICATION NO. 185

May 18, 1922.

Appearances: William Sydow and J. W. Worrall, for Applicant, the Town of Simla.

S T A T E M E N T

By the Commission:

The above named applicant, the Town of Simla, filed with the Commission, on April 19, 1922, an application for a certificate of public convenience and necessity for the construction and operation of a municipally owned electric light system in said town, setting forth therein that the municipal authorities had theretofore been authorized to issue electric light bonds in the sum of $10,000 in pursuance of law; that there is no supply of electricity available to the citizens of said town, and that the erection and installation of an electric light system is a matter of public convenience and necessity to said town and its inhabitants.

The matter was set for hearing before the Commission at its Hearing Room in the State Office Building, May 12, 1922, and duly heard upon said date. The testimony on behalf of the applicant town established the fact that there had been a special election called of the qualified electors under the law in said town on April 4, 1922, submitting to said electors the question whether or not the said town should erect an electric light system for the purpose of supplying said town and its inhabitants

with electric light and power, said electric light works to be owned, managed and operated by the town; and also the further question whether or not the Board of Trustees of said town should be authorized to contract an indebtedness on behalf of the town upon its credit by issuing its bonds in the aggregate amount of $10,000 for such purpose; that said election was duly and legally called and held and that there were cast sixty-five votes in favor of both the propositions and twenty-eight votes in opposition thereto; that there is not at present and never has been any electric light system in said town and that the public convenience and necessity demand the installation of such electric utility; and that the approximate cost of the construction of said electric light works would be in the sum of $9,000.

There was also introduced in evidence certified copies of the ordinance calling said election and the proof of the result thereof on each of said propositions, and in other respects it was made clear that said town had complied with the requirements of the statutes in such cases made and provided for the purposes aforesaid.

As has heretofore been repeatedly observed by this Commission, in this modern age electrical energy for the purpose of furnishing light and power to the people in any community is certainly a convenience and almost a necessity; certainly a necessity in the application of the use of electrical energy for light and power purposes. The certificate sought will, therefore, be issued.

O R D E R

IT IS ORDERED That the public convenience and necessity require, and will require, the erection of an electric light system by the Town of Simla to be owned, managed and operated by said town for the purpose of supplying itself and its inhabitants with electrical energy for light and

power purposes, and that this order shall be taken, deemed and held to be a certificate therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 18th day of May, 1922.

(Decision No. 541)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF CLOSING)
)
OMAR AS AN AGENCY STATION)

APPLICATION NO. 172.

ORDER UPON MOTION TO DISMISS.

May 17, 1922.

Appearances: J. L. Rice, of Denver, for Chicago, Burlington and Quincy Railroad Company; John H. Gabriel, of Denver, for Protestants.

STATEMENT

By the Commission:

The Chicago, Burlington and Quincy Railroad Company filed notice in the form of a petition, March 2, 1922, entitled as above, notifying the Commission that after the expiration of thirty (30) days from the date of filing of such notice or petition, it intended to close and discontinue said Omar as an agency station upon several alleged grounds therein stated; said notice was filed in compliance with the terms of General Order No. 34, of this Commission.

Notice of the filing of said notice or petition was posted by said Railroad Company in the depot at Omar station, as a result of which an answer and protest was filed March 20, by Thomas H. Gibbs for himself and numerous others whose names were attached to his answer and protest in the form of an exhibit.

Thereafter and on March 25, 1922, said Thomas H. Gibbs filed his motion to dismiss the notice or petition of the Railroad Company for the reasons set forth in his said answer, and for the further reason that this Commission did, within three years, order said Railroad Company to erect, open and maintain a station at Omar; and that the Supreme Court of this State, upon a writ of review directed to this Commission, had af-

firmed the order of this Commission with reference thereto, and that the notice or petition does not show any reason or ground for the changing of the aforesaid order entered by this Commission in the prior proceeding.

The matter was set upon the motion to dismiss, only, for the 9th day of May, 1922, at 10:00 o'clock A. M., at the Hearing Room of the Commission, Room 305 State Office Building, Denver, Colorado, and the parties to the proceeding given due notice thereof.

At the hearing of said motion, the only question involved was, of course, a matter of procedure; and from the arguments advanced and from facts of which the Commission will take notice, it appears that in case No. 170, entitled J. P. Adams, et al, Complainants, vs. The Chicago, Burlington and Quincy Railroad Company, Defendant, submitted August 19, 1919, and decided September 24, 1919, the Commission made and entered its statement and order in said case No. 170, requiring and directing said Railroad Company to erect a suitable station building, install an agent therein, and maintain an agency station, among other things, at a certain point in said order described, now called "Omar," and upon certain terms and conditions as in said order set forth.

It further appears that in said case No. 170, petition for rehearing was filed by the defendant Railroad Company. Upon the same being denied by this Commission, said Railroad Company took the matter into our said the Supreme Court upon a writ of review, with the result that said Supreme Court, upon such writ of review, affirmed the order of the Commission theretofore entered; and the defendant thereafter erected a depot at Omar, installed an agent therein, and in other respects complied with the order of this Commission entered on September 24, 1919, in said case.

C. B. & Q. R. R. Co. vs. the Public Utilities Commission, et al
P. U. R. 1920-E, 705-706 :: S.C. 190 Pac. 539.

At the hearing upon said motion, counsel for said Railroad Company asked leave to consider his notice or petition as being filed in the

original case, if that method of procedure were decided to be proper, to which objection was made by counsel for protestants.

A similar situation was presented to the Commission in re Denver, Boulder and Western Railway, reported in 5th Colo. P.U.C. 742-744, where notice had been given by The Denver, Boulder and Western Railway that it proposed to discontinue its line of railway and cease its operations. Protestants in that case moved to dismiss upon the ground that it was not the proper method of procedure and that the proper method of procedure was to petition the Commission for leave to reopen the case involving the same subject matter so that the entire situation would be before the Commission. Upon consideration of that motion and a rather extensive argument, the Commission sustained the motion and dismissed the proceeding, when the petitioner in that case did pursue the method suggested and petitioned for the reopening of the original case No. 12.

So, in this case, it appears to the Commission that General Order No. 34, which requires the giving of notice by railroad carriers of the discontinuance of an agency, and other things, is only meant to apply to an original or initial proceeding and that if the same subject matter is to be dealt with again, it should be entitled in and made a part of the original proceeding.

The original Omar proceeding was decided by this Commission September 24, 1919; and upon review in the Supreme Court, was affirmed by that tribunal on June 7, 1920. If conditions have so changed since June, 1920, or rather since the depot was erected and the agency was established in the fall of 1920, at Omar, the proper and orderly procedure should be by petition in the original proceeding to reopen the same and submit testimony or other evidence that would show to the Commission such changed conditions as would justify it in the modification of its original order to grant the relief sought. Thereupon protestants will

be given notice of the pendency of such proceeding and a chance to appear in opposition thereto and, at the hearing upon such proceeding, the entire record of the original case would be contained and properly be considered in the proceeding again to be heard. For the above reasons, and in order that the procedure in such cases may be more clearly understood, the motion of protestants to dismiss will be sustained, with leave, of course, to said Railroad Company to take such further steps in conformity with the views herein expressed, as it shall be advised.

O R D E R

IT IS THEREFORE ORDERED, That the motion to dismiss filed herein by protestants be, and the same is, hereby sustained, and the proceeding docketed as In the Matter of Closing Omar as an Agency Station, Application No. 172, be, and the same is, hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hallenman

A. P. Anderson

W. D. Lamson

Commissioners.

Dated at Denver, Colorado,
this 17th day of May, 1922.

(Decision No. 541)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

The Pikes Peak Consolidated Fuel Company,
Complainant,
vs.
The Denver and Rio Grande Railroad Company,
The Chicago, Rock Island and Pacific Railway Company,
Defendants.

CASE NO. 164

(May 8, 1922)

O R D E R

WHEREAS, on November 16, 1918, complaint was filed by the above named conplainant against the above named defendants, and;

WHEREAS, subsequent thereto and in compliance with the rules of the Commission, defendants filed their respective pleas, and whereas, no party to said proceeding has moved therein up to January, 1922, and;

WHEREAS, on January 4, 1922, written notice of the Commission was served upon all parties to said proceeding to the effect that, unless some step was taken within fifteen days of said date to advance said cause upon the calendar of the Commission for hearing and disposition, the same would be dismissed by the Commission without prejudice, and;

WHEREAS, no step has been taken other than that the complainant above named has assented to the dismissal thereof for reasons given in its letter of assent, under date of February 14, 1922;

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.

Grant E. Hall Erman
A P Anderson
W. D. Lamson
Commissioners.

Dated at Denver, Colorado,
this 8th day of May, 1922.

(Decision No. 5477

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, A KANSAS CORPORA-)
TION, FOR PERMISSION TO ABANDON SOME) APPLICATION NO. 186
TWENTY-FIVE (25) MILES OF TRACK BE-)
TWEEN PUEBLO AND PORTLAND, COLORADO.)

May 24, 1922.

Appearances: Henry T. Rogers, Esq., for Applicant,
The Atchison, Topeka and Santa Fe
Railway Company.

S T A T E M E N T

By the Commission:

Applicant, The Atchison, Topeka and Santa Fe Railway Company, filed its application April 20, 1922, with the Commission for permission to permanently abandon about twenty-five (25) miles of its track between Pueblo and Portland, Colorado.

The application shows the corporate capacity of applicant, and that it has a line of railway which is denominated a spur or branch line running from Pueblo, Colorado, to the City of Canon City and other near-by points in Fremont county; that for a number of years prior to June, 1921, applicant had operated its said line, known as its Canon City branch, from its main line at Pueblo westward to Canon City, with other nearby regions served, and that during that same period The Denver and Rio Grande Railroad Company, now denominated The Denver and Rio Grande Western Railroad Company, operated its main line track from Pueblo westward to Canon City, and between said points the tracks of said two railway carriers were parallel to and traversed the same general direction following the channel of the Arkansas river and, in a practical way, both carriers served the same territory.

That in June, 1921, a flood occurred at Pueblo which resulted in the washing away of a great part or portion of said two railway companies' tracks between Pueblo and Portland, and particularly the track of applicant between Pueblo and Portland was washed entirely away; that shortly after said flood, The Denver and Rio Grande Western Railroad Company reconstructed and repaired its track so that it was possible to operate trains over the same, and, thereafter, upon a tentative agreement entered into by and between applicant and the said Denver and Rio Grande Western Railroad Company, applicant arranged to operate its trains over said portion of the Rio Grande track from Pueblo to Portland.

That at all times since the entering into of said tentative agreement, applicant has operated over its own lines and over all the spurs in the Canon City coal fields, and at all points west of Portland, but has continued to operate its trains over the tracks of The Denver and Rio Grande from Portland into Pueblo.

The petition further shows that the principal reason for the maintenance of said branch line of applicant is to serve Portland and points west thereof; and that there were and are no industries to serve and practically no inhabitants to serve between Portland and Pueblo, and that such inhabitants that do reside between Portland and Pueblo can be as satisfactorily served by applicant over The Denver and Rio Grande Western tracks as though applicant would reconstruct its own tracks between the said points and operate thereover.

That to reconstruct or build a new track from Pueblo to Portland would require a large expenditure of money by applicant, and that the same is not justified by the present industrial conditions in Fremont County or at points between Canon City and Pueblo, so that to avoid any question of abandonment of its Canon City branch, applicant has entered into an agreement with the said Denver and Rio Grande Western Railroad Company, for the continued joint operation of its trains over the tracks of said Denver and Rio Grande from Pueblo to Portland, and that this right

has been secured by applicant for a long term of years.

Applicant therefore prays an order of the Commission authorizing it to abandon its track between its mile post 1 plus 3082 feet, on the Canon City branch, to mile post 24 plus 236 feet, Canon City branch, and yard tracks on said abandoned branch line, all of such track requested to be abandoned being situate between Pueblo and Portland and being parallel to the tracks of the Denver and Rio Grande Western, over which the trains of applicant will operate hereafter.

Upon the filing of said application, notice thereof was given to the principal communities served by said Canon City branch, to-wit, Florence and Canon City, Colorado, by publication in the respective newspapers in said two cities of the pendency of said application, and by serving a copy thereof upon the mayors of each of said two cities.

Thereafter, said matter was set for hearing before the Commission at its Hearing Room, State Office Building, Denver, Colorado, on Thursday, the 18th day of May, 1922, at 10:00 o'clock A. M., due notice thereof having been theretofore givem to applicant and the aforesaid two communities.

At the hearing no appearance was entered save for the applicant and no protests or objections were received to the granting of said application from any source.

The division superintendent of the applicant Railway Company testified in support of the allegations of the application, from which it is made to appear that the region between Pueblo and Portland, formerly served by the applicant over its own lines, is very sparsely populated, and that such business as it theretofore and prior to said flood had received, has since said time and can in the future be transacted by it without serious or any inconvenience over the tracks of The Denver and Rio Grande Western between Pueblo and Portland; that the cost of reconstruction or rebuilding of applicant's line destroyed by the flood of

June, 1921, would be approximately $450,000, without any reasonable justification therefor in a business sense.

Said witness further testified that an operating agreement had been entered into between said applicant Railway Company and said The Denver and Rio Grande Western Railroad Company, covering a term of years, whereby applicant should operate its Canon City branch trains from Pueblo to Portland over the tracks of said The Denver and Rio Grande Western Railroad Company, and that upon arrival at Portland, westbound, applicant will use its own line of track from said point to Canon City and to the coal field lines contiguous thereto; that there was nothing whatever in said operating agreement between said two railway companies which would prohibit or inhibit or prevent said applicant from rendering adequate and efficient passenger and freight service over and upon its said Canon City branch line in the use of the tracks of The Denver and Rio Grande Western Railroad Company between Pueblo and Portland.

While said application did not in anywise involve a matter of service between Pueblo and Canon City over its said Canon City branch, the witness testified, and counsel for applicant Railway Company stated in the record, that if permitted to abandon its said line between Pueblo and Portland as requested, or, more properly speaking, if not required to rebuild the same, applicant would be in nowise, or at all, hindered or prevented from operating such service between Pueblo and Canon City as the needs of the public may require either upon its own volition or upon order of this Commission; and that the saving to said applicant Company of said sum of money would enable it to apply the same to other portions of its mileage in this and other states where the public need was relatively of far greater importance than it ever had been or probably ever would be in reconstructing or rebuilding the line between Pueblo and Portland.

From the testimony of the superintendent and from the state-

ments of counsel, the Commission is quite satisfied that the reasonable and adequate needs of the public between Pueblo and Portland are and can be served by the joint use of the tracks of The Denver and Rio Grande Western Railroad Company by applicant between said two points, and that the use thereof will in nowise hinder or prevent the applicant in serving the communities between Portland and Canon City and contiguous thereto over its own line, and that to require applicant to reconstruct the said portion of its line which was washed away by said flood would entail upon it the expenditure of a useless and extravagant amount of money in comparison with any reasonable benefit to be derived therefrom by the public. Hence, the Commission will authorize applicant Railway Company, by appropriate order, to continue the abandonment of its said track between the points above mentioned.

O R D E R

IT IS THEREFORE ORDERED, That applicant, The Atchison, Topeka and Santa Fe Railway Company, be, and it is hereby, authorized and permitted to abandon that portion of its track on its so-called Canon City branch between Pueblo and Portland as lies between mile post 1 plus 3082 feet to mile post 24 plus 236 feet, and yard tracks on said abandoned branch line, all lying between Pueblo and Portland and being parallel to the tracks of The Denver and Rio Grande Western Railroad Company; and to operate its trains over the tracks of said Denver and Rio Grande Western Railroad Company between Pueblo and Portland in the service of its patrons and the public between Pueblo and Canon City.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Emeritus

A. P. Anderson

H. D. Lawson

Commissioners.

Dated at Denver, Colorado,
this 24th day of May, 1922.

(Decision No. 543)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of the Town of Castle Rock, a Municipal Corporation, for a Certificate of Public Convenience and Necessity Authorizing the Construction of the New Plant or System Specified and Described in this Petition.	)	APPLICATION NO. 190

- - - - - - - -
May 24, 1922.
- - - - - - - -

S T A T E M E N T

By the Commission:

On May 6, 1922, there was filed with this Commission by the Town of Castle Rock, a municipal corporation, a petition for a certificate of public convenience and necessity for the construction of an electric light plant or system for the purpose of serving the said Town of Castle Rock with electricity for light and power uses, to be constructed by the said Town of Castle Rock.

The petition sets forth that the Town of Castle Rock is located about thirty-three miles south of Denver and about twelve miles south of the Town of Louviers, in Douglas County, Colorado; that, for the purpose of supplying the said town with light for domestic use and for street lighting and for the purpose of supplying electricity to the inhabitants of said town, the applicant has entered into a contract with E. I. Du Pont de Nemours Company, a corporation organized under the laws of the State of Delaware; that, by said contract, the said Du Pont Company undertakes to sell to the applicant electric energy at an agreed price, such energy to be delivered to the applicant at the powder works of said company in said Town of Louviers; that, for the purpose

of transmitting said electricity from said Town of Louviers to the said applicant, or the Town of Castle Rock, the applicant proposes to build and construct a pole and wire line, as well as pole and wire lines needed to distribute the same in the said Town of Castle Rock; that applicant is, at the present time, without any system of lighting by electricity or otherwise, and that said improvement is, therefore, necessary in the interest of all of the people of said town; that the construction of said pole and wire lines will be built according to plans and specifications prepared by the engineer of said town, a copy of which said specifications is filed with this petition and marked "Exhibit A;" that permission for placing its poles and wires has been obtained from the County Commissioners of said Douglas County and also from the State Highway Department.

Applicant prays that an order may be entered and that a certificate of public convenience and necessity be issued to it in accordance with the above petition.

After due notice to all parties concerned, the above case was set for hearing and was heard in the Hearing Room of the Commission on Friday, the 12th day of May, 1922, at 2:30 P. M.

Applicant introduced in evidence its "Exhibit No. 1," which is a copy of the permission granted by the State Highway Department for the use of the state highway between the said Town of Louviers and Castle Rock; also its "Exhibit No. 2," which is a copy of a resolution of the Board of County Commissioners of Douglas County, Colorado, granting permission to the said Town of Castle Rock to use the said public road between the said Town of Louviers and Castle Rock, for the purpose of setting its poles and stringing its wires thereon. Applicant also introduced in evidence its "Exhibits Nos. 3 and 4." "Exhibit 3" is a map of the public highway between the Town of Louviers and the Town of Castle Rock on which the said poles will be set and the wires strung. "Exhibit 4" is a plat of

the Town of Castle Rock, Colorado, the applicant herein, on which is marked in red lines the streets and alleys thereof on which it is proposed to construct the transmission lines within said Town of Castle Rock.

The evidence in the record shows that Castle Rock is a town of about six hundred inhabitants; that it is the county seat of Douglas County and is situated about thirty-three miles south of Denver; that there are practically all lines of mercantile business represented in said town, and that an electric plant will not only be a convenience but an actual necessity in supplying the residences and business houses with electricity for lighting and power purposes; that there is no other electric company operating in the Town of Castle Rock for the purpose of furnishing either light or power; that the cost of construction of the proposed plant will be from $19,000 to $20,000; that the nearest electric light plant is the private plant of the Du Pont Company at Louviers, with whom the applicant has entered into a contract for a sufficient supply of electricity from their plant to be delivered to the applicant company, at a sub-station to be located at Louviers, at wholesale prices.

From the evidence introduced in this case, it clearly appears to the Commission, and the Commission finds, that public necessity and convenience require and will require the construction of the electric lighting plant applied for and described in the petition herein.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity require and will require the construction of the electric light plant as applied for and described in the petition herein, and this order shall be deemed a certificate of public convenience and necessity therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 24th day of May, 1922.

(Decision No. 544)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of The Platner Telephone Company of Platner, Colorado, for a Certificate of Public Convenience and Necessity for the Construction and Operation of a Telephone System.	APPLICATION NO. 156 Amended Order

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May 31, 1922.

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S T A T E M E N T

By the Commission:

In the above entitled cause an application for a certificate of public convenience and necessity was filed on December 14, 1921, and an order was entered by the Commission on February 3, 1922, by the terms of the first paragraph of which a certificate of convenience and necessity was granted to the applicant herein:

"To operate in the territory heretofore described."

On May 24, 1922, there was filed with the Commission a stipulation entered into by the applicant and The Mountain States Telephone and Telegraph Company, whereby both of said parties requested the Commission to modify the terms of its order of February 3, 1922, so as to include only that territory originally requested by the applicant herein, and described as follows, to-wit:

> "Beginning at a point three miles due West from the center of the Town of Platner, running thence North eighteen miles, thence due East at right angles six miles, thence due South at right angles thirty-three miles, thence due West at right angles six miles, thence due North at right angles fifteen miles to the point of beginning."

Inasmuch as the rights of neither of the parties hereto are waived or prejudiced by the stipulation, the Commission is of the opinion that an order should be entered in conformity with the filed stipulation, without prejudice to the rights of any of said parties.

O R D E R

IT IS THEREFORE ORDERED, That the first paragraph of the order of the Commission entered February 3, 1922, in this cause be, and the same is hereby modified and amended to read as follows:

> "It Is Therefore Ordered, That The Platner Telephone Company of Platner, Colorado, is hereby granted a certificate of convenience and necessity to operate in the following described territory, to-wit:
>
> "Beginning at a point three miles due West from the center of the Town of Platner, running thence North eighteen miles, thence due East at right angles six miles, thence due South at right angles thirty-three miles, thence due West at right angles six miles, thence due North at right angles fifteen miles to the point of beginning."

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 31st day of May, 1922.

(Decision No. 545)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

The Town of Padroni,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 240
	)	
The Chicago, Burlington & Quincy Railroad Company,	)	
	)	
Defendant.	)	

- - - - - - - -

May 31, 1922.

- - - - - - - -

S T A T E M E N T

By the Commission:

It appearing that the Chicago, Burlington & Quincy Railroad Company has withdrawn its notice of intention to close its agency at Padroni, Colorado, and that said Railroad Company has requested the Commission to dismiss this cause, the Commission will issue an order dismissing same.

O R D E R

IT IS THEREFORE ORDERED, That this cause be, and the same is, hereby dismissed without prejudice to either of the parties hereto.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 31st day of May, 1922.

(Decision No. 546

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of)
)
Homer Hutchinson for Adjustment of)
) APPLICATION NO. 192
Charges Made by The Canon Gas Company.)

- - - - - - - -
June 6, 1922.
- - - - - - - -

S T A T E M E N T

By the Commission:

This proceeding arises upon the complaints of Homer Hutchinson, and Maude B. Hutchinson, his wife, both of Canon City, Colorado, concerning certain service rendered, and charges made therefor, by The Canon Gas Company, of Canon City, Colorado.

Pursuant to notice duly given to all the parties hereto, this cause came on for hearing at the Court House, Canon City, Colorado, on May 29, 1922. After the testimony was taken, all of the parties hereto settled the differences theretofore existing between them, by an agreement, the original of which is on file herein. By the terms of said agreement, The Canon Gas Company allowed, and the complainants accepted, seven and one-half per cent discount on all charges made by The Canon Gas Company to complainants for gas service rendered from October, 1918, to February, 1922, in full and complete settlement and satisfaction of all the differences theretofore existing between them, and all of the complaints of complainants against The Canon Gas Company were withdrawn.

It appearing, therefore, that The Canon Gas Company has fully satisfied all of the complaints of the complainants herein, the

Commission will issue an order dismissing this cause.

ORDER

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 6th day of June, 1922.

(Decision No. 847)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In re Proposed Increase in Power Rates of The Colorado Power Company.) INVESTIGATION AND SUSPENSION DOCKET NO. 49.

PETITION OF THE COLORADO POWER COMPANY

FOR A REHEARING

Filed May 20, 1922.

Appearances: W. W. Hodges and D. Edgar Wilson, for Petitioner; Lee & Shaw, by Wilbur W. Adams, for The Western Light & Power Company; M. C. Vidal, Warwick M. Downing, Harvey L. Whatley, for Protestants.

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STATEMENT

By the Commission:

On the 19th day of April, 1922, the Commission issued its order in this cause, In re Proposed Increase in Power Rates of The Colorado Power Company, for a determination by the Commission of just and reasonable rates and charges.

On May 20, 1922, a petition was filed by The Colorado Power Company applying for a rehearing. Upon due notification of all of the parties interested, the motion for a rehearing was set for June 12, 1922, and was heard on that date.

At the time of the hearing the attorneys for The Colorado Power Company stated that they had submitted their petition for a rehearing on the basis of the records and briefs already filed in the case, and that they felt it would be inadvisable and serve no good purpose to further prolong the case, the facts of which had been fully discussed in the briefs and records already on file; and that, therefore, they had submitted the petition without argument. They requested, however, that while the Commission had treated Cases No. 49, 50 and 51 as

covered by the one opinion, and as there were separate orders entered in Cases No. 50 and 51, involving The Denver Gas and Electric Light Company and The Western Light and Power Company, that the Commission consider the motion for rehearing in Case No. 40 as applying also in Cases No. 50 and 51, and that an appropriate order be entered also in Cases No. 50 and 51 disposing of them. This motion of The Colorado Power Company was granted and a separate order will be entered in each case.

The Commission has carefully considered the petition filed herein applying for a rehearing, and now being fully advised in the premises is of the opinion that the petition for a rehearing should be denied.

ORDER

IT IS THEREFORE ORDERED, That the petition for a rehearing filed with the Commission on May 20, 1922, in I. & S. Docket No. 40, by The Colorado Power Company, be, and the same is, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT H. HALLENBAR

(S E A L)

A. R. ARMSTRONG

P. F. LARSEN
Commissioners.

Dated at Denver, Colorado,
this 14th day of June, 1922.

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. 548)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In re Proposed Advance in Rates of The Colorado Power Company, in Special Power Agreement with The Western Light and Power Company.	INVESTIGATION AND SUSPENSION DOCKET NO. 51.

- - -

S T A T E M E N T

By the Commission:

On April 26, 1922, the Commission issued its order in this cause, on the petition of The Colorado Power Company, for a determination by the Commission of just and reasonable rates, fares and charges.

On May 20, 1922, a petition was filed by The Colorado Power Company applying for a rehearing.

The Commission, now being fully advised in the premises, is of the opinion that the petition for a rehearing should be denied.

O R D E R

IT IS THEREFORE ORDERED, That the petition for a rehearing, filed with the Commission on May 20, 1922, by The Colorado Power Company, be, and the same is, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 16th day of June, 1922.

(Decision No. 549

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In re Proposed Advance in Rates of The Colorado Power Company, in Special Power Agreement with The Denver Gas and Electric Light Company.	INVESTIGATION AND SUSPENSION DOCKET NO. 50.

S T A T E M E N T

By the Commission:

On April 26, 1922, the Commission issued its order in this cause, on the petition of The Colorado Power Company, for a determination by the Commission of just and reasonable rates and charges.

On May 20, 1922, a petition was filed by The Colorado Power Company applying for a rehearing.

The Commission, now being fully advised in the premises, is of the opinion that the petition for a rehearing should be denied.

O R D E R

IT IS THEREFORE ORDERED, That the petition for a rehearing filed with the Commission on May 20, 1922, by The Colorado Power Company, be, and the same is, hereby denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hardeman,

A. P. Anderson

H. L. Lawson

Commissioners.

Dated at Denver, Colorado,
this 16th day of June, 1922.

(Decision No. 550)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of Douglas County, in the State of Colorado, for the opening of a public highway over the right-of-way and track of The Colorado and Southern Railway at a point where the section line between sections 23 and 26, Township 6 South, Range 66 West, 6th Principal Meridian, intersects said railway track in Douglas County, Colorado.

APPLICATION 189½

June 27, 1922

STATEMENT

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Douglas County, State of 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 Colorado and Southern Railway on the section line in Sections 23 and 26, Township 6 South, Range 66 West of the 6th Principal Meridian, Douglas County, Colorado.

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's engineer on June 16, 1922. In his report to the Commission he states that the view of approaching trains is fairly good in all directions and, in his judgment, the crossing is a necessity.

At the time of making application, the Board of County Commissioners of Douglas County inclosed therewith a copy of a certain agreement entered into the 2nd day of March, 1922, between The Colorado and Southern Railway Company and the County of Douglas, wherein the County agreed to assume all expense incurred by the railway in

connection with the establishment and maintenance of the crossing sought for in the application.

In the matter of grade crossings across railroads in this State, it has been tentatively agreed, after considerable discussion by the principal railroad companies of the State, that in compliance with the Commission's ideas, the railroad company will construct and maintain those things pertaining to the railroad property and that the applicant will construct and maintain the approaches to the crossing including the necessary drainage under the highway.

In order that all matters of this kind be treated uniformly, this application was taken up with the officials of The Colorado and Southern Railway Company and, on May 31, 1922, a letter was received from Mr. R. C. Gowdy, Chief Engineer of The Colorado and Southern Railway Company, wherein he states, "This Company is willing to install this crossing under the general terms recently accepted by us covering matters of this kind and will, at its expense, furnish and install the crossing plank, cattle guards, and necessary crossing signs with the understanding that Douglas County will do all the necessary grading of the approaches including necessary drain boxes under the approach."

The County Commissioners of Douglas County and The Colorado and Southern Railway 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 requested.

ORDER

IT IS, THEREFORE, ORDERED That in accordance with Section 29 of the Public Utilities Act 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 Colorado and Southern Railway Company on the section line between Sections 23 and 26, Township 6 South, Range 66 West of the 6th Principal Meridian, Douglas County, Colorado; conditioned, however, that prior to the opening of the 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 Douglas 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 Colorado and Southern Railway Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
27th day of June, A. D. 1922.

(Decision No. 551)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of El Paso County, State of Colorado, for the opening of a public highway crossing over the right-of-way and track of The Denver and Rio Grande Western Railroad Company at a point about 150 feet south from where the township line between Townships 14 and 15, Range 66 West of the 6th Principal Meridian intersects said railroad track in El Paso County, Colorado.

APPLICATION NO. 181

June 27, 1922.

STATEMENT

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of El Paso County in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, for the opening of a public highway crossing over the main line track of The Denver and Rio Grande Western Railroad Company on the township line between Townships 14 and 15, Range 66 West of the 6th Principal Meridian in El Paso County, Colorado.

An investigation of the necessity and convenience of a public highway crossing at this point was made by the Commission's engineer, on April 14th, in company with the County Commissioners of El Paso County and Mr. Cosand of The Denver and Rio Grande Western Railroad Company.

In the original application it was suggested that an under crossing was feasible at this point. After considerable discussion between the officials of The Denver and Rio Grande Western Railroad Company and the County Commissioners, it was decided to establish a grade crossing at a point about 150 feet south from where the township line

intersects the main line track of The Denver and Rio Grande Western Railroad Company. The Railway Engineer for the Commission states that the view of approaching trains at this point is fairly good in all directions and, in his judgment, a crossing is a necessity.

The County Commissioners of El Paso County and The Denver and Rio Grande Western Railroad Company being fully advised of these matters and having consented to the terms and conditions as hereinafter made in the order and no objection having been filed, the Commission will, therefore, issue its order granting permission for the establishment of a grade crossing at the point agreed upon.

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, 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 about 150 feet south from where the township line between Townships 14 and 15, Range 66 West of the 6th Principal Meridian intersects said railroad track in El Paso 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 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 the crossing, including the necessary drainage therefor, be borne by El Paso 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 Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
27th day of June, 1922.

(Decision No. 2[illegible])

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of the Board of County Commissioners of El Paso County, in the State of Colorado, for the opening of a public highway crossing over the right-of-way and tracks of the Atchison, Topeka and Santa Fe Railway Company at a point where the township line between townships 14 and 15, range 66 west of the 6th principal meridian intersects said railway tracks in El Paso County, Colorado.

APPLICATION NO. 182

June 27, 1922

STATEMENT

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of El Paso County in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, for the opening of a public highway crossing at grade over the main line track of the Atchison, Topeka and Santa Fe Railway on the township line between townships 14 and 15, range 66 west of the 6th principal meridian, El Paso County, Colorado.

An investigation as to the necessity and convenience of a public highway crossing at this point was made by the Commission's engineer in Company with the County Commissioners and Mr. Brozo of The Atchison, Topeka and Santa Fe Railway Company, on April 19, 1922. In his report to the Commission he states that the view of approaching trains is fairly good in all directions and, in his judgment, the crossing is a necessity.

The County Commissioners of El Paso County and The Atchison, Topeka and Santa Fe Railway 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 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, 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 Atchison, Topeka and Santa Fe Railway Company on the township line between townships 14 and 15, range 66 west of the 6th principal meridian, El Paso 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 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 the crossing, including the necessary drainage therefor, be borne by El Paso 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 Atchison, Topeka and Santa Fe Railway Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 27th day of June, 1922.

(Decision No. 553)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the matter of the alleged violation by The Denver and Salt Lake Railroad Company, and W. R. Freeman and C. Boettcher, the Receivers thereof, of the rules, regulations and tariffs of said Railroad Company on file with this Commission with reference to the charging, exacting and collecting of and from passengers traveling over said Railroad the sum of one dollar ($1.00) for transporting baggage of its patrons in addition to the regular ticket fares, and thirty-five cents (35¢) per cwt. for L.C.L. freight, twenty-five cents (25¢) per cwt. for carloads, transferred around said Tunnel No. 16.	)	CASE NO. 260

- - - - - - - -
July 8, 1922.
- - - - - - - -

Appearances: Hon. Victor E. Keyes, Attorney General of the State of Colorado, and E. N. McMullin, Esq., Deputy Attorney General, for the Commission; Charles R. Brock and Elmer L. Brock, Esquires, for The Denver and Salt Lake Railroad Company, and its Receivers.

S T A T E M E N T

By the Commission:

On June 24, 1922, the Commission, upon its own motion, issued its order in the above entitled matter, directed against W. R. Freeman, the operating receiver of The Denver and Salt Lake Railroad Company, and W. H. Wood, for the purpose of hearing and investigating the informal complaints brought to the attention of the Commission concerning the alleged practice of said Railroad and its receivers in charging, exacting and collecting of and from its passengers one dollar ($1.00) for transporting baggage, in addition to the regular ticket fare, around Tunnel No. 16, and of collecting thirty-five cents (35¢) per cwt. for L.C.L. and twenty-five cents (25¢) per cwt. for carload freight transferred around said tunnel, alleged to be in violation of the provisions of the

Public Utilities Act, and more particularly Section 16 thereof.

Said order was duly served upon the operating receiver of said Railroad, and upon said W. H. Wood, and the matter was set for hearing and investigation at 9:30 o'clock A. M., July 1, 1922. Upon request of the receiver, said hearing and investigation was continued until July 6, 1922, at 9:30 o'clock in the forenoon, at the Hearing Room of the Commission, State Office Building, Denver, Colorado, where the hearing and investigation was duly held.

Shortly after the issuance of the order herein, the Commission caused its auditor and statistician to examine the books, records and accounts of said Railroad Company with respect to the alleged operations of its receivers and said W. H. Wood in the transfer of baggage and freight around said Tunnel No. 16; and in addition thereto the inspectors for the Commission made a personal trip of investigation to find the physical conditions existing thereat and the method of operation alleged to have been, and being, pursued in the transferring of baggage and freight from the eastern to the western portal of said tunnel, and vice versa.

The office of the Attorney General was asked to conduct the examination and investigation at the hearing to ascertain the facts and conditions that have existed concerning said matter; and such facts and conditions were testified to by the rate expert and auditor of the Commission. Briefly, it was established that the tariffs on file with this Commission provided, in harmony with the tariffs of practically all other common carriers, that one hundred fifty pounds of baggage would be transported without charge to the holder of a ticket of first class fares; that the Railroad Company, nor its receivers, had not filed any modification or emergency tariff: providing for other than the regular tariffs on file, denominated as the Maguire and Hannegan tariffs, which are filed by these individuals as agents for most of the carriers in the western

territory, which includes the State of Colorado. The freight tariffs, both class and commodity, were testified to by the rate expert for the Commission, and that no supplemental or emergency tariffs had been filed or asked for by said Railroad to cover the movement of freight, either L.C.L. or carloads, around said Tunnel No. 16.

The auditor for the Commission testified in support of his report to the Commission under date of June 24, 1922, which briefly summarizes the total amount collected by said Railroad and its receivers, and in turn turned over by it to said Wood, which gave the total receipts from April 17 to June 23, 1922, inclusive, of $9,205.69. The report of the auditor embodied a memorandum of a contract entered into by the operating receiver of said Railroad and said W. H. Wood, dated April 1, 1922, whereby said Wood agreed that he would build a wagon road from one portal of said tunnel to the other, and would transport thereover all railroad company material required to be handled free of charge to the Railroad; that he would act as the carrier of freight, not exceeding five hundred pounds in any one package, and the baggage of passengers between the east and west end of Tunnel 16, either direction, for which his charge would be twenty-five cents (25¢) per cwt., carloads, and thirty-five cents (35¢) per cwt., L.C.L., and one dollar ($1.00) each for trunks or other pieces of baggage not exceeding one hundred fifty pounds in weight, all such charges to be collected in advance by the receiver of said Railroad and paid over to Wood at the convenience of both parties. Said contract further provided that the employes and the necessary freight and material for Wood to do the required work of constructing said road be transported by said receiver on company account, i. e., without charge; and that such arrangement would continue in effect until train operations were resumed through said Tunnel No. 16.

The operating receiver of said Railroad, W. R. Freeman, testified that said Tunnel No. 16 was destroyed by fire on March 30, 1922, and that immediately thereafter he had had several locating engineers, including

Major Blauvelt, now of the Highway Commission, inspect the topography of the country with a view to building a "shoo-fly" track around said tunnel; that all of said engineers advised that the construction of a shoo-fly track was impractical, if not impossible, owing to the rugged character of the country and the narrow margin between the base of the tunnel and the crest of the surface of the ground adjacent to the rim of the canon; but after long conferences and deliberations of the engineers of said Railroad, and other engineers brought in for that purpose, it was considered inadvisable and impractical to construct a permanent line of railroad, and that the only thing to be done was to rejuvenate said tunnel so as to permit of its use as before it was destroyed; that approximately a million feet of Oregon pine was rushed to the scene of said tunnel, and that all efforts had been brought to bear to excavate and re-timber said tunnel within as short time as possible, and that he had every confidence that trains would be running through by or before August 1, 1922.

The receiver further testified that for the first two or three weeks after said tunnel had been caved in, following a declaration of embargo by said Railroad upon freight and other service, the only means of transportation afforded to the public was by the way of rail or truck line to Boulder out of Denver, thence by truck to Rollinsville to be conveyed therefrom over its line of railroad, and vice versa from destinations west of Rollinsville by truck to Boulder, and thence to Denver; that such service was at a cost of two or three times the cost of service later afforded by the means of the Wood transfer service; that shortly after said fire, and on March 31, said Railroad Company had declared an embargo upon traffic moving over its lines, and on April 15 had declared a supplement to such embargo, both of which had been filed with the Commission; that said embargos provided that the patrons of said Railroad might have their freight or baggage transported at regular tariff rates at and when the Railroad resumed operations; that freight and baggage would be received

eastbound for carriage to Rollinsville, thereafter to be transported to Denver by the consignors at their own expense; and recognizing the inconvenience to the patrons of said Railroad in dealing with promiscuous hack and truck drivers between Rollinsville and Denver, he proceeded to make the arrangement with said Wood to build a road around said tunnel and transport baggage and freight at the sums therein designated; that the road so constructed was safe, well built and easy of negotiation; and that said Wood had installed a service to care for all freight and baggage at whatever time of day or night; that three or four trucks and teams had been provided and the necessary employes were at all times ready, day or night, as the trains of said Railroad arrived at one or the other portal of said tunnel, to transport whatever was offered at the rates agreed upon; that the Railroad Company merely acted as the collector of said moneys and did not participate therein and had nothing to do therewith except turning it over to Wood, so long as the service was being performed by Wood; that the receiver had had not a single complaint from any patron of the Railroad save one, and that one was a person who had expressed a desire to get even with the Railroad's management for some real or fancied grievance; that the investment of Wood in the building of said road was approximately $2,500.00, and that his trucks represented an investment of $12,000.00 to $15,000.00; and that finally if the Commission would order the discontinuance of such service, it would be pleasing to Wood and displeasing to the traveling public over said line of railroad.

From all the evidence presented to the Commission it is quite apparent that the operating receiver of said Railroad has complied with the requirements of the Act; that while it may seem unreasonable and exorbitant to those who are unfamiliar with the physical condition of said country and the facts as testified to, that one should be charged a dollar for the transportation of his baggage, or should pay something additional for the transportation of his freight around said tunnel, yet, from all

the evidence introduced, the Commission is firmly of the opinion that such sums are not exorbitant; and that, considering the country where the work is done, the risks that are encountered by the person who does it, and the liability that he thereby assumes, such sums are at least fair and reasonable.

From the evidence it would appear, and the Commission so finds, that The Denver and Salt Lake Railroad Company has pursued such practices in the usual, ordinary and lawful manner; that it believes there may have been, though we do not decide, a technical violation of the Act, but if so, under all of the circumstances surrounding the case that have been testified to, such technical violations, if any, are not unfair to the public and are not the subject of condemnation by this Commission.

The question arose at the hearing and investigation as to the capacity or character of said W. H. Wood in the doing of the service of transporting baggage and freight around said Tunnel No. 16. From the facts as testified to, and from the contract introduced in evidence, the Commission is clearly of the opinion that he is not a common carrier under Section 2, sub-division (e) of the Public Utilities Act; and, therefore, not subject to the jurisdiction of the Commission.

Stated tersely and concisely and in sort of a recapitulation, the situation is about as follows:

> A passenger destined from Denver to Steamboat Springs, for instance, is informed when he purchases his ticket that his baggage will not be accepted for carriage, nor himself, unless he and his baggage are transported from Scenic, the eastern portal, to Crescent, the western portal of said tunnel; likewise, the consignor of freight is informed that it will not be accepted for carriage further than Rollinsville, eastbound, nor further than Crescent, westbound, except upon the payment to Wood of a dollar for the transferring of his baggage, or of thirty-five cents for L.C.L. and twenty-five cents for carload per cwt.

It resolves itself, therefore, into the proposition of whether or not the Railroad is doing a thing unlawful in the method it has done. The testimony is positive that a common carrier, overtaken by a catastrophe over which it has no control, has the legal right to declare an embargo upon all sorts of traffic until such time as the results of such catastrophe

have been remedied and it may again resume its normal functions as a common carrier. That is the universal practice and established custom, and one that is entirely lawful in its operation and effect. The fact that the patrons of the Moffat Railroad are compelled, under the exigencies of this emergency, to pay the additional expense of transporting their baggage and freight around Tunnel 16, rather than waiting until the tunnel has been rehabilitated to permit of the operation of trains there through, is not discriminatory, but is rather their misfortune in having to be dependent upon a common carrier that has itself had so many misfortunes.

Enough has been said to clearly indicate, to an unprejudiced person, the true conditions; and the fact that this investigation was had by the Commission, upon its own motion, is attributable, in a greater or less degree, to informal complaints and to newspaper notoriety which, according to the testimony, are entirely unfounded in fact.

An outstanding and loud-speaking circumstance connected with this hearing is observed from the fact that though a great deal of hue and cry has been made concerning the alleged violation of the Act by the Railroad Company, and the exorbitant and excessive charges that Wood has made for transporting baggage and freight around said tunnel, which has been given the widest publicity, there was not a single person present save the officials of said Railroad, the Attorney General's office, the Commission and its employes, and said W. H. Wood.

O R D E R

IT IS THEREFORE ORDERED, That the alleged practices of the receivers of said The Denver and Salt Lake Railroad Company, as hereinabove in this statement set forth, are not founded upon fact; that said Railroad Company and its receivers have pursued a course in harmony and consistent with their lawful rights in the premises, and that such alleged charges are entirely unfounded in fact.

IT IS FURTHER ORDERED, That the operating receiver of said Railroad is, and was, justified in making the arrangement for the transportation of baggage and freight around said tunnel with said W. H. Wood; and that the charges therefor are not unreasonable nor excessive, under the circumstances and facts testified to in the hearing and investigation hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

[redacted]

Commissioners.

Dated at Denver, Colorado,
this 8th day of July, 1922.

(Decision No. 554)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the)
Town of Crook, Colorado, for a certifi-)
cate of Public Convenience and Necessity) APPLICATION NO. 201
Authorizing the Construction and Opera-)
tion of a Municipally Owned Transmission)
System.)

- - - - - - -
June 19, 1922
- - - - - - -

S T A T E M E N T

By the Commission:

On June 27, 1922, applicant Town of Crook filed application for the granting, by the Commission, to it of a certificate of public convenience and necessity, in effect, for the construction of an electric transmission line from the Town of Fleming, Colorado, to the Town of Crook, Colorado, along the state highway, as evidenced by a map or plat thereof attached to said application, and alleging that the Board of Trustees of applicant town had been duly authorized by a vote of the people to issue water extension bonds in the amount of $20,000 for the purpose of furnishing adequate electric and water service for the Town of Crook. A copy of the ordinance with respect to such water extension bonds for the purpose for which they were authorized to be issued was attached to and made a part of said application and marked "Exhibit A."

The application contained the allegation that in addition to the extension of the water works system that the construction of an electric transmission line, aforesaid, was necessary to give adequate power for the purpose of pumping water to supply said Town and its inhabitants with an adequate supply of water for domestic and fire purposes, and alleging that the present plant was entirely inadequate to satisfy such requirements.

In addition thereto the applicant town purposes to install an electric light plant, facility or system to use the electrical energy so obtained, for the purpose of supplying electric light and power to the town and its inhabitants. Exhibit A, being the ordinance passed by the Board of Trustees of the Town of Crook in pursuance of the authority of the voters of said town at a special election therein called and held on Tuesday, January 7, 1919, specifically provides in its title, and also in its various sections, that said Board of Trustees were authorized to issue negotiable coupon bonds of said town in the aggregate principal sum of $20,000 "for the purpose of adequately supplying said town with water for fire and domestic purposes by the further construction and extension of the water works system of said town."

The testimony of witness Dunn, a member of the Board of Trustees of said town, together with said ordinance, establishes the fact that the people authorized the issuance of such bonds for the purpose therein stated; to-wit, to supply the town and its inhabitants with an adequate supply of water for fire and domestic purposes; and the evidence submitted amply justifies the issuance of a certificate of public convenience and necessity for said purpose. The Commission has repeatedly held, however, that it has no authority to issue a certificate of convenience and necessity for a joint purpose; that is, for the construction of an electric light utility out of water works extension funds, or for the construction of a water utility out of electric light construction funds. The two utilities are separate and distinct in their character, function, and purpose; and if the municipality desires to engage in the furnishing of electric light and power to itself and its inhabitants, it should make application for such purpose independently of its desire to supply its inhabitants with water or with gas or with any other convenience or necessity. Water is neces-

sary for the sustenance of all life, so that but little, if any, proof is required to show the fact that public convenience and necessity require, or will require, the furnishing of water for fire and domestic purposes. The furnishing of electricity for light and power, or the furnishing of gas for domestic consumption, is not, however, an absolute necessity; but is rather more in the nature of a necessary convenience under modern conditions.

The above statements are made for the purpose of making clear to the applicant, and, we hope, future applicants of a similar nature, that application for the issuance of a certificate of public convenience and necessity should be confined, under the Public Utilities Act, to one specific character of utility.

ORDER

IT IS ORDERED That the public convenience and necessity requires, and will require, applicant, the Town of Crook, Colorado, to construct an extension of its water works system for the purpose of adequately supplying said town and its inhabitants with water for fire and domestic purposes, and that this order shall be taken, deemed and held to be a certificate of public convenience and necessity therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hardman

J. D. Lannon

Commissioners.

Dated at Denver, Colorado, this
19th day of July, A. D. 1922.

DECISION No 535

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF COLORADO.

In the Matter of the Application of)
THE WRAY TELEPHONE COMPANY for Permission)
to Increase its Rates for Telephone Service.)

APPLICATION NO. 114.

July 18, 1922.

APPEARANCES:

Milton Smith and L. J. Williams for the Applicant Company and Dan J. McQuaid for the Town of Yuma.

STATEMENT

By the Commission:

On February 16, 1921, the Commission made an order in the above entitled matter that the applicant might file a schedule of rates in harmony with its application to embrace the rates embodied on page 2 of its application when it should have produced satisfactory proof to the Commission that the additional investment as proposed in its application and its testimony in support thereof had been made to its plant and system, and that reasonably adequate, satisfactory and efficient service is being rendered to the communities affected; and that upon completion of its work and additions to its plant and system, applicant should furnish the Commission with a sworn statement of the actual investment incurred thereby.

On June 17, 1922, the applicant appeared before this Commission at Denver, Colorado, upon notice having been given to the Town of Yuma and the Town of Wray, and produced evidence that the order above mentioned had been complied with, and furnished the Commission with a sworn statement of the actual investment incurred by the completion of the work and additions to applicant's plant and system.

There appearing no objection to the rates applied for in the Town of Wray, it was ordered by the Commission on the 17th day of June, 1922, that the rates heretofore referred to in the application herein for the Town of Wray be allowed to go into effect on the 1st day of July, 1922.

The Town of Yuma filed a protest against the proposed rates between Yuma and Wray and applied for a continuance of the case. The case was thereupon continued until July 15, 1922, at 9:30 o'clock, A.M. On said date the case was again continued by the Commission until July 17, 1922, at 10 o'clock A. M. At that time the matter again came on for hearing before the Commission. It was stated on behalf of the applicant that the toll rates described on page 2 of the application and classifications described on page 2 of the application to be established between the Wray and Yuma Exchanges should be modified as follows:

Station to station calls, ...	10¢
Person to person calls, ...	15¢
Appointment and messenger calls, ...	20¢
Report charge, ...	5¢

The initial period of conversation shall be five minutes for station to station calls; 3 minutes for person to person, appointment and messenger calls, and over-time period shall be 3 minutes for station to station calls and one minute for all other classes of calls; the over-time rate shall be five cents for station to station, person to person, appointment and messenger calls. The foregoing toll rates apply to day, evening and night calls.

Thereupon the Town of Yuma withdrew its protest to the toll rates between Wray and Yuma upon condition that the foregoing rates be established for said service.

ORDER

IT IS, THEREFORE, ORDERED That the schedule of rates of the applicant The Wray Telephone Company, filed with this Commission for service in the exchange of Wray, Colorado, as set forth on page 2 of its application herein, be and the same is hereby permitted to become effective July 1, 1922, the same having been ordered at the hearing on June 17, 1922.

IT IS FURTHER ORDERED That the following toll rates and classifications be and the same are hereby established between the Wray and Yuma Exchanges in the State of Colorado, effective July 21, 1922, as follows:

Station to station calls, ...10¢
Person to person calls, ...15¢
Appointment and messenger calls, ...20¢
Report charge, ... 5¢

The initial period of conversation shall be five minutes for station to station calls; 3 minutes for person to person, appointment and messenger calls, and over-time period shall be 3 minutes for station to station calls and one minute for all other classes of calls; the over-time rate shall be five cents for station to station, person to person, appointment and messenger calls. The foregoing toll rates apply to day, evening and night calls.

Dated at Denver, Colorado, this 18th day of July, 1922.

Grant E. Hoedemaker

[illegible]

[illegible]

Commissioners.

DECISION NO. 356

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF COLORADO.

In the Matter of THE WRAY TELEPHONE COMPANY.

July 18, 1922.

BY THE COMMISSION:

The Commission having this day issued its order fixing certain toll rates for said Company between Yuma and Wray, Colorado, the above named Company has filed its schedule embodying said rates, and has also included in said schedule a reduction in its rates between Wray and Eckley, Colorado, and Yuma and Eckley, Colorado.

IT IS THEREFORE ORDERED, That The Wray Telephone Company be and it is hereby authorized to file its schedule effective July 21, 1922, containing the following toll rates between Wray and Eckley, and Yuma and Eckley, Colorado:

Station to station calls, ... 10¢
Person to person calls, ... 15¢
Appointment and messenger calls . . 20¢
Report charge, ... 5¢

The initial period of conversation shall be five minutes for station to station calls; 3 minutes for person to person, appointment and messenger calls, and over-time period shall be 3 minutes for station to station calls and one minute for

all other classes of calls; the over-time rate shall be five cents for station to station, person to person, appointment and messenger calls. The foregoing toll rates apply to day, evening and night calls.

Dated at Denver, Colorado, this 18th day of July, 1922.

Commissioners.

(Decision No. 5571

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

The Bear River Coal Company, The Hayden Bros. Coal Corporation, The Mitchell Coal Company, The Routt-Pinnacle Coal Company, The International Fuel Company, The Colorado & Utah Coal Company, The Victor-American Fuel Company, Complainants, v. Charles Boettcher and William H. Freeman, Receivers of The Denver & Salt Lake Railroad Company, Defendants.	CASE NO. 254

July 20, 1922

Appearances: Keenan Hoffman, of Yeomans, Cove & Hoffman, and Robert H. Moore, of Moore & Nolan, for Complainants; Kinney L. Brock, for Charles Boettcher and William H. Freeman, Receivers of The Denver & Salt Lake Railroad Company, Defendants.

STATEMENT

By the Commission:

On March 11, 1922, there was received by this Commission complainants' complaint in Case No. 254, which was set down for hearing and was heard at the Hearing Room of this Commission, at the State Capitol, Denver, Colorado, March 29th, 1922.

By stipulation with counsel of both complainants and defendants, it was agreed that the record in Case No. 122, which was heard by this Commission on May 31st, 1917, should have the same force and effect as any other part of the record in the present case. Case No. 122 was almost identical with the case now under consideration, both as to evidence submitted and also as to the parties interested. This case was decided adversely to the defendants June 23rd, 1917, and the present

proceeding would have naturally been considered <u>ex adulteris</u> under the provisions of the Public Utilities Act but for the fact that the defendants in this case had filed, December 14th, 1921, a cancellation of allowance for application of car door boards; and this, through an oversight of the rate clerk in not calling the attention of the Commission thereto, became operative January 19th, 1922.

The testimony in this case shows that bituminous coal, east of the Missouri River, is almost wholly shipped in open top coal cars, designed especially for the transportation of this commodity. In Colorado, however, owing to shortage of open top equipment and the desirability of returning cars loaded, rather than empty, it has been considered an advantage to the carriers, rather than to the shippers, to furnish box and stock cars for bituminous coal movement.

The coal roads of Colorado, in view of the local conditions, have adopted and are working under the rule of furnishing the shippers car door boards free, or where car door boards are not furnished, then granting the shipper an allowance of 50 cents per car as part of the expense of furnishing boards or slabs, nails and the labor of affixing same to door openings.

Joint freight tariff No. 252-B, of the Denver & Salt Lake Railroad, P.U.C. No. 87, which cancelled joint freight tariff No. 252-C, provides as follows:

> "Where coal is loaded in box or stock cars minimum weight will be 60,000 pounds. If marked capacity of the car is less than 60,000 pounds, the marked weight capacity of the car will be the minimum weight."

The testimony of the witnesses in this case is practically unanimous that the major portion of the equipment furnished by defendants herein could not be loaded so as to hold the minimum requirements without the use of car door boards. In exceptional cases, where a long car is supplied and the minimum load of 60,000 pounds could be shoveled up in the ends of such a car, the testimony shows that such loading is entirely impractical

and unjustified. Experience in such loading shows that while cars thus loaded in rounding curves and switching in yards, causes lump coal to be thrown to center of car, thus breaking it up and causing the shipment to arrive at its destination in an impaired condition.

The evidence clearly shows, and this Commission finds the fact to be, that to ship coal in box or stock cars without car door board protection would result in damage to consignment; would result in bulging of car doors and cause liability to "side swiping," spilling and wasting of coal along track and in yards, and be a great danger and cause liability to injury and probably loss of life through derailments and wreckage which might be caused by coal falling on the railroad tracks of these defendants or the tracks of its connecting carriers.

The danger attendant on shipping coal without car door board protection was admitted by counsel for defendants, and he went so far as to say his company would not ship coal without such protection and pleaded that the problem presented was as to whether his company or the operators should supply same. In this connection the Commission finds that the allowance of fifty cents per car for car door protection by the railways of Colorado is no more than fair and should be allowed by the carriers.

The Victor-American Fuel Company in its exhibit "B" goes into detail as to cost of car door protection, and gives its estimate of cost for same over sixteen months' period, which is as follows:

Average feet car door boards used per car 60 feet. Cost of same 1.6 cents per foot.

Cost car door boards per car	$ .96
Cost nails per car	.08
Time one man 30 minutes at rate per day of 9 hours at $4.79	.27
Total cost per car	$ 1.32

Previous to the world war, the estimated cost of furnishing and applying car door boards per car was one dollar. Dividing this expense equally between the shipper and carrier during the period mentioned

would make an expense to each of fifty cents per car. Owing to increased costs, however, both during and since the war, the shipper has had to absorb about a 20% additional increase for this particular purpose.

June 25th, 1918, a 35% increase was granted on coal rates from the Canon, Valsenburg and Oak Creek districts. This increase brought the rate up to $2.15 per ton. On account of the desperate financial condition of The Denver & Salt Lake Railroad, the shippers on this line very magnanimously consented to another and additional increase of twenty-five cents per ton which compelled these operators to pay a freight rate of $2.40 per ton to Denver as against a rate of $2.15 from the competitive Canon and Valsenburg fields. August 26th, 1920, another 35% increase was granted from all the points mentioned, with the net result that the Oak Creek district rate was increased to $3.24 per ton, while their competitors in the Canon and Valsenburg fields were compelled to pay a freight rate of but $2.90½ per ton, or a handicap of 33½ cents per ton against the operators of the Oak Creek fields.

Competition between the various coal districts of Colorado and Wyoming is quite keen and the universal custom in both states is for the railroads to allow fifty cents per car for car door board protection. The shippers of the Oak Creek district feel the burden of the heavier freight rates they now have to bear over that paid by their competitors, and feel that the retention of the fifty cents per car allowance by The Denver & Salt Lake Railroad, added to the burden of the higher freight rate, makes the conditions so burdensome as to become unbearable. This Commission finds the fact to be that the disallowance of fifty cents per car to the shippers of coal over defendants' railroad amounts to and is an unwarranted and unjust discrimination against the complainants herein.

ORDER

IT IS THEREFORE ORDERED, That Charles Boettcher and William R. Wrenn, Receivers of The Denver & Salt Lake Railroad Company, shall file,

within ten days, with this Commission a supplement to their tariff No. 1-K, P.U.C. No. 62, reinstating allowance for car door boards as carried in Item No. 6 of aforesaid tariff.

IT IS FURTHER ORDERED, That the defendants herein be, and are hereby, ordered to make reparation of fifty cents per car to the shippers thereof on each and every box or stock car loaded with coal on The Denver & Salt Lake Railroad between January 19, 1922, and the date that allowance for car door boards is reinstated in the tariffs of these defendants.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

A. P. ANDERSON

(S E A L)

W. P. LARSON
Commissioners.

Dated at Denver, Colorado,
this 30th day of June, 1922.

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

* * *

The Bear River Coal Company, et al.,

Complainants,

v.

Charles Hertzber and William H. Bywaters, Receivers of The Denver & Salt Lake Railroad Company,

Defendants.

CASE NO. 884

July 31, 1922.

KALTENBACH, Commissioner:

I find myself unable to agree with my associates in the conclusions reached in the majority decision and order in the above entitled cause. I might, perhaps, content myself by merely announcing this dissent in the interest of brevity, but I deem it no more than fair to my associates and to the interested parties to give some of the reasons upon which my dissent is based.

As I understand the record, the defendants filed a tariff in December, 1921, cancelling the then existing tariff, which provided an allowance of fifty cents per car for shippers of coal over the Moffat Railroad for car dump hauls. This tariff became effective thirty days thereafter and on January 10, 1922. I further understand from the record that similar action was taken with reference to interstate shipments by filing such cancellation of tariff with the Interstate Commerce Commission so that after the effective date of the latter tariff, so far as car dump hauled allowance is concerned, shippers of coal intrastate and interstate over the Moffat Railroad were subject to the same conditions.

It may be contended, I think, that the carrier had the right to cancel its car door board tariff in the manner in which it did; so that the only question for decision is whether or not the removal from its tariff of the fifty cents per car for car door boards is discriminatory or unjust or unreasonable. It is conceded that the shippers of coal over the Denver & Salt Lake Railroad are all treated alike in this regard. The more fact, as stated in the majority order, that other carriers from the Sweet City and Valentine districts do make such an allowance under their tariffs is not evidence of discrimination by the Denver & Salt Lake Railroad, for the simple reason that said Railroad does not extend into the Sweet and Valentine fields. If the shipper on the Denver & Salt Lake Railroad was given such an allowance for car door boards and another shipper upon the same road was denied it, there would be clearly a case of discrimination as between shippers on the said line of railroad. In other instances there are different rules and regulations and tariffs existent upon the Denver & Salt Lake Railroad that are not in existence upon other lines of railroad in the Routt-in Public territory on intrastate commerce, and this is not discrimination. One railroad may have the advantage of topography, climate, density of traffic and all that sort of thing, whereby it is justified in having a different rule or tariff pertaining to a certain service than would another railroad in the same territory, and this is not discrimination as I interpret the Public Utilities law.

The majority order and decision, in effect, finds that because this Commission, on June 1, 1927, in Decision No. 118, required the Denver & Salt Lake Railroad Company to file a tariff containing the fifty cents per car for car door board allowance to shippers of coal, largely because it was and is customary for other carriers so to do, that thereby the matter is res adjudicata. To my mind the principle of res adjudicata does not apply in matters before a regulatory body, for the simple reason that a rule or schedule or rule that was found to be

reasonable in 1917 may, by reason of changed conditions and circumstances, be found to be unreasonable in 1922, or at any other period when the matter is brought to the attention of such regulatory body; so that to say the decision of June, 1917, is decisive of the issue presented in this case is a principle with which I am unable to agree.

It is conceded by all of us that a car door board is essential and necessary where coal is shipped in stock or box cars. The only question remaining, therefore, is, shall the carrier bear any of the expense of such additional equipment. The evidence clearly establishes the fact, I think, although the majority decision and order ignores that feature of it, that a number of the shippers of coal over the Denver & Salt Lake Railroad prefer stock and box cars rather than the open top cars, and particularly in the winter season when the stock and box car equipment affords protection from the elements to the commodity being shipped. It is said, with a great deal of zeal, by counsel for complainants that the carrier is charged with a common law duty of furnishing such equipment as is reasonably necessary for the transportation of the commodity moved. As a general principle this is true, but it does not apply to all commodities that are moved. It is a well known fact, and one with which this Commission may properly take notice, that in the tariffs of the carriers of potatoes out of the San Luis Valley and of northern Colorado it is provided that if "heater protection" is desired by the shipper of potatoes he must pay, in addition to the regular tariff rates, a certain sum for such heater service, the heater being furnished by the carrier; but the consignor or shipper of potatoes is required to pay a certain sum additional for the use of the equipment in protecting the potatoes from frost and injury in transit. The above is cited as one instance of the common law rule, so insistently urged, as not being applicable, for the simple reason that a carrier is not an insurer and is justified in accepting a particular commodity for movement under such reasonable rules and regulations, published in its tariffs, as will save itself from unnecessary and undue liability.

As before stated, the cancellation of the car door board allowance was filed with the Interstate Commerce Commission, as to interstate movements over the Denver & Salt Lake Railroad, at the same time that it was filed with this Commission with reference to intrastate traffic. The record discloses that no proceeding has as yet been instituted before the Interstate Commerce Commission to restore the car door board tariff allowance, and complainants' counsel give as a reason therefor that they may only take "one step at a time." In several other proceedings before this Commission it has become an established fact that approximately 95 per cent of the entire traffic of the Denver & Salt Lake Railroad is the movement of coal; and that approximately 47 per cent of that 95 per cent of coal is moved in interstate commerce, and these facts are fairly deducible from the record in this case. That being true, it would seem to us that the more logical method of procedure would be for the complainants to have instituted a proceeding before the Interstate Commerce Commission concerning the alleged discrimination of the Railroad in cancelling its car door board allowance on interstate commerce. If that tribunal, which has jurisdiction over 47 per cent of the coal movement of the railroad, would order the reinstatement of the car door board allowance, this Commission then would, as would, with entire propriety, follow suit as to the relatively small percentage of coal moved in intrastate traffic. In other words, and in the language of the vernacular, it appears to be an attempt to have the "tail wag the dog" in the instant proceeding. Counsel for defendants raises the point that the reason the other method of procedure was not followed may be accounted for, perhaps, from the fact that the Interstate Commerce Commission has, in number of cases, decided adversely to the contentions of complainants; and he cites several decisions of the Interstate Commerce Commission in support of that contention. One of such cases is the case of Sterling Salt Company v. Pennsylvania Railroad Company, 49 I.C.C., 274. Upon careful reading of

that case it appears to me to be controlling in this, as the principles involved are identical to my mind. In that case salt had been moved in bags or other containers under a certain tariff rate; and when the shippers had inaugurated the practice of shipping salt in bulk, with car door boards or inside doors to protect the bulk salt shipment against loss in transit, no change was made in such rates. The complainants sought compensation for the installation of such inside doors, which were necessary in shipping salt in bulk, and the contention was made that it was the duty, in that case, for the carrier to furnish such equipment as was necessary to move the commodity without loss in transit. There was nothing in the evidence in that case to show that the rates for the transportation of salt included anything for the cost of installing the car doors, but included merely the rates in effect for the movement of bulk salt; and the Interstate Commerce Commission denied the relief sought and declared it not to be unjust discrimination, until and unless the Railroad should make similar payment for such car doors to other shippers of bulk salt. So in the instant case the rates for the shipment of coal remain the same whether the coal is shipped in a stock or box car or in an open top coal car. The carrier receives nothing additional for transporting coal, whether it be protected by car door boards or not; and, as formerly stated, many of the coal shippers, according to the evidence, prefer box cars to open top cars for such coal movement as being better suited to climatic and other conditions for the trade in this region of the country; so that the inability of the carrier to furnish open top cars in sufficient quantities to meet the needs of the coal movement over the Denver & Salt Lake Railroad is not of controlling importance to my mind.

Finally, this Commission has, in numerous instances, sanctioned and permitted the doing or not doing of things by the Denver & Salt Lake Railroad that it would not permit upon other railroads, for the simple reason that it is a notorious fact that the Denver & Salt Lake Railroad Company is not a "going concern." For instance, we have permitted the

discontinuance of daily passenger service; we have granted a 15 per cent increase in rates over the Denver & Salt Lake Railroad, shortly subsequent to the decision in Application No. 81, in order to give the Railroad the benefit of a 25 per cent increase, in harmony with carriers in the western territory, rather than a 25 per cent increase, as allowed by the Interstate Commerce Commission upon carriers in the Mountain Pacific territory.

These things and other things were done by this Commission in the desire to do all in its power to keep the Denver & Salt Lake Railroad in operation at all. Its deficits in operating income run into hundreds of thousands of dollars yearly. As to the statement I make that said Railroad is not a "going concern," in the real meaning of that phrase hardly admits of argument. Were it otherwise and were the Denver & Salt Lake Railroad Company earning more than its operating expenses it would be required, at least it could rightfully be required, to observe the general rules, practices and customs of other carriers in this State with reference to car door board allowances, rates, adequate train service, depot facilities and the like; but until such time arrives, if ever, this Commission ought, in concert with the patrons of said Railroad, to do everything in its power to keep train service, poor as it is, in operation. The patrons of the Denver & Salt Lake Railroad Company, whether they be coal operators, farmers, stockmen or otherwise, have not enjoyed, do not enjoy and, until conditions are very materially improved, will not enjoy the same service, the same rates or the same practices as are enjoyed by the patrons of a real railroad.

Under all the circumstances disclosed by the record in this case, I think the tariff filed cancelling the car door board allowances, effective January 19, 1922, should be allowed to remain and that said Denver & Salt Lake Railroad Company ought not to be required to make

reparation in any amount to shippers of coal in box or stock cars, as ordered by the majority of this Commission.

(S E A L)

GRANT H. HALLENBECK
Chairman.

Dated at Denver, Colorado,
this 31st day of July, 1922.

I do hereby certify that the above and foregoing is a true and correct copy of the original dissenting opinion of the Chairman 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. 558)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application)
of The Canon-Reliance Coal Company) APPLICATION NO. 136
for an Order for 300 Additional)
K.V.A. Capacity.)

April 23, 1922
July 20, 1922, nunc pro tunc.

Appearances: E. I. Thayer and Berrien Hughes, of Denver, for Applicants; Charles R. Brock, of Denver, for The Trinidad Electric Transmission Railway and Gas Company, Respondent.

S T A T E M E N T

By the Commission:

On March 27, 1922, J. S. Cheyney, Receiver of applicant, The Canon-Reliance Coal Company, filed his petition before the Commission to compel obedience to the order of the Commission heretofore and on November 22, 1921, entered in the above entitled matter, and for enforcement of penalties provided by the Public Utilities Act for violation of said order, and asked the Commission to issue a citation against The Trinidad Electric Transmission Railway and Gas Company and W. P. Southard, its General Manager, in proceedings for contempt.

Upon the filing of said petition, the Commission issued its order or citation to said The Trinidad Electric Transmission Railway and Gas Company and W. P. Southard, its General Manager, respondents, requiring them to be and appear before this Commission on Thursday, April 13, 1922, at the Hearing Room of the Commission, Capitol Building, Denver, Colorado, then and there to show cause, if any, why the Commission should not subject the respondents, and each of them, to the penalties provided in the Public Utilities Act for a failure to comply with the aforesaid order of the Commission. This citation was issued

March 31, 1922, and duly served upon each of said respondents with a copy of the receiver's petition aforesaid thereto attached.

The petition of receiver set forth at length the history of the matters in dispute and the terms of the order of November 22, 1921, and of the petition for rehearing, and its denial, and the reasons why the respondents should be proceeded against to compel obedience to said order of November 22, 1921, and punished for a violation thereof.

The respondents, The Trinidad Electric Transmission Railway and Gas Company and W. P. Southard, its General Manager, filed, on April 13, 1922, their joint answer to the aforesaid petition of said receiver, wherein is set forth at considerable length specific denials of any intention to violate the order of the Commission aforesaid, and other reasons and causes why respondents, and each of them, were not subject to the charge asserted by petitioner of disobedience to said order of November 22, 1921.

Upon the filing of said answer at the time fixed for the hearing aforesaid, petitioner being represented by E. I. Thayer, Esq., one of his attorneys, and respondents by Charles R. Brock, Esq., one of their attorneys, the Commission took up for consideration the issue presented by the citation directed against the respondents as in proceedings for contempt for the alleged failure to obey the order of the Commission aforesaid; which issue was heard upon the allegations contained in the petition and in the answer thereto.

Arguments of counsel were heard by the Commission at great length upon the issue thus presented, at the conclusion of which the Commission took the matter under advisement as to the contempt charges, and continued the hearing as to other issues presented.

From the allegations of the petition and the answer of respondents, and upon consideration of argument of counsel, respectively, the Commission is clearly of the opinion that no intentional violation of the

Commission's order of November 22, 1921, was committed by the respondents, or either of them, in the sense of their being in contempt of said order.

Upon due consideration given and the Commission now being sufficiently advised in the premises,

IT IS ORDERED by the Commission that the rule or citation issued against the respondents, and each of them, as in proceedings for contempt be, and the same is, hereby discharged.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
April 23, 1922,
July 20, 1922, nunc pro tunc.

(Decision No. 560)

Before the Public Utilities Commission
of the State of Colorado

In the Matter of the Application of)
The Canon-Reliance Coal Company for)
an Order for 300 Additional K. V. A.) APPLICATION NO. 136
Capacity.)

July 21, 1922

Appearances: Hughes and Dorsey, of Denver, for Applicant, The Canon-Reliance Coal Company; Charles R. Brock, of Denver, for Respondent, The Trinidad Electric Transmission Railway and Gas Company.

By the Commission:

Hearing of the matters involved in the above entitled application (aside from the citation issued against respondent on March 31, 1922, which has heretofore been disposed of) was originally set for April 25, 1922, and thereafter, at the request of the interested parties, such hearing was continued from date to date, the last continuance being to July 26, 1922. These various continuances were granted with the expectation and hope by the parties interested that they might be able to agree upon some terms of settlement or compromise of the differences existing.

This result has been accomplished as is evidenced by a stipulation in writing duly entered into and signed by the applicant and the respondent above named, filed July 20, 1922, together with a contract, entered into by and between the parties, attached to said stipulation.

The terms of the stipulation are to the effect that the order made and entered herein on November 22, 1921, in the above entitled matter, shall be vacated and set aside, and that this proceeding be dismissed for the reason that all matters at issue in said cause have been adjusted to the satisfaction of the parties thereto.

O R D E R

IT IS, THEREFORE, ORDERED, That the order made and entered herein on November 22, 1921, shall be, and the same is, hereby vacated and set aside.

IT IS FURTHER ORDERED, That the above entitled application be, and the same is, by virtue of the stipulation aforesaid, dismissed; and the hearing of the same set for July 26, 1922, be, and the same is, hereby vacated.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Emeau,

H. L. Lawson

Commissioners.

Dated at Denver, Colorado,
this 21st day of July, 1922.

(Decision No. 581)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of Reparation between)
The Atchison, Topeka and Santa Fe)
Railway Company and Union Pacific)
Railroad Company, Defendants, and) R.R. Claim X-RC-1721
The Colorado Portland Cement Com-)
pany, Claimant.)

(July 25, 1922)

STATEMENT

By the Commission:

Whereas, The Atchison, Topeka and Santa Fe Railway Company and the Union Pacific Railroad Company, in their application dated April 14, 1922, request authority to make reparation to The Colorado Portland Cement Company on nine carloads of cement, covered by Portland, Colorado waybills 580-September 10, 607-September 17, 663-September 28, 650-September 27, 677-October 1, 711-October 9, 735-October 14, 572-September 9, 1920, and 46-February 18, 1921, destined Cornish, Greeley, Brighton, Lupton, Briggsdate, Fort Collins and Cornish, Colorado.

And further, that the freight charges collected on the nine carloads amounted to $1,384.74 based on an increase of 33-1/3% was unreasonable and the correct charge should have been $1,317.12 based on an increase of 25% as published in A.T.& S.F. tariff 10659-E, effective May 16, 1921, about nine months after the shipments moved, and the Commission finds that the claimant is entitled to reparation in the sum of Sixty-Seven and 62/100 ($67.62) Dollars.

ORDER

IT IS THEREFORE ORDERED, That the Atchison, Topeka and Santa Fe Railway Company and the Union Pacific Railroad Company, Respondents be, and they are, hereby directed to pay to The Colorado Portland Cement Company, Claimant, the said sum of Sixty-Seven and 62/100 ($67.62) Dollars on or before September 20, 1922.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Isaac E. MacFarlane,

H. D. Lamson

XXXXXXXXXXXXXX
Commissioners.

Dated at Denver, Colorado,
this 25th day of July, 1922.

(Decision No. 54)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of F. W. Roddy and C. L. Roddy for a Certificate of Convenience and Necessity for the Construction and Operation of a Telephone Company, to be known as The Branson Telephone Company, at Branson, Colorado.

APPLICATION NO. 187

August 5, 1922.

Appearances: F. W. Roddy, for the co-partnership known and doing business as The Branson Telephone Company.

S T A T E M E N T

By the Commission:

The Branson Telephone Company filed its application before this Commission April 28, 1922, for a certificate of convenience and necessity for the construction and operation of a telephone line between Kim and Branson, Colorado, via Atwell, Alcreek and Tobe, and within the town limits of each of said places, and rural lines adjacent thereto.

Upon reception of said application, copies thereof were served upon The Mountain States Telephone and Telegraph Company, there being no other such utility known to exist within that field, with the result that, upon May 10, 1922, The Mountain States Telephone and Telegraph Company filed its answer herein, in and by which said Company consented to the granting of the application as it was not serving and had never served that territory.

The matter was set for hearing before the Commission at its hearing room, State Office Building, Denver, Colorado, June 1, 1922, at 10:00 o'clock A. M.; and, by consent, to suit the convenience of the parties interested, the hearing was continued until August 2, 1922, at the same place.

F. W. Roddy was the representative of the applicant and the only person in attendance at said hearing. He testified, in substance, that The Branson Telephone Company was a co-partnership composed of the witness and C. L. Roddy; that in the territory in which they proposed to construct such telephone lines, and in fact had constructed the greater portion thereof, the total distance to be covered is about forty-seven miles of grounded line with a thirty drop switchboard out of Kim, which includes Atwell, Alcreek and Tobe; that in the entire project there would be when fully completed about sixty-five miles of grounded line; that different lines, which are called farmers' lines, run into their switchboards at Branson and at Kim; and that the territory to be served had not and never had been served prior to the establishment of The Branson Telephone Company with telephone facility; that up to the present time there had been invested in this enterprise some $3,500 to $4,000; that the line runs nine miles north of Branson, thence in a general northeasterly direction through Alcreek to Tobe, about thirty-two miles from Branson, thence east fourteen miles, and thence north two miles to Kim; that this would be the general line of telephone construction except as it might be changed in the future to conform to highway construction; that all said lines were constructed over public roads and state highways and that the consent of the commissioners of the county (Las Animas) in which the lines are located had been secured for the construction of said telephone lines.

The witness further testified that it was a great convenience and practically a necessity to the people of the territory served that they be furnished with some telephone facility.

Considering such testimony, the Commission feels that it would be justified in finding that the public convenience and necessity would be subserved by the construction of a telephone line between the designated communities. In this day and age of the world, it seems to be one of the necessities for any community that is at all progressive and wishes to be in the world of affairs.

O R D E R

IT IS THEREFORE ORDERED, That The Branson Telephone Company, a co-partnership composed of F. W. Roddy and C. L. Roddy, be, and they are hereby, authorized to construct and operate a line of telephone communication over the route in their application described, and that the public convenience and necessity requires, and will require, the construction and operation thereof; and that this order shall be taken, deemed and held to be a certificate of convenience and necessity therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 5th day of August, 1922.

(Decision No. 563)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Union Pacific Railroad Company for the Abandonment of Three Highway Crossings in Weld County, Colorado, over the Tracks of the Union Pacific Railroad Company on Dent Sub-Division between Mile Post 44.83 and Mile Post 45.39.

APPLICATION NO. 184

August 10, 1922

S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the Union Pacific Railroad Company, a corporation duly organized and existing under and by virtue of the laws of the State of Utah and duly qualified to do business within the State of Colorado, in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, for the abandonment of three public highway crossings, to-wit: The first at Mile Post 44.83 in the Southwest Quarter of the Northwest Quarter (SW¼ of NW¼), Section 8, Township 4 North, Range 66 West of the 6th Principal Meridian; the second at Mile Post 45.18, being located on the line between the Northeast Quarter of the Northwest Quarter (NE¼ of NW¼), and the Northwest Quarter of the Northeast Quarter (NW¼ of NE¼) of said Section 8; the third at Mile Post 45.39 in the Northwest Quarter of the Northeast Quarter (NW¼ of NE¼) of said Section 8.

On March 11, 1922, the Commission's engineer viewed these crossings and, in his report to the Commission, he states that in his opinion these crossings should be abandoned to the end, intent and purpose that accidents may be prevented and the safety of the public promoted.

On April 18, 1922, the Board of County Commissioners of Weld County filed their answer to the application of the railroad company wherein they say, "They admit all the allegations in the application of the Union

Pacific Railroad Company herein filed, asking the abandonment of three highway crossings in Weld County over the tracks, Dent Sub-Division, Union Pacific Railroad Company, as described in said application. Respondents, on behalf of Weld County, consent and agree that said crossings may be abolished; and they further waive the right to a formal hearing on said application and agree that if an order is issued, Weld County will promptly comply with such order."

On April 24, 1922, this Commission notified each adjacent property owner of the matters contained in this application and received their reply wherein they state that they have no objection providing suitable private crossings be established for their convenience on reasonable terms. On July 29, 1922, this Commission received copies of contracts for private crossings with each of the abutting property owners indicating that satisfactory arrangements had been made.

In view of the fact that the Union Pacific Railroad Company and the County Commissioners of Weld County, after being fully advised of these matters, have consented to the terms and conditions as hereinafter made in the order, and that the adjacent property owners, after being duly notified, have accepted private crossings under satisfactory conditions, and no other objections having been filed, the Commission will, therefore, issue its order granting permission for the abandonment of the crossings as requested.

O R D E R

IT IS THEREFORE ORDERED, That in accordance with Section 29 of the Public Utilities Act, as amended April 16, 1917, permission is hereby granted to abandon three public highway crossings over the main line track and right-of-way, Dent Sub-Division, of the Union Pacific Railroad Company in Weld County, Colorado, at the following points, to-wit: The first at Mile Post 44.83 in the Southwest Quarter of the Northwest Quarter (SW¼ of NW¼), Section 8, Township 4 North, Range 66 West of the 6th Principal Meridian; the second at Mile Post 45.18, being located on the line between the

Northeast Quarter of the Northwest Quarter (NE¼ of NW¼) and the Northwest Quarter of the Northeast Quarter (NW¼ of NE¼) of said Section 8; and the third at Mile Post 45.39 in the Northwest Quarter of the Northeast Quarter (NW¼ of NE¼) of said Section 8.

IT IS FURTHER ORDERED That in the matter of the expense of the abandonment of said highway crossings that that portion pertaining to the railroad property, including the removal of said crossings and the building of the necessary right-of-way fences, shall be borne by the applicant, the Union Pacific Railroad Company; and that all other expense, including the building of the highway, necessary in connection with said abandonments shall be borne by Weld County.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

A P Anderson

H. L. Lawson

Commissioners.

Dated at Denver, Colorado,
this 10th day of August, 1922.

(Decision No. 564)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the County Commissioners of Conejos County, State of Colorado, for the Changing of a County Road over the Track and Right-of-Way of The Denver and Rio Grande Western Railroad Company near the Station of Cumbres in Section 18, Township 32 North, Range 5 East, New Mexico Meridian, to a Point About 300 feet East, in Conejos County, Colorado.	APPLICATION NO. 199

August 10, 1922

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 Conejos County, in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, for the changing of a public highway crossing over the main line track of The Denver and Rio Grande Western Railroad Company in Section 18, Township 32 North, Range 5 East, New Mexico Meridian, to a point about 300 feet east of its present location. This change in location of the crossing is necessary for the proper service, accomodation and convenience of the public in the reconstruction of the state highway, which will form the shortest and most practical route connecting the San Juan Basin of southwestern Colorado with the eastern portion of the State.

The Commission's engineer inspected the site of the proposed crossing and reports that the view of approaching trains is good in all directions.

The County Commissioners of Conejos County and The Denver and Rio Grande Western 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 change of location of the crossing as 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, permission is hereby granted to abandon the present crossing over the tracks and right-of-way of The Denver and Rio Grande Western Railroad Company near Cumbres station in Section 18, Township 32 North, Range 5 East, New Mexico Meridian, and to establish in lieu thereof a crossing over said right-of-way and track at a point about 300 feet east of the present crossing in Conejos 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 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 respondent, The Denver and Rio Grande Western Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

A P Anderson

E. L. Lawson

Commissioners.

Dated at Denver, Colorado,
this 10th day of August, 1922.

(Decision No. 5635)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of Conejos County, in the State of Colorado, for the Moving of a Crossing over the Right-of-Way and Tracks of The Denver and Rio Grande Western Railroad from its present Location at a Point Near Mile Post 333 in Section 18, Township 32 North, Range 5 East, New Mexico Meridian, to a Point about 425 feet East in Conejos County, Colorado.

APPLICATION NO. 200

August 10, 1922

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 Conejos County in compliance with Section 29 of the Public Utilities Act of the State of Colorado, as amended April 16, 1917, for the changing of a public highway crossing over the main line track and right-of-way of The Denver and Rio Grande Western Railroad Company from its present location near Mile Post 333 in Section 18, Township 32 North, Range 5 East, New Mexico Meridian, to a point about 425 feet east. This change in location of the crossing is necessary for the proper service, accomodation and convenience of the public in the reconstruction of the state highway, which will form the shortest and most practical route connecting the San Juan Basin of southwestern Colorado with the eastern portion of the State.

The Commission's engineer inspected the site of the proposed crossing and reports that the view of approaching trains is good in all directions.

The County Commissioners of Conejos County and The Denver and Rio Grande Western 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 change of location in the crossing as 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, permission is hereby granted to abandon the present crossing over the main line track and right-of-way of The Denver and Rio Grande Western Railroad near Mile Post 333 in Section 18, Township 32 North, Range 5 East, New Mexico Meridian, and establish in lieu thereof a crossing at a point about 425 feet east of said present crossing; 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 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 respondent, The Denver and Rio Grande Western Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

A. P. Anderson

Commissioners.

Dated at Denver, Colorado,
this 10th day of August, 1922.

(Decision No. 546)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of a Reduction in Freight Rates of Ten Percent, Effective July 1, 1922, of The Denver and Salt Lake Railroad Company, and its Receivers, in Conformity with the Suggestion of the Interstate Commerce Commission in its Docket No. 13293, Reduced Rates - 1922.

CASE NO. 261

(September 6, 1922)

STATEMENT

By the Commission:

After the findings of the Interstate Commerce Commission in Docket No. 13293, Reduced Rates - 1922, 68 I.C.C. 676, W. R. Freeman and C. Boettcher, Receivers of the Denver and Salt Lake Railroad, applied to the Interstate Commerce Commission for exemption from said order upon the grounds that they were not in position financially to make the reduction contemplated by the findings of the Commission in that case.

Upon said application of the Receivers of the Denver and Salt Lake Railroad, a hearing was held before Division 3 of the Interstate Commerce Commission in Denver, Colorado, beginning July 31, 1922.

In connection with said hearing, the Interstate Commerce Commission invited this Commission to sit jointly with them so that this Commission might at the same time consider the matter of intrastate rates also. This invitation was accepted and on July 22, 1922, a notice was issued by this Commission entitled as above and served upon the Receivers of the Denver and Salt Lake Railroad and other carriers in Colorado, particularly including all carriers participating with the

Denver and Salt Lake in joint through rates to destinations in Colorado.

As a result of the hearing the Interstate Commerce Commission on August 3, 1922, made its findings and order denying the application of the Receivers of the Denver and Salt Lake Railroad exemption from the findings insofar as the interstate rates on coal were concerned without, however, requiring any reduction on other commodities, and ordered the Receivers to cease and desist on or before September 17, 1922, and thereafter to abstain from publishing, demanding or collecting the present interstate joint rates on coal from points on the Denver and Salt Lake Railroad to points on participating lines in Wyoming, Kansas, Nebraska, Iowa, North Dakota, and South Dakota, and by said order the Interstate Commerce Commission further required the Receivers of the Denver and Salt Lake Railroad to establish on or before September 17, 1922, upon notice to the Commission and the general public of not less than five days, and thereafter to maintain and apply joint interstate rates on coal reduced as specified in the original findings of the Commission in said case, which amounts substantially to a reduction of ten percent of the rates in effect at the time of the original findings of the Commission in said cause.

This Commission allowed increases in rates effective September 1, 1920, in conformity with the increases ordered by the Interstate Commerce Commission in Ex Parte 74, and from the evidence introduced in the joint hearing herein, and in view of the findings and order of the Interstate Commerce Commission requiring a reduction in coal rates at this time in interstate commerce, this Commission finds that a corresponding reduction should be made in intrastate coal rates so as to preserve the same relationship between interstate and intrastate rates on coal as existed immediately prior to the reduction in interstate rates ordered by the Interstate Commerce Commission.

The Interstate Commerce Commission at the time of the hearing of this case in Denver also heard the argument of counsel in

another case involving the divisions of the joint interstate rates on coal and rendered a decision also on August 3rd in that case. So far as the hearing before this Commission was concerned, however, the question of divisions was not involved and it is expected that the participating carriers will agree upon the divisions of joint intrastate coal rates, and in the absence of such agreement the matter may be presented to this Commission for further hearing.

The Commission therefore finds that the local and joint intrastate rates on coal now in effect, from mines on the Denver and Salt Lake Railroad, will be unjust and unreasonable on and after September 17, 1922.

O R D E R

IT IS THEREFORE ORDERED, That W. R. Freeman and C. Boettcher, as Receivers of the Denver and Salt Lake Railroad be, and they are, hereby required to file with this Commission and make effective on September 17, 1922, on not less than five day's notice to the Commission and to the general public, and in the manner prescribed by the Act, rates on intrastate shipments of coal which will be ten percent less than the rates now in effect for such traffic.

IT IS FURTHER ORDERED, That carriers now participating with the Denver and Salt Lake Railroad in joint intrastate coal rates from mines located on the Denver and Salt Lake Railroad to intrastate destinations be, and they are, hereby required to participate with the Receivers of the Denver and Salt Lake Railroad in the establishment of the rates ordered hereby.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Commissioners.

Dated at Denver, Colorado,
this 6th day of September, 1922.

(Decision No. 567)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of)
The Silverton Railway Company for a)
Certificate of Public Convenience and)
Necessity Authorizing the Abandonment) APPLICATION NO. 176
of its Line of Railway and the Opera-)
tion Thereof.)

September 15, 1922.

Appearances: For the Applicant, Attorney Frank L. Ross; for the Protestants, G. A. Stahl; W. A. Way, for San Juan County, Town of Silverton and Silverton Commercial Club; E. E. Wheeler, for Ouray County and Town of Ouray; George M. Collins, for Colorado Metal Mining Board, Colorado Metal Mining Association, and Red Mountain Mines Company.

STATEMENT

By the Commission:

This application was filed with the Commission March 25, 1922, and was set down for hearing at the Hearing Room of the Commission, Denver, Colorado, May 22 and May 23, A. D. 1922, and was continued for further hearing to July 27, 1922. The application submitted asked for a certificate authorizing the abandonment as to intrastate commerce of the applicant's railroad, located in San Juan and Ouray counties, Colorado, for which a certificate has been issued by the Interstate Commerce Commission of the United States authorizing an abandonment of said railroad as to interstate and foreign commerce.

The applicant herein owns and asks permission to abandon and remove the rails of the Silverton Railroad, a line extending from the Town of Silverton, in San Juan county, northerly toward and extending into Ouray county, and serving what is known as the Red Mountain Mining District. The road is about sixteen miles in length, a narrow gauge,

and having no rolling stock of its own, but leasing engines and cars from The Silverton Northern Railroad Company, with which it is connected at Silverton. No trains were run over this road during the years 1921 and 1922. In 1920, and prior thereto, the business was intermittent and fluctuating according to the conditions of the mining operations in the Red Mountain Mining District, but at no time during the past ten years has the road shown a profit and the railroad company has never been able to pay interest on its bonds or dividends on its stock.

This railroad was constructed in 1887, at a time when the mining district was quite active. A smelter was being operated at the Silverton end of the line, a large number of mining properties were producing along the line of this road, and a large tonnage was available, consisting of crude ore for down freight, and coal, timber and mining supplies for up freight; and, in addition, passenger, mail and express traffic.

On account of the panic in 1893, the mining industry in the Red Mountain district gradually declined until it was practically closed down in 1896. Since that time several efforts have been made to revive mining in the district. In 1904 the railroad company was reorganized and the present company obtained title. About $40,000 was spent in betterment and repairs of the railroad. A large amount of capital was used in developing mining properties in the district without satisfactory result in the way of supplying an adequate railroad tonnage. During the present period of depression in the mining industry, practically all the mines have been closed down and there has been no tonnage available for operation of the railroad.

The Silverton Railroad is in a high altitude. The winters are severe and the snowfall is heavy. The road was operated only six

or seven months of each calendar year; the ruling grade is 5.85 per cent; the maximum curvature is forty degrees; there are no incorporated municipalities along the line of road, save and except the southern terminal, Silverton. The population of the territory tributary to the line, outside of Silverton, is approximately twenty. For the five years ending December 31, 1920, operating revenues totaled $52,508.12. The operating expenses were $55,486.84. The loss on the railroad operations for the five year period was $8,887. No interest was paid on bonds and no dividends were paid on the capital stock. There were no operations whatever during the years 1921 and 1922. There is at this time no tonnage in sight to justify the operation of the railroad. In addition to the foregoing, the roadbed and ties are in such a deplorable condition that the road could not be operated without a large expenditure for replacements and repairs.

The protestants have admitted the existing conditions, but have asked that abandonment proceedings be denied temporarily on the claim that a mining revival and improvements in mining conditions within a reasonable time would produce a tonnage sufficient to justify operating the road in the future. This phase of the case has been gone into to a considerable extent by the parties interested and the Commission has given considerable study to this question with the idea that some practical means could be found to preserve the railroad for the district without injury to the applicant or the owners of its stock and bonds and without doing violence to the constitutional rights of the applicants. Upon these issues most of the evidence was received and arguments addressed.

Were conditions such that temporary suspension of the mining industry in that district was the fundamental reason for the temporary lack of tonnage, and there were sound reasons to believe that within a year or so the return to normal conditions in the mining industry would

produce a tonnage sufficient to justify the operation of the railroad, the Commission would be more than pleased to exercise its discretion in retaining the railroad; but an examination of the evidence and a survey of the conditions prevailing in the district establish conditions as such that we must conclude that delaying the abandonment of the road would simply cause loss and injury to the applicant without there being any reasonable expectation of a sufficient amount of business being developed even if the mining industry should revive within the next two or three years.

The original tonnage of this road consisted of crude ores, coal for power purposes, mining supplies and mail, passenger and express. The district is now traversed by power lines of The Western Colorado Power Company and practically all the mines in recent years use electric power in place of steam; hence, there is no future coal tonnage available. A first-class automobile road of easy grade has been constructed under joint supervision and expense of the Forestry Reserve and Highway Department of the United States and State Highway Department of the State of Colorado and the counties of San Juan and Ouray. Automobiles and trucks have been and will continue to be operated in the future on this highway; and the mail, passenger and light freight service has been lost to the railroad for several years; and, in the future, there is no prospect of the railroad company receiving any revenues for any such service. The only remaining possibility of revenue would be from heavy freight service or handling of the ores produced in the mining properties. There is, however, no such tonnage available at present, and while there is considerable variance in the opinions of the witnesses as to the future possibilities of tonnage from the ores, the evidence shows that the future possibilities of the district are largely conjectural and will at best depend on handling successfully on a commercial basis the low grade ores of such nature and value that

they could not during former operations be shipped as crude ores. This necessarily means that some process of concentration and smelting must be worked out in order to justify operation of the mines. Concentrating plants of necessity mean a greatly reduced tonnage. If concentration takes place at the mine, then the future tonnage for the railroad would be the concentrates from the mines. This tonnage would be small. Considering the loss of coal shipments, mail, passenger and light freight, it is extremely doubtful if there would be sufficient business to justify operating the railroad even if concentration should take place at Silverton, Durango or some outside point.

When revival will take place, if at all, is very uncertain; how much tonnage there would be if such revival takes place, is unknown; whether the shipments would be concentrates or crude ore depends upon future experiments and developments. The possibilities of the future are obscured in a maze of uncertainties. In the meantime, the railroad is deteriorating in value and the owners are asking permission to charge off the former losses by abandonment of the road. The Interstate Commerce Commission, after due hearing of all the parties interested, has granted such permission insofar as interstate commerce is concerned, under the facts as they exist, and this Commission cannot find that the future possibilities are such as to justify it in refusing to grant to the applicant herein the permission asked for.

O R D E R

IT IS THEREFORE ORDERED, That as to intrastate commerce the present and future public convenience and necessity permit the abandonment by The Silverton Railway Company of its line of railroad described in the application filed herein.

IT IS FURTHER ORDERED, That the said The Silverton Railway Company be, and it is hereby, authorized and permitted to abandon its said line of railroad as to intrastate commerce; and,

IT IS FURTHER ORDERED, That said The Silverton Railway Company may file schedules cancelling tariffs applicable to intrastate commerce on said line of railroad, if any, and may remove the rails and dispose of its holdings and properties in such manner as it may be advised; and, at the proper time, file reports and schedules with this Commission showing what disposition was made thereof and what action is taken under this Order so that the Commission may be advised; and this shall be deemed its Certificate of Convenience and Necessity therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Emmons

A. P. Anderson

W. D. Lamson

Commissioners.

Dated at Denver, Colorado, this
15th day of September, A. D. 1922.

(Decision No. 568)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of the Board of County Commissioners of Weld County for the Opening of a Public Highway Over the Right-of-way and Track of the Chicago, Burlington & Quincy Railroad at a Point Where the Section Line between Sections 28 and 29, Township 2 North, Range 64 West of the 6th Principal Meridian Intersects said Railroad Track in Weld County, Colorado.

APPLICATION NO. 217

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September 21, 1922.

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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 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 on the section line between Sections 28 and 29, Township 2 North, Range 64 West of the 6th Principal Meridian.

On August 18 an inspection was made of this proposed crossing by the Commission's railway engineer, together with the Board of County Commissioners, the county engineer of Weld County and the assistant engineer of the Chicago, Burlington & Quincy Railroad Company. The view is good in all directions, and it was generally agreed that the crossing is a necessity. All details of installation were agreed to by the county and the Railroad Company. On September 8 this Commission was in receipt of a letter from Mr. E. E. Whitted, Attorney for the Chicago, Burlington & Quincy Railroad Company, wherein he states that the officers

of said Railroad Company have no objections to the crossing, provided the details of installation are satisfactorily agreed to between the interested parties.

The County Commissioners of Weld County and the Chicago, Burlington & 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 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 & Quincy Railroad Company on the section line between Sections 28 and 29, Township 2 North, Range 64 West of the 6th Principal Meridian in Weld 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, and also including any expense that may be necessary in connection with an irrigation ditch that now crosses the right-of-way of said Railroad Company on the line of the proposed highway, be borne by Weld 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, Chicago, Burlington & Quincy Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 21st day of September, 1922.

(Decision No. 568A)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of Elbert County, 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 on the Section Line Between Sections 25 and 26, Township 10 South, Range 60 West of the 6th Principal Meridian, Elbert County, Colorado.

APPLICATION NO. 145

September 25, 1922.

Appearances: E. E. Gray, Simla, Colorado, for the Board of County Commissioners of Elbert County, and other interested parties, Complainants; D. Edgar Wilson, Denver, Colorado, for Chicago, Rock Island and Pacific Railway Company, Defendant.

S T A T E M E N T

By the Commission:

This matter comes before the Commission on an application filed September 8, 1921, by the Board of County Commissioners of Elbert County, Colorado, which application states that the said Board of County Commissioners has established a highway on the section line between Sections 25 and 26, Township 10 South, Range 60 West of the 6th Principal Meridian, and opened the same for public use, and that said highway crosses the main line track of the Chicago, Rock Island and Pacific Railway at a point where permission is asked in this application that a crossing be established.

The application further states that there is being used at the present time a temporary crossing at a point approximately 900 feet west of the crossing established by the Board of County Commissioners of Elbert County; that the crossing now in use passes beneath a bridge at a point where said railway crosses Big Sandy Creek; that the road leading to this

temporary crossing is inside the right-of-way of said railway and passes over low and marshy ground which is under water at frequent intervals, keeping said temporary road in an impassable condition; that it would be impracticable to construct a detour to reach the open crossing to the Town of Simla, which is three-quarters of a mile west of said section line; that the residents of Elbert County, and more particularly those residing adjacent to the crossing established by the Board of County Commissioners of Elbert County, are greatly inconvenienced by reason of the fact that they are unable to use said established crossing; that the rural mail delivery route uses the temporary crossing and the mail service is greatly impaired thereby; that there has been expended on the county road approaching the crossing established by the Board of County Commissioners of Elbert County more than $20,000.

Upon the filing of the application, it was served upon defendant Railway Company and, after being granted additional time for reply, a protest was filed in this office by said Railway Company on November 7, 1921. This protest alleges that the present crossing at Big Sandy Creek "is adequate for all purposes of the traffic involved and the convenience of the public in crossing the line of railway of protestant." It further states, "that the establishment of a grade crossing at the point indicated in the application referred to, being within three-quarters of a mile of the crossing at Simla, unnecessarily multiplies the number of such crossings; and by reason of the fact that grade crossings are inherently dangerous, and that the present public policy tends to eliminate rather than increase the number of such crossings, protestant submits that the convenience of the public in the present instance will not be greatly prejudiced or impaired, and the public safety will be promoted, by a continuance of the present crossing passing beneath the bridge at the point where the line of railway of protestant crosses Big Sandy Creek, and the installa-

tion of the proposed grade crossing will not only necessitate greater care and create a greater liability upon protestant in the matter of operation of its said line of railway, but will result in unnecessary hazards to the public by the use thereof."

On November 28, the Commission's railway engineer, in company with the Board of County Commissioners and the County Clerk of Elbert County, and Mr. J. D. Sullivan, roadmaster of the Chicago, Rock Island and Pacific Railway Company, inspected the site of the proposed crossing. In his report to this Commission, he states that in his opinion the present crossing under the railway bridge at Big Sandy Creek, by fixing it up, would be sufficient to handle public travel for sometime to come, and that the utlimate remedy would be to open a highway one mile north and parallel to the present state highway connecting with the crossing now established at Simla. At the time of this inspection there was some talk of the state highway being moved one mile south of and parallel to the present highway in order to avoid two crossings of Big Sandy Creek. In the event this were done, no crossing need be established at the point requested; and the natural outlet for the residents to the north and east of this point would be the highway one mile north of the track, as suggested by the railway engineer of this Commission.

Upon notice to all parties concerned, the matter was set down for hearing by the Commission on Thursday, February 16, 1922, at the Tompkins Hotel, Limon, Colorado, and the same was heard on said date and place by Commissioner Lannon. Several witnesses appeared for the complainants and testified that the present road under the bridge was impassable a great portion of the time and that it was evident that it would require a considerable sum of money to put it in passable condition for continuous use. They also objected to the clearance under the bridge at Big Sandy Creek as not being sufficient for large loads of hay or threshing machines.

The issue involved is to say whether or not permission for the opening of a crossing at grade should be granted where there is at present

being used an under grade crossing. Ordinarily the Commission hesitates to grant grade crossings where they can be avoided. In this case, however, it seems that the travel is light over the crossing requested and that the expense of making the present crossing passable is heavy for the amount of travel. All witnesses testified that the view at the crossing is open in all directions. From the testimony it is quite evident that the people living in this vicinity are very much in favor of a grade crossing in preference to using the present under bridge crossing.

The Commission has allowed some time to elapse since the hearing in order that it might take the matter up with the State Highway Department to ascertain whether or not the change in the highway, reported by the railway engineer for the Commission, is likely to be made. The Commission is now informed through a representative of the Highway Department that there is no likelihood of the road being changed from its present location. This being the case, the Commission is of the opinion that the convenience and necessity of the traveling public will best be served by opening the grade crossing as requested in this application.

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, 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 Rock Island and Pacific Railway on the line between Sections 25 and 26, Township 10 South, Range 60 West of the 6th Principal Meridian, in Elbert County, Colorado; conditioned, however, that prior to the opening of said crossing to public travel, it shall be constructed in accordance with plans and specifications prescribed in the Commission's order In re: Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. No. 128.

IT IS FURTHER ORDERED That the expense of the construction and maintenance of grading the roadway at the crossing, including the necessary drainage therefor, be borne by Elbert 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, Rock Island and Pacific Railway Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hadderman

A O Anderson

M P Lannon

Commissioners.

Dated at Denver, Colorado, this
25th day of September, A.D. 1922.

(Decision No. 568 B)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of Mineral County for the Opening of a Public Highway over the Right-of-Way and Track of The Denver and Rio Grande Western Railroad, at a Point about 900 Feet East From Where the North and South Center Line of Section 5, Township 41 North, Range 1 East, New Mexico Principal Meridian, intersects the Main Line Track of The Denver and Rio Grande Western Railroad, in Mineral County, Colorado.

APPLICATION NO. 205

Sept. 26, 1922.

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 Mineral 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 a point about 900 feet east from where the north and south center line of Section 5, Township 41 North, Range 1 East, New Mexico Principal Meridian, intersects the main line track of The Denver and Rio Grande Western Railroad, and the abandonment of the present crossing about 657 feet easterly from this point.

Upon the filing of this application, it was served upon the defendant Railroad Company and, after being granted additional time for reply, a letter was received from Mr. E. N. Clark, General Attorney for The Denver and Rio Grande Western Railroad Company, wherein he states: "With the understanding that the old crossing will be permanently abandoned and that the new road parallel to the railroad track will be located off of and outside of the railroad right-of-way, the Railroad Company desires to present no objection or protest to the application and consents to the entry of an order on the conditions stated." In paragraph two of

application No. 205, the applicant states: "It is understood that the present crossing will be abandoned after the proposed crossing is installed." On a map accompanying the application it is shown that the proposed county road is located parallel to and off of the right-of-way of The Denver and Rio Grande Western Railroad. It is, therefore, clear that the interested parties have agreed on these matters in order that this crossing may be moved to a more desirable location.

The County Commissioners of Mineral County and The Denver and Rio Grande Western 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 an order granting permission for the moving of the present crossing to a point about 657 feet westerly.

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, the public highway at station 3449, plus 17, on The Denver and Rio Grande Western Railroad, in the Southeast Quarter of Section 5, Township 41 North, Range 1 East, New Mexico Principal Meridian, in Mineral County, Colorado, be moved to a point westerly along said track a distance of 657 feet, more or less; said point is located 900 easterly from where the north and south center line of said Section 5 intersects said Railroad's main line track; conditioned, however, that the present crossing be abandoned as soon as the new crossing is constructed in accordance with plans and specifications on file in this office and as prescribed in the Commission's order In re: Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. No. 128.

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

drainage therefor, shall be borne by Mineral 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 Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hardeman

A. J. Anderson

E. P. Lannon

Commissioners.

Dated at Denver, Colorado, this
26th day of September, A.D.1922.

(Decision No. 569)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

The Town of St. Elmo, Colorado, Complainant,

vs.

The Colorado and Southern Railway Company, Defendant.

CASE NO. 249

Sept. 29, 1922.

S T A T E M E N T

By the Commission:

Complaint in the above entitled case was filed before the Commission October 13, 1921, which involved the right of the defendant Railway Company to abandon that portion of its line extending from Buena Vista to Hancock, Colorado, and to points west of Hancock.

Upon complaint being filed and copy thereof served upon defendant, the carrier filed its motion to dismiss said cause on November 3, 1921, setting up in its said motion, briefly stated, that it was an interstate carrier and subject to the jurisdiction of the Interstate Commerce Commission; that, on September 1, 1921, it had applied to the Interstate Commerce Commission for a certificate of public convenience and necessity authorizing it to abandon its narrow gauge line of railroad extending from Buena Vista to Romley, Colorado, with its trackage extending westerly from Romley to Hancock; and that said Interstate Commerce proceeding had not been determined, and this Commission was by virtue thereof without jurisdiction in the premises.

The case was permitted to remain on the docket of the Commission until such time as the Interstate Commerce Commission announced its decision in the proceeding pending before it, which it has heretofore done in the month of July, 1922.

The matter was set for hearing, upon the motion to dismiss filed by defendant November 3, 1921, for September 27, 1922, at the Hearing Room of the Commission, State Office Building, Denver, Colorado; On September 26, 1922, the Town of St. Elmo, complainant, filed herein its motion to dismiss the above cause without prejudice. Under these stated facts, the Commission will, therefore, issue its order in dismissal of complainant's cause without prejudice.

O R D E R

IT IS THEREFORE ORDERED, That the above entitled cause be, and the same is hereby, dismissed without prejudice to the right of complainant to bring another proceeding against the defendant containing the matters and things mentioned in its said complaint should it so be advised.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Ferman

A. P. Anderson

H. D. Lannon

Commissioners.

Dated at Denver, Colorado, this
29th day of September, A.D.1922.

(Decision No. 571)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of the Town of Granada, Colorado, for a Certificate of Public Convenience and Necessity Authorizing the Construction and Operation of a Municipally Owned Transmission and Distribution System.

APPLICATIONS NOS. 207 AND 215

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September 29, 1922.

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Appearances: Goodale & Horn, of Lamar, Colorado, Attorneys for Applicant; Smith & Brock, E. L. Brock and L. J. Williams, of Denver, Attorneys for The Mountain States Telephone and Telegraph Company; P. B. Behr, of Saint Louis, Missouri, Attorney for The Colorado and Eastern Telephone and Telegraph Company.

S T A T E M E N T

By the Commission:

The town of Granada, Colorado, a municipal corporation, filed its application before the Commission July 15, 1922, wherein it set forth a statement of facts which it considered would entitle it to a certificate of convenience and necessity for the construction and operation of a municipally owned electric transmission line extending from the city of Lamar, Colorado, to said applicant town, and a distribution system within said town for such electric energy for light and power purposes.

This application was numbered 207 on the docket of the Commission, and in addition to the statements therein as to the necessity for the construction and operation of such municipally owned electric transmission line and distribution system, there was stated also that the applicant town proposed to issue its water works extension bonds in the sum of $25,000 with which to extend its water works system and construct said transmission line and distribution system for electric purposes.

In harmony with its former rulings, the Commission declined to pass upon the manner or method in which funds were raised or for what purpose by an applicant seeking a certificate of public convenience and necessity for the construction of a public utility; and thereupon, at the suggestion of the Commission, said applicant filed, on August 2, 1922, its application in the nature of a supplemental application, which was numbered 215 on the docket of the Commission, which related to the same subject matter, except that no reference was therein made to the extension of its water works system.

The last named petition sets forth the requisite information as to the public convenience and necessity requiring the construction of an electric transmission line from Lamar, Colorado to said town of Granada, and the distribution system therein in order that said town may be afforded adequate electric service to supply itself and inhabitants with electric light and power; that said town has no electric lighting or power system of any kind and no method is available, at a reasonable cost, other than the method set forth in said application which, briefly stated, is that the said applicant town had entered into an agreement or contract with the city of Lamar for the furnishing of electric current over the transmission system to be owned and operated by applicant town, from the power plant owned by the city of Lamar, and that the current thus obtained would furnish applicant town with twenty-four hours service for the purposes mentioned. The application further sets forth that the transmission line was to be erected on, over and along the state highway connecting said applicant town and the city of Lamar, and that such line would not compete with any municipal or other public utility, corporation or person. Filed with the latter application was a map or plat showing the proposed location of the transmission line and the distribution system; and applicant asks the Commission to make and enter its order authorizing the applicant town to proceed with the construction and operation of said transmission line and distribution system.

It is quite apparent that the real object and purpose of both applications is that the applicant town of Granada desires the Commission to issue to it a certificate of public convenience and necessity for the construction and operation of said electric transmission line between Lamar and Granada, and the distribution system within the town of Granada.

Upon the filing of Application No. 207, a copy thereof was served upon The Mountain States Telephone and Telegraph Company, as was also a copy of the last mentioned Application No. 215, on the supposition that said Telephone and Telegraph Company might be interested in the construction and operation of an electric transmission line in the territory where it operates its telephone and telegraph system. Thereafter, and on August 7, 1922, said Mountain States Telephone and Telegraph Company filed its protest against the proposed construction and operation of said transmission line by said applicant town, and on August 15, 1922, The Colorado and Eastern Telephone and Telegraph Company filed its protest to the construction of said transmission line; and while each of said protests was filed as in Application No. 207, they will be considered as being filed in Application No. 215 as well.

The basis of the protests of each said Telephone and Telegraph Companies, briefly stated, is that each of said companies owns and operates telephone and telegraph lines between the city of Lamar and the town of Granada, and that the construction and operation of said electric transmission line upon and along the state highway, as proposed in the said applications, would seriously interfere with the service being rendered the public by, as well as endanger the health and safety of the users of the service of, said two Telephone and Telegraph Companies; and that to avoid such alleged interference in the lines of said Telephone and Telegraph Companies, various steps would have to be taken and measures adopted which

would involve an expenditure of considerable money; that the applicant town of Granada should be required to so construct its electric transmission line as not to interfere with the operation of the lines of the two telephone companies, or else be required to bear the expense incident to the construction thereof over said line to obviate the alleged interference.

Thereafter, and on August 28, 1922, said applicant town of Granada filed its demurrer to the protests of each of said Telephone and Telegraph Companies, setting forth various grounds of demurrer.

On August 2, 1922, the matter was heard by the Commission at its Hearing Room, State Office Building, Denver, Colorado, as to the question only of public convenience and necessity for the construction and operation of said electric transmission line and distribution system; and thereafter the matter was allowed to rest in abeyance until the aforesaid protests upon the ground of interference should have been heard and determined. In the meantime, negotiations were entered into between said applicant town of Granada and said two telephone companies, looking toward a compromise of the question of interference and the withdrawal thereby of the protests of said telephone companies against the construction by said applicant town of said electric transmission line.

On Monday, September 25, 1922, there was filed with the Commission a written stipulation in the nature of a withdrawal by protestants of their respective protests, and an agreement between the interested parties for the issuance of a certificate for the construction of said electric transmission line over, on and along a route in said stipulation described as follows:

> Beginning at a point about four (4) miles north of the city of Lamar and two (2) miles north of the highway now occupied by the lines of the Colorado Company and the Mountain States Company, and extending in an easterly direction along the route now occupied by the existing power line construction of the city of Lamar to a point known as Whiteis, thence extending in an easterly direction for about four (4) miles, thence in a southerly direction for about one (1) mile, thence in an easterly direction for about nine (9)

miles, thence in a southerly direction for about one-half (½) mile, thence in an easterly direction to the town of Bristol.

And specifying therein that practically all of the above described route from the point designated as Whiteis being north of the Arkansas Valley Railroad, and that in constructing said power line from the town of Bristol to the town of Granada the construction shall be maintained on the side of the highway opposite to the lines of The Mountain States Telephone and Telegraph Company, and shall provide said lines with as much separation as is practicable; and that the said power line between the town of Bristol and the town of Granada on the state highway shall be operated at a voltage not exceeding twenty-three hundred (2300) volts between phase wires; and that all of the said power lines and all crossings of said power lines with any lines of The Colorado and Eastern Telephone and Telegraph Company or The Mountain States Telephone and Telegraph Company shall each and all be constructed in conformity with the National Electrical Safety Code, Third Edition, October 31, 1920, Hand Book Series of the Bureau of Standards No. 3.

The above stipulation and withdrawal of protest is duly executed by the representatives of the applicant town of Granada and of the two Telephone and Telegraph Companies.

At the hearing on August 2, 1922, the applicant town, through one of its officials, made proof of the necessity existing for the construction and operation of said electric transmission line and distribution system, and that the same was necessary for the public convenience and necessity. It may be observed, in passing, that in any community that may be able to successfully finance the installation and operation of an electric light and power system, there is but little else required to show that the public convenience and necessity will be subserved thereby. In this day

electricity for lighting and power purposes has become to be certainly a convenience and almost a necessity, whenever the public may be able to enjoy the benefits afforded by such use. The proof submitted by applicant herein satisfies the requirements of the statute and of the Commission that applicant has acquired the requisite consent of the authorities of the town of Granada for the construction and operation of said electric transmission line and distribution system, to be municipally owned and operated by said applicant town.

In harmony, therefore, with the aforesaid stipulation and agreement of the interested parties, a certificate of convenience and necessity will be issued by this Commission authorizing the construction and operation of said electric transmission line and distribution system by applicant town, to be municipally owned and operated by it.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires and will require the construction and operation of said electric transmission line from the city of Lamar, Colorado, to said applicant town, and the construction and operation of a distribution system within the said applicant town for the transmission of electrical energy for lighting and power purposes of said applicant town and its inhabitants.

In the construction of said transmission line, this certificate shall only authorize the same to be constructed or built over a route substantially as follows:

> Beginning at a point about four (4) miles north of the city of Lamar and two (2) miles north of the highway now occupied by the lines of the Colorado Company and the Mountain States Company, and extending in an easterly direction along the route now occupied by the existing power line construction of the city of Lamar to a point known as Whiteis, thence extending in an easterly direction for about four (4) miles, thence in a southerly direction for about one (1) mile, thence in an easterly direction for about nine (9) miles, thence in a southerly direction for about one-half (½) mile, thence in an easterly direction to the town of Bristol.

Practically all of the above described route from the abovementioned point of Whiteis being north of the Arkansas Valley Railroad; and that in constructing the said power line from the town of Bristol to the town of Granada the construction shall be maintained on the side of the highway opposite to the lines of the Mountain States Telephone and Telegraph Company and shall provide said telephone and telegraph lines with as much separation as is practicable; and that the said power line between the town of Bristol and the town of Granada on said highway shall be operated at a voltage not exceeding twenty-three hundred (2300) volts, between phase wires. And that all of the said power lines, and all crossings of said power line with any lines of The Colorado and Eastern Telephone and Telegraph Company or The Mountain States Telephone and Telegraph Company shall each and all be constructed in conformity with the National Electrical Safety Code, 3rd Edition, October 31, 1920, Hand Book Series of the Bureau of Standards, No. 3.

This order shall be deemed, taken and held to be a certificate of public convenience and necessity for the construction and operation of said electric transmission line and distribution system by applicant town of Granada, over the route and in the manner specified herein.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 29th day of September, 1922.

(Decision No. 572)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of)
)
The Colorado Power Company for a)
) APPLICATION NO. 208
Certificate of Public Convenience)
)
and Necessity.)

- - - - - - -
October 11, 1922.
- - - - - - -

Appearances: Hodges & Wilson, by D. Edgar Wilson, Attorneys; Norman Read, Vice-President and General Manager, and E. H. Coe, Sales Manager, for Applicant.

S T A T E M E N T

By the Commission:

On July 15, 1922, the application of The Colorado Power Company was filed with this Commission in which applicant set forth the following facts on which it asked for a certificate of public convenience and necessity from this Commission to construct and operate an electric light and power plant in the territory described therein, including the Town of Center, Colorado:

That applicant at all times hereinafter mentioned, and since the second day of April, 1913, has been, and is, a corporation duly organized and existing and doing business as a public utility under the laws of the State of Colorado; that, under its articles of incorporation and by virtue of full compliance with the laws of the State of Colorado, it is now, and ever since said date has been, authorized by the State of Colorado to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation and distribution of electrical energy for light, heat, power, motive and all other purposes,

and to sell such electrical energy to the inhabitants of the State of Colorado in which it has installed, and may lawfully install and operate, its power stations and system, and the included municipalities and territory, and to take tolls and rates therefor; and among other localities in which applicant has heretofore installed and operated its system is the County of Saguache, in the State of Colorado. Applicant refers the Commission to a certified copy of its articles of incorporation filed herewith. The post office address of applicant is Symes Building, City and County of Denver, State of Colorado; that on to-wit: the 5th day of October, 1921, applicant secured and accepted from the Town of Center, State of Colorado, certain franchise privileges and authority to construct, maintain, extend and operate within the corporate limits of said town for a period of twenty years for the generation, sale and distribution of electrical current and power within said town. Said authority was granted by Ordinance No. 66, passed, adopted, published and approved by said town as required by law; that applicant has not, prior to the granting of said franchise, exercised any franchise rights in the Town of Center; that the public convenience and necessity of the Town of Center and the people in its vicinity require the exercise of such franchise by the applicant and the construction, maintenance and operation of said plant; that said town has a population of eight hundred persons and heretofore, and at present, has no other supply for electric light and power, and no other public utility has any other franchise rights within the corporate limits of said Town of Center or in the vicinity thereof; and that applicant will not compete with any other public utility or person engaged in similar service; that applicant will also furnish electrical current for light and other purposes along the route of its said extended transmission lines and to the rural population in the vicinity thereof without competing with any existing plant or system; that applicant has filed herewith a blue print showing the proposed extension of its transmission line and system to supply the

Town of Center and adjacent territory and refers to said blue print for a greater particularity.

Applicant prays that the Public Utilities Commission make its order authorizing the applicant to exercise the franchise rights granted to it by the Town of Center, and granting to applicant a certificate of public convenience and necessity for the erection, maintenance and operation of its plant for the generation and distribution of electrical energy in the territory described in the foregoing application, and as shown by the map filed and submitted herewith.

After due notice to all parties in interest, including notice to the proper authorities of the Town of Center, this case was set for hearing at the Hearing Room of the Commission at 10:00 o'clock A. M., Wednesday, September 20, 1922, at which time witnesses were sworn and testimony taken.

Mr. Norman Read, Vice-President and General Manager, was sworn and testified that he had read the application filed with the Commission in this case and that he knew the contents thereof, and that each and every statement and allegation therein was true and correct. He introduced in evidence Exhibit No. 1, which was a certified copy of the original certificate of incorporation and certificate of amendment of The Colorado Power Company; also Exhibit No. 2, which is a blue print, being a map showing the details of the survey of the proposed transmission line; also Exhibit No. 3, being a copy of Clason's map of the San Luis Valley upon which the extension of The Colorado Power Company's lines from Monte Vista to Center is illustrated, showing in more concise form the details of the blue print. Mr. Read testified that they proposed to enter into and operate in the Town of Center under a franchise granted to the Colorado Power Company; that the construction and operation of the system in the Town of Center is a convenience and an absolute necessity as there

is no other means by which said town can be supplied; that there has been filed with this Commission a schedule of rates to be charged by the company; that said Ordinance No. 66 of the Town of Center granting said franchise, approved by the Board of Trustees, has been filed with the Commission attached to the application; that the total investment under this application will amount to the sum of $24,000.00.

The Commission has carefully considered the evidence in this case, together with all exhibits on file, and has reached the conclusion that the construction, maintenance and operation of the said plant applied for by the applicant herein is necessary and will be a real convenience to the citizens of the Town of Center and the territory described in the application herein.

O R D E R

IT IS THEREFORE ORDERED, That the applicant is hereby authorized to exercise the franchise rights granted to it by the Town of Center, as applied for herein, and that a certificate of public convenience and necessity is hereby authorized by this Commission for the extension, construction, erection, maintenance and operation of the power plant and stations described by the applicant herein, together with its transmission lines and distribution system, for the generation and distribution of electrical energy in the territory described in the application herein, and as shown by the map filed and submitted herewith, and this order shall be considered as a certificate of public convenience and necessity therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 11th day of October, 1922.

(Decision No. 573)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of The Colorado Power Company for a Certificate of Public Convenience and Necessity.	)	APPLICATION NO. 209

October 18, 1922

Appearances: Hodges & Wilson, by D. Edgar Wilson, Attorneys; Norman Read, Vice-President and General Manager, and E. H. Coe, Sales Manager, for Applicant.

STATEMENT

By the Commission:

On July 15, 1922, the application of The Colorado Power Company was filed with this Commission in which applicant set forth the following facts on which it asked for a certificate of public convenience and necessity from this Commission to construct and operate an electric light and power plant in the territory described therein, including the Town of Saguache:

That applicant at all times hereinafter mentioned, and since the second day of April, 1913, has been, and is, a corporation duly organized and existing and doing business as a public utility under the laws of the State of Colorado; that, under its articles of incorporation and by virtue of full compliance with the laws of the State of Colorado, it is now, and ever since said date has been, authorized by the State of Colorado to construct, acquire, maintain and operate transmission lines, power stations, systems and appliances for the generation and distribution of electrical energy for light, heat, power, motive and

other purposes, and to sell such electrical energy to the inhabitants of the State of Colorado in which it has installed, and may lawfully install and operate, its power stations and system, and the included municipalities and territory, and to take tolls and rates therefor; and among other localities in which applicant has heretofore installed and operated its system is the County of Saguache, in the State of Colorado. Applicant refers the Commission to a certified copy of its articles of incorporation filed herewith. The post office address of applicant is Symes Building, City and County of Denver, State of Colorado; that applicant, on the third day of May, A.D., 1922 secured, and on the sixth day of June, 1922 accepted, from the Town of Saguache, State of Colorado, certain franchise rights, privileges and authority to erect, construct, maintain, extend and operate within the corporate limits of said town for a period of twenty years, one or more electric sub-stations and power plants with the transmission and distribution system appertaining thereto, for the general sale, transmission, distribution and delivery of electrical current and power within the limits of said town, for the use of said town and the inhabitants thereof, and any person or corporation doing business in said town or the vicinity thereof for light, heat and power purposes. A true and correct and complete copy of said ordinance and franchise is attached to the complaint and made a part of the application and marked Exhibit A for identification. That the applicant has not heretofore exercised the franchise rights so granted by the Town of Saguache; that the public convenience and necessity of said town and its inhabitants and the people in its vicinity require the exercise of such franchise by the applicant, and the construction and operation of electric light and power plants with the necessary distribution system in order to furnish said town and the inhabitants thereof and the territory adjacent thereto with electrical current for light, heat and power and other purposes; that the said Town of Saguache has a population of approximately one thousand persons, and has heretofore been inadequately supplied with electrical energy by a small, privately owned

plant, which plant and system has been purchased by said Town of Saguache from the owner thereof; that the said plant will be dismantled and the said distribution system will be turned over by the Town of Saguache to the applicant for its use in conjunction with its own plant and system; that no other applicant will have any franchise or rights of a character similar to those obtained and sought to be exercised by the applicant within the corporate limits of said town or in the vicinity thereof; that in the exercise of its rights, applicant will not compete with any public utility or any person or corporation engaged in similar business in the territory sought to be served by applicant; that applicant will also furnish electrical current for light and other purposes along the route of its extended transmission lines, and to the rural population in the vicinity thereof without competing with any existing plant or system; that applicant has filed with its application, a blue print showing the proposed extension of its transmission line and system to supply the Town of Saguache and adjacent territory, and refers to said blue print for a greater particularity.

Applicant prays that the Public Utilities Commission make its order authorizing it to exercise the franchise rights granted by the Town of Saguache, and that the Commission grant to applicant a certificate of public convenience and necessity for the erection, maintenance and operation of its plant for the generation and distribution of electrical energy in the territory described in its application, and as shown by the map filed and submitted therewith.

After due notice to all parties in interest, including the proper authorities of the Town of Saguache, this case was set for hearing at the Hearing Room of the Commission, at 10:00 o'clock A.M., Wednesday, September 20, 1922, at which time witnesses were sworn and testimony taken.

Mr. Norman Read, Vice-President and General Manager, was sworn and testified he had read the application filed with the Commission in this case, and that he knew the contents thereof and that each and every statement and allegation therein was true and correct. He introduced in

evidence Exhibit No. 1, which was a certified copy of the original certificate of incorporation and certificate of amendment of The Colorado Power Company; also Exhibit No. 2, which is blue prints, being a map showing the details of the survey of the proposed transmission line; also Exhibit No. 3, being a copy of Clason's map of the San Luis Valley, upon which the extension of The Colorado Power Company's lines is illustrated, showing in more concise form the details of the blue print. Mr. Read testified that they proposed to enter into and operate in the Town of Saguache under a franchise granted by said town to The Colorado Power Company; that the construction and operation of the system in said town is a convenience and an absolute necessity as there will be no other means by which said town can be supplied; that there has been filed with this Commission a schedule of rates to be charged by the Company; that said ordinance and franchise of the Town of Saguache, approved by the Board of Trustees, have been filed with the Commission attached to the application; that the total investment under this application will amount to the sum of $25,000.00.

The Commission has carefully considered the evidence in this case, together with all exhibits on file, and has reached the conclusion that the construction, maintenance and operation of the said plant as applied for by the applicant herein, is necessary and will be a real convenience to the citizens of the Town of Saguache and the territory described in the application herein.

O R D E R

IT IS THEREFORE ORDERED, That the applicant is hereby authorized to exercise the franchise rights granted to it by the Town of Saguache as applied for herein, and that a certificate of public convenience and necessity is hereby authorized by this Commission, for the

extension, construction, erection, maintenance and operation of the power plant and stations described by the applicant herein, together with its transmission lines and distribution system for the generation and distribution of electrical energy in the territory described in the application herein, and as shown by the maps filed and submitted herewith, and this order shall be considered as a certificate of public convenience and necessity therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hall Veneman,

A. P. Anderson

M. D. Lannon

Commissioners.

Dated at Denver, Colorado,
this 18th day of October, 1922.

(Decision No. 574)

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

(October 30, 1922)

STATEMENT

By the Commission:

The proceeding arises upon the application of the Board of County Commissioners of Archuleta County, Colorado, in compliance with Section 29 of the Public Utilities Act of Colorado 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 409 plus 410 feet, in Section 13, T 32 N, R 6 W, Ute Meridian, near Allison in Archuleta County, Colorado.

The Railway Engineer for the Commission reports that the view of approaching trains is good in all directions, and in his judgment, the crossing is a necessity.

On October 27 the Commission was in receipt of a letter from E. N. Clark, General Attorney of The Denver and Rio Grande Western Railroad System, wherein he states "that the management of the railroad company has no objection to an order being issued, establishing the crossing as herein requested."

The County Commissioners of Archuleta 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 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 System, at mile post 409 plus 410 feet in Section 13, T 32 N, R 6 W, 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 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 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.

Commissioners.

Dated at Denver, Colorado,
this 30th Day of October, 1922.

(Decision No. 585)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of the Board of County Commissioners of Lincoln County in the 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, to connect Federal Aid Project No. 111 with the Main Street in the Town of Genoa, located in Section 12, Township 9 South, Range 55 West of the Sixth Principal Meridian.

APPLICATION NO. 202

(October 30, 1922.)

STATEMENT

By the Commission:

The proceeding arises upon the application of the Board of County Commissioners of Lincoln 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 track of the Chicago, Rock Island and Pacific Railway, to connect Federal Aid Project No. 111 with the main street in the Town of Genoa, located in Section 12, T 9 S, R 55 W of the Sixth Principal Meridian, Lincoln County, Colorado.

On September 11, 1922, the Commission's Railway Engineer in company with the Division Engineer of the Chicago, Rock Island and Pacific Railway and the Board of County Commissioners of Lincoln County inspected the site of the proposed crossing on the ground. He reports that the view of approaching trains is somewhat obscured by buildings and that the proposed crossing will cross over more than one track. He also states that an endeavor was made to secure a better location that would accomplish the desired results, but that no other site was available in the near vicinity but what was in some way objectionable. At present this highway crosses the track of said railway company about one block east of the proposed

crossing. He is of the opinion that the view of approaching trains is better at the proposed crossing than at the present crossing.

At this meeting of the parties interested, it was agreed that there was no necessity of two crossings in close proximity and that, if the proposed crossing was opened, the present crossing should be closed. Pursuant to this understanding, the Board of County Commissioners on October 25, 1922, passed the following resolution:

"BE IT RESOLVED THAT:

WHEREAS, The Public Utilities Commission of the State of Colorado has given the Chicago, Rock Island and Pacific Railway Company its permission and authority to install a public crossing over said railway Company's tracks and right of way at a point where Main Street of the Town of Genoa intersects said railway, upon condition that the present crossing over said tracks, one block east of the proposed crossing be vacated,

WHEREAS, in the opinion of the Board of County Commissioners the said crossing now located one block east of the proposed crossing will be unnecessary and dangerous after the proposed crossing is installed,

Now therefore, Be it Further Resolved, that the said crossing located one block east of the proposed crossing be vacated as soon as the proposed crossing is installed and open for traffic, and that the County Clerk forward to the Colorado Public Utilities Commission a certified copy of this resolution

BOARD OF COUNTY COMMISSIONERS

R. R. Lucore Chairman

F. C. Kenaga
Clerk of the Board

James D. Peyton

R. R. Lucore

Hugo, Colorado
October 25th, 1922."

In paragraph 9 of the above application, it is stated "that in the opinion of the applicant, a safety device will be necessary at the proposed crossing by reason of the heavy travel over said crossing, the number of trains passing the proposed crossing and for the reason that the view of the tracks is somewhat obstructed by buildings and corrals." The Railway Engineer for this Commission and the officials of the railway company do not concur in that opinion. This Commission would hesitate to establish a crossing so dangerous that a safety device would immediately

be necessary. Its Railway Engineer expressed the opinion that, if such a crossing was unavoidable, in justice to the railway company the expense of such protection as may be necessary should in a large measure be borne by the parties requesting the crossing. The Commission concurs in the opinion of its Railway Engineer that crossing protection is not necessary at this time and it is unnecessary for it to commit itself relative to the division of cost of the installation of a safety device at this crossing until such matter is presented to it, together with all facts pertaining thereto.

On October 17, 1922, this Commission was in receipt of a letter from D. Edgar Wilson, Attorney for The Chicago, Rock Island and Pacific Railway Company, wherein he states that the railway company will consent to the establishment of the proposed crossing as hereinabove outlined. The County Commissioners of Lincoln County and The Chicago, Rock Island and Pacific Railway Company, being fully advised of these matters and having consented to the terms and conditions as hereinafter made in the order, and no objection having been filed, the Commission will, therefore, issue its order abandoning the present crossing in the Town of Genoa and 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 track and right-of-way of The Chicago, Rock Island and Pacific Railway Company to connect Federal Aid Project No. 111 with the main street in the Town of Genoa, located in Section 12, T 9 S, R 55 W, in the Sixth Principal Meridian, Lincoln County, Colorado, and to abolish the present crossing about one block east of this point; 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 at the crossing, including the necessary drainage therefor, be borne by Lincoln 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 Chicago, Rock Island and Pacific Railway Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hardgrave

A P Anderson

Commissioners.

Dated at Denver, Colorado,
this 30th day of October, 1922.

(Decision No. 576)

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, State of Colorado, for the Opening of a Public Highway on Michigan Avenue in the Unincorporated Town of Arapahoe, in the Northwest Quarter of Section 12, Township 14 South, Range 43 West, of the Sixth Principal Meridian.

APPLICATION NO. 128

(November 8, 1922)

Appearances: Honorable V. H. Johnson, Cheyenne Wells, Colorado, for the Board of County Commissioners of Cheyenne County, Complainants; E. G. Knowles, Denver, Colorado, for the Union Pacific Railroad Company, Defendant.

S T A T E M E N T

By the Commission:

This matter comes before the Commission upon application filed in this office March 1, 1921, by the Board of County Commissioners of Cheyenne County, for the opening of a public highway at grade over the tracks of the Union Pacific Railroad on the extension of Michigan Avenue, in the unincorporated Town of Arapahoe, across said tracks, said proposed crossing being in the northwest quarter of Section 12, T 14 S, R 43 W, of the 6th Principal Meridian, State of Colorado. The applicant states that "at the present time there is a crossing a few rods west of where the highway should cross the track and it is now being used. On account of the approach and the location thereof, there have been several narrow escapes from injury by persons crossing the same. And the approach to the crossing now is such that it is very difficult in wet weather to get to the crossing without stalling a car." On March 2, 1921, a copy of

this application was served upon the defendant railroad company, and on March 21, 1921, said railroad company filed its answer with this Commission, wherein it denies that the railroad company ever expressed a willingness to construct the proposed crossing, which indicated that no agreement could be reached as between the interested parties.

On March 18, 1921, Mr. C. D. Vail, Railway Engineer for this Commission, in company with Mr. C. D. Voris, Assistant Engineer for the Union Pacific Railroad Company, visited the site of this proposed crossing with a view of ascertaining the facts, and if possible to adjust matters pertaining thereto. No agreement was reached on this matter, and his report to the Commission was to the effect that while he was in general opposed to highway crossings at railroad yards in close proximity to depots, he was of the opinion that the people of Arapahoe were entitled to a crossing from the south. He further stated "if a better solution can be offered by the Union Pacific Railroad Company as to a location which will accomplish the same general results, it should be considered." After numerous attempts by the railway engineer to reach an agreement between interested parties and the defendant railroad company, it was decided that no amicable agreement could be had and that the matter should go to hearing.

On notice to all parties concerned, the matter was set down by the Commission for hearing on Wednesday, February 15, 1922, at 7:30 P. M., Arapahoe, Colorado, and the same was heard on said day at said time at the local bank building, Arapahoe, Colorado, by Commissioner Lannon. Prior to the hearing, Commissioner Lannon viewed the sites of the present and the proposed crossing.

Witnesses for the complainants testified that the present crossing is dangerous and at times impassable, owing to its location. The present crossing is about one-half block west of the line of Michigan Avenue, and it was stated by witnesses that the turn to the west made it dangerous

to cross the tracks of the railroad company. They also stated that there was a low place in the road before crossing the tracks that filled with water after storms and made the road impassable. They further testified that to come directly up Michigan Avenue would improve the general appearance of the town.

Mr. W. H. Lowther, Division Engineer for the Union Pacific Railroad Company, testified that to open the crossing on Michigan Avenue would materially interfere with the plans of the railroad company in the matter of future improvements and the establishing of sites for elevators, etc. The railroad company introduced Exhibit A showing the method proposed by the railroad company of locating the crossings and the proposed arrangement of their yard. In this plan, it was proposed to cross the track at either end of the yard beyond the switches. Mr. Lowther further testified that to extend the highway across the yard on Michigan Avenue would make a very dangerous crossing on account of the obstruction to view by present buildings and structures. In addition, the proposed crossing would be dangerous from the fact that the industrial track parallels the main line on the north and the passing track on the south, and where cars are standing on either or both of these tracks near the crossing, the view of approaching trains would be further obstructed. He also stated that the proposed location of any industries would tend to obstruct the view if the proposed crossing were installed.

Mr. C. D. Vail, Railway Engineer for the Commission, testified that in his opinion crossings through railroad yards are very dangerous on account of the obstruction to view of approaching trains by buildings and industries, and also by cars that may be standing on tracks parallel to the main line and that such crossings should only be established where no other site was available. He also stated that he had endeavored to have grade crossings removed from railroad yards to places where there are no buildings or sidings to obstruct the view.

Mr. D. H. Zuck, County Surveyor, Cheyenne County, testified "the matter of safety in the present and the proposed crossing at Michigan Avenue did not differ much. It would be very slight one way or the other; they differ very little as to safety. The proposed crossing at the section line west of town would be very much safer than either of the two in town."

During the hearing there was much discussion of the plan proposed by the railroad company, and witnesses for the company stated that a road along the north side of the railroad right-of-way from Michigan Avenue to the section line west of town would be obstructed by snow at times during the winter. They also stated that in their opinion the crossing on the section line would be dangerous on account of the turn made before crossing the track.

The issue involved is whether or not the crossing should be established on Michigan Avenue. In view of the fact as observed on the ground and as testified to by witnesses that the view of trains would be obstructed by buildings or cars that may be standing on the siding on either side of the main line track.

It is evident from the testimony of the residents of Arapahoe that they desire the crossing on Michigan Avenue opened, believing that it would be to their advantage in giving them a crossing on the main street of the town. It is equally evident that the crossing is opposed by the railroad company believing that it would be dangerous of operation and materially to their detriment in future plans and operation of their property.

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." In view of this fact, it does not seem proper that

a dangerous crossing should be opened by order of this Commission if a site can be had less dangerous. This Commission is quite of the opinion that crossings should be made through railroad yards only when there is no other plan feasible. During the past few years, the greatest number of accidents at crossings have occurred in railroad yards where cars on the sidings or buildings have obstructed the view of approaching trains. While it is true that accidents have occurred where the view is unobstructed, it appears to the Commission that such accidents must in general be the fault of the user of the highway in not making proper observation before attempting to cross tracks. Accidents of this character are beyond the control of this Commission. It is the unanimous opinion of this Commission, however, that to remove obstructions to view the crossings or to remove crossings to points of unobstructed view is the best preventative to accidents on highway crossings at grade.

This matter has long been held in abeyance by the Commission in the hope that some plan could be agreed upon satisfactory to the parties in interest. This Commission believes that the crossing on Michigan Avenue, as asked for in this application, is not the proper location for a crossing for travel south from the Town of Arapahoe because such crossing would, on account of its location, be dangerous to public travel. It is further realized that the opening of the crossing on Michigan Avenue will greatly interfere with the future development of the railroad yard as may be necessary to accommodate the growth of the community, and that, if such crossing were opened, it would become more dangerous from year to year as buildings and tracks are added to the present railroad yards. The Commission will, therefore, enter an order denying the petition of the County Commissioners of Cheyenne County, for the opening of said crossing on the ground that the crossing asked for is not in the proper location, taking into consideration the safety of the traveling public.

O R D E R

IT IS THEREFORE ORDERED, That the application herein for the opening of a public highway crossing at grade, over the tracks and right-of-way of the Union Pacific Railroad Company on Michigan Avenue, in the unincorporated Town of Arapahoe, in the northwest quarter of Section 12, T 14 S, R 43 W, of the Sixth Principal Meridian, State of 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 Norman,

A. P. Anderson

H. L. Lannon

Commissioners.

Dated at Denver, Colorado,
this 8th day of November, 1922.

(Decision No. 577)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

The Mercantile Service Corporation,
Complainant,
vs.
The American Railway Express Company,
Defendant.

CASE NO. 256

December 6, 1922..

Appearances: R. L. Ellis, Traffic Manager of The Pueblo Commerce Club, for Complainant; for Defendant, J. H. Moores, 49 Broadway, New York; for Intervenor, The Denver & Rio Grande Western Railroad Company, Messrs. E. N. Clark and Thomas R. Woodrow, its Attorneys; for The Commerce Club of Pueblo, Colorado, Mr. R. J. Breckenridge, President, and Mr. E. E. Gray, Secretary; for The Colorado Springs Chamber of Commerce, Mr. Jackson; for Intervenor, The Colorado & Southern Railway Company, Mr. J. E. Buckingham; for The Denver Civic and Commercial Association, W. D. Wright, Jr.; Intervenor for The Macklem Baking Company of Denver, Roger E. Knight; Intervenor for The Campbell-Sell Baking Company, of Denver, Stephen J. Knight.

S T A T E M E N T

By the Commission:

On March 23, 1922, the Commission received the complaint herein and set the case down for hearing for 2:00 o'clock P. M., May 25, A.D. 1922, at the City Hall, Pueblo, Colorado, at which time the matter was duly heard.

By agreement of all parties and insofar as testimony was in any way applicable, both cases, numbered 255 and 256, were consolidated for the purpose of hearing; Case No. 255 being recognized as the ice cream hearing and the present Case No. 256 being the bread hearing; both cases, however, relating to and having to do with express rates in practically the same territory.

Complainant, a corporation, in behalf of its clients, The Sunville Baking Company and Purity Bread Company, located at Pueblo, Colorado; Denver Bread Company, located at Denver, Colorado; The Zimmerman Baking Company, the Columbia Bakery, The Star Baking Company and the Ideal Bakery, located at Colorado Springs, Colorado, alleges that the defendant herein charges rates for the shipment of bread within Colorado that are unjustly high and unreasonable, and seeks relief therefrom and we are asked to establish reasonable rates for the future.

A large number of witnesses were introduced by the complainants, representing all the larger bakeries in Denver, Colorado Springs and Pueblo. The testimony went minutely into the facts of the baking industry in Colorado. It showed very conclusively that reductions in prices had been made by the bread manufacturers since the date of the last increase in express rates in 1920. The evidence also showed that while the bakers had increased their sales considerably in their respective localities, they have suffered very heavy losses in their outside trade, running from 30 to 70 per cent. These losses in their shipping business, the complainants allege, are wholly attributable to the increased express rates put in effect in 1920.

Sufficient evidence bearing out these claims was submitted to warrant the conclusion that the free movement of bread over the lines of the defendant carrier in Colorado is being retarded on account of high rates, and this in the face of the fact that more strenuous efforts have been made since such date to increase outside trade than ever before.

The testimony shows that the cost of shipping bread in New York City for a little over one hundred miles is 87 cents per cwt., while the cost of shipping it from Pueblo to Walsenburg, a distance of fifty-three miles, is $1.04 per cwt.; from Colorado Springs to Ramah, a distance of forty-eight miles, 82 cents; from Pueblo to Monte Vista, a distance of one

hundred forty-five miles, $1.99; and from Pueblo to Salida, a distance of ninety-six miles, $1.16.

From the foregoing it can be readily seen that the New York shipper has approximately twice the shipping radius for the same amount of express charges.

The following is a comparison in the present rates from Denver, Colorado Springs and Pueblo to points west thereof, with the rates in the next lower zone as shown by complainant's Exhibit No. 5:

Miles	Points West of Pueblo, Colorado Springs and Denver.	Washington, Oregon, Kansas, Nebraska, Dakotas and Other Points in Zones 3 and 5.
100	$ 1.71	$ 1.04
200	2.03	1.56
300	2.81	1.97
400	3.06	2.44
500	3.33	2.81

A statement showing comparisons in rates on bread from Denver, Colorado Springs and Pueblo to points in Colorado west thereof, and other states located in the same zone which did not permit the last 26 per cent advance, is as follows:

Miles	Points in Colorado West From Denver, Colo.Springs and Pueblo.	Rates in Idaho, Utah, Arizona, Montana, Nevada.	% of Colorado Rates to Other Rates.	% of Increase Colorado Rates Over Other Rates.
25	$ .73	$ .70	104.3	04.3
50	1.19	.96	124	24
100	1.71	1.15	149	49
150	2.03	1.36	149	49
200	2.03	1.62	125.3	25.3
250	2.29	1.81	126.5	26.5
300	2.81	2.02	139	39
350	2.81	2.23	126	26.4
400	3.06	2.44	125.4	25.4
450	3.33	2.64	126.1	26.1
500	3.33	2.80	119	19

It will be noted in the figures above the rate for fifty miles is $1.19, while the rate to Salida from Pueblo, ninety-six miles, is but $1.16. The lower rate between Pueblo and Salida was occasioned by the Express Company granting a special commodity rate between these points after the 26 per cent raise became effective.

Defendant urges that the aforesaid rates are not a fair comparison, but certainly if we are to arrive at just and equitable rates within the State of Colorado, we must take into consideration the rates paid by competitors in the states surrounding us. The last increase in express rates was made effective in November, 1920, and at this time the states of Idaho, Utah, Arizona, Montana and Nevada did not permit the 26 per cent advance, while Colorado did. Owing to the apparent exigency of the case, brought about by an increase of express employes' wages, the Interstate Commerce Commission ordered a general increase throughout the country, after an investigation of the matters involved. This Commission allowed the same rates in Colorado to conform with the interstate rates. While two years have elapsed, and in the meantime the Express Company has appealed to the Interstate Commerce Commission, no advance in the rates in the states of Idaho, Utah, Arizona, Montana and Nevada has as yet been made.

To allow these competing states to continue on their present basis of rates and Colorado to continue on its higher basis of rates would constitute a discrimination against our own citizenry, which this Commission does not feel justified in permitting.

The evidence shows that, under the uniform contract between the Express Company and the railroad companies, the railroads will stand the larger portion of any reduction in express rates. Under an order of the United States Railway Labor Board, effective August 1, 1921, the Express Company got a reduction in labor costs amounting to approximately $12,000,000.00 per annum. The railroad companies, under an order of the Labor Board, effective August 1, 1921, got a reduction in wages estimated at $400,000,000.00 per annum. The Express Company and the railroad companies have also been benefitted by reductions in other expenses.

Many reductions in freight rates have been made voluntarily by the railroad companies and others have been ordered by the Interstate Commerce Commission. In Reduced Rates, 1922, Vol. 68, of the Interstate Commerce Commission's reports, pages 676 to 747, the commission ordered a

general reduction of 10 per cent in freight rates throughout the country, effective July 1, 1922. In discussing the situation in this decision, the Interstate Commerce Commission, at page 732, said: "Shippers almost unanimously contend, and many representatives of the carriers agree, that 'freight rates are too high and must come down.' This indicates that transportation charges have mounted to a point where they are impeding the flow of commerce and thus tending to defeat the purpose for which the increased rates were established—that of producing revenues which would enable the carriers to provide the people of the United States with adequate transportation." In our own State the railroads voluntarily reduced freight rates on certain commodities to about the basis in effect prior to the last increase.

To permit the reductions in wages and expenses of the carriers to be entirely absorbed by reductions in freight rates would be manifestly unfair to shippers whose products move by express and who are unable to bear the burden of the existing high rates.

In rates on grain, grain products and hay, 64 I.C.C. Reports, Page 100, the Interstate Commerce Commission says: "So far as a tendency downward in their rates (meaning the rail carriers) can be induced, and so far as the reduction in wages and prices which have already been made effective can be converted into rate reductions, we are assured that the full return of prosperity will be hastened for both industry and labor."

Defendant's witnesses insist that bread now takes a cheaper rate than any other article of food, except those packed in ice.

A flat charge of 5 cents is made for the return of empty bread containers where pickup and delivery service is not accorded, and 10 cents if pickup and delivery service is provided. The Express Company insists that the charges assessed for the return of the empties is not remunerative.

One of defendant's witnesses also stated that "bread is a necessity of life, and bakers have always contended that their margin of profit is smaller than on other classes of shipments and would not stand an increase in express rates." This he gave as a reason for the present rates on bread being lower than some other classes of food products.

The evidence shows that both milk and cream move at a lower rate than the bread rate, and the empty cans are returned free where no pickup or delivery service is performed. While no terminal service is performed on the milk and cream rates, even by adding terminal costs, the bread rate would be considerably above those charged for milk and cream.

If, then, we are to measure the bread rates solely by those articles of food which take a higher or a lower rate than bread, which item would be the controlling factor in establishing a proper rate? It would be just as reasonable to use one measure as the other. The fact that a rate does not measure up or down to other articles with which it is not in competition does not indicate that the rate is too high or too low.

Defendant's evidence shows that the Express Company's operating income on Colorado intrastate business, after deducting expenses, was $17,-864.93 for the year 1921, and that its net income for the same year from all operations throughout the United States amounted to $2,309,220.82. It is noticeable, however, that the Express Company did not contend that it was not earning a sufficient return on its investment, but contented itself rather upon a showing of the intervenors, The Denver & Rio Grande Western Railroad Company and The Colorado & Southern Railway Company, which companies produced exhibits to show that there was a deficit in express operation on the lines of these carriers for the year 1917, and that the deficit was greater in 1921 than in 1917; but this showing included through interstate hauls and included figures for local hauls in other states, and were not segregated in such a manner as to be of value and are not persuasive in the absence of evidence showing the surrounding circumstances and conditions. On the other hand, it is shown in the testimony that for the first three months of 1922 (subsequent reports were not produced at the hearing) the express privileges paid to the carriers generally through-

out the United States exceeded those for the same period in 1921 by over $3,000,000.00, or in excess of 15 per cent.

It is also significant to note that the Missouri Pacific Railroad Company, The Chicago, Rock Island & Pacific Railway Company, The Atchison, Topeka & Santa Fe Railway Company, The Chicago, Burlington & Quincy Railroad Company and the Union Pacific Railroad Company, all large companies having extensive lines within the State of Colorado, entered no appearances and made no protest or showing.

An illuminating statement showing how the increased express rates have decreased shipments and depleted the revenues of the Express Company is shown by complainant's Exhibit No. 12. It shows that for the week ending October 9, 1920, the five leading bakeries of Denver, Colorado Springs and Pueblo shipped 86, 936 pounds of bread at an 82 cent rate, which gave the Express Company a return of $712.88. The same baking companies, for the week ending May 6, 1922, only shipped 38,252 pounds of bread at a rate of $1.04, producing a revenue for the Express Company of but $397.82, or a loss to the Express Company of $315.06 in revenue attributable to the higher rates.

Upon consideration of the record as a whole, the Commission finds the facts to be that the express rates of this defendant on bread are unreasonably high and unjust between Denver, Colorado Springs and Pueblo, Colorado, and points within the State of Colorado, and for the future will be unreasonable and unjust to the extent that they exceed those in effect prior to the last 26 per cent advance in rates.

Although the issue is not before us, the Commission does not feel warranted in issuing an order affecting certain localities in the State without according all points within the State the same privilege; and while no order will be issued at this time covering the points not mentioned in the complainant's complaint, the Express Company will be expected to bring all rates on bread within the State of Colorado to conform

with the order in this case.

O R D E R

IT IS THEREFORE ORDERED, That The American Railway Express Company be, and it is hereby, ordered to restore the bread rates in effect in Colorado immediately previous to the twenty-six 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.

IT IS FURTHER ORDERED, That The American Railway Express Company file with this Commission an amendment to its bread rates, in accordance with this order, within eight days of the date hereof.

IT IS FURTHER ORDERED, That the reduced rates ordered herein become effective December 15, 1922.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hardeman

A. C. Anderson

E. D. Lamon

Commissioners.

Dated at Denver, Colorado,
this 6th day of December, A.D.1922.

(Decision No. 578)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

The Pueblo Ice Cream Company,
The Polar Ice Cream & Supply Company,

Complainants,

vs.

American Railway Express Company,

Defendant.

CASE NO. 255

December 6, 1922.

Appearances: R. L. Ellis, Traffic Manager of the Pueblo Commerce Club, for Complainant; for Defendant, J. H. Moores, 49 Broadway, New York; for Intervenor, The Denver & Rio Grande Western Railroad Company, Thos. F. Woodrow, Esq.

S T A T E M E N T

By the Commission:

On March 23, 1922, the Commission received the complaint herein and set the case down for hearing for 2:00 o'clock P. M., May 25, A.D.1922, at the City Hall, Pueblo, Colorado. Cases Nos. 255 and 256 were consolidated for the purposes of the hearing and it was agreed by the interested parties that all evidence that might be applicable should be used in both cases. It was agreed by counsel and other interested parties that Case No. 256 should be heard first and at its conclusion on May 26th, Case No. 255 was duly heard.

Complainants, The Pueblo Ice Cream Company and the Polar Ice Cream & Supply Company, both located at Pueblo, Colorado, allege that the defendant charges rates on ice cream between Pueblo, Colorado, and all points within the State of Colorado, and for the return of ice cream empties from Colorado points to Pueblo that are unjustly high and unreasonable, and seeks

relief therefrom. It was also alleged by complainants that rates to certain points were discriminatory in favor of Denver, but this latter allegation was withdrawn at the hearing.

It is shown in the evidence that ice cream and bread move on the same rates per cwt., and what we said in regard to the main issues in our decision on the bread case applies with equal force to the ice cream case and we will deal only with the issues peculiar to the ice cream case now before us.

The testimony of complainants' witnesses was similar to that introduced by the witnesses in the bread case. It was shown that reductions in prices had been made from time to time by the ice cream manufacturers since the date of the last increase in express rates.

The evidence shows that it is impossible for the ice cream companies to reduce their prices further in order to get business. More active sales effort has been made in 1920, without results. Their inability to get outside trade is attributed entirely to the high express rates.

Defendant's evidence shows that ice cream and other food shipments packed in ice are allowed a reduction of 25% from the gross weight account of being packed in ice, and that no reduction is allowed in the weight of articles not packed in ice. For this reason, the Express Company urges that no reduction should be made in the ice cream rates; but, everything considered, cream and milk move at a lower rate than ice cream.

Complainants contend that by reason of the necessity of packing shipments in ice, the defendant is accorded a greater revenue in comparison with the net weight of the shipment than is accorded food products not packed in ice. The evidence shows that in the early days of the express business it was found that the express business would be very essential for perishable food products packed in ice, such as fish, meat, oysters, clams, dressed poultry, etc., but those commodities would not

move freely by express if they were charged on the gross weight, including the weight of the ice; so the express companies years ago fixed a classified rate on perishable food products packed in ice of 25 per cent less than the gross weight.

The issues here presented are practically identical with those in the bread case, No. 256, and the findings in that case will apply likewise to the issues involved herein.

The evidence in this case shows that 50 per cent of the ice cream is hauled to the express office by the express company's wagons, and 50 per cent is delivered by complainants' trucks, the reason being that complainants do not wish to pack their shipments so far ahead of the departure of trains and prefer to deliver the ice cream to the station themselves for this reason.

The present charge for the return by express of empty ice cream containers is 16 cents, regardless of distance carried. Complainants ask the Commission to reduce this charge to 5 cents, which is the charge in Colorado on the returned bread empties when no terminal service is performed.

A similar demand was made in the case of the National Association of Ice Cream Manufacturers against the Adams Express Company, et al, 33 I.C.C. 411, in which the Interstate Commerce Commission said: "As with respect to the charges on ice cream, the rates on ice cream packages returned empty are not fairly comparable with rates on empty bread carriers or other carriers which take lower rates." The evidence shows that not all the ice cream empties are delivered by the Express Company, but the exception is when the ice cream company is in a hurry for the empties and picks them up with its own truck.

The testimony shows that complainants' containers are three and five gallon containers, and the cubic dimensions of these are less than other containers returned for ten and eleven cents. Bread empties are re-

turned for five cents where the bread company's truck picks up the empty, and ten cents where the Express Company delivers it. The Express Company contends that the delivery cost is in excess of the amount received for this service. It seems that complainant should be accorded the alternative of permitting the Express Company to deliver the ice cream empties at the existing rates or to pick them up with their own trucks, and that a reduction of five cents per package would be a fair allowance for this service.

After consideration of the record as a whole, we find that the rates on ice cream between Pueblo and points within the State of Colorado are, and for the future will be, unreasonable to the extent that they exceed those in effect prior to the last 26% increase, and that an alternative application should be established in the Express Company's tariff providing for return of ice cream empties when pickup and delivery service has not been accorded by the Express Company, five cents under the rate where pickup and delivery service is performed by the Express Company.

Although the issue is not before it, the Commission does not feel warranted in issuing an order affecting certain localities in the State without according all points within the State the same privilege; and while no order will be issued at this time, the Express Company will be expected to bring all rates on ice cream and ice cream empties within the State to conform with the order in this case.

O R D E R

IT IS THEREFORE ORDERED, That the American Railway Express Company be, and is hereby, ordered to restore the rates on ice cream to the basis in effect in Colorado immediately previous to the twenty-six per centum increase allowed under Colorado P.U.C. Application No. 94, of November 5, 1920, from Pueblo to all points in Colorado reached by said American Railway Express Company.

IT IS FURTHER ORDERED, That the American Railway Express Company's tariff shall provide a reduction of five cents under its regular tariff where the Express Company does not provide delivery service for empty ice cream containers.

IT IS FURTHER ORDERED, That the reduced rates ordered herein become effective December 15, A. D. 1922, and that the Express Company file its amended tariff with this Commission embodying said reductions within eight days of the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 6th day of December, 1922.

(Decision No. 579)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

The Pueblo Ice Cream Company, The Polar Ice Cream & Supply Company, Complainants, vs. American Railway Express Company, Defendant.	)	CASE NO. 255 SUPPLEMENTAL ORDER

December 11, 1922

WHEREAS, the order in the above entitled cause, issued December 6, 1922, provided that the effective date for the filing of the tariff in harmony therewith should be December 15, 1922; and,

WHEREAS, the American Railway Express Company has made application to the Commission for an extension of the period within which to file said tariff on account of there not being sufficient time to permit for the printing and serving of the tariff upon the agents of said Company within the State of Colorado within the time therein allowed.

IT IS, THEREFORE, ORDERED that the time for filing of the tariff in the above entitled cause shall be extended from December 15, 1922 to January 1, 1923.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Ferman

A. P. Anderson

J. L. Lamm

Commissioners.

Dated at Denver, Colorado,
this 11th day of December, 1922.

(Decision No. 580)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

The Mercantile Service Corporation, Complainant,	)	
vs.	)	CASE NO. 256
American Railway Express Company, Defendant.	)	SUPPLEMENTAL ORDER

December 11, 1922

WHEREAS, the order in the above entitled cause, issued December 6, 1922, provided that the effective date for the filing of the tariff in harmony therewith should be December 15, 1922; and,

WHEREAS, the American Railway Express Company has made application to the Commission for an extension of the period within which to file said tariff on account of there not being sufficient time to permit for the printing and serving of the tariff upon the agents of said Company within the State of Colorado within the time therein allowed.

IT IS THEREFORE ORDERED, that the time for filing of the tariff in the above entitled cause shall be extended from December 15, 1922 to January 1, 1923.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hoffman

A. O. Anderson

H. D. Lawson

Commissioners.

Dated at Denver, Colorado,
this 11th day of December, 1922.

(Decision No. 581).

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 the Opening of a Public Highway Crossing at Grade Over the Union Pacific Right of Way and Track on Section Line between Sections 22 and 23, in Township 14, South, Range 50 West 6th P.M., near Wild Horse, Cheyenne County, Colorado.

Application No.198

11 December 1922.

S T A T E M E N T

By the Commission:

This matter comes before the Commission on Application filed in this office by the Board of County Commissioners of Cheyenne County, Colorado, for the opening of a public highway crossing at grade over the main line track and right of way of the Union Pacific Railroad Company, on the section line between sections 22 and 23, in township 14 south, range 50 west of 6th p.m.,near Wild Horse, Colorado.

Upon investigation by the railway engineer for this Commission it was found that this crossing was desired for the benefit of one Mr. C. C. Fox, owner of some land on the south side of the Union Pacific railroad track. Later investigation revealed the fact that Mr. Fox had moved from this property, and on November 14, 1922, this Commission was in receipt of a resolution from the said Board of County Commissioners wherein they stated, "this Board is now of the opinion that such crossing is not entirely necessary" and requested that the original application herein be withdrawn.

IT IS THEREFORE ORDERED, That said Application may be withdrawn by applicant as requested, and that this case be, and the same is hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Chairman,

A.P. Anderson

H.D. Lamm

Commissioners.

Dated at Denver, Colorado,
this 11th day of December,
1922.

(Decision No. 582)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

The Atchison, Topeka and Santa Fe Railway Company, a corporation, The Colorado and Southern Railway Company, a corporation, and Joseph H. Young as Receiver of The Denver and Rio Grande Western Railroad Company, Complainants,	)	CASE NO. 262
v.	)	
Inter-City Automobile Lines, Inc. Defendant.	)	

- - - - - - -

December 12, 1922

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S T A T E M E N T

By the Commission:

The above case was filed with this Commission August 5, 1922. In their complaint the above named corporations, hereinafter called the railroads, after other formal allegations alleged that the Inter-City Automobile Lines is a corporation of the State of Colorado, having its chief place of business in Denver, Colorado; that the said auto line has, since the middle of June, 1922, been operating automobile passenger stages and affording a means of transportation by such vehicles similar to that ordinarily afforded by railroads, and in competition with the railroads as common carriers for hire and compensation by indiscriminately accepting and advertising and otherwise holding itself out to accept, and carrying, discharging and laying down passengers between the fixed points of Denver and Colorado Springs, and latterly Pueblo, and immediately paralleling the double track jointly used and operated by the railroads between said cities; that the auto line has recently, and immediately prior to the month of July, 1922, begun the construction and operation of said new facility, line and system without first having obtained, or attempting to have obtained, from this Commission

a certificate that the present or future public convenience and necessity require or will require such construction or operation as required by law; that the said auto line, in so constructing and operating its said line, facility and system, has interfered and is interfering with and injuriously affecting the systems of said railroads. Complainants ask that the Commission, after hearing, make an order prohibiting the further operation of said auto line, and that it find that said auto line is not entitled to obtain from this Commission a certificate of public convenience and necessity, and shall forbid any operation along such route by said auto line without such certificate.

After service of the complaint upon the respondent, Inter-City Automobile Lines, Inc., and on September 2, 1922, there was filed by the said Inter-City Automobile Lines a demurrer to the complaint, which reads as follows:

> "Comes now the above named defendant and demurs to the complaint filed herein, and for grounds of said demurrer alleges that the complaint does not constitute a cause of action against the defendant."

After some delay, occasioned by the request of the parties hereto, the Commission set the case down for hearing and the same was heard on the 4th day of October, 1922, at 10:00 o'clock A. M., at the Hearing Room of the Commission. The case was set for hearing upon the demurrer filed by the respondent herein. Full opportunity for argument was afforded to all parties in interest, and at the request of the Commission briefs were filed by the parties in interest.

Upon the argument of the demurrer by the respondent, the respondent denied the power of the State to prohibit use of highways by common carriers by automobile and raised the question as to whether, under the existing Public Utilities law and the subsequent amendments thereto, the State of Colorado, through its legislature, has given the Public Utilities Commission the authority and duty of investigating the question from the point of view of public convenience and necessity in allowing the operation of motor bus lines in

competition with railroads. The respondent took the position that the legislature, in Section 35, did not intend to include motor bus lines in competition with railroads and that, therefore, the Utilities Commission had no power or authority to withhold or grant a certificate of public convenience and necessity. Particular stress was given by the respondent in its argument to its contention that motor bus lines were not public utilities, as included in Section 35, but that motor bus lines in competition with the railroads were only quasi public utilities, and although they were subject to regulation under the Utilities law as to rates and service they were not intended to be included in Section 35, requiring certificates of public convenience and necessity, and that no certificate of public convenience and necessity is required to be obtained by the respondent herein. Section 2 (e), as amended in 1915, reads as follows:

> "The term "common carrier," when used in this act, includes every railroad corporation, street railroad corporation, express corporation, dispatch, sleeping car, dining car, drawing room car, freight line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading; 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; and every other car corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, operating for compensation within this State."

This amendment was approved April 9, 1915. Section 35 of the original Public Utilities Act of 1913 was submitted to the people and failed of adoption. In 1917 the legislature passed a new act, and designated the same as Section 35 (a), which provides as follows:

> "No public utility shall henceforth begin the construction of a new facility, plant or system, or of any extension of its facility, plant or system, without having first obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction* * * *."

It will be noticed that amended Section 2 (e) declares an automobile line to be a common carrier. Section 3 reads:

"The term "public utility," when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, person or municipality operating for the purpose of supplying the public for domestic, mechanical or public uses, and every corporation or person now or hereafter declared by law to be affected with a public interest, and each thereof, is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the Commission and to the provisions of this act* * * *."

How it can be contended by the respondent, after a careful reading of these sections, that motor bus lines are only quasi public utilities we do not understand. The amended Section 2 (e) defines a transportation company by automobile as a common carrier. Section 3 defines the term public utility as including every common carrier and every corporation or person now or hereafter declared by law to be affected with a public interest. In 1915 the legislature of the State, three days after the passing of the amendment to Section 2 (e) and on April 12, 1915, also passed another statute, which seems to have been independent of the Public Utilities Act, expressly declaring automobile lines affected with a public interest to be public utilities. This section reads as follows:

Section 1. "Any person, firm, association of persons, or corporation now or hereafter engaged in transporting passengers, freight or express for hire in this State in any automobile or other vehicle whatever, and operating for the purpose of affording a means of transportation similar to that 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, is hereby declared to be affected with a public interest and to be a public utility and subject to the laws of this State now in force and effect, or that may hereafter be enacted, pertaining to public utilities."

It will, therefore, be seen that this act itself expressly declares automobile lines to be affected with a public interest and to be a public utility, not a quasi public utility.

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 amendment of 1917, requiring certificates

of public convenience and necessity, starts out by saying that, "No public utility shall henceforth begin the construction of a new facility, plant or system, or of any extension, without having first obtained a certificate, etc." The words "no public utility" are simple, plain and emphatic, and in the opinion of the Commission it is not justified in holding that a common carrier by automobile is in any sense a different class of utility than others contemplated in the law requiring the obtaining of certificates of public convenience and necessity. If there is any good reason why common carriers by automobile should not be required to obtain a certificate of public convenience and necessity the same as other public utilities, this is for the legislature to decide by proper legislation.

It is the opinion of the Commission that the respondent herein, if it is operating in competition with railroads and has the other legal characteristics as set forth and contained in amended Section 2 (e), should obtain a certificate of public convenience and necessity from this Commission.

The Commission, at a future date, will set this case down for hearing on its merits when, after hearing, the Commission will either grant or deny to the respondent a certificate of public convenience and necessity.

O R D E R

IT IS THEREFORE ORDERED, That the demurrer herein, filed by the respondent, Inter-City Automobile Lines, Inc., is hereby overruled, and the respondent will be permitted to file any answer to the complaint herein it may desire within fifteen days from this date.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 12th day of December, 1922.

(Decision No. 5825.

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, State of Colorado, for the Opening of a Public Highway Crossing Over the C. B. & Q. tracks.	Application No.57.

11 December 1922.

S T A T E M E N T

By the Commission:

This matter comes before the Commission on Application No.57, filed in this office on September 19, 1919, by the Board of County Commissioners of Logan County, Colorado, for the opening of a public highway crossing at grade over the right of way and tracks of the C. B. & Q. R. R. Co., on the section line between sections 1, in township 11 north, range 52 and section 6, in township 11, north, range 51, all west 6th p.m., and being on the range line between ranges 51 and 52.

On January 29, 1921 the C. B. & Q. R. R. Co. filed its answer to said application in which it opposed the opening of theproposed crossing.

Since that time the said county commissioners and railroad company have been conducting negotiations with reference to said highway crossing with the result that on November 9, 1922, the county commissioners aforesaid, by resolution duly passed withdrew said application made by them on September 18, 1919, and filed in this office on September 19, 1919.

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hadsell

A.O. Anderson

H.D. Lawson

Commissioners.

Dated at Denver, Colorado,
this eleventh day of
December, A.D.,1922.

Decision No. 5831

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of)
)
W. E. Carver to Operate a Passenger) APPLICATION NO. 197
)
Stage Line.)

- - - - - - - - -
December 18, 1922.
- - - - - - - - -

Appearances: W. H. Wadley, Esq., of Denver, for Applicant; L. J. Williams, Esq., of Denver, for Protestant, The Denver and Salt Lake Railroad Company and its Receivers.

S T A T E M E N T

By the Commission:

On June 14, 1922, W. E. Carver, the above named applicant, filed an application with the Commission seeking authority to operate an automobile stage line between the cities of Denver and Steamboat Springs, Colorado, for the purpose of transporting passengers thereover for hire. Applicant seeks herein what is denominated under our statute a certificate of public convenience and necessity for the establishment of such automobile passenger stage line.

The applicant sets forth in his application the purpose for which he desires to engage in such business, his post office address, and gives the route over which he proposes to establish such automobile service as "the usual route for motor travel, to-wit: Denver to Idaho Springs, Empire, Fraser, Hot Sulphur Springs, Kremmling, paralleling the Moffat Railroad about fifty miles," and alleging that the granting of the application sought will result in increasing the convenience to the public along said named route by giving daily service each way and by shortening the traveling time to approximately ten hours between termini.

A copy of said application was served upon the receivers of The Denver and Salt Lake Railroad Company who, on June 24, filed an answer

and protest to the granting of such certificate of convenience and necessity to said applicant. In addition to alleging the appointment of the receivers for said railroad under authority of the District Court of Adams County, Colorado, protestants allege, by way of objection to the granting of said application, that the applicant, if allowed to engage in such automobile passenger business, would directly compete with the receivers of said railroad in the transportation of passengers between Denver and Steamboat Springs; that the volume of passenger business between said cities is not sufficient to justify the operation of a stage line in competition with the railroad; that the public convenience and necessity does not require, nor will not require, the operation of a passenger stage line between said points; that the line of protestants' road is operated and extends from Denver to and beyond Steamboat Springs and said railroad is operated throughout the year, whereas the passenger stage line proposed in this case could not possibly be operated much of the time during the winter season, with the result that if applicant is granted a certificate he would simply participate in the passenger carrying business between said points during the summer season to the great detriment of the receivers and the railroad operated by them.

Protestants further allege, by way of protest, that they are required to pay large sums for taxes to the various counties through which said railroad runs; that said railroad has been located and established at enormous expense and that it should be protected from competition so long as it continues to furnish reasonable transportation facilities for the communities served by it; and, finally, that the receivers have not been able to show an earning on the investment in said railroad, and that for the greater portion of the time the railroad has been operated by them they have not even been able to pay operating expenses, and that the operation of the proposed competing passenger stage line will further add to the difficulties of maintaining said railroad; and protestants pray that the above application be denied.

Pursuant to notice, the matter was set for hearing at the Hearing Room of the Commission, State Office Building, Denver, Colorado, on Wednesday, September 27, 1922, at 10:00 o'clock A. M. and duly heard on that day. At the conclusion of the hearing time was given the applicant for the filing of briefs, to be followed by the brief in answer thereto by protestant, with a short order for reply brief by applicant; and all briefs were filed and have been duly considered by the Commission. Press of business and other matters that have consumed the time and attention of the Commission have prevented an earlier decision and order being rendered herein.

Preliminary to and as part of the testimony of applicant there was introduced a map, "Exhibit 1," which shows the line of railroad between Denver and Steamboat Springs, indicated thereon by a red line, and the route of the proposed auto stage line, indicated thereon by a blue line. The stage line, leaving Denver, proceeds west through the environs of Golden over Lookout Mountain, through Idaho Springs, crosses the range over Berthoud Pass and first invades the territory of the railroad at Vasquez, thence practically paralleling the railroad from there to Kremmling, whence it branches off in a northerly direction through Martin to Steamboat Springs. The railroad, leaving Denver, proceeds north to Utah Junction and then northwesterly over the range through Rollinsville, Tolland, crossing the divide at Corona, thence on through Fraser, Tabernash, Granby, Hot Sulphur Springs, Parshall to Kremmling, thence in a southwesterly direction to State Bridge, thence north through Yampa, Phippsburg, Oak Creek, and then northeasterly to Steamboat Springs.

As alleged by applicant, and supported by his testimony, the only portion of the route that can be fairly said to be competitive territory between the auto stage line and the railroad is that part between Vasquez and Fraser to Kremmling which, it is testified, is a distance of approximately fifty miles, and in no other respect is the automobile stage line and the railroad in competition, save as between the termini of Denver and Steamboat Springs.

At the time of the filing of the application applicant started to run his passenger auto bus line and transport passengers between Denver and Steamboat Springs. At that time, prior thereto, and for some weeks afterward, the railroad was being operated in two parts, one part from Denver to Tunnel 16 and the other part from Tunnel 16 to Steamboat Springs, necessitating the transfer of passengers as well as freight and express around Tunnel 16 for several months, occasioned by a fire in said tunnel that occurred in the latter part of April, 1922. No serious objection was made to the operation of the auto stage at that time by reason of the inability of the railroad to establish and maintain regular and prompt passenger service. Counsel for protestants, however, strenuously object to the further continuance of the automobile stage because of it depriving the railroad of revenues which would otherwise accrue to it, and claiming that the railroad furnishes adequate transportation facilities for all business offered; in other words, that the public convenience and necessity does not require, and will not require, any additional means of passenger transportation than said railroad. The evidence discloses, however, that the railroad is not at all punctual in delivering passengers at either termini, Denver or Steamboat Springs, and that during at least half the year tri-weekly service only is maintained. It is rather significant that a number of the residents of northwestern Colorado testify as to the public convenience and necessity that is served by the auto stage line. It is true that the applicant does not propose to engage in such transportation during the portions of the year that weather conditions make it impossible for him so to do. If he accepts the certificate of convenience and necessity herein sought, however, he will be expected by the Commission to operate his auto stage to serve the public convenience and necessity, alleged by him to exist, at all seasons of the year when it is reasonably possible for him to do so--exactly as the rail carrier is expected to do and does. When a storm of extreme severity occurs often the rail carrier is unable temporarily to operate its trains. The same will be true, no doubt, of the auto stage; but if there is a necessity and con-

venience to the public at all in the operation of the auto stage, it would seem that it would exist in the fall, winter and spring season equally as much as in the summer season.

Protestants insistently urge that applicant be denied the certificate sought for the reason that he started to operate his auto stage and continued to do so before a certificate of convenience and necessity had been obtained. Hence, that having violated the law he has no standing before this Commission, and protestants cite numerous authorities in support of the principle so well known that a wrong-doer may not take advantage of his own wrong in the courts of our country. With that principle the Commission is in full accord, but it is not yet convinced that it is a body given the authority and power of a court to apply such legal principles. If applicant were violating the law by operating a stage before having obtained a certificate of convenience and necessity to the injury or detriment of the railroad, or any person else, the person injured had the right at any time to have sought the protection of a court of competent jurisdiction to enjoin and thus prevent a continuance of the alleged injury.

Protestant railroad strongly relies upon the case of Re McGlochlin, 6 Colo. P.U.C., P.U.R. 1922-C, 215, as authority for the denial of the certificate sought by applicant herein, and in its brief insists that the cases are entirely analogous in principle. A careful reading of the McGlochlin case, however, discloses evidence of the fact upon which that certificate was denied to be that there were ample passenger train facilities between Glenwood Springs and Wolcott in either direction every day in the year, so that the establishment of the auto bus passenger stage sought to be made by McGlochlin between Glenwood Springs and Wolcott for the four summer months, or for that matter at all, was denied for the fundamental reason that there were existent ample and adequate passenger facilities between those two points. In the case under discussion, however, the evidence is undisputed that there is but one train every other day in the winter season each way, and in the spring and summer season a daily service in each direction, and that it is the exception rather than the rule for the existent train service to arrive

in Denver in time to make connections with other trains leaving Denver and is very frequently many hours late in arriving at the stations along its line.

Protestants allege and urge the necessity for the railroad earning all the revenue possible that it may make even its operating expenses, and make the claim that if the automobile bus line is allowed to continue to operate it will thereby deprive it of considerable revenue, thus making the deficit in operating expenses greater. The testimony is that during the time of operation of the auto stage up to the date of the hearing, and which embraced a considerable part of the time when the railroad was prevented from running through because of the cavein of Tunnel 16, that the revenues derived amounted to about $90.00 a day, exclusive of Sundays when the auto stage did not operate; and, according to the testimony submitted, if that were the average earnings of the auto stage it would be approximately an average of five per cent of the passenger earnings of the railroad. However this may be, it is not deemed to be of controlling materiality for the simple reason that, as this Commission and many other commissions have repeatedly held, a common carrier must afford reasonably adequate and efficient service to the public to be protected in that service from competition. If a common carrier is unable to do so by reason of poverty, lack of business or any other reason, it is not cause for the public to be deprived of a reasonably adequate and efficient service. Hence, it follows that evidence of the financial condition of a railroad and its inability to earn even its operating expenses in and of itself furnishes no ground of defense or protest to the granting of a certificate of convenience and necessity. As has been decided by this Commission in several cases, the necessity need not be an absolute necessity, but only such a necessity as will be reasonably convenient to the service of the public.

Re Overland Motor Express Co., 6 Colo. P.U.C. - P.U.R. 1920-B, 551.
Re Donovan, 6 Colo. P.U.C. - P.U.R. 1921-D, 488.

In the past several years perhaps no other common carrier in the State has given this Commission more concern than The Denver and Salt Lake Railroad Company, and it has done everything consistently in its power to aid the railroad in every way, that it may continue to operate. Perhaps in

the same length of time no other common carrier in the State has been the cause of so much complaint by its inefficient lack of passenger transportation facilities. Whether the passenger auto bus line will alleviate the passenger convenience and necessity which seems to exist from northwestern Colorado into Denver will be readily demonstrated by its patronage or lack of patronage; for it is quite obvious if the railroad meets that competition with punctual train service and lands its passengers from Steamboat Springs to Denver and vice versa in the same length of time the competition will soon disappear.

Taking into consideration all the evidence in the case and the circumstances surrounding it, the Commission is of the opinion that of the many applications for certificates of convenience and necessity that have been filed with it by automobile carriers of passengers and of freight and express in this State since the close of the world war, that being the period when such applications began being filed, the application herein presents a case where, more than any other that has come before the Commission, the certificate applied for should be granted.

In the application the applicant did not limit the proposed operation of his auto passenger stage line to any particular period of the year, but in the testimony submitted by him, and particularly upon cross-examination, he admitted that probably he would be unable to operate more than six months of each year. As has hereinbefore been stated, applicant will be expected to operate his passenger stage line during all seasons of the year except such time as extraordinary weather conditions will render it practically impossible so to do. If applicant is not willing to accept this certificate herein granted him upon that condition, it will be denied; and, if he is so willing, he will indicate that willingness by filing a statement with the Commission within ten days from the date of this order indicating therein his willingness so to do.

O R D E R

IT IS THEREFORE ORDERED, That applicant, W. E. Carver, be, and he hereby is, authorized to operate an automobile passenger stage line between Denver and Steamboat Springs, Colorado, over the route indicated by applicant's

"Exhibit 1" herein, for hire; and that he is hereby required to render statements within ten days from the end of each month, beginning with January 1, 1923, showing thereon the number of days in the preceding month during which he so operated, except Sundays, and if no operation upon day or days therein was had, reasons therefor shall be stated.

IT IS FURTHER ORDERED, That this decision and order be taken, deemed and held to be a certificate of convenience and necessity for the operation of said automobile passenger stage line, and that the same shall not be transferable.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
18th day of December, A. D., 1922.

(Decision No. 584)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of the Board of County Commissioners of Phillips County, State of Colorado, for the Opening of a Public Highway Crossing over the Right of Way and Track of the Chicago, Burlington & Quincy Railroad Company, on the Section Line between Sections 4 and 5, T 7 N, R 44 W, Sixth Principal Meridian.

APPLICATION NO. 231

(December 21, 1922)

STATEMENT

By the Commission:

This proceeding arises from the application of the Board of County Commissioners of Phillips 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 right of way and track of the Chicago, Burlington & Quincy Railroad, on the section line between Sections 4 and 5, Township 7 North, Range 44 West, of the 6th Principal Meridian, being about 1.4 miles east of the Town of Holyoke, State of Colorado.

When the application was received in this office, there is the following endorsed: "This request is approved by the Chicago, Burlington & Quincy Railroad Company. E. E. Whitted, Attorney, Chicago, Burlington & Quincy Railroad Company."

The County Commissioners of Phillips County and the Chicago, Burlington & Quincy Railroad Company being fully advised of these matters, and having tentatively agreed to the usual terms and conditions as hereinafter made in the order and no objection 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 crossing at grade be, and the same is, hereby permitted to be opened and established over the main line track of the Chicago, Burlington & Quincy Railroad, on the section line between Sections 4 and 5, Township 7 North, Range 44 West, of the 6th Principal Meridian in Phillips 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 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 grading at the crossing, including the necessary drainage therefor, be borne by Phillips 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. Hardeman,

A P Anderson

H. D. Lamon

Commissioners.

Dated at Denver, Colorado,
this 21st day of December, 1922.

(Decision No. 585)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In Re Advance by The Colorado Power Company in Charges Governing Line Extensions.) I. & S. No. 53

(December 29, 1922)

STATEMENT

By the Commission:

On October 25, 1920, The Colorado Power Company filed tariffs with the Commission increasing the charges governing line extensions and these tariffs are designated as follows:

1st	Revised	Sheet	No.	12	to	Colo.	P.U.C.	No.	3
1st	"	"	"	12	"	"	"	"	4
1st	"	"	"	12	"	"	"	"	5
1st	"	"	"	12	"	"	"	"	6
1st	"	"	"	12	"	"	"	"	7
1st	"	"	"	12	"	"	"	"	9
1st	"	"	"	12	"	"	"	"	10
1st	"	"	"	12	"	"	"	"	14
1st	"	"	"	12	"	"	"	"	15
1st	"	"	"	12	"	"	"	"	16
1st	"	"	"	12	"	"	"	"	17

On November 24, 1920, by order, the Commission on its own motion entered upon an investigation and hearing concerning the propriety of the charges governing line extensions by The Colorado Power Company stated in the tariffs enumerated, and suspended the operation of said schedules until the 25th day of March, 1921.

Inasmuch as a decision in this investigation and suspension appeared properly to depend upon the decision of the Commission upon other schedules of The Colorado Power Company in cases then pending, action was deferred.

On September 24th, 1921, by order, the Commission further deferred a hearing in this investigation and suspension upon the tariffs

emmerated, and suspended the operation of these schedules until the 1st day of December, 1921. And now on December 21, 1922, The Colorado Power Company by letter seeks to withdraw these schedules without prejudice, and since it appears no other effort has been made in regard to these schedules since Decision No. 527, April 19, 1922, in re Proposed Increase in Power Rates of The Colorado Power Company, the case upon which these schedules seemed properly to depend, the Commission will issue an order dismissing this case.

O R D E R

IT IS THEREFORE ORDERED, That the schedules of The Colorado Power Company filed with the Commission, embodying advances in the charges governing line extensions and which were suspended by the Commission be, and the same are, hereby withdrawn, and the case is dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant Hall Denman.

A J Anderson

By L. Lannon

Commissioners

Dated at Denver, Colorado,
this 29th day of December, 1922.

(Decision No. 586)

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 for a Public Highway Crossing Over the Right-of-Way and Main Line Track of the Missouri Pacific Railroad on the Section Line between Sections 33 and 34, Township 18 South, Range 45 West, in Kiowa County, Colorado.

APPLICATION NO. 233

- - - - - - - -
January 13, 1923.
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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 Kiowa 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 Missouri Pacific Railroad Company on the section line between Sections 33 and 34, Township 18 South, Range 45 West of the 6th Principal Meridian, in Kiowa County, Colorado.

On January 12, 1923, the Commission's assistant railway engineer viewed the crossing, and he states that the view of approaching trains is good in all directions and that in his opinion the crossing is a necessity.

On January 3, 1923, the Commission was in receipt of a letter from Mr. T. H. Devine, Attorney for the Missouri Pacific Railroad Company, wherein he states, after taking this matter up with the proper officials of the Railroad Company, that "I am this morning in receipt of their answer, which is to the effect that the Railroad Company has no objection to the installation of this crossing."

The County Commissioners of Kiowa County and the Missouri Pacific Railroad Company being fully advised of these matters and having consented

to the terms and conditions hereinafter specified and no objections having been filed, the Commission will issue an order granting permission for the establishment of the crossing as 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 of the Missouri Pacific Railroad on the section line between Sections 33 and 34, Township 18 South, Range 45 West of the 6th Principal Meridian, in Kiowa 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 Kiowa 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, Missouri Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 13th day of January, 1923.

(Decision No. 586)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - - - -

In the Matter of the Alleged Abandonment and Cessation of Service of The Colorado Springs and Cripple Creek District Railway Company, and of the Alleged Removal and Junking of said Line of Railway by one W. D. Corley.

CASE NO. 265

O R D E R

WHEREAS, It has been made to appear to the Commission by petition filed with it on January 13, 1923 by The Cripple Creek Motor and Commercial Club, et al, that The Colorado Springs and Cripple Creek District Railway Company, which said road is commonly known as the "Short Line" and operated between Colorado Springs and the Cripple Creek District, has, for the past two or three years, been in the hands of a receiver appointed by the United States District Court for the District of Colorado; and that for about two years last past, while the said road was in the hands of a receiver, the same has not been operated.

It is further made to appear to the Commission that on or about the 16th day of October, 1922, at Colorado Springs, Colorado, the said railroad known as the Short Line, and other property of The Colorado Springs and Cripple Creek District Railway Company, was sold at a foreclosure sale by a Special Master appointed by the United States District Court for the District of Colorado, and the same was purchased by one W. D. Corley.

It is further made to appear to the Commission that said W. D. Corley is removing said railroad by pulling up the rails from portions of said road; that said W. D. Corley has not operated any portion of the said

road; and that it is his intention to wreck and dismantle all of said road.

It is further alleged and made to appear that heretofore switch tracks in said Cripple Creek Mining District in Teller County, Colorado, and switches to many of the mining properties therein, have been used for hauling supplies, coal, ore, etc., and that said tracks and switches at this time are being used in said district; and that, despite such fact, said W. D. Corley is tearing up and removing the rails and ties in said Cripple Creek District and threatens to remove said side tracks and switches to many of the operating mines; all such acts, if committed, being inimical to the public interest.

WHEREAS, Said W. D. Corley, nor any other person, association or corporation, has at any time made application for permission to abandon or dismantle any part or portion of said Colorado Springs and Cripple Creek District Railway, commonly known as the Short Line Railroad; and the dismantling of said property without order of this Commission, upon due and legal notice and hearing at which the public interest may be heard and protected, is contrary to the provisions of the Public Utilities Act.

NOW, THEREFORE, The Public Utilities Commission of the State of Colorado does hereby, upon its own motion, order an investigation into the matters and things hereinabove and in said petition set forth, and that due notice of said hearing and investigation be given to the said W. D. Corley and to the signers of said petition and to the public of Teller County by publication in the newspapers published in the Cities of Cripple Creek and Victor.

IT IS FURTHER ORDERED, That said hearing and investigation be held at the offices of the Public Utilities Commission in the State Office Building, in the City and County of Denver, on the 26th day of January, 1923, at 10:00 o'clock A.M., and that the Secretary of this Commission be, and is hereby, ordered to serve copies of this order upon said W. D. Corley

and upon said petitioners by registered mail upon the day of the date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Dated at Denver, Colorado,
this 16th day of January, 1923.

Commissioners

(Decision No. 587)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

INVESTIGATION AND SUSPENSION DOCKET NO. 60

In the matter of the suspension of the estimated weight on five gallon cans of ice cream, as carried in Item 8, page 89, American Railway Express Company's Classification No. 28, as ordered by the Commission in Investigation and Suspension Docket No. 60, dated July 14, 1922, and August 28, 1922, respectively:

IT IS ORDERED, That the operation of the schedule above specified, contained in said tariffs, be further suspended, and that the use of the rates, charges, regulations and practices therein be deferred on interstate traffic until the 1st day of September, 1925, unless otherwise ordered by the Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

E. E. LANDON

(S E A L)

EELIX SCOTT

Commissioners.

Dated at Denver, Colorado,
this 19th day of February, 1925.

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

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INVESTIGATION AND SUSPENSION DOCKET NO. 61.

In the matter of the suspension of the express rates covering newspapers daily, as carried in Item 3, page 43, American Railway Express Company's Classification No. 28, as ordered by the Commission in Investigation and Suspension Docket No. 61, dated August 25, 1922:

IT IS ORDERED, That the operation of the schedule above specified, contained in said tariffs, be, and the same is hereby, further suspended, and that the use of the rates, charges, regulations and practices therein be deferred on intrastate traffic until the 1st day of September, 1923, unless otherwise ordered by the Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GRANT E. HALDERMAN

(S E A L)

F. P. LANNON

TULLY SCOTT
Commissioners.

Dated at Denver, Colorado,
this 19th day of February, 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. 589)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Alleged Abandonment and Cessation of Service of The Colorado Springs and Cripple Creek District Railway Company, and the Alleged Removal and Junking of said Line of Railway by one W. D. Corley.

CASE NO. 265

February 20, 1923

Appearances: E. B. Upton, of Cripple Creek, Colorado, for the Petitioners; H. C. Lunt and E. M. Kistler, of Colorado Springs, Colorado, for W. D. Corley; and Clarence C. Hamlin, of Colorado Springs, Colorado, amicus curiae.

STATEMENT

By the Commission:

This matter comes before the Commission on a petition in the form of a letter filed January 13, 1923 by The Cripple Creek Motor and Commercial Club, et al, alleging that certain acts were being done, or about to be done, by The Colorado Springs and Cripple Creek District Railway Company and the purchaser thereof, one W. D. Corley.

The petition states that on or about October 16, 1922, at Colorado Springs, Colorado, the railroad known as the "Short Line" and other property of The Colorado Springs and Cripple Creek District Railway Company was sold at a foreclosure sale by a special master appointed by the United States District Court for the District of Colorado, and, at such sale, one W. D. Corley was the purchaser.

The petition further alleges that W. D. Corley nor any of his predecessors have ever applied to this Commission for an order to discontinue and cease operation of said railroad, or any part thereof, and have never requested and secured permission to dismantle, tear up and junk said railroad

or any part thereof.

The petition further alleges "that the tearing up of the side tracks and switches in the Cripple Creek Mining District in Teller County, Colorado, of said Short Line, which have and do serve mining properties in said District, and which have been and are now connected also with the Midland Terminal Railway Company system, will cause an irreparable damage to the owners of mining properties and to the business interests of the Cripple Creek Mining District and to the inhabitants of said District; that it is a public matter and will cause irreparable damage to the public in general;" and asks that this Commission take jurisdiction of this matter on its own motion and hold a hearing wherein all facts pertaining to this subject may be heard.

On the 16th day of January, 1923, the Commission issued an order directed to W. D. Corley and to the petitioners, stating that a hearing and investigation would be had upon the allegations of the petition, which hearing was set originally for January 26, 1923, at the Hearing Room of the Commission, State Office Building, Denver, Colorado, later continued to February 1, 1923, and finally continued to February 8, 1923 and held at the City Hall, Colorado Springs, Colorado, at 10:00 o'clock A.M., all parties in interest having been duly notified.

On February 3, 1923, a motion was filed by W. D. Corley, through his attorneys, asking that he be dismissed from the operation of the order for the reason that he is not a common carrier; is not a corporation or an individual operating a railroad; and is not a public utility or person operating for the purpose of supplying the public; and is not, therefore, under the jurisdiction of this Commission or subject to its orders.

The motion further states that The Midland Terminal Railway Company is the corporation operating in the Cripple Creek Mining District and alleges that this is the only corporation or person subject to the control of this Commission under the Public Utilities Act, and asks that the Commission enter an order dismissing W. D. Corley and requiring that The Midland Terminal Railway Company be made a party to this proceeding. On the same date, the Chairman of this Commission, in a letter addressed to Horace G.

Lunt, Attorney for W. D. Corley, stated that there was some question as to the power and authority of this Commission to compel intervention of The Midland Terminal Railway Company, and further stated that his motion would be disposed of at the hearing. The Chairman, also, by letter on February 5 addressed to J. J. Cogan, General Manager of The Midland Terminal Railway Company, called his attention to the matter of the hearing and suggested that, if interested, a petition in intervention would be entertained.

History of the Property

The Colorado Springs and Cripple Creek District Railway, generally known as the "Cripple Creek Short Line," was built about 1900. It was a standard gauge railroad consisting of about forty-seven miles of main line from Colorado Springs to Cripple Creek and seventeen miles of sidings. In addition to the main line and sidings, there was built about twenty-eight miles of spurs, branches and sidings in the Cripple Creek District to serve the mining industries.

On May 2, 1919, the District Court of the United States for the District of Colorado, under an action entitled "Guaranty Trust Company of New York, as Trustee, and Central Union Trust Company of New York, as Trustee, Complainants, vs. The Colorado Springs and Cripple Creek District Railway Company, Defendant," appointed George M. Taylor as Receiver for said Railway Company. On July 15, 1919, George M. Taylor commenced operation of the railway property. On May 7, 1920, the District Court of the United States for the District of Colorado entered an order authorizing its Receiver to discontinue operation of said railway, excepting a small portion thereof between Colorado Springs and Summit.

On May 22, 1920, the Public Utilities Commission of the State of Colorado filed its petition in intervention with the United States District Court and asked that its order of May 7, 1920, be vacated or modified. On May 26, 1920, the United States District Court heard the facts and conditions as presented by the Commission and denied its petition.

On or about the 16th day of October, 1922, at Colorado Springs, Colorado, The Colorado Springs and Cripple Creek District Railway Company was sold at foreclosure sale, by a special master appointed by the District Court for

the District of Colorado, to one W. D. Corley. Soon thereafter, W. D. Corley began to tear up, dismantle and junk said Colorado Springs and Cripple Creek District Railway.

At the opening of the hearing at Colorado Springs, Colorado, on February 8, 1923, W. D. Corley, through his attorneys, filed an answer to the petition of The Cripple Creek Motor and Commercial Club and the order of the Commission pertaining thereto of January 16, 1923, wherein he alleged, first, that this Commission is without jurisdiction in that W. D. Corley is not a public utility, is not a common carrier, and is not a person operating for the purpose of supplying the public with those things declared by law to be affected with the public interest; second, that this Commission, by its own action, did intervene on an order made in the United States District Court of the District of Colorado, and such intervention was denied; that thereafter no further action was taken by this Commission; and that said W. D. Corley, herein, was advised that this Commission had, therefore, assented and consented to the order of the said United States District Court; third, that the said W. D. Corley entered into possession of said Railway Company by deed from a special master appointed by the United States District Court and began to dismantle said railroad, as he was informed and believed he had a perfect right so to do; fourth, that the said W. D. Corley has not threatened to tear up the tracks, sidings and switches mentioned in said petition, but has tried to dispose of same to the parties in interest for a fair and reasonable price and is willing and ready so to do.

After submitting the answer, H. G. Lunt, Attorney for W. D. Corley, was asked by the Commission to be heard upon his motion, to which he replied, saying, "I will submit the motion as it stands there, simply alleging that Mr. Corley is not subject to the jurisdiction of the Commission in any way, and ask that he be dismissed as far as he is concerned." The Commission thereupon denied the motion and stated in substance that originally when the Colorado Springs and Cripple Creek District Railway, or Short Line Railroad, was in operation, it may be fairly assumed that it was subject to the jurisdiction of the Commission the same as any other operating carrier or utility

in the State. When it was sold or prior to its sale, May 13, 1920, the Commission was advised by notice from J. W. Cummings, Superintendent of the said Short Line, that on May 16 it would cease operation over its electrical lines and, May 17, over its steam lines, and gave as his authority an order of the Federal Court in a certain suit pending for the cessation of such operations. Thereupon the Commission made request upon the then Attorney General to intervene in that proceeding in the Federal Court and to make such showing as was deemed to be necessary to determine the question of jurisdiction or the power of the Federal Court to authorize cessation of service without regard to the power, jurisdiction and authority of the Commission, which was done. The Federal Court permitted the intervention, but denied the questions there involved. Thereafter request was made by the Commission upon the then Attorney General to preserve such records as might be necessary and have the question reviewed in the Circuit Court of Appeals or such other tribunal as would be proper. That, however, does not seem to have been done. That was the status of the matter until The Cripple Creek Motor Club filed its petition in January. Assuming that the petition is true and the allegations of it so far as the sale of the road is concerned last October to Mr. Corley, the Commission views the matter, under these circumstances, in this light: That one buying a public utility property at any time at a legal sale, foreclosure sale, master's sale or any other sale authorized by law, buys such property charged with the same duties and responsibilities, so far as the public is concerned, that the original owner had. In other words, the maxim "caveat emptor" applies; so that, when Mr. Corley bought the property, if he did buy it, he was charged with the knowledge and notice of its public character and of its public duty and obligation. The mere fact that that company, as the Commission contends, never had any legal right to cease operations and junk the property, of course would not give the purchaser any legal right. In Public Utilities Commission vs. Colorado Title and Trust Company, et al, 65 Colo. 472, our Supreme Court in a very exhaustive opinion, lays down the proposition that the Public Utilities Commission has exclusive jurisdiction over every rail carrier or utility line lying wholly within the State, and that its jurisdiction is complete and exclusive as to the question of abandonment of service and junking of railroads, and, in that case, cited some very respectable

authorities along the same line; so that the position of the Commission is that that question in this State, and in other states having the same sort of commissions, is a question that has been decided so that it leaves the purchaser of this property in the position that until he makes application to the lawful authority for permission to abandon, junk and tear up the public utility that theretofore had existed, he has no lawful right so to do and he cannot defeat, and no other person can defeat, the public interest by so doing.

The Commission further stated: "This Commission is far from convinced that merely because the question of jurisdiction was raised in the Federal Court and was not reviewed by the Attorney General in the Court of Review, which is assumed to be the Circuit Court of Appeals, that thereby the Commission abandons all question of its jurisdiction in this matter. The law defines its jurisdiction and no act of omission or commission by the Commission would affect its jurisdiction one way or the other.

Messrs. H. T. Coppage, Evan J. Williams, E. P. Arthur, Jr., and J. W. Pherson, witnesses for the petitioners, testified in substance that certain tracks sold to W. D. Corley by the special master and originally owned by The Colorado Springs and Cripple Creek District Railway Company were essential and necessary to the operation of certain mining properties; that they were now and had been used for this purpose since their installation; and that to remove them would do an irreparable injury to the mining industry and to the public in general in the Cripple Creek mining district.

Charles D. Vail, Railway Engineer for the Commission, testified that he had investigated the subject under discussion of the tracks and switches owned originally by The Colorado Springs and Cripple Creek District Railway Company, and that, in his opinion, certain tracks hereinafter mentioned in the order are necessary to the operation of the mining properties in the Cripple Creek District and to the public generally. He further stated that these tracks and switches are now in most cases serving the mines and to the best of his knowledge have been serving them for a number of years past.

The price paid W. D. Corley for a piece of track about four hundred

feet in length was testified to by J. W. Pherson, for the petitioners, and explained by W. D. Corley, witness in his own behalf.

At the conclusion of the hearing it was agreed by all parties in interest and consented to by E. B. Upton, attorney for the petitioners, that an order be entered authorizing the dismantling and junking of the property of The Colorado Springs and Cripple Creek Railway Company, purchased by W. D. Corley from the special master appointed by the District Court of the United States for the District of Colorado, save and excepting those tracks, sidings and switches herein described as follows: Beginning at the connection of the Midland Terminal Railway with said Colorado Springs and Cripple Creek District Railway near the Last Dollar Mine to the Dante head block, a distance of 4169 feet; a spur to the Dante ore bin, 340 feet long; a spur to the Dexter mine 325 feet in length; the Gold Sovereign spur track, 2584 feet in length; the Gold Sovereign stub track, 208 feet in length; from Portland Junction on what is known as the "high line" to the end of Ajax track, 4815 feet in length; Ajax stub track, 650 feet in length; the Portland No. 2 ore track, 1374 feet in length; the Portland No. 1 coal track, 532 feet in length; the Portland switchback track, 1682 feet in length; the Portland No. 1 ore track, 1332 feet in length; the Portland stub track, 435 feet in length; making a total of 18,446 feet of track.

O R D E R

IT IS THEREFORE ORDERED, That W. D. Corley, purchaser of The Colorado Springs and Cripple Creek District Railway Company, is hereby authorized to discontinue service, withdraw from the public service and cease to operate such line of railroad and remove, dismantle and dispose of its property save and excepting those tracks, sidings and switches described as follows: Beginning at the connection of the Midland Terminal Railway with said Colorado Springs and Cripple Creek District Railway near the Last Dollar mine to the Dante head block, a distance of 4169 feet; a spur to the Dante ore bin, 340 feet in length; a spur to the Dexter mine, 325 feet in length; the Gold Sovereign spur track, 2584 feet in length; the Gold Sovereign stub track, 208 feet in length; from Portland Junction on what is known as the "high line" to the end of Ajax track, 4815 feet in length; Ajax stub track, 650 feet in

in length; the Portland No. 2 ore track, 1374 feet in length; the Portland No. 1 coal track, 532 feet in length; the Portland switchback track, 1682 feet in length; the Portland No. 1 ore track, 1332 feet in length; the Portland stub track, 435 feet in length; making a total of 18,446 feet of track; and each and every part thereof not herein excepted.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

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

(Decision No. 590)

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, 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 Twenty (20) Feet South of Mile Post 185 near Kincaid, Colorado.

APPLICATION NO. 238

February 27, 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 Huerfano County, Colorado, in compliance with Section 29 of the Public Utilities Act of Colorado, 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 twenty (20) feet south of Mile Post 185 near the station of Kincaid, Colorado, all in Huerfano County.

An investigation as to the necessity, convenience and safety of a public highway crossing at this point was made by the Commission's railway engineer on February 24, 1923. This inspection was made in company with the chairman of the Board of County Commissioners of Huerfano County. The railway engineer for this Commission reports that a necessity for this crossing exists. He also states that to the south of the proposed crossing on the east side of the railroad track there is a waste bank and some brush that to a certain degree obstructs the view of approaching trains from the south as the crossing is approached from the east. It was agreed by the chairman of the Board of County Commissioners of Huerfano County that the County would, at its own expense, remove about two (2) feet off the top of this waste bank and cut all brush so that the view would be unobstructed. With this provision, the Commission's railway engineer recommends that the crossing be opened.

Under date of February 23, 1923, this Commission was in receipt of a letter from E. N. Clark, General Attorney for The Denver and Rio Grande Western Railroad Company, relative to this proposed crossing, wherein he states "that the Railroad Company has no objection to the establishment of said public highway crossing and consents to the entry of an order by your Commission establishing said crossing upon the usual terms and conditions."

The County Commissioners of Huerfano County and The Denver and Rio Grande Western 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, That, in accordance with Section 29 of the Public Utilities Act 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 and right of way of the Denver and Rio Grande Western Railroad at a point twenty (20) feet south of Mile Post 185 on said Denver and Rio Grande Western Railroad near the station of Kincaid in Huerfano County, Colorado.

IT IS FURTHER ORDERED That prior to the opening of said crossing the County Commissioners of Huerfano County shall perform, or bear the expense of performing, the work of grading the approaches, provide such drainage as may be necessary under the highway and remove such obstacles to the view as are hereinafter specified.

IT IS FURTHER ORDERED, That the crossing at the point above described shall be constructed in accordance with plans and specifications in the Commission's order In re Improvements of Grade Crossings in Colorado, 2 Colo. P.U.C. 128; and, furthermore, that the waste bank to the south of the proposed crossing and east of the railroad track will be taken off approximately two (2)

feet in depth and that all brush be removed that obstructs the view of approaching trains.

IT IS FURTHER ORDERED, That as soon as the above work is completed to the acceptance of the railway engineer of this Commission, The Denver and Rio Grande Western Railroad Company shall open and establish said crossing and bear all additional expense thereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Berman,

H. L. Lamm

Jerry Dent

Commissioners.

Dated at Denver, Colorado, this
27th day of February, A.D. 1923.

(Decision No. 591)

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 Opening of a Public Highway at Grade over the Right-of-way and Track of the Denver and Rio Grande Western Railroad, at a Point 110 feet southwesterly along the track from Mile Post 227 in Chaffee County, Colorado.

APPLICATION NO. 235

(February 28, 1923)

STATEMENT

By the Commission:

This proceeding arises upon 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 crossing at grade over the main line track of the Denver and Rio Grande Western Railroad, at a point 110 feet southwesterly from Mile Post 227, being in the southwest quarter of the southeast quarter of Section 6, Township 48 North, Range 8 East, New Mexico Principal Meridian, in Chaffee County, Colorado.

On February 22, 1923, the Assistant Railway Engineer for this Commission, in company with Mr. Snell, County Commissioner of Chaffee County, visited the site of this proposed crossing. He reports that this crossing is to take the place of a crossing heretofore existing about 310 feet northeasterly from this point. He also states that, in his opinion, this new location is less dangerous and has a better view of approaching trains than the one heretofore used. This same opinion is expressed in a letter from Mr. E. N. Clark, General Attorney for The Denver and Rio Grande Western Railroad Company, and Mr. Clark further states: "The Denver and Rio Grande

Western Railroad Company has no objections to the proposed change." It is mutually agreed and understood by the County and the Railroad Company that the old crossing will be abandoned as soon as the proposed crossing is open for travel.

The County Commissioners of Chaffee County and The Denver and Rio Grande Western 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, 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 of the Denver and Rio Grande Western Railroad at a point 110 feet southwesterly from Mile Post 227, located in the southwest quarter of the southeast quarter of Section 6, Township 48 North, Range 8 East, New Mexico Principal Meridian, in Chaffee County, Colorado; conditioned, however, that prior to the opening of said crossing to public 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 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 respondent, The Denver and Rio Grande Western Railroad Company.

IT IS FURTHER ORDERED, That the crossing heretofore existing at a point 310 feet northeasterly from this crossing shall be closed and

abandoned as soon as this proposed crossing is constructed and opened to public travel.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

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

Commissioners.

(Decision No. 592)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of)
Potato Growers, Resident and Opera-)
ting in the Monte Vista, Center and) APPLICATION NO. 221
Del Norte, Colorado, Districts, and)
Embracing Intermediate and Contiguous)
Loading Stations.)

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February 28, 1923.
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The above application having been set for hearing at Monte Vista, Colorado, Thursday, March 1, 1923, and motion for continuance having been filed by attorneys for petitioners,

O R D E R

IT IS HEREBY ORDERED, That the hearing in the above application, set for Monte Vista, Colorado, Thursday, March 1, 1923, be, and the same is hereby, vacated and set aside, and hearing in these matters be set for Monday, April 16, 1923, at 10:00 o'clock A. M., at the Hearing Room of the Commission, State Office Building, Denver, Colorado.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

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

(Decision No. 593)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of San Miguel County, Colorado, for the Opening of a Public Highway at Grade over the Right-of-Way and Track of The Rio Grande Southern Railroad Company at a point 3970 feet southerly from Mile Post 17.

APPLICATION NO. 203

February 28, 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 San Miguel County, Colorado, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the opening of a public crossing at grade over the main line track of the Rio Grande Southern Railroad at a point 3970 feet south of Mile Post 17 in the Northwest Quarter of Section 3, Township 44 North, Range 10 West, New Mexico Principal Meridian, all in San Miguel County, Colorado.

This application was filed in this office on July 10, 1922. On or about August 1, 1922, the railway engineer for this Commission, together with the Board of County Commissioners of San Miguel County and a representative of The Rio Grande Southern Railroad Company, visited the site of the proposed crossing. As the state highway was then staked and located, the angle of the crossing was very acute and the view of approaching trains would be greatly obstructed.

After several conferences with the railroad officials and the State Highway Department, an agreement was entered into between the County Commissioners of San Miguel County and the officials of The Rio Grande Southern Railroad Company on January 8, 1923. This agreement provides that the highway cross the track approximately at right angles at Mile Post 17 plus 3970

feet. At this point the view of approaching trains is very much improved.

It is understood and agreed by all parties in interest that the crossing heretofore existing at Mile Post 17 plus 1115 feet be closed and abandoned as soon as this proposed crossing is opened for public travel.

The County Commissioners of San Miguel County and The Rio Grande Southern 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 designated in the agreement of January 8, 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, a public highway at grade be, and the same is hereby, permitted to be opened and established over the main line track of the Rio Grande Southern Railroad at a point 3790 feet southerly from Mile Post 17 located in the Northwest Quarter of Section 3, Township 44 North of Range 10 West, New Mexico Principal Meridian, in San Miguel 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 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 the crossing, including the necessary drainage therefor, be borne by San Miguel 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 Rio Grande Southern Railroad Company.

IT IS FURTHER ORDERED, That the crossing heretofore existing at a point 1115 feet southerly from Mile Post 17 shall be closed and abandoned

as soon as this proposed crossing is constructed and opened to public travel.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Frank E. Hall

E. L. Lawson

Jesse Davy

Commissioners.

Dated at Denver, Colorado, this
28th day of February, A. D. 1923.

(Decision No. 594)

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, State of Colorado, for the Opening of a Public Highway Crossing over the Right-of-Way and Main Line Track of the Union Pacific Railroad to extend Marigold Drive easterly across said Main Line Track in Section 5, T 7 N, R 52 W, Logan County, Colorado.

APPLICATION NO. 212

February 28, 1923.

STATEMENT

By the Commission:

This matter comes before the Commission on Application No. 212, filed in this office July 24, 1922, by the Board of County Commissioners of Logan County, Colorado, for the opening of a public highway crossing at grade over the right-of-way and main line track of the Union Pacific Railroad, to extend Marigold Drive easterly across said main line track in Section 5, Township 7 North, Range 52 West, Logan County, Colorado.

On November 6, the Railway Engineer for this Commission viewed the site of this crossing and, in his judgment, a crossing about fifteen hundred (1500) feet southeasterly from this point, on the east and west center line of said Section 5, should be opened in lieu of the crossing herein requested. This view was expressed to the Board of County Commissioners of Logan County by letter dated December 14, 1922. On January 6, 1923, the Commission was in receipt of a letter from Mr. John R. Coen, Attorney for the County Commissioners of Logan County, enclosing application for the opening of the

crossing on the east and west center line of Section 5, Township 7 North, Range 52 West, and stating "this letter will be your authority for withdrawing Application No. 212."

O R D E R

IT IS THEREFORE ORDERED, That Application No. 212 made in this case may be withdrawn, and that this case be, and the same is, hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Grant E. Hadden,

H. D. Lamman

Jesse Davis

Commissioners

Dated at Denver, Colorado, this
28th day of February, A.D. 1923.

(Decision No. 595)

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 Right-of-Way and Track of the Union Pacific Railroad on the East and West Center Line of Section 5, Township 7 North, Range 52 West of the Sixth Principal Meridian.

APPLICATION NO. 234

February 28, 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 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 Union Pacific Railroad on the East and West Center Line of Section 5, Township 7 North, Range 52 West, near Sterling, in Logan County, Colorado.

On November 6, 1922, the Railway Engineer for this Commission, in company with the Chairman of the Board of County Commissioners of Logan County and officials of the Union Pacific Railroad Company, inspected the site of this proposed crossing. The view of approaching trains is good in all directions; and, in the judgment of the Railway Engineer, the crossing is a necessity.

On February 26, 1923, this Commission was in receipt of a letter from C. C. Barnard, Superintendent of the Union Pacific Railroad Company, wherein he states: "We have no objection to the installation of this crossing on the usual basis."

The County Commissioners of Logan County and the Union Pacific 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 per-

mission 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 of the Union Pacific Railroad on the East and West Center line of Section 5, Township 7 North, Range 52 West of the Sixth Principal Meridian, near Sterling, 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 prescribed in 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, shall 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, the Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado, this
28th day of February, A. D. 1923.

(Decision No. 596)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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

- - - - - -

March 15, 1923.

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O R D E R

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 twelve weeks, beginning Monday, March 19, 1923; but shall not be required to sell its single pass for the price of seventy-five cents, or at all, until beginning Monday, March 26, 1923; that this order shall be in effect only for the period of twelve weeks beginning Monday, March 19, 1923.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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

Commissioners.

(Decision No. 597-A)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of)
Charles Stewart for permission to)
operate a motor passenger car between) APPLICATION NO. 180
Berkeley Gardens, Arvada, Adams County,)
Colorado, and Broadmoor Hotel, El Paso)
County, Colorado.)

April 13, 1923.

Appearances: Erl Ellis, for The Atchison, Topeka and Santa Fe Railway Company; and J. Q. Dier, for The Colorado and Southern Railway Company.

S T A T E M E N T

By the Commission:

This matter is before the Commission on application of Charles Stewart for permission to operate a motor passenger car between Berkeley Gardens, Arvada, Adams County, Colorado, and Broadmoor Hotel, El Paso County, Colorado, which application was filed April 6, 1922.

After due and legal notice to all interested parties, the above entitled matter came on for hearing before the Commission at the Hearing Room of the Commission, Denver, Colorado, April 13, 1923, at 10:00 o'clock A. M. Representatives appeared for defendants as noted in appearances, applicant not being represented.

O R D E R

IT IS THEREFORE ORDERED, That the above application be, and the same is hereby, dismissed for want of prosecution for applicant.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 13th day of April, 1922.

(Decision No. 597-B)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of J. M. Hall for a certificate as authority for an auto stage route between Montrose and Grand Junction, in the State of Colorado, and between Delta and Paonia, in the State of Colorado.

APPLICATION NO. 188

April 14, 1923.

S T A T E M E N T

By the Commission:

This matter is before the Commission on application of J. M. Hall for a certificate authorizing the operation of an auto stage route between Montrose and Grand Junction, in the State of Colorado, and between Delta and Paonia, in the State of Colorado, which application was filed April 24, 1922.

After due and legal notice to all interested parties, the above entitled matter was set for hearing before the Commission at Grand Junction, Colorado, April 18, 1923, at 10:00 o'clock A. M. Motion to dismiss was filed by J. M. Hall, applicant, on April 11, 1923.

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 14th day of April, 1923.

(Decision No. 597-C)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of Luther Willey for a certificate of public convenience and necessity for the operation of a freight and passenger automobile line between Grand Junction and Gateway, Colorado, and intermediate points.

APPLICATION NO. 194

April 14, 1923.

STATEMENT

By the Commission:

This matter is before the Commission on application of Luther Willey for a certificate of public convenience and necessity for the operation of a freight and passenger automobile line between Grand Junction and Gateway, Colorado, and intermediate points, which application was filed with the Commission May 23, 1922.

After due and legal notice to all interested parties, the above entitled matter was set for hearing at Grand Junction, Colorado, April 18, 1923, at 10:00 o'clock A. M. Motion to dismiss, by McMullin and Sternberg, attorneys for applicant, Luther Willey, was filed with the Commission April 13, 1923.

ORDER

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 14th day of April, 1923.

(Decision No. 598

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

- - -

In the Matter of the Application of F. E. James and L. G. Bradfield for the Issuance of a Certificate of Public Convenience and Necessity for the Operation of a Public Transportation System at and Within the City of Greeley, Weld County, Colorado.

The Greeley Transportation Company, a Colorado corporation, Substitute and Successor Petitioner.

APPLICATION NO. 218

- - - - - - -
April 2, 1923.
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Appearances: For Applicant, E. H. Houtchens of Greeley, Colorado; Karl W. Farr, of Greeley, for Protestant, The Greeley and Denver Railroad Company; A. P. Anderson and Barney L. Whatley, of Denver, Counsel for Protestant on brief.

S T A T E M E N T

By the Commission:

On August 19, 1922, an application was filed before the Commission by F. E. James and L. G. Bradfield seeking a certificate of public convenience and necessity for the operation of an automobile bus transportation system within the city of Greeley, Colorado; and subsequently, upon leave, an amended application was filed on October 30, 1922, by The Greeley Transportation Company, a domestic corporation, which became substitute and successor to the rights of petitioners.

In the amended application the substitute applicant shows that it is a duly organized corporation under the laws of the State of Colorado, and by proper averment sets forth that it proposes to engage in the operation and conduct of a moter bus transportation line or lines for the convenience of the public generally, inter alia, in, through, over and along the streets of the city of Greeley; that there are no suitable or adequate transportation facilities for the convenience of passengers upon and along the streets of said city except such as were rendered, and being rendered, by The Greeley and Denver Railroad Company through the operation of an

electric street car line owned by it, which service was wholly inadequate for the public convenience and necessity of the inhabitants of said city; and that said protestant, The Greeley and Denver Railroad Company, was unable to maintain an adequate and efficient system for the transportation of passengers over and upon the streets of Greeley by means of its electric operation on account of financial inability, and otherwise.

The protest and answer to the amended application sets forth that the protestant owns and operates, and for more than ten years prior thereto has owned and operated, a street railway line in the city of Greeley, and that there is no necessity for the operation of an automobile bus line in said city, and that there are not sufficient passengers for hire to be carried in said city to require two public utilities to be engaged in such business, and hence not sufficient revenue for two competing companies. The protest and answer puts in issue the necessity for the proposed automobile bus line as being detrimental to the protestant, which occupies such field, and that to grant a certificate to a competing line would greatly injure its business, and perhaps ultimately render it necessary for cessation of its operations.

After due notice to all parties in interest the matter was set down for hearing at the City of Greeley on December 19, 1922, and duly heard. At the hearing applicant introduced in evidence a certified copy of its articles of incorporation, in obedience to the requirements of sub-division (c) of Section 35 of the Public Utilities Act. Applicant also introduced in evidence Exhibits C, D, E and F, which are licenses issued August 26, 1922, to the original applicants, James and Bradfield, and duly assigned to the corporate applicant, as a license tax imposed for permission to follow the business or vocation of a passenger auto in the city of Greeley from August 26, 1922, to August 26, 1923, subject to the provisions of the ordinances of the city of Greeley pertaining to said vocation.

At the further hearing herein held at the Hearing Room of the Commission, State Office Building, Denver, March 31, 1923, at 10:00 o'clock

A. M., pursuant to adjournment from December 19, 1922, applicant offered in evidence its exhibit "J," which is merely a certificate of the city clerk of Greeley to the effect that the licenses introduced in evidence at the hearing on December 19, 1922, to-wit: Exhibits C, D, E and F, was and is the only authority the city of Greeley was empowered to grant under the statute law of the State, concerning or showing the city's consent to applicant to operate the proposed auto bus transportation line or lines within the city. Whether or not such be the case involves a question of law determinable by a court of competent jurisdiction. Applicant also offered to introduce additional testimony to show that at the present time, and since the December, 1922, hearing, the protestant has utterly failed to operate its street cars, and has practically abandoned its service to the public by that method of transportation. The offer was denied, for, obviously, if the Commission has no power or jurisdiction to issue the certificate of convenience and necessity for lack of proof as to the city's assent and consent, to issue it would be a void act, and the offered proof would in no sense indicate the consent of the city to the operation of applicant's bus line or lines, or even bear upon that question. And, of course, if the Commission would issue the certificate to applicant it requests, and its so doing would be an invalid act, no right would be gained to applicant thereby, nor no right of protestant affected. It would be as though no order granting the certificate had never been issued insofar as the legal rights of the parties to this proceeding are concerned.

A mass of testimony was taken and received as to the necessity for the establishment and maintenance, in the interest of the public, of the motor bus line, which the evidence disclosed was to be located and operated entirely within the city limits of the city of Greeley, and would be in competition with the operation of the electric street car line of the protestant.

At the conclusion of the hearing the question of the sufficiency of the consent of the municipality to the operation of said auto bus transportation line in its corporate limits, as evidenced by the aforesaid licenses, that being the only consent of said city tendered or received in evidence, became important to the Commission; as, obviously, if the evidence submitted would not satisfy the requirements of said sub-division (c) of Section 35 of the Act, the Commission was without power to grant the certificate applied for, or any certificate. In that state of the record, the Commission requested that briefs be filed by the respective parties upon that one point, and for such purpose applicant requested, and was given, forty days within which to file its brief, and protestant forty days thereafter to answer, and the applicant ten days thereafter to reply should it so desire; and the case was continued for further hearing to the 29th day of March, 1923, at the Hearing Room of the Commission, State Office Building, Denver, Colorado, in the event further testimony was desired to be submitted by either party to the record, provided the Commission was satisfied of its power and jurisdiction under the requirements of sub-section (c) of Section 35, as to the consent of the municipal authorities given to applicant, as evidenced by Exhibits C, D, E and F aforesaid, and said Exhibit "J."

Applicant's brief was filed January 29, 1923, and that of the protestant on March 10, 1923, and on March 19, 1923, applicant notified the Commission in writing that it did not desire to make further reply to the protestant's brief.

The Commission will not enter into a discussion of the evidence submitted at the hearing other than the evidence of consent required by sub-section (c) of Section 35, to determine whether or not such evidence is sufficient to vest the Commission with jurisdiction to grant the certificate desired by applicant. Said sub-section (c), insofar as it pertains to the matter under discussion herein, reads as follows:

> "Before any certificate may issue under this section, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be filed in the office of the Commission. 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."

It will be observed therefrom that two things are essential to be filed by an applicant desiring a certificate of convenience and necessity; (1) if it be an incorporation that it shall file with the Commission a certified copy of its articles of incorporation, and (2) every applicant, whether it be a corporation or person, shall file with the Commission such evidence as shall be required by the Commission to show that applicant has received the required "consent, franchise, permit, ordinance, vote or other authority" of the particular municipality or public authority involved. The first of these requirements was complied with by applicant. The second of the requirements was attempted to be complied with by the filing with the Commission of the licenses marked Exhibits C, D, E and F, and said Exhibit J. A certified copy of the ordinance of Greeley which authorizes the issuance of such licenses by the city clerk was also introduced in evidence, and, in brief, such ordinance is one that is similar to every town and city within this State, which seeks to license, and does license, those who desire to enter the municipality to engage in running an express wagon, dray, transfer wagon, hack, omnibus or automobile used for express or rent. Said ordinance was passed February 17, 1914, is numbered 258 and marked Exhibit H, and section one thereof provides as follows:

> Section 1. "Every person, association, partnership or corporation who shall hire out, keep or cause to be kept, or permit to be used for carrying any person for hire, or for transporting any express, baggage, freight, merchandise, household goods, fuel or passengers; any dray, express wagon, transfer wagon, carriage, hack, omnibus, freight wagon, automobile express or automobile passenger car, within the corporate limits of the City of Greeley without having a license therefor, shall, on conviction thereof, be fined in a sum not less than five dollars nor more than twenty-five dollars for each offense."

The next section, or section two, indicates the mode of procedure to be followed in obtaining any such license as may be desired. Section two reads as follows:

Section 2. "The mayor is authorized to issue proper license, duly attested by the city clerk, under the seal of the city, to any person or persons, association, partnership or corporation, to keep and use for hire for the purposes mentioned in Section 1 of this ordinance, any or either of the carriages, automobiles or other vehicles mentioned in said Section 1, upon the application of such person, association or corporation, and the payment of the license fee hereinafter set forth."

In following sections of the ordinance the license fee is fixed at $10.00 per year for any automobile passenger car, express or transfer car, and for any two horse drawn vehicle described in Section 1, and at $7.50 per year for any one horse drawn vehicle described in Section 1; and provides that no license shall be taken out for a less period than one year, and other terms and conditions set forth in the ordinance pertaining to the conditions under which said license is issued.

It will be seen therefrom that any person who desires may apply to the city clerk for a license to engage in any of the vocations described in the ordinance, and upon payment of the required fee the city clerk is required to issue a license to such applicant for a term of not less than one year. This applies to the person who operates a dray in the city, a jitney bus, an express wagon, or any other kind or means of transportation within the corporate limits of said city. The license issued is a matter of right to every applicant who complies with the terms and conditions of Ordinance No. 258. The question, therefore, resolves itself into this: Did the legislature, in using the terms or words embodied in sub-section (c) of Section 35, have in mind anything more than the customary and usual license to be issued by a municipality as a condition precedent to the issuance by this Commission of a certificate of public convenience and necessity for the operation of public utility carriers within such city or town? Taking Section 35 in its entirety, it seems to be the plain indication of the legislative intent that before the State, through its regulatory body, will authorize the conduct of any such business as is involved in the case at bar, by the issuance of a certificate of public convenience and necessity therefor, the local authority, which is given

exclusive jurisdiction and control over its streets, alleys, highways and other public places within its corporate limits, must give its assent thereto. And it will be noted that throughout Section 35, as well as in sub-section (c) thereof, the character of the business proposed to be engaged in by an applicant seeking a certificate of convenience and necessity is one that is denominated, under the Act, a "public utility." Nowhere in the Act has the legislature defined a public utility to include the various businesses mentioned in Section 1 of Ordinance 258 of the city of Greeley. A dray line, for example, is not a public utility; an express wagon operating within Greeley, or any other city, is not a public utility, so that it seems quite clear that the legislature intended that before this Commission should grant a certificate to an applicant to operate a public utility in any city or town the consent so to do, in one of the methods indicated by sub-section (c) of Section 35, shall be secured from such local authority and filed in the office of the Commission. This is made more apparent by the use of the words of sub-section (c) "consent, franchise, permit, ordinance, vote or other authority," for the reason that in interpreting a statute it is entirely proper, in arriving at the proper interpretation of legislative intent, to apply the principle of sui generis; so under such rule of interpretation the required consent, vote, franchise, ordinance, permit, etc. are required to be of like kind. In other words, the consent or assent of the municipality must be obtained for the particular vocation to be carried on by the applicant within such city or town, before this Commission is vested with power to issue its certificate of convenience and necessity therefor.

This Commission has held to this view heretofore in Farmers Electric and Power Company v. Ault, where this same question was under consideration, and this language was used:

> "The Commission, therefore, will hold that the required consent of the municipality has been given for the construction and installation of the municipal electric plant. A different situation would be presented were the applicant other than the municipality itself; but it seems to the Commission that the main purpose of the legislature in enacting sub-section (c) of Section 35 of the Public Utilities Act was to prevent a

privately owned utility from entering a town without first having obtained express consent of the town so to do, the evidence thereof being shown to the Commission before any certificate of public convenience and necessity may issue."

Farmers Electric and Power Company v. Ault, P.U.R. 1920-D page 226.

This same general principle was made the subject of consideration by this Commission in its decision in Taylor v. Glenwood Springs, August 2, 1921. There the petitioners sought to have the Commission remedy conditions that affected the streets within the corporate limits of the city of Glenwood Springs with reference to a water pipe line. In disposing of that contention the Commission used this language:

"Sub-section (7) of General Section 6524 R.S., 1908, defines the powers of incorporate towns or cities over streets therein. Among other things the legislature has granted to towns and cities in this State power with respect to streets, 'to regulate the use of the same and to prevent and remove encroachments or obstructions upon the same.' * * * * The Public Utilities Act in no wise confers power or jurisdiction upon and over the streets and alleys of a municipality. * * * * * The local authority is the forum to which such situation should be properly addressed, as the local authority, if for no other reason, is more familiar with the desires and needs of the people affected thereby than would be any state regulatory body, and to hold otherwise would be clearly to confer upon the Commission the power of regulation concerning matters affecting local self-government which do not affect the public generally."

Taylor v. Glenwood Springs, P.U.R. 1921-E, 526-535-536.

The same principle is recognized by the Supreme Court of this State in its decision in Chicago, Burlington and Quincy Railroad Company v. Public Utilities Commission, et al., November 8, 1920, where it reversed a decision of the Commission with reference to the opening of a street crossing within the incorporate limits of the town of Peetz, Colorado, and the Supreme Court held that the Commission had no right to practically condemn the property of a railroad company for street purposes, and uses this language:

"There is no reason for giving to the Commission the right to condemn. Paragraph 59 of 6525, R.S. 1908, gives express power to town and city councils to extend streets across railroads. * * * * * *If the citizens of Peetz want the street extended they can doubtless induce the town council to take appropriate action to that end. This local action better accords with the principles of popular goverhment than does the committing of the matter to the determination of a state commission."

C.B. & Q. RR V. Public Utilities Commission, P.U.R. 1921-B, 734-738, 193 Pac. 726.

So in the instant case it better accords with the principles of local self-government for the city of Greeley to give its assent to the applicant herein to engage in the public utility business within its corporate limits in the way it proposes, than that a state regulatory body should so determine. The contention is made by applicant, however, that the statute does not authorize or empower the city of Greeley to grant any other or different consent than has been granted by the issuance of the licenses aforesaid, Exhibits C, D, E, F, and J. It may be suggested in reply to this contention that it would be entirely a matter of right and power of the city council of Greeley to pass a resolution giving the city's consent and permission to the applicant to operate the automobile bus transportation lines in, upon and over the streets and avenues of said city if the city council desired so to do. If they do not desire to give such permission or consent, certainly it would be an infringement upon the principles of local self-government for this Commission, or any regulatory body, to decree otherwise without the consent and permission of the local governing authority.

For the reasons given the Commission is of the opinion that not sufficient proof of the "consent, franchise, permit, ordinance, vote or other authority" of the city of Greeley has been shown in evidence to vest this Commission with jurisdiction to issue the certificate of convenience and necessity applied for, and for failure of such proof the Commission is without jurisdiction to act.

O R D E R

IT IS THEREFORE ORDERED, That the application of the applicant herein be, and the same is hereby, dismissed for want of jurisdiction under the proof submitted, without prejudice, however, to the right of applicant to re-apply should it be so advised.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Commissioner.

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

(Decision No. 599)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

- - -

The Atchison, Topeka and Santa Fe Railway Company, a corporation, The Colorado and Southern Railway Company, a corporation, and Joseph H. Young, as Receiver of The Denver and Rio Grande Western Railroad Company, Complainants, -vs- Inter-City Automobile Lines, Inc., Defendant.	ORDER OF DISMISSAL CASE NO. 262

April 5, 1923

WHEREAS, On December 12, 1922, the Commission, by its order duly made and entered herein, over-ruled the demurrer of respondent and fixed the time for the filing of an answer herein by respondent to fifteen days from said date; and,

WHEREAS, No answer has as yet been filed herein by respondent or defendant; and,

WHEREAS, On March 31, 1923, there was filed herein by said complainants a motion to dismiss said cause without prejudice to the rights of complainants, however, to raise or revive the questions herein involved in the event of any future operations or transportation by respondent, The Inter-City Automobile Lines, Inc., or in the event of any revival or continuation of any operation or transportation complained of herein; and,

WHEREAS, it is made to appear that said defendant, The Inter-City Automobile Lines, Inc., has heretofore discontinued the operation of its alleged automobile passenger trucks over the routes mentioned in the complaint herein, and that said defendant is not engaged therein and is not the owner of any automobile trucks and that the creditors of said defendant

have, by certain proceedings, obtained possession of all the property of said defendant, and that the likelihood of the defendant to attempt to enter the business of a common carrier is somewhat remote; and that a hearing, under such circumstances, to consider the merits as to the propriety of the granting of a certificate of public convenience and necessity of said defendant would be futile and not in the interests of the public.

O R D E R

IT IS THEREFORE ORDERED, That the complaint of the above named complainants be, and the same is hereby, dismissed without prejudice to the rights of the complainants, or any of them, to raise or revise the questions herein involved at such time as they shall be advised.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Halderman

H. A. Lawson

Lucy Dan

Commissioners.

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

(Decision No. 669

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of Warren B. Chase, for a Certificate that the present and future Public Convenience and Necessity require the Operation of an Automobile Freight Line and for a Permission to Operate such Line, between Denver and Loveland and intermediate Points.

APPLICATION NO. 166

(April 9, 1923)

STATEMENT

By the Commission:

This application was received by the Commission February 18, 1922. On January 22, 1923, the Commission set the same down for hearing April 10, 1923.

Applicants filed their motion to dismiss April 9, 1923.

ORDER

IT IS THEREFORE ORDERED, That the application of Warren B. Chase for a certificate of convenience and necessity for the operation of an automobile freight line and for permission to operate such line between Denver and Loveland and intermediate points be, and the same is, hereby dismissed.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

By H. D. Lawson

Commissioners.

Dated at Denver, Colorado,
this 9th day of April, 1923.

(Decision No. 600½)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of J. B. Forshay (L. E. Wells, Successor), R. C. Mauzy and J. A. Blair for an order authorizing transportation of passengers and freight by motor cars from Denver to Idaho Springs, Colorado.

APPLICATION NO. 168

April 11, 1923.

Appearances: For Applicants, none; for Defendant, The Colorado and Southern Railway Company, J. Q. Dier and A. E. Buckingham.

STATEMENT

By the Commission:

This matter is before the Commission on application of J. B. Forshay, R. C. Mauzy and J. A. Blair for an order authorizing the transportation of passengers and freight by motor cars from Denver to Idaho Springs. The application was filed with the Commission February 27, 1922.

On March 10, 1922, the Commission received a notice from L. E. Wells, 1036 Tenth street, Denver, Colorado, that Mr. J. B. Forshay, one of the applicants in the above numbered application, had withdrawn from same.

After due and legal notice to all interested parties, the above entitled matter came on for hearing before the Commission at the Hearing Room of the Commission, Denver, Colorado, April 11, 1923, at 10:00 o'clock A. M. Representatives appeared for defendant, The Colorado and Southern Railway Company, but no one appeared for applicants.

ORDER

IT IS THEREFORE ORDERED, That the above application be, and the same is hereby, dismissed for lack of appearance for applicants.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 11th day of April, 1923.

(Decision No. 601)

PUC-12

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of L. W. Parcell for franchise and permit to conduct and operate an automobile stage line between the town of Silverton, San Juan County, Colorado, and the city of Ouray, Ouray County, Colorado, via Red Mountain, Colorado.

APPLICATION NO. 242

April 23, 1923.

S T A T E M E N T

By the Commission:

The above named applicant, L. W. Parcell, filed a petition with the Commission March 17, 1923, stating therein the information required under the Act and asking that he be granted a certificate of public convenience and necessity for the operation of an automobile stage line for the transportation of passengers, baggage and freight, between Silverton, San Juan County, Colorado, and Ouray, Ouray County, Colorado, via Red Mountain, Colorado, over the usual and only highway between such towns, and to be operated as " The Circle Route Stage Line."

The Denver and Rio Grande Western Railroad System was served with a copy of said petition; and, on March 23, 1923, by its General Attorney, E. N. Clark, advised the Commission that it had no objection to the granting of the certificate prayed for and would file no objection or protest thereto.

Said railroad system runs in a circuitous route between the two towns covering a distance of approximately one hundred fifty miles and requiring approximately two days' time by rail; while the proposed stage line covers the distance in twenty-five miles and requires a couple of hours' time when weather and road conditions are favorable.

It will thus be seen that the public convenience and necessity is and will be subserved by the issuance of such a certificate to the

applicant. The railroad system making no objection thereto and there being no other carrier between Silverton and Ouray, the Commission deems it not essential to hear testimony in support of the petition and will, accordingly, grant the certificate prayed for upon the showing made in the applicant's petition, which is duly verified.

O R D E R

IT IS THEREFORE ORDERED, That the public convenience and necessity requires and will require the operation of an automobile stage line between Silverton and Ouray, Colorado, for the transportation of passengers, baggage and freight by applicant, L. W. Parcell, to be known as "The Circle Route Stage Line," and that this order shall be taken, deemed and held to be a certificate of convenience and necessity therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Chairman

Duff Scott

W. D. Lamm

Commissioners.

Dated at Denver, Colorado, this
23rd day of April, A. D. 1923.

(Decision No. 6027

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of the City and County of Denver to Abandon the Grade Crossing Over the Main Line Track of the Union Pacific Railroad at a Point 400 Feet West of Where Colorado Boulevard Crosses Said Railroad Track between 42nd and 43rd Avenues, and to Establish a Grade Crossing at Said Intersection of Colorado Boulevard and Said Main Line Track, in the City and County of Denver, Colorado.

APPLICATION NO. 247.

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May 1, 1923.
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S T A T E M E N T

By the Commission:

This proceeding arises upon the application of the City and County of Denver, Colorado, in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for the abandonment of a public highway crossing at grade over the main line track of the Union Pacific Railroad Company at a point 400 feet west of where Colorado Boulevard crosses said track between Forty-second and Forty-third Avenues, and to establish a grade crossing at said intersection of Colorado Boulevard and the main line track of said railroad in the City and County of Denver.

On May 1, 1923, the Railway Engineer for the Commission inspected the site of this proposed change of location of crossing in the vicinity of Colorado Boulevard, and reported to the Commission that the view of approaching trains is reasonably good in all directions.

On April 30, 1923, the Commission was in receipt of a letter from Mr. C. C. Barnard, Superintendent of the Union Pacific System, wherein

he states: "We find that there are no objections to making this change."

The City and County of Denver and the Union Pacific 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 abandonment and establishment of the crossings as 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 crossing at grade over the main line track of the Union Pacific Railroad Company at a point 400 feet west of where Colorado Boulevard crosses said track between Forty-second and Forty-third Avenues be abandoned, and in lieu thereof 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 Union Pacific Railroad at the intersection of Colorado Boulevard with said railroad between Forty-second and Forty-third Avenues in the City and County of Denver; 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, will be borne by the City and County of Denver, and all other expense in the matter of installation and maintenance of said crossing, as herein provided, shall be borne by the respondent, Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Dated at Denver, Colorado,
this 1st day of May, 1923.

Commissioners.

(Decision No. 603)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Board of County Commissioners of Yuma County, Colorado, for the Opening of a Public Highway Across the Right-of-Way and Tracks of the Chicago, Burlington & Quincy Railroad at a Point about 792 Feet North and about 825 Feet East of the Southwest Corner of Section 35, Township 2 North, Range 45 West.

APPLICATION NO. 211.

April 26, 1923.

S T A T E M E N T

By the Commission:

This matter comes before the Commission on Application No. 211, filed in this office July 19, 1922, by the Board of County Commissioners of Yuma County, Colorado, for the opening of a public highway crossing at grade over the right-of-way and tracks of the Chicago, Burlington & Quincy Railroad at a point about 792 feet north and about 825 feet east of the southwest corner of Section 35, Township 2 North, Range 45 West of the 6th Principal Meridian at what is known as Robb Station on the Chicago, Burlington & Quincy Railroad.

On November 2, 1922, the Railway Engineer for the Commission and the Resident Engineer of the Chicago, Burlington & Quincy Railroad Company, together with Mr. Heindel, Road Supervisor of Yuma County, visited the site of the proposed crossing and made a thorough investigation of the matter. It was agreed that the crossing asked for in this application was not the best location for a crossing in this vicinity. The engineer for the Chicago, Burlington & Quincy Railroad Company recommended that the crossing be established either on the section line between Sections 34 and 35, Township 2 North, Range 45 West, or at a point about 300 feet east of where the section line crosses the main line track. The Railway Engineer

for the Commission agreed that either of these places would be preferable to the point asked for in this application.

On March 30, 1922, the Commission was in receipt of a statement from the Board of County Commissioners of Yuma County, and approved by the attorney for the Chicago, Burlington & Quincy Railroad Company, wherein it was stated that the Board of County Commissioners and the Chicago, Burlington & Quincy Railroad Company had agreed to construct a crossing on the section line between Sections 34 and 35, Township 2 North, Range 45 West in lieu of the crossing asked for in this application.

On April 24, 1923, this Commission received a communication from Jo A. Fowler, County Attorney for the Board of County Commissioners, asking that Application No. 211 be abandoned; and accompanying this request for abandonment there was also received an application to construct a crossing on the section line between Sections 34 and 35, Township 2 North, Range 45 West of the 6th Principal Meridian. In view of these facts application No. 211 will, therefore, be abandoned and dismissed.

O R D E R

IT IS THEREFORE ORDERED, That the application made in this case will be abandoned 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 26th day of April, 1923.

(Decision No. 604

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of the Board of County Commissioners of Yuma County, State of Colorado, for Permission to Open a Public Highway Crossing Over the Right-of-Way and Track of the Chicago, Burlington & Quincy Railroad Company on the Section Line between Sections 34 and 35, Township 2 North, Range 45 West of the 6th Principal Meridian.

APPLICATION NO. 245.

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April 26, 1923.

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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 Yuma 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 on the section line between Sections 34 and 35, Township 2 North, Range 45 West of the 6th Principal Meridian, near Robb Station, Yuma County, Colorado.

An inspection was made of this proposed crossing by the Commission's Railway Engineer, the Resident Engineer of the Chicago, Burlington & Quincy Railroad Company and the Road Supervisor of Yuma County on November 2, 1922. In his report the Railway Engineer for the Commission states the view of approaching trains is fairly good in all directions. At the time of this inspection there was some dispute as to the best location for this crossing. The Resident Engineer for the Chicago, Burlington & Quincy Railroad Company favored the location on the section line in preference to the point then under consideration.

On March 30, 1923, there was received in this office a statement by the Board of County Commissioners of Yuma County, and approved by E. E. Whitted, Attorney for the Chicago, Burlington & Quincy Railroad Company, advising the Commission that an amicable agreement had been reached by the County and the Railroad Company whereby the crossing was to be constructed on the said section line, upon permission being secured from this Commission.

The County Commissioners of Yuma County and the Chicago, Burlington & 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 requested in this application.

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 Chicago, Burlington & Quincy Railroad Company on the section line between Sections 34 and 35, Township 2 North, Range 45 West of the 6th Principal Meridian, in Yuma 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 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 the crossing, including the necessary

drainage therefor, be borne by Yuma 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

Commissioners.

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

(Decision No. 605

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 for a change in the location of a public highway crossing over the right-of-way and track of The Denver and Rio Grande Western Railroad Company from its present location to a point about 647 feet west of the present location, the same being in Section 23, Township 30 South, Range 22 West near Fort Garland, Colorado.

APPLICATION NO. 224

(May 5, 1923)

STATEMENT

By the Commission:

This proceeding arises upon the application of the Board of County Commissioners of Costilla County, Colorado, in compliance with Section 29 of the Public Utilities Act as amended April 16, 1917, for a change in the location of a public highway crossing at grade over the right-of-way and track of The Denver and Rio Grande Western Railroad Company from its present location to a point about 647 feet west, the same being in Section 23, Township 30 South, Range 22 West of the 6th Principal Meridian, near Fort Garland, Colorado.

This application was filed with the Commission September 20, 1922; and, on October 31, 1922, the Commission received a letter from Mr. E. N. Clark, General Attorney for The Denver and Rio Grande Western Railroad Company, wherein he states: "Beg to advise that the Railroad Company agrees to the abandonment of the present crossing and to the establishment of a new crossing, providing that the new crossing shall be constructed at right angles to the track instead of diagonally as proposed in the above application." Upon receipt of this letter from Mr. Clark,

the County Commissioners of Costilla County were advised and, on December 8, 1922, replied to the Commission, in effect, stating that so far as the Board of County Commissioners of Costilla County was concerned this would be acceptable to them providing it was acceptable to the State Highway Department. After considerable correspondence with the State Highway Department, on April 27, 1923, this Commission received a letter from J. A. Maloney, Assistant Highway Engineer, wherein he states: "In the matter of the Denver and Rio Grande Western Railroad crossing near Fort Garland, Colorado, which has been under discussion for sometime in your department, please be advised that the right angle crossing is satisfactory to this department."

The County Commissioners of Costilla County and The Denver and Rio Grande Western 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 change in the location of the grade crossing as requested in the application.

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 the present public highway crossing be abandoned and that in lieu thereof 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 at a point about 647 feet west of the present crossing in Section 23, Township 30 South, Range 22 West of the 6th Principal Meridian near Fort Garland, 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, 2 Colo. P.U.C. 128.

IT IS FURTHER ORDERED, That said crossing shall be constructed approximately at right angles to said Denver and Rio Grande Western

Railroad track.

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

IT IS FURTHER ORDERED, That the present crossing shall be abandoned as soon as the proposed crossing is opened for travel.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Frank E. Stedman,

H. L. Lamson

Commissioners.

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

C. I. Wright, et al, Plaintiffs,
vs.
The Town of Manitou, Defendant.

CASE NO. 263

May 9, 1923

Appearances: C. I. Wright and Mrs. C. I. Wright, in propria persona, of Manitou, for themselves and petitioners; C. W. Dolph, Town Attorney, for the Town of Manitou, Defendant.

S T A T E M E N T

By the Commission:

Sometime before February 17, 1922, the subject matter of the petition herein was brought to the attention of the Commission informally by some of the residents of Manitou speaking through Mr. and Mrs. Wright. The basis of the informal complaint was that the water being supplied to consumers in the Town of Manitou from what was known as the "Iron Springs Water System" and then owned by the Manitou and Pikes Peak Railway Company, was unsanitary and unfit for human consumption and, consequently, deleterious in its effect upon the users.

Such informal complaint was referred to Mr. C. D. Vail, Railway and Hydraulic Engineer for the Commission, who, upon making an investigation of the conditions surrounding said water supply, reported to the Commission, on February 17, 1922, to the effect that the Manitou and Pikes Peak Railway Company owned a water supply from Ruxton Creek which was installed in connection with the railway some thirty odd years ago primarily for the use of said railway company; that residents along said line were furnished water, and later mains were extended to reach consumers that could not be reached readily from the municipal plant owned by the Town

of Manitou. The Hydraulic Engineer further reported that the owner of said railway company did not operate the system as a water utility and had no desire so to do and what water was being furnished to others was done so as an accommodation; that some sort of charge was made for the service rendered by the company until about the month of August, 1914; that in the year 1914, the company and the town entered into a certain contract whereby the said water plant was leased to the town under certain terms and conditions which were carried into effect for about a year and a half, when the Town of Manitou sought to repudiate it, on the ground that the contract had been irregularly entered into and the town brought suit to annul the contract in the District Court of El Paso County. The railway company demurred to the complaint of the Town of Manitou and, on April 24, 1918, the demurrer was sustained by the District Court and the case dismissed, since which time no action has been taken either by the company or the town with respect to the matter.

The Hydraulic Engineer further reported that no water rents had been collected from the consumers along said line by anybody since about 1918, as neither the town nor the company exercised any responsibility regarding the operation of said water plant. This condition continued for four or five years and was responsible, perhaps, for the impression of some of the consumers that no charge was made for the water furnished on account of the impurity of the water supplied.

The Hydraulic Engineer made several inspections of the stream of Ruxton Creek on different occasions and reported that in his judgment the purity of the water supply is as good, if not better, than the average water supplied by the smaller plants in this State; and, further, that he had made inquiry at the office of the State Board of Health and that the purity of the water supplied from Ruxton Creek had never been brought into question in that department.

The Hydraulic Engineer further reported that during this period of disputed operation, or liability for operation of this system, there had been frequent interruption of service due to breaks, stopping up or freezing of

the mains; and that if consumers made objection, the railway company made such repairs as to restore the service largely as a matter of accommodation to consumers on the line, as the company still claimed that the contract of August, 1914 still existed between the Town of Manitou and itself.

Without going into further detail as to the report of February 17, 1922 of the Hydraulic Engineer, suffice it to say that the energies of the Commission were directed toward securing either the railway company or the Town of Manitou to assume responsibility for the operation of said water system; and so matters continued until, on September 1, 1922, there was filed in the office of the Commission a petition signed by a number of the tax payers and citizens of the Town of Manitou protesting against the further use of Ruxton Creek water on account of its alleged contaminated condition resulting from the unsanitary surrounding of its location and asking that proper extension be made to the Town of Manitou water system so as to furnish petitioners with an adequate supply of pure water from the Manitou reservoir located on French Creek--the supply to be sufficient for all domestic purposes and give adequate fire protection.

Upon the incoming of said petition, a copy of same was served upon the officials of the Town of Manitou, asking that it satisfy the demands of petitioners or answer the same within the statutory time. Thereupon, said petition was docketed as a formal case on the dockets of the Commission as above entitled, being Case No. 263, and such matters as had theretofore been informally filed were considered as embraced therein.

On September 13, 1922, a letter was received from the Town Attorney of the Town of Manitou, which is equivalent to an answer to said petition and has been treated as such, wherein the Commission is advised that the Town of Manitou has had under consideration the matter of the Iron Springs Company's water supply; and stating that the water received by consumers from the supply derived from Ruxton Creek is not contaminated and that the surroundings are not unsanitary.

The so-called answer further represents that during the summer of 1922 that the water supplied out of French Creek and the town's reservoir was

not sufficient in volume to furnish water to consumers who are now using same and scarcely enough water from said source to supply the domestic water of its inhabitants deriving a supply from French Creek, to say nothing of water for irrigating and lawn purposes; and that to connect the consumers along Ruxton Creek with the French Creek source would incur an expense by the Town of Manitou of from $30,000 to $50,000 and would require immediate repairs to the dam that would cost approximately $25,000 in addition, and that the Town of Manitou was financially unable to incur such expense at the present time.

The letter, or answer, further advised that at a meeting of its Board of Trustees held a few days prior to the date of said communication, a committee was appointed to confer with the owner of the Iron Springs Water System with a view of acquiring that system for the Town of Manitou; and that it was necessary that all available water for the supply of Manitou be purchased by the Town and that the Iron Springs supply is the most available to be had.

Upon receipt of the communication from the Town of Manitou, the Commission, through its Hydraulic Engineer, took the matter up with the railway company and the Town of Manitou for the purpose of getting one or the other to become responsible for the operation of said Iron Springs Water System and, preferably, to induce the Town of Manitou to become the owner of it and thus be responsible to its inhabitants and the consumers of water. These efforts were made intermittently throughout last fall by communication, personal visits and otherwise with the town officials and the railway company officials, but without any very definite result up until shortly prior to the hearing herein.

In the meantime, petitioners, as represented by Mr. and Mrs. Wright, were urgently insistent that the Commission take definite action with the view of compelling the Town of Manitou to supply users of water along Ruxton Creek with water out of the French Creek system on the ground that the Ruxton Creek water was impure and unfit for human consumption. So insistent were they that the Commission take action that, in November, 1922, a communication was addressed by Mr. C. I. Wright to the then Governor of this State, Honorable O. H.

Shoup, with a view to having the Commission hasten its action in the premises. Owing to a combination of circumstances, however, that were unavoidable to the delay of action by the Commission, and to the further fact that negotiations were not completed nor abandoned as between the owner of the Iron Springs system and the Town of Manitou, the matter was deferred until, on the 28th day of February, 1923, the matter was set for hearing on Tuesday, March 27, 1923, at the City Hall, Manitou, Colorado, and notice thereof duly given to all parties in interest.

At the hearing a voluminous record was made consisting of ninety typewritten pages, very much of which was submitted by petitioners. We think it not too much to say that of the direct testimony submitted by petitioners, no single substantive fact was proven by other than hearsay, rumor, and what might be denominated "gossip" evidence. Great stress was laid upon the fact that a dead man was found in the settler in the Iron Springs system some seven or eight years ago, though that fact would not contaminate water after the body had been removed therefrom for any appreciable length of time. Other statements were made that picnickers, campers and burros using the trails through the territory contiguous to Ruxton Creek were responsible for the contamination of the water supply therefrom, and that cases of typhoid fever were attributable to the drinking of the Ruxton Creek water supply; and all such evidence was from the standpoint of hearsay or rumor and no one case of typhoid was directly traceable to the use of Ruxton Creek water so far as the evidence disclosed.

On the other hand, witness Smiley testified on behalf of defendant and stated that he built the Iron Springs system in 1885 and that he and his family have used the water supplied from that system for twenty-nine years and have never had any case of sickness and that he has never noticed during all that time any particularly disagreeable odors from the water either in the summer or wintertime and that he is a great water drinker. The witness testified that a number of years ago there was a case of typhoid fever contracted on the Creek, but that the water generally speaking is far superior

to what it was at that time and that it is sanitary and fit for human consumption at the present time and could be made better with little expense if Colorado Springs would shunt its water around the intake when flushing the Colorado Springs reservoir.

Witness Ogilbee testified that he was town physician for the Town of Manitou and was also one of its Board of Trustees and had lived in Manitou for thirty-five years; that he had never heard of any cases of typhoid being contracted by the use of Ruxton Creek water and never heard that claim made nor any objection made with respect to the sanitary state of that water except until within the past few years when neither the town nor the railway company was giving the system any attention. Other testimony is substantially to the same effect.

Complaint was made as to pine needles and gravel entering the intake of the Iron Springs system and thereby giving the water an unpleasant odor and stopping up its pipes. Such matters, of course, may be readily remedied by the town authorities and with comparatively little expense; and, for that matter, the testimony of the mayor and the trustees is to the effect that now that the town has acquired the Iron Springs system, it will take the necessary steps to remedy such defects as have existed in that regard and take other necessary steps to insure the supply of water emanating from Ruxton Creek to be wholesome and as pure as that from ordinary mountain sources, including the supply from French Creek.

As above stated, the Town of Manitou acquired by purchase the ownership of the Iron Springs Water System on the 20th day of March, 1923, in pursuance of a resolution adopted by the Board of Trustees of said town on the 17th day of March, 1923, authorizing and directing the purchase of said water system from the owner thereof. The terms and conditions of this purchase are fully set forth in said resolution and in the deed of conveyance executed by the owner to the Town of Manitou on March 20, 1923, as shown in Exhibits 1 and 2 of the Town of Manitou, certified copies being filed herein.

By the terms of said deed, the town becomes absolute owner of all and singular of the property theretofore owned by the railway company and

herein spoken of as the "Iron Springs Water System" and all its rights, franchises, and privileges, together with certain water rights as in said deed of conveyance described. Said purchase also is in settlement of all controversies heretofore existing between the parties to the deed of conveyance and particularly with reference to the aforesaid lease made in August, 1914.

Inasmuch as the Town of Manitou has now become the owner of said water system together with all appurtenances pertaining thereto and shortly before the date of the hearing, which has all been made to appear by the evidence, the Commission is of the opinion that the Town of Manitou now being a public utility for the furnishing of water to its residents and inhabitants, is obligated to use every reasonable effort, and within a reasonable time, to supply the users of water from Ruxton Creek with a reasonably adequate and pure supply of water for domestic purposes; and, if such efforts are not made, then the petitioners, or complainants, herein have recourse to the courts or this Commission for relief. As hereinbefore indicated, however, the mayor and at least two of the members of the Board of Trustees of the Town of Manitou have testified herein that such efforts would be made so that the water supply out of Ruxton Creek would be made as free from objection as that out of French Creek. Under these circumstances and conditions, the Commission can do nothing else, and particularly in view of the unsatisfactory character of the evidence submitted by petitioners, than to dismiss the petition or complaint without prejudice.

O R D E R

IT IS, THEREFORE, ORDERED That the petition or complaint of complainants herein be, and the same is hereby, dismissed without prejudice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 9th day of May, 1923.

(Decision No. 607)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of)
Norman W. Murphy for Permission to)
Operate or Drive a Truck Express be-) APPLICATION NO. 193.
tween the Cities of Pueblo and Monte)
Vista, Colorado.)

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May 23, 1923.
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S T A T E M E N T

By the Commission:

It appearing that the applicant in this cause has advised the Commission that the application may be dismissed;

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 23rd day of May, 1923.

(Decision No. 608)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

In the Matter of the Application of)
The Denver and Salt Lake Railroad)
Company for an Order Authorizing it) APPLICATION NO. 157
to Close its Agency at Rollinsville,)
Colorado.)

(May 25, 1923)

O R D E R

This matter is before the Commission on the petition of Leon D. Wurtz, Superintendent The New Life Mining and Milling Corporation and eighty-six other signers of said petition, dated April 10, 1923, stating that by the permission of the Commission the agency of The Denver and Salt Lake Railroad Company at the Rollinsville station was discontinued from, and after, January 1, 1922 to, and until, May 1, 1922; that said agent had not been installed after January 1, 1923, and seeking the establishment of an agent at that station on or before the first day of May, 1923.

WHEREAS, Upon receipt of the above petition, signed by Leon D. Wurtz and other petitioners, a copy of same was submitted to The Denver and Salt Lake Railroad Company and the Receivers thereof, under date of April 23, 1923, requesting Receiver W. R. Freeman to advise the Commission the position of The Denver and Salt Lake Railroad Company, relative to reestablishing this agency; and,

WHEREAS, No response has been received by the Commission in reply to its letter of April 23, 1923; and,

WHEREAS, The closing of the agency at Rollinsville, Colorado, January 1, 1923, and up to the present time, was unauthorized by this Commission as no showing was made for the necessity for said closing; and,

WHEREAS, The Receivers of The Denver and Salt Lake Railroad Company have, and now are assuming an attitude of contempt for the laws of Colorado

governing the regulation of public utilities and are setting themselves up as a law unto themselves; and,

WHEREAS, The New Life Mining and Milling Corporation, by Leon D. Wurtz, its Superintendent, has secured the names of eighty-six bona fide residents who are adversely affected and inconvenienced by the unlawful and unwarranted closing of the Rollinsville station agency.

This Commission will issue its order correcting the aforesaid violation of the statutes made and provided, covering such cases.

O R D E R

IT IS THEREFORE ORDERED, That The Denver and Salt Lake Railroad Company, through its Receivers, W. R. Freeman and C. Boettcher, reestablish its agency at Rollinsville, Colorado, and place an agent therein, on or before June 1, 1923.

IT IS FURTHER ORDERED, That the aforementioned agency shall be maintained until otherwise ordered by this Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

Dated at Denver, Colorado,
this 25th day of May, 1923.

Commissioners.

(Decision No. 609)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of)
The Colorado Power Company for a)
Certificate of Public Convenience) APPLICATION NO. 250.
and Necessity to Operate in the Town)
of Antonito, Colorado.)

Hodges, Wilson & Rogers, of Denver, Attorneys for applicant.

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May 26, 1923.

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S T A T E M E N T

By the Commission:

On May 4, 1923, the above named applicant filed its petition with this Commission alleging, inter alia, the fact of its incorporation and its being engaged in the operation, construction and maintenance of transmission lines, power stations, systems and appliances for the generation, transmission and distribution of electrical energy and electricity for heat, light, power, motive and other purposes in the State of Colorado and in the cities and municipalities thereof; that it has heretofore filed a certified copy of its Articles of Incorporation in the office of this Commission, pursuant to the requirements of sub-section (c) of Section 35 of the Act, as amended, effective July 16, 1917; that the post office address of applicant is Symes Building, Denver, Colorado; that heretofore, and in the month of April, 1923, applicant secured and accepted from the town of Antonito, Conejos County, Colorado, certain franchise rights, privileges and authority to erect, construct, maintain and operate within the corporate limits of said town, or any additions thereto, for a period of twenty years electric sub-stations, electric light and power plants, with the transmission and distribution system appertaining thereto, and with the right to install all necessary equipment and appliances, and to operate the same upon, across, along, under and over

any and all streets, alleys and public grounds of said town for the generation, transmission, sale, distribution and delivery of electricity, electrical current and power within the corporate limits of said town, or any additions thereto, for the use of said town and the inhabitants thereof for light, heat, power and other purposes.

The application refers to Ordinance No. 25 as having been passed, adopted, approved and published by said town, granting the rights and privileges to said applicant, as in its application set forth, on April 6, 1923; and attached thereto and marked "Exhibit A" for the purposes of identification is the published ordinance aforesaid, as the same is published in the Antonito ledger in the issue thereof dated April 12, 1923.

Applicant further alleges that it has not heretofore exercised the franchise rights so granted to it by said town, and that the public convenience and necessity of said town and its inhabitants, and of the people contiguous thereto, require the exercise of such franchise rights by the applicant, and the erection, construction, maintenance and operation, with all necessary sub-stations, of electric light and power plants, with the necessary transmission and distribution system appertaining thereto; that said town has a population of about one thousand people, and has not heretofore been served with electrical energy for electric light and power by other than a small privately owned and operated generating plant and distribution system, and that said privately owned plant has been acquired by applicant and same will be utilized, improved and extended by applicant for use in conjunction with its own plant and system to be installed under the rights and privileges granted it by said franchise; and that no public utility has heretofore occupied the territory embraced within said application for the purposes aforesaid, and that applicant, in the exercise of the aforesaid rights, will not enter into competition with any public utility or person engaged in such business in the territory therein described.

Attached to and made a part of the application and marked "Exhibit B" is a blue print showing the proposed extension of applicant's transmission line and system for the purpose of exercising the rights and privileges granted it under the aforesaid franchise, and asks that the Commission grant to it a certificate of public convenience and necessity for the extension, construction, erection, maintenance and operation of its power plants and stations, transmission lines and distribution systems for the generation and distribution of electrical energy in the territory described in its application and as shown by the map filed therewith.

Notice was given by the Commission to the said town of Antonito of the filing of said application by service of a copy thereof upon the mayor of said town with a letter of transmittal, asking if there were any objections on the part of said town to the granting of the certificate of convenience and necessity prayed for; said notice and copy of application being served by mail upon the mayor of said town under date of May 5, 1923.

The Commission was advised by letter of the town clerk of the town of Antonito, received May 8, 1923, of the reception of the copy of said application, and that said town had granted the franchise therein specified, and that all things necessary had been done to grant full authority to install the electrical project aforesaid.

In view of the fact that the town of Antonito, by its officials, has made no objection and has given its assent to the issuance of the certificate of convenience and necessity desired by applicant, and in view of the further fact that no other person or corporation is interested in the subject matter thereof aside from the applicant and the said town, and that the application is duly verified by the Vice-President and General Manager of applicant, the Commission deems it to be unnecessary to require further or additional evidence concerning the facts alleged in said petition.

As has heretofore been oft remarked by this Commission, electrical energy for light, heat and power purposes in this day and age is so essentially a necessity to any community that may be able to acquire it that no evidence of that fact is required. A town, a city or a community that would not avail itself of an opportunity to have the privilege of electric lights for its homes and businesses and power for its industrial activities at the present time would be regarded as being so far behind the times and out of date in the use and application of modern conveniences that it would soon lose caste and eventually pass into a state of innocuous desuetude.

O R D E R

IT IS THEREFORE ORDERED, That the applicant, The Colorado Power Company, be, and it is hereby, granted a certificate of public convenience and necessity for the construction, extension, erection and use of all necessary transmission lines, sub-stations, power plants, and all necessary apparatus pertaining thereto, for the furnishing to said town of Antonito and its inhabitants and the territory contiguous thereto of electrical energy and electricity for light, heat, power and other purposes, as more particularly set forth and alleged in its petition hereinabove referred to; and that this order shall be taken, deemed and held to be a certificate of convenience and necessity therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Hall Emeritus,

H. D. Lawson

Commissioners.

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

(Decision No. 610)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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In the Matter of the Application of The Colorado Power Company for a Certificate of Public Convenience and Necessity to Operate in the Town of Manassa, Colorado.

APPLICATION NO. 251.

Hodges, Wilson & Rogers, of Denver, Attorneys for applicant.

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May 26, 1923.

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S T A T E M E N T

By the Commission:

On May 4, 1923, the above named applicant filed its petition with this Commission alleging, inter alia, the fact of its incorporation and its being engaged in the operation, construction and maintenance of transmission lines, power stations, systems and appliances for the generation, transmission and distribution of electrical energy and electricity for heat, light, power, motive and other purposes in the State of Colorado and in the cities and municipalities thereof; that it has heretofore filed a certified copy of its Articles of Incorporation in the office of this Commission, pursuant to the requirements of sub-section (c) of Section 35 of the Act, as amended, effective July 16, 1917; that the post office address of applicant is Symes Building, Denver, Colorado; that heretofore, and in the month of April, 1923, applicant secured and accepted from the town of Manassa, Conejos County, Colorado, certain franchise rights, privileges and authority to erect, construct, maintain and operate within the corporate limits of said town, or any additions thereto, for a period of twenty years electric sub-stations, electric light and power plants, with the transmission and distribution system appertaining thereto, and with the right to install all necessary equipment and appliances, and to operate the same upon, across, along, under and over

any and all streets, alleys and public grounds of said town for the generation, transmission, sale, distribution and delivery of electricity, electrical current and power within the corporate limits of said town, or any additions thereto, for the use of said town and the inhabitants thereof for light, heat, power and other purposes.

Attached to and made a part of said application and marked "Exhibit A" is a copy of Ordinance No. 28 of said town, granting the rights and privileges to said applicant as alleged in its petition, and also of the proper posting of said Ordinance in six public places in said town of Manassa, as appears by affidavit of publication by posting thereof by the town clerk and recorder of said town attached to said application and marked "Exhibit B".

Applicant further alleges that it has not heretofore exercised the franchise rights so granted to it by said town, and that the public convenience and necessity of said town and its inhabitants, and of the people contiguous thereto, require the exercise of such franchise rights by the applicant, and the erection, construction, maintenance and operation, with all necessary sub-stations, of electric light and power plants, with the necessary transmission and distribution system appertaining thereto; that said town has a population of about five hundred people, and has not heretofore been served with electrical energy for electric light and power; and that no public utility has heretofore occupied the territory embraced within said application for the purposes aforesaid, and that applicant, in the exercise of the aforesaid rights, will not enter into competition with any public utility or person engaged in such business in the territory therein described.

Attached to and made a part of the application and marked "Exhibit C" is a blue print showing the proposed extension of applicant's transmission line and system for the purpose of exercising the rights and privileges granted it under the aforesaid franchise, and asks that the Commission grant to it a certificate of public convenience and necessity for the extension, construction,

erection, maintenance and operation of its power plants and stations, transmission lines and distribution systems for the generation and distribution of electrical energy in the territory described in its application and as shown by the map filed therewith.

Notice was given by the Commission to the said town of Manassa of the filing of said application by service of a copy thereof upon the mayor of said town with a letter of transmittal, asking if there were any objections on the part of said town to the granting of the certificate of convenience and necessity prayed for; said notice and copy of application being served by mail upon the mayor of said town under date of May 5, 1923.

The Commission was advised by letter of the town clerk of the town of Manassa, received May 9, 1923, of the reception of the copy of said application, and that said town had granted the franchise therein specified, and that all things necessary had been done to grant full authority to install the electrical project aforesaid.

In view of the fact that the town of Manassa, by its officials, has made no objection and has given its assent to the issuance of the certificate of convenience and necessity desired by applicant, and in view of the further fact that no other person or corporation is interested in the subject matter thereof aside from the applicant and the said town, and that the application is duly verified by the Vice-President and General Manager of applicant, the Commission deems it to be unnecessary to require further or additional evidence concerning the facts alleged in said petition.

As has heretofore been oft remarked by this Commission, electrical energy for light, heat and power purposes in this day and age is so essentially a necessity to any community that may be able to acquire it that no evidence of that fact is required. A town, a city or a community that would not avail itself of an opportunity to have the privilege of electric lights for its homes and businesses and power for its industrial activities at the present time would be regarded as being so far behind the times and

out of date in the use and application of modern conveniences that it would soon lose caste and eventually pass into a state of innocuous desuetude.

O R D E R

IT IS THEREFORE ORDERED, That the applicant, The Colorado Power Company, be, and it is hereby, granted a certificate of public convenience and necessity for the construction, extension, erection and use of all necessary transmission lines, sub-stations, power plants, and all necessary apparatus pertaining thereto, for the furnishing to said town of Manassa and its inhabitants and the territory contiguous thereto of electrical energy and electricity for light, heat, power and other purposes, as more particularly set forth and alleged in its petition hereinabove referred to; and that this order shall be taken, deemed and held to be a certificate of convenience and necessity therefor.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

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

(Decision No. 611)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

The Chamber of Commerce of Greeley,
The Greeley Gas and Fuel Company,
The Greeley Ice and Storage Company,
The Board of County Commissioners of
Weld County and the City of Greeley,

Complainants,

v.

Union Pacific Railroad Company,
The Colorado and Southern Railway Company,
The Denver and Rio Grande Railroad and
Alexander R. Baldwin, Receiver thereof,
Chicago, Burlington & Quincy Railroad
Company,

Defendants.

CASE NO. 244

The Continental Investment Company, a corporation, and F. G. Bonfils and H. H. Tammen,

Complainants,

v.

Union Pacific Railroad Company,
The Colorado and Southern Railway Company,
The Denver and Rio Grande Western Railroad
Company,
Chicago, Burlington & Quincy Railroad Company,

Defendants.

CASE NO. 250

The Megeath Coal Company,
The North Park Coal Company,
W. R. Freeman and C. Boettcher, as Receivers
of The Denver and Salt Lake Railroad Company,

Intervenors.

June 4, 1923.

Appearances: Whitehead & Vogl, Colorado Building, Denver, Colorado, for Complainants;
C. C. Dorsey and E. G. Knowles, Denver, Colorado, for Union Pacific Railroad Company;
J. Q. Dier and K. F. Burgess, Railway Exchange Building, Denver, Colorado, for Chicago, Burlington & Quincy Railroad Company;
J. Q. Dier and E. E. Whitted, Railway Exchange Building, Denver, Colorado, for The Colorado and Southern Railway Company;
E. N. Clark, Equitable Building, Denver, Colorado, for The Denver and Rio Grande Western Railroad Company;

Henry T. Rogers and Erl H. Ellis, of Denver, Colorado, for The Atchison, Topeka and Santa Fe Railway Company;
Elmer L. Brock, of Denver, Colorado, for Receivers of The Denver and Salt Lake Railroad Company;
Russell W. Fleming, of Fort Collins, Colorado, for The North Park Coal Company.

S T A T E M E N T

By the Commission:

The above matter is before the Commission by virtue of the complaint of the above named complainants in Case No. 244, filed with the Commission July 26, 1921; and of the complaint of complainant in Case No. 250, filed with the Commission October 25, 1921.

These two proceedings bring in issue the reasonableness and propriety of rates on coal from the northern lignite fields, located in Boulder and Weld counties, and from the Southern Fields, located in Huerfano and Las Animas counties, to Greeley and Denver. Complainants in Case No. 244 allege that the rates from the Northern and Southern Fields to Greeley are unjust and unreasonable, and by comparison with the rates on coal from the same originating territory to other localities within the state of Colorado, subject the city of Greeley and the residents and industries thereof to unjust discrimination. They ask for the establishment of the following rates:

To Greeley from	Lump	M. R.	Nut	Slack
Trinidad	$2.75		$2.25	$1.75
Walsenburg	2.45		1.95	1.50
Northern Fields	1.25	$1.00		.80

Complainants in Case No. 250 attack the rates on coal from these same fields to Denver, alleging that they are unjust and unreasonable and are unduly prejudicial to intrastate commerce and preferential of interstate commerce. The Commission is asked to establish just, reasonable, non-discriminatory and non-prejudicial rates for the future. The North Park Coal Company, located at Coalmont, Colorado, intervened in opposition

to the complaint in Case No. 244. The Denver and Salt Lake Railroad Company, by its Receivers, intervened in Case No. 250 in opposition to the reductions sought in the rates to Denver.

Both of these cases were, upon notice to all parties interested, set for hearing before this Commission upon several different dates in the latter part of 1921 and early in 1922, but, by applications for continuances and by stipulation and otherwise, they were not heard until after the institution by the Interstate Commerce Commission in the spring of 1922 of an investigation upon its own motion in re "Western Coal Rates," Docket No. 13588. At the instance of the parties, request was made to the Interstate Commerce Commission for a joint hearing upon a common record at such time as that Commission should designate as the date of its hearing to be held in the city of Denver. Thereafter, in April, 1922, the Interstate Commerce Commission extended an invitation to this Commission to sit with it jointly at its hearing in the city of Denver on May 10, 1922, and, upon a common record, to determine the matters involved in the two cases herein then pending before us for determination.

The complainants and defendants joined in a request that the scope of the investigation be widened or extended so as to include and permit a full consideration of both the interstate rates to and from Colorado and intrastate rates within Colorado to destinations on and east of the Colorado common point line, and thereby so to adjust the relationship between the interstate rates and the intrastate rates on coal that they would harmonize and not cause conflict through the inharmonious decisions of the two commissions.

While the stipulation or request as filed and of record is signed only by the complainants and The Colorado and Southern, Burlington, Union Pacific, and The Denver and Rio Grande Western, it was acquiesced in at the hearing by all interested parties except intervener, The Denver and Salt Lake Railroad, which objected on the ground that it had had no notice thereof and was not to be considered as a party thereto.

As indicated, and in pursuance to notice duly given by the Interstate Commerce Commission as to carriers of interstate traffic, and by the Colorado Commission as to carriers interested in intrastate traffic, the matter was set down for hearing and heard at the hearing room of the Commission in the State Office Building, Denver, Colorado, beginning on May 10, 1922.

It will be observed that under the terms of the agreement or stipulation widening or extending the scope of the investigation, many of the objections raised by the different carriers in the two Colorado cases are thereby eliminated, as the final outcome of this proceeding will be to fix and adjust coal rates from producing districts in Colorado to the principal consuming points in Colorado, including points on and east of the Colorado common point line to the Colorado state line.

The rates on coal in Colorado have been considered by this Commission in several proceedings. In Case No. 53, Commercial Club of Greeley v. Colorado and Southern Railway Company, decided in 1914, we prescribed rates from the northern Colorado lignite district to Greeley. In Case No. 26, Greeley Gas & Fuel Company v. Colorado and Southern Railway Company, decided in 1915, we approved rates then in effect from the Trinidad district to Greeley. As the result of Consumers' League of Colorado v. Colorado and Southern Railway Company, Case No. 6, decided in 1914, and on further hearing in 1918, rates were prescribed on lignite coal from northern Colorado to Denver. In 1915, this Commission instituted an investigation into all rates on coal from the various coal producing districts to points on and east of the Colorado common point line. In that proceeding, known as Case No. 10, we prescribed rates from the principal mining districts to destinations on the Santa Fe, Burlington, Chicago, Rock Island & Pacific, Missouri Pacific, and Union Pacific, observing generally the differentials as between the districts which had been voluntarily established by the carriers. The rates from the Walsenburg district, as a rule, constituted the base rates, and on traffic moving through Denver, the Canon City, Oak Hills, and South Canon districts were accorded the same rate basis,

with the Trinidad and Palisade districts 25 cents per ton higher on lump coal.

The rates then prescribed or approved by this Commission remained in effect, with minor variations, until June 25, 1918, when the increases under General Order No. 28 of the Director General of Railroads became effective. Following these, on September 1, 1920, further increases were made with our authority which corresponded with the increases in interstate rates effected by Ex Parte 74. The rates in effect in Colorado at the time of the hearing, therefore, were, in general, rates approved or prescribed by us. Since then, the reductions required under Reduced Rates, 1922, have been applied to the intrastate rates as well as the interstate rates. We are now called upon to determine, upon a record dealing with both the intrastate rates in Colorado and the interstate rates to and from Colorado, what would be a reasonable and non-prejudicial adjustment within this state.

The defense interposed in these cases that because decisions and orders of this Commission rendered some years ago, prescribed rates from the Trinidad and Walsenburg Districts to Pueblo, Colorado Springs and Denver, and from the Northern Coal Fields to Denver, and such orders and decisions have been in force and effect for a number of years and having been, as it is alleged, acquiesced in by complainants and other shippers of coal from said districts, they are final and conclusive and constitute a permanent adjudication and determination of the basic rates above mentioned, the Commission thinks to be untenable. The defense mentioned is in the nature of what might be denominated in a court proceeding res adjudicata or stare decisis. Those principles are not applicable to a rate proceeding or, for that matter, any other proceeding before a regulatory body, for the reason that a rate or classification or rule established by a regulatory body today may at this time next year be shown to be entirely unreasonable, unjust or discriminatory in its effect. It is true, defendant carriers allege that complainants have shown in their complaints no such change of conditions and circumstances from the time of the rendition of the prior orders and decisions as would warrant the Commission in changing, modifying or al-

tering the decisions and orders heretofore rendered; but that is a statement of conclusion merely. Whether conditions and circumstances have so changed as to warrant the regulatory body in increasing or decreasing a rate theretofore established is a matter for the regulatory body to determine from all the facts and circumstances in evidence; and the Commission is clearly of the opinion that, except as to the rates to Pueblo and Denver from the Southern Fields, the evidence clearly indicates that intrastate rates to other points on and east of said Common points to the Colorado state line are too high both in and of themselves and by comparison with interstate rates from the Trinidad and Walsenburg Districts to Kansas and Nebraska points and the Missouri River, and that said intrastate rates have hitherto borne an unfair and unjust proportion of the rates for the transportation of coal by the carriers involved for similar distances under similar conditions.

The present rate of $2.25 on lump coal from the Walsenburg District to Colorado Springs, one of the principal common points, as compared with the present rates of $1.76 and $2.34 from said district to Pueblo and Denver, respectively, is unreasonable and unjust in view of the length of hauls involved, as well as other factors that pertain to the Denver movement. A rate of $2.00 from Walsenburg to Colorado Springs is, therefore, found to be a reasonable and just rate for said movement for the future, with a 25 cent differential over Walsenburg from the Trinidad District on lump and nut coal, and a 10 cent differential on pea and slack.

Insofar as the rates to the common points designated are concerned, to-wit: Pueblo and Denver, of $1.76 and $2.34, respectively, from the Walsenburg District, with a 25 cent differential from the Trinidad District on lump and nut coal and a 10 cent differential on pea and slack, we are of the opinion they are no more than is fair, just and reasonable considering the length of haul, density of traffic, grades and other conditions surrounding the service in transporting coal to the two above mentioned common points.

In the stipulation hereinbefore referred to, the scope of the hearing was extended so as to permit full consideration of both interstate rates

to Colorado and the intrastate rates within Colorado "to destinations on and east of the Colorado common point line". So far as the two Colorado cases are concerned, the Commission, as disclosed by the intention of the parties to the written stipulation and as expressed by complainants in the record, meant thereby the destinations "on and east of the Colorado common point line" from the principal common points of Pueblo, Colorado Springs and Denver to the Colorado state line; and as so construed by the Commission that question will be first dealt with herein, after which the rates in Case No. 244, from the Northern Coal Fields to Greeley, and in Case No. 250, from the Northern Coal Fields to Denver, will be dealt with, to be followed by a consideration of the rates from the other producing points in Colorado to the three principal common points above named.

When the complaints in Cases Nos. 244 and 250 were filed in July and October, 1921, respectively, the rates from the Walsenburg field to Denver were, as set forth in the complaints, $2.90½ on all coal except pea and slack and $2.56½ on pea and slack. By tariffs issued July 22, 1922, effective July 24, 1922, these and other rates on coal were reduced in conformity with Reduced Rates, 1922, 68 I.C.C., 676, which required a reduction of 10 per cent in class and commodity rates. Prior to Ex Parte 74, the rates from the Canon City and Walsenburg districts to Denver were the same. The increases granted by the Commission under Application No. 91, following Ex Parte 74, were greater from Walsenburg than from Canon City because of the inclusion of the former in the western group and of the latter in the mountain-Pacific group. Under the 10 per cent reduction of July 24, 1922, the rate on lump from Canon City to Denver became $2.34 and to restore the former parity the carriers reduced the Walsenburg rate to the same amount, the reduction being nearer 20 per cent than 10 per cent. At the time of the hearing, therefore, rates from Canon City and Walsenburg were the same and were $2.34 on all coal except pea and slack, and on the fine coal $2.14. The usual differentials over Walsenburg of 25 cents and 10 cents, respectively, made the rates from Trinidad $2.59 and $2.24. These differentials have been maintained for a long

period of years.

The operators and shippers of coal urgently contended at the hearing that rates for the transportation of coal should be adjusted upon a mileage scale in conformity with the distance scale of rates found to be reasonable by the Interstate Commerce Commission in the case of Holmes & Hallowell Company v. Great Northern Railway Company, et al, decided March 8, 1921, reported in 60 I.C.C., pages 687 to 714, as amended June 6, 1922, effective July 1, 1922, the same being commonly known and referred to as the "Holmes & Hallowell Scale." This contention was vigorously opposed by the carriers as being impracticable to be applied to the transportation of coal traffic and unfair to the carriers, owing to the many different conditions affecting the service rendered occasioned by density of traffic, curvatures, grades, empty car movement, climatic conditions and many other factors that enter into the operation of railroads throughout the country; and that to apply such distance scale, or any distance scale, would be inequitable and unjust to the carriers as a whole, and that to attempt to apply a distance scale at all each line of railroad should be considered separately with the circumstances and conditions surrounding its difficulties of transportation.

The Commission is impressed with the argument of the carriers that the adoption of rates for transportation in compliance with the principles laid down in the Holmes & Hallowell case applied indiscriminately would be unfair and unjust to the carriers as, for instance, any principle of mileage scale of rates adopted over a prairie line where the grades and other difficulties of transportation are comparatively negligible as compared with the service rendered by a carrier over and through a mountainous country where curvatures and grades are quite considerable and climatic conditions render the service much more expensive than in the prairie haul, and where the return of empty car movement is practically 100 per cent, would be unfair, unjust and entirely unreasonable. In determining, however, the rates for the transportation of bituminous coal, carloads, from

the Colorado common points east, northeast and north to the state line on movements intrastate, the Holmes & Hallowell scale will be considered as a starting point or guide for the fixing of what is deemed to be reasonable and fair rates for such movements.

An examination of the tariffs of the carriers shows that the increases in rates proceeding eastward from the three principal common points, Denver, Colorado Springs and Pueblo, to the Colorado state line are far out of proportion with the increases east of the state line. In other words, the rates are so graded that most of the increase between the common points mentioned and the Missouri River is within the state of Colorado. For illustration, the rate from Walsenburg to Cheyenne Wells, a distance of 362 miles, is $4.86, while to Enterprise, Kansas, 304 miles farther, the rate is the same, and to Kansas City, 463 miles east of Cheyenne Wells, it is only 41 cents higher. The following table illustrates how the present grading of the rates throws the principal burden upon the consumers in Colorado:

Walsenburg to	Miles	Rate	Increase in Miles	Increase in Rate
Denver	185	$2.34	--	$--
Cheyenne Wells, Colo.	362	4.86	177	2.52
Enterprise, Kans.	666	4.86	304	--
Kansas City	825	5.27	463	.41
Julesburg, Colo.	382	5.04	197	2.70
Alda, Neb.	593	5.04	211	--
Council Bluffs, Ia.	747	5.27	365	.23
Laird, Colo.	358	4.91	173	2.57
Hastings, Neb.	571	5.04	213	.13
Omaha, Neb.	723	5.27	365	.36
Colorado Springs, Colo.	110	2.25	--	--
Peconic, Colo.	269	5.04	159	2.79
Selden, Kans.	558	5.27	289	.23
Missouri River	679	5.27	410	.23
Pueblo, Colo.	67	1.76	--	--
Towner, Colo.	218	3.29	151	1.53
Herrington, Kans.	513	4.86	295	1.57
Missouri River	689	5.27	471	1.98

The carriers justify the disparity shown to exist between coal rates from the Walsenburg-Canon City-Trinidad Districts to eastern Colorado points as compared with the rates to Kansas, Nebraska and river points, on the ground that the comparatively low rate for the long haul is made

necessary in order that Colorado coal may compete in the Kansas, Nebraska and river territory with coal from Iowa, Illinois and other coal producing districts contiguous to the Missouri River. It may be conceded that on the long haul there should be a lower rate as compared with the rate for the shorter haul else no Colorado coal would move into the long haul territory; but where but a few cents difference, and in some cases no difference at all, is made between the rate to the last station in Colorado and the rate two hundred and fifty to three hundred miles or more farther east, it would seem that the consumers of Colorado coal at the designated points in Colorado are being unduly penalized and the consumers of Colorado coal in the territory farther on unduly favored.

Upon consideration of all the evidence presented at the joint hearing before this Commission and the Interstate Commerce Commission concerning the adjustment of rates from mines in southern Colorado to points in Colorado on and east of the Colorado common point line, more detailed discussion of which we deem to be unnecessary, we are of the opinion and find that the present rates on coal, other than nut, slack or pea, are now, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceed the following. The record is insufficient to warrant a finding as to the differentials that should be maintained on the smaller and finer grades of coal.

Union Pacific Railroad

Destination	Walsenburg Canon City Rate	Trinidad Rate
Kuner	$3.05	$3.30
Sublette	3.15	3.40
Ft. Morgan	3.20	3.45
Cooper	3.40	3.65
Balzac	3.50	3.75
Atwood	3.60	3.85
Sterling	3.65	3.90
Proctor	3.80	4.05
Red Lion	3.85	4.10
Ovid	4.00	4.25
Julesburg	4.10	4.35
Sable	2.65	2.90
Watkins	2.70	2.95
Bennett	2.80	3.05
Byers	2.90	3.15
Deer Trail	3.05	3.30
Limon	3.25	3.50
Hugo	3.35	3.60
Boyero	3.50	3.75
Aroya	3.60	3.85
Arena	3.80	4.05
Cheyenne Wells	3.90	4.15
Arapahoe	4.00	4.25
Brighton	2.50	2.75
Erie	2.75	3.00
Boulder	3.00	3.25
Greeley	3.00	3.25
Eaton	3.00	3.25
Ault	3.05	3.30
Pierce	3.10	3.35
Nunn	3.15	3.40
Carr	3.15	3.40

Colorado and Southern Railway

University Park	2.34	2.59
Sullivan	2.34	2.59
Parkers	2.34	2.59
Elizabeth	2.34	2.59
Elbert	2.34	2.59
Eastonville	2.34	2.59
Boulder	3.00	3.25
Fort Collins	3.00	3.25
Windsor	3.00	3.25

Chicago, Burlington & Quincy Railroad

Destination	Walsenburg Canon City Rate	Trinidad Rate
Derby	$2.65	$2.90
Barr	2.70	2.95
Hudson	2.80	3.05
Keenesburg	2.90	3.15
Roggen	3.00	3.25
Wiggins	3.10	3.35
Ft. Morgan	3.20	3.45
Brush	3.30	3.55
Akron	3.45	3.70
Otis	3.60	3.85
Yuma	3.65	3.90
Laird	3.80	4.05
Hillrose	3.30	3.55
Union	3.50	3.75
Sterling	3.65	3.90
Padroni	3.75	4.00
Winston	3.85	4.10
Peetz	3.85	4.10
Logan	3.75	4.00
Willard	3.80	4.05
Stoneham	3.90	4.15
Raymer	3.95	4.20
Buckingham	4.05	4.30
Keota	4.05	4.30
Grover	4.20	4.45
Hereford	4.25	4.50
Fleming	3.70	3.95
Haxtun	3.70	3.95
Paoli	3.85	4.15
Holyoke	4.00	4.25
Amherst	4.05	4.30
Eversman	2.70	2.95
Lafayette	2.70	2.95
Erie	2.75	3.00
Idaho Creek	2.80	3.05
Longmont	3.00	3.25
Hygiene	3.00	3.25
Lyons	3.00	3.25

Chicago, Rock Island & Pacific Railway

Falcon	2.25	2.50
Calhan	2.25	2.50
Simla	2.35	2.60
Mathison	2.35	2.60
Resolis	2.45	2.70
Limon	2.55	2.80
Bovina	2.70	2.95
Arriba	2.70	2.95
Flagler	2.90	3.15
Vona	3.00	3.25
Stratton	3.05	3.30
Burlington	3.20	3.45

Missouri Pacific Railroad

Destination	Walsenburg Canon City Rate	Trinidad Rate
Nepesta	1.76	2.00
Sugar City	2.00	2.25
Arlington	2.20	2.45
Haswell	2.30	2.55
Eads	2.45	2.70
Brandon	2.65	2.90
Sheridan Lake	2.75	3.00
Stewart	2.80	3.05
Towner	2.80	3.05

Atchison, Topeka & Santa Fe Railway

ElMoro	1.60	1.10
Thatcher	1.85	1.35
Timpas	2.10	1.65
La Junta	2.10	1.85
Las Animas	2.25	2.00
Lamar	2.55	2.30
Amity	2.70	2.45
Holly	2.80	2.55

Great Western Railway

Carriers heretofore or hereafter publishing joint through rates from the Southern Fields to points on the Great Western Railway, shall publish joint through rates not exceeding the following:

Mead	3.00	3.25
Johnstown	3.00	3.25
Kelim	3.00	3.25
Wattenberg	3.00	3.25

Oak Hills District-Common Point Rate

The Oak Hills District is located on the Denver and Salt Lake (Moffat) Railroad, 211 miles distant from Denver, the nearest common point to said district. The present rate from the Oak Hills District to Denver is $2.92 per ton, carloads, for all sizes of coal, the bituminous product being the only kind of coal produced in said district. The haul involved from the Oak Hills District to Denver is conceded to be a service fraught with more difficulties and expense than any similar transportation service on the continent. The gradient of the haul frequently reaches as much as 4½ per cent, while the curvatures are quite numerous and about as sharp as it is possible in the operation of a standard gauge railroad; and before the service of transportation from the Oak Hills District to Denver is completed, it involves a haul over the main Continental Divide at an altitude in excess of 10,000 feet. The testimony discloses that it requires two locomotives to handle no more than eleven to fourteen cars of coal over these grades and curves,

both ascending and decending, and that climatic conditions, particularly during the season of the year when the coal movement is the greatest, are so terrific that snow blockades are not infrequent, and that for many months of the winter season it is with the greatest difficulty and attended with enormous expense that the line of railroad is kept in operation. The road has been in the hands of receivers for several years and its operating expenses have been in excess of its operating revenues, according to the testimony, as a general rule during the past few years, while no attempt is made to pay interest on its bonded debt, much less dividends on its stock. Any serious disturbance of its revenues would, therefore, endanger the continued operation of this railroad. It has received from time to time special consideration from this Commission, and at least once from the Interstate Commerce Commission, because of its lamentable financial condition and its comparatively limited revenue possibilities. Approximately 87 per cent, the testimony discloses, of the entire traffic over the Moffat Railroad is coal traffic.

Taking into consideration all the difficulties and expenses incident to the operation of the railroad, as well as other factors that enter into the equation, the Commission is of the opinion that the present rate of $2.92 per ton of two thousand pounds, carloads, for the transportation of coal from the Oak Hills District to Denver is not unreasonable, excessive or unjust. We reach the same conclusion with respect to the present rate from Leyden Junction to Denver.

The testimony discloses that in the calendar year 1921 The Denver and Salt Lake Railroad Company transported 713,925 tons of revenue coal, of which 275,164 tons moved in intrastate commerce, which includes 199,281 tons to Denver, making a tonnage of about 76,000 tons originating on the Denver and Salt Lake Railroad destined to points in Colorado other than the City of Denver.

For a considerable period of time prior to the latter part of 1917 rates from the Oak Hills District were the same as from Walsenburg, a condition brought about by the competition between the two fields. In 1917 a temporary increase was made effective from Oak Hills, whereby the

rates became 25 cents higher than from Walsenburg. The former parity has never been restored. Oak Hills and southern Colorado coals meet at Denver when destined to points on the Union Pacific and Burlington. The average distance from the Oak Hills mines to Denver is 26 miles greater than from Walsenburg and substantially the same from Trinidad. The differences in the operating conditions are such, however, as to justify higher rates from Oak Hills than from Trinidad.

The present rates on lump coal from Oak Hills and Walsenburg to a few representative stations in eastern Colorado are given below:

	Oak Hills		Walsenburg		Difference	
	Miles	Rate	Miles	Rate	Miles	Rate
Denver	211	$2.92	185	$2.34	26	$0.58
Union Pacific						
Ft. Morgan	310	4.01	284	3.60	26	.41
Sterling	351	4.74	325	4.46	26	.28
Ovid	401	5.10	375	4.82	26	.28
Julesburg	408	5.28	382	5.04	26	.24
Bennett	246	3.65	216	3.33	26	.32
Limon	300	4.01	274	3.69	26	.32
Cheyenne Wells	388	5.22	362	4.86	26	.36
C. B. & Q.						
Brush	299	4.37	273	4.05	26	.32
Akron	323	4.62	297	4.32	26	.30
Yuma	349	4.86	323	4.55	26	.31
Laird	384	5.22	358	4.91	26	.31
C. R. I. & P.						
Limon	300	4.01	189	3.69	111	.32
Arriba	322	4.37	211	4.05	111	.32
Vona	351	4.86	240	4.55	111	.31
Burlington	377	5.22	266	4.91	111	.31

It will be observed that under the present adjustment the difference between the Oak Hills and Walsenburg rates at Denver on lump coal is 58 cents, whereas at points east of Denver it ranges from 24 to 41 cents. Under the rates which we have prescribed from the Walsenburg District to these points in eastern Colorado the differences will be substantially greater than at Denver and will range from about 75 cents to $2.00. Some readjustment is, therefore, necessary in the Oak Hills rates to enable the operators on the Moffat Road to compete in these common markets with the operators in the Southern Fields.

We are of opinion, and find, that the rates from the Oak Hills District to points east and north of Denver on the Union Pacific, Colorado and Southern, and Chicago, Burlington & Quincy Railroads, will be un-

reasonable and prejudicial to the extent that they exceed by more than 50 cents per ton of two thousand pounds the rates contemporaneously in effect from the Walsenburg District to the same destinations. We further find that to points on the Chicago, Rock Island & Pacific Railroad east of Limon, rates on lump coal from the Oak Hills District should not exceed those from Walsenburg by more than $1.20 per ton.

Southern Fields to Greeley Rates

The present rates on lump and nut coal from Trinidad and Walsenburg to Greeley are $3.40 and $3.15, respectively, and on pea and slack coal $3.03 and $2.93, respectively. The average distance from the mines in the Trinidad District to Greeley via the Union Pacific north of Denver is 265 miles and from the mines in the Walsenburg District 237 miles or 52 miles greater than the distances to Denver. For this additional haul of 52 miles the increase in the lump coal rate is 81 cents. The distance from Denver to Greeley via the Colorado & Southern is 99 miles, or almost twice the distance by way of the Union Pacific. The Union Pacific haul from Denver to Greeley is over a level country without appreciable grades or curves and under ideal transportation conditions. The haul via the Colorado and Southern is not only circuitous but offers greater difficulties from a transportation standpoint. Under the circumstances, rates from the Southern Fields to Greeley should be based upon the distance over the shorter line of the Union Pacific.

We are of opinion that the present rates to Greeley are unreasonable and that reasonable rates for the future will be the following: from Walsenburg, $3.00 on lump and $2.70 on slack, and from Trinidad, $3.25 on lump and $2.80 on slack.

Northern Coal Fields-Greeley Rates

In Case No. 244 complainants allege that rates for the transportation of coal from the northern coal fields, in Boulder and Weld Counties, to Greeley are unjust and unreasonable, subjecting the City

of Greeley and its inhabitants to unjust discrimination, and are excessive by comparison with the rates to other localities within the State of Colorado for similar traffic under similar conditions. Attached to and made a part of the complaint is "Exhibit A" which shows that the rates from the Northern Fields to Greeley at the time the complaint was filed were $1.89 on lump, $1.48½ on mine run and $1.35 on slack per ton, carloads. The distances are stated as 40.2 miles by way of Union Pacific and 77.4 miles by way of Colorado and Southern. Since the complaint was filed the above rates have been reduced by the carriers 10 per cent. The present rates are $1.70 on lump, $1.34 on mine run and nut, and $1.22 on slack and pea.

While the haul from the Northern Fields to Greeley via the Union Pacific is over a level country and free of operating difficulties of importance, the evidence establishes the fact that approximately 90 per cent of the coal movement is over the Colorado and Southern owing to most of the important mines being located on that railroad. This affords an example where rates over the longer haul should not be depressed because there is an available competing shorter route between the same points. We recognized this in Commercial Club of Greeley v. C. & S. Ry., 1 Colo. P.U.C., 117-120.

The rates under consideration from the Northern Fields to Greeley were advanced as a result of General Order No. 28, Ex Parte 74, Application No. 91, approximately 100 per cent, and were reduced 10 per cent as a result of Reduced Rates 1922, making the present rate 90 per cent higher than the rate in effect prior to General Order No. 28. Taking all the facts and circumstances in evidence, and considering the rate for a similar haul under similar transportation conditions, we find that a rate of $1.50 per ton on lump coal would be just and reasonable, and any rate in excess of $1.50 per ton is hereby found to be unjust, unreasonable, and discriminatory. We do not find the rates on mine run, nut, pea or slack to be unreasonable or discriminatory.

Northern Coal Fields-Denver Rate

The rates on the above movement, as determined by this Commission in November, 1914, after an extended hearing and investigation, were fixed at 65 cents on lump, 60 cents on mine run and 55 cents on slack, which continued to be the rates until affected by the increases allowed under General Order No. 28 and Ex Parte 74-Application No. 91. These increases made the rates $1.35, $1.35 and $1.21½, which were the rates in effect at the time the complaint was filed in this proceeding. Since that time, however, the 10 per cent reduction made in July 1922, has resulted in present rates of $1.22, $1.22 and $1.09, which are substantial increases over the rates established by this Commission in its hearing and investigation hereinabove referred to.

The average distance from the northern coal fields to Denver over the three lines of carriers affected; viz., the Colorado and Southern, the Burlington and the Union Pacific, is stated as being 27.2 miles and the movement over each of said lines is practically free from difficulties of operation and is what might be denominated a prairie haul. The density of traffic for this particular haul as it pertains to the coal movement is perhaps as large a percentage as exists in any other section of the State for a haul of a similar distance and under similar conditions. It is true that the return movement of equipment is practically 100 per cent empty and should be taken into consideration in determining what is a fair and reasonable rate for the service in question; but that return movement is not appreciably greater than exists in other territories in this State, and in proportion to tonnage hauled is no greater now that in November, 1914, when the prior hearing fixed the rates at 65, 60 and 55 cents, respectively. As stated, the volume of coal traffic is relatively of such magnitude as should be taken into consideration in fixing a just and reasonable rate. Taking the above and all of the facts and circumstances in evidence into consideration, the Commission is of the opinion that the present rates for the transportation of coal, carloads, from the Northern Fields to Denver are excessive and unreasonable.

We find that rates of $1.15 on lump, nut and mine run, and $1.00 on pea and slack will be reasonable for the transportation of coal from the Northern Fields to Denver over all the lines involved in said transportation and that any rates in excess thereof will be unreasonable and unjust.

Rates from Western Colorado Districts

As heretofore stated, the Colorado cases as originally filed did not embrace any adjustment of rates from points other than the Walsenburg-Trinidad fields to Denver and Greeley and the Northern Fields to Denver and Greeley; but that at the beginning of the joint hearing on May 10, 1922, counsel for complainants asked that, in conformity with the stipulation theretofore entered into between the parties interested, the scope of the hearing should be widened and extended to include the rates from all producing points in Colorado to points on and east of the Colorado common point line. Considerable evidence was submitted at the hearing under such agreement and understanding that would not have been relevant were the scope of the hearing not so widened and extended.

There are three well defined districts on the western slope of the Continental Divide in Colorado where coal is mined. These districts are referred to on the record as the Cameo-Palisade, Bowie-Somerset and Crested Butte-Baldwin Districts. The Cameo-Palisade District lies about 316 miles west of Pueblo on the main line of the Denver and Rio Grande Western. The Bowie-Somerset District is on a standard gauge branch of the Rio Grande 41 miles from Delta and 426 miles west of Pueblo via the route over which the traffic moves, i.e., via the standard gauge route through Grand Junction. The mines at Crested Butte and Baldwin are on narrow gauge branches of the Rio Grande 27 and 17 miles, respectively, north of Gunnison. The average distances from these mines to Pueblo, via the narrow gauge line through Salida, are 197 and 187 miles. At some of the mines in the Crested Butte District anthracite coal is produced as well as bituminous.

The present rates from the three districts mentioned to Pueblo, Colorado Springs and Denver are as follows:

	Crested Butte Baldwin				Cameo Palisade			Bowie Somerset		
	Miles	Anthracite	Lump	Slack	Miles	Lump	Slack	Miles	Lump	Slack
Pueblo	197	$4.39	$2.93	$2.25	316	$3.38	$2.70	426	$3.60	$2.93
Colorado Springs	291	4.39	3.55	3.27	360	3.55	3.27	470	3.83	3.55
Denver	316	4.73	3.55	3.27	435	3.55	3.27	545	3.83	3.55

Comparatively little evidence was offered with respect to the reasonableness of the rates on bituminous coal from these western Colorado fields to Colorado common points. Considering the difficulties encountered in the transportation over the main range of the Rocky Mountains, we do not find these rates to be unreasonable.

According to the evidence, anthracite coal from some of the mines in the Crested Butte District is hoisted to the surface through the same shaft as the bituminous coal and is loaded over the same tipple. The minimum weights on the two classes of coal are the same and the actual loading on anthracite is said slightly to exceed that on bituminous. Anthracite is more expensive to produce and at the time of the hearing sold at the mine for $7.50 per ton as compared with $5.00 to $5.50 for bituminous. Notwithstanding the similarity in the conditions affecting transportation, the rates on anthracite exceed those on bituminous by $1.46 at Pueblo, 84 cents at Colorado Springs, and $1.18 at Denver. A slightly higher rate for the transportation of anthracite is justified not only through custom and precedent, but because of the greater value and resultant higher claims against the carrier in the event of loss, but the present differences are excessive. We find that the rates on anthracite are unreasonable to the extent that they exceed by more than 50 cents per ton the rates in effect on bituminous lump coal from the mines in the Crested Butte District to the same destinations.

Rates on bituminous coal from western Colorado mines to points east of Pueblo, Colorado Springs and Denver are usually made differentially over the rates from Walsenburg. These differentials are $1.00 from the Cameo-Palisade and Crested Butte-Baldwin Districts, and $1.25 from the Bowie-Somerset District. Through rates thus made we find to be reasonable and these differentials should be applied to the rates herein prescribed from Walsenburg.

There are exceptions to the general method of making rates from western Colorado in that a different basis is used to points on the Rock Island between Roswell and Falcon, on the Missouri Pacific and on the Santa Fe. We are not advised of the reasons for the differences and are of opinion that for the future the same differentials should apply on traffic moving through Pueblo to points on the lines of the carriers named. Anthracite rates when published should not exceed the bituminous lump rates by more than 50 cents.

O R D E R

IT IS ORDERED, That defendant carriers engaged in the transportation of coal from the Walsenburg-Canon City District to Colorado Springs be, and they are hereby, required to file tariffs establishing a rate of $2.00 per ton of two thousand pounds on lump coal from the Walsenburg-Canon City District to Colorado Springs, with a twenty-five cent differential over Walsenburg from the Trinidad District, and a ten cent differential on pea and slack coal.

IT IS FURTHER ORDERED, That defendant carriers engaged in the transportation of bituminous coal to destinations in the State of Colorado on, east, northeast and north of the Colorado common point line, save as to points on said line from Trinidad to Denver, both inclusive, from the Walsenburg -Canon City-Trinidad Districts be, and they are hereby, required to file tariffs covering such service as is herein in this decision set forth, with a differential of twenty-five cents from the Trinidad District over the Walsenburg-Canon City District as to lump and nut coal, and ten cents differential as to pea and slack coal where the defendant carriers now publish differentials on the lower grades from either of said districts, carloads, per ton of two thousand pounds.

IT IS FURTHER ORDERED, That defendant carriers engaged in the transportation of bituminous coal from the Southern Fields to Greeley be, and they are hereby, required to file a tariff of rates for the transportation of lump, mine run and nut coal of $3.00 per ton of two thousand pounds, carloads, and of $2.70 per ton on pea and slack coal, carloads, with a differential of twenty-five cents and ten cents, respectively, from

the Trinidad District over the above rate from the Walsenburg-Canon City District.

IT IS FURTHER ORDERED, That defendant carriers engaged in the transportation of lignite coal from the Northern Fields to Greeley be, and they are hereby, required to file a tariff of rates for the transportation of coal from said Northern Fields to Greeley of $1.50 per ton of two thousand pounds, carloads, on lump coal. The present rates on mine run, nut, pea and slack are deemed to be not unreasonable or discriminatory.

IT IS FURTHER ORDERED, That defendant carriers engaged in the transportation of lignite coal from the Northern Coal Fields to Denver be, and they are hereby, required to file a tariff of rates for the transportation of coal from the northern coal fields to Denver of $1.15 per ton of two thousand pounds on lump, mine run and nut, and of $1.00 per ton on pea and slack coal.

IT IS FURTHER ORDERED, That the receiver of defendant carrier, The Denver and Rio Grande Western Railroad Company, be, and he is hereby, required to file a tariff of rates for the transportation of anthracite coal from the Crested Butte-Baldwin District to the Colorado common points, Pueblo, Colorado Springs and Denver, that do not exceed by more than fifty cents per ton the rates in effect on bituminous lump coal from that district to the same destinations; and that the rates now in effect from the Crested Butte-Baldwin District, the Cameo-Palisade District and the Bowie-Somerset District on bituminous coal are not found to be unreasonable or unjust.

IT IS FURTHER ORDERED, That the receivers of The Denver and Salt Lake Railroad Company be, and they are hereby, required to file a tariff of rates for the transportation of coal from the Oak Hills District to points east and north of Denver on the Union Pacific, Colorado and Southern and Chicago, Burlington & Quincy Railroads that do not exceed by more than fifty cents per ton of two thousand pounds the rates contemporaneously in

effect from the Walsenburg-Canon City District to the same destinations.

IT IS FURTHER ORDERED, and the Commission finds, that each of the rates designated in the above decision and order are hereby found to be just and reasonable rates in the transportation service involved.

IT IS FURTHER ORDERED, That each of the defendant carriers be, and they are hereby, required to file such tariffs in supplemental, or other, form as may be desired to become effective within fifteen days from the date of this order.

Mr. Commissioner Scott does not participate in the above decision and order.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

Dated at Denver, Colorado,
this 4th day of June, 1923.

(Decision No. 612)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of the Union Pacific Railroad Company for permission to construct a spur track over and across three public highways in Sections 22 and 27, Township 1 North, Range 70 West, Boulder County, Colorado.

APPLICATION NO. 254

June 2, 1923.

STATEMENT

By the Commission:

The above matter comes before the Commission on the application of the Union Pacific Railroad Company, a corporation organized and existing by virtue of the laws of the State of Utah and duly authorized to do business in the State of Colorado, for permission to construct and maintain a spur track over three public highways described as follows:

(1) County Road No. 1 in the south limits of Valmont at a point about 770 feet from the point where said spur connects with the Boulder branch of the Union Pacific Railroad Company;

(2) On the line between Sections 22 and 27, Township 1 North, Range 70 West, known as County Road No. 118;

(3) On the line between Sections 26 and 27, Township 1 North, Range 70 West, near Culbertson station, known as County Road No. 118.

The application states that the applicant desires to construct a spur track from Valmont on the Boulder branch of the Union Pacific Railroad to the site of a proposed power plant to be built near Culbertson by Henry L. Doherty & Company. Attached to the petition is a map showing such track and crossings.

It is understood and agreed that the crossings will be constructed in accordance with the provisions of the Commission In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. 128; and that the expense of constructing said crossings will be borne by the applicant.

The applicant further states that the only trains which will be moved over the proposed crossings will be switch engines and cars destined to said power plant.

The Railway Engineer for the Commission has inspected the site of the proposed crossings and recommends that the installation be permitted; and Boulder County, through its Board of County Commissioners, has given its consent thereto.

The Commission has considered the matter presented in said application and is of the opinion that permission should be granted applicant to construct and maintain the proposed crossings in accordance with conditions herein and in its petition mentioned, and it will be so ordered.

O R D E R

IT IS, THEREFORE, ORDERED That the Union Pacific Railroad Company be, and it is hereby, permitted to construct and maintain its spur track over and across the following highways:

(1) County Road No. 1 in the south limits of Valmont at a point about 770 feet from the point where said spur connects with the Boulder branch of the Union Pacific Railroad Company;

(2) On the line between Sections 22 and 27, Township 1 North, Range 70 West, known as County Road No. 118;

(3) On the line between Sections 26 and 27, Township 1 North, Range 70 West, near Culbertson station, known as County Road No.118;

all in Boulder County, Colorado, at grade, and that same shall be constructed in accordance with the specifications prescribed for the construction of railroad crossings at grade as contained in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P.U.C. No. 128.

IT IS FURTHER ORDERED That all expense in connection with the construction and maintenance of said crossings shall be borne by applicant, the Union Pacific Railroad Company.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners.

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

(Decision No. 613)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the Matter of the Application of The Paradox Land and Transport Company, a corporation, for a Certificate of Public Convenience and Necessity.

APPLICATION NO. 237

June 14, 1923

Appearances: George H. Swerer and H. E. Luthe, of Denver, for Applicant; J. Q. Dier, of Denver, for The Denver & Interurban Railroad Company, The Colorado & Southern Railway Company and the Chicago, Burlington & Quincy Railroad Company; T. A. McHarg, of Boulder, for the Boulder Chamber of Commerce, and A. W. Fitzgerald, of Boulder, for The Glacier Route, Inc., Protestants.

STATEMENT

By the Commission:

The Paradox Land and Transport Company, a corporation, filed its application with the Commission February 5, 1923, for a certificate of public convenience and necessity for it to operate and maintain an automobile bus line for the transportation of passengers between Lafayette, Boulder, Nederland and Lyons, Colorado, and intermediate points, under the provisions of Section 35 of the Public Utilities Act. Applicant filed a certified copy of its Articles of Incorporation, with its post office address, 800 Central Savings Bank Building, Denver, Colorado, and alleged in its application the lack of adequate or convenient passenger service between Lafayette, Boulder and Lyons, Colorado, and from Boulder to Nederland.

Subsequently and at the hearing, that portion of its application that related to the service between Boulder and Nederland was withdrawn, so that the application pertained only to that portion of the route originally specified as between Lafayette and Boulder and Boulder and Lyons.

Copies of the application were served upon the carriers affected, with the result that on February 28, 1923, the railroad carriers filed their

objection and protest to the granting of the certificate applied for. The Chamber of Commerce of Boulder and The Glacier Route, Inc., also protested against the granting of the certificate to applicant. The grounds of protest, tersely stated, were that the public convenience and necessity does not require nor will not require any additional means of transportation between the points designated in the application.

The matter was set for hearing at the Hearing Room of the Commission, State Office Building, Denver, Colorado, originally for May 10, 1923, and thereafter, by consent, continued to Monday, the 28th day of May, 1923, when the matter was duly heard.

The evidence on behalf of applicant in support of its application disclosed that heretofore, and in the month of April, 1921, a certificate of convenience and necessity was granted to The Paradox Land and Transport Company, then a co-partnership, which subsequently was merged into the present corporate applicant, to operate an automobile bus line between Denver and Fort Collins over the main traveled highway, passing through Broomfield, Lafayette, Longmont, Berthoud and Loveland to Fort Collins; that it was the desire of applicant to establish a connecting bus line from Lafayette to and through Boulder north to Lyons, so that passengers destined from either termini to Boulder might connect with the Denver-Fort Collins bus stages at Lafayette for Boulder and thence on to Lyons, and returning from Lyons in the same way connect at Lafayette for buses between the termini of Denver and Fort Collins.

For the travel between Denver and Boulder, the testimony of applicant and protestants discloses that The Denver & Interurban Railroad Company operates hourly service from early in the morning until late at night, daily, except for two periods of two hours between cars, and that The Colorado & Southern Railway Company operates steam trains between Denver and Boulder, daily, three in either direction, and that there is a steam passenger train leaving Lyons in the morning operating through Lafayette to Denver and returning from Denver in the late afternoon through Lafayette back to Lyons.

From the north, Longmont to Boulder, there are three passenger trains each way, daily, operated by the Colorado & Southern. The testimony of applicant was largely directed to the showing of an alleged public convenience and necessity for the traveling public between Lafayette and Boulder, and Longmont and Boulder, by the establishment of the connecting bus line from Lafayette.

Obviously from the number of interurban and steam trains that are operated between Denver and Boulder there would not be any convenience and necessity of the public served by the establishment of the connecting bus line from Lafayette to Boulder in the statutory sense, and, for that matter, for the traffic Longmont to Boulder via Lafayette, the same would not be greatly conveniened over the service now being afforded by the steam railroad from Longmont to Boulder. Two witnesses were asked as to the probable amount of traffic that exists between Lafayette and Boulder, one of whom gave it as his opinion that it <u>might</u> be as high as ten or fifteen a day, and the other about six to eight a day. On the traffic between Boulder and Lyons the evidence on behalf of applicant was not at all definite, while that offered on behalf of protestants was to the effect that it was almost negligible.

In short, taking all the testimony that was offered, it falls short of proving a reasonable public convenience and necessity for the establishment of the proposed auto bus line from Lafayette through Boulder to Lyons; for, as has heretofore been declared by this Commission and by many others throughout the country, the "convenience and necessity" contemplated by the statute is the reasonable convenience and necessity of the public generally and not for any particular locality or community; and especially is this true if the evidence tends to show that the traffic from the particular locality or community is quite limited in its extent.

One of the prerequisites of an applicant desiring a certificate of public convenience and necessity is that before the application may be granted, in a proper case, the applicant shall file in the office of the

Commission such evidence as shall be required by the Commission to show that applicant has received the required consent, permit or other authority of the proper county, city and county, municipal or other public authority, as prescribed by sub-section (c) of Section 35 of the Public Utilities Act. Attempting to comply with this requirement, applicant filed with the Commission, attached to its application, a license issued to it on the 27th day of January, 1923, for a period of one year from that date, to operate within the city of Boulder the business or vocation of "taxi", and that it had paid the license fee of $10.00, as provided by the ordinance of that municipality for one proposing to engage in the business or vocation of running a taxi within said municipality.

This Commission has repeatedly held that it will require more of a showing of consent of the municipality than the usual license that is issued as a matter of course to anyone applying under the ordinance of a municipality to engage in the ordinary vocations within that municipality as prescribed by its ordinances; this for the reason that when this Commission authorizes an applicant to engage in the transportation of either passengers or freight into or through a municipality, the applicant thereby becomes a public utility and, as such, subject to the regulation of this Commission. The licensee under the license submitted in this case is not a public utility, but is simply licensed to engage in the particular vocation or business within the corporate limits of the municipality and subject to the rules, requirements and regulations of the municipality's ordinances governing such business or vocation.

This identical question has been before this Commission a number of times, the last time being April 2, 1923, In the matter of the Application of The Greeley Transportation Company, Application No. 218 - Decision No. 598, not yet published. In that decision it was said:

> "Any person who desires may apply to the city clerk for a license to engage in any of the vocations described in the ordinance, and upon payment of the required fee the city clerk is required to issue a license to such applicant for a term of one year. This applies to the person who operates a dray, a jitney bus, an express wagon, or any other kind or means of transportation within the corporate limits of said city. The license issued is a matter of right to every applicant who complies with the

terms and conditions of Ordinance No. 258. The question, therefore, resolves itself into this: Did the legislature, in using the terms or words embodied in sub-section (c) of Section 35, have in mind anything more than the customary and usual license to be issued by a municipality as a condition precedent to the issuance by this Commission of a certificate of public convenience and necessity for the operation of public utility carriers within such city or town? Taking Section 35 in its entirety, it seems to be the plain indication of the legislative intent that before the State, through its regulatory body, will authorize the conduct of any such business as is involved in the case at bar, by the issuance of a certificate of public convenience and necessity therefor, the local authority, which is given exclusive jurisdiction and control over its streets, alleys, highways and other public places within its corporate limits, must give its assent thereto; and it will be noted that throughout Section 35, as well as in sub-section (c) thereof, the character of the business proposed to be engaged in by an applicant seeking a certificate of convenience and necessity is one that is denominated under the Act a "public utility". Nowhere in the Act has the legislature defined a public utility to include the various businesses mentioned in Section 1 of Ordinance 258 of the city of Greeley. A dray line, for example, is not a public utility; an express wagon operating within Greeley or any other city is not a public utility, so that it seems quite clear that the legislature intended that before this Commission should grant a certificate to an applicant to operate a public utility in any city or town the consent so to do, in one of the methods indicated by sub-section (c) of Section 35, shall be secured from such local authority and filed in the office of the Commission. * * * In other words, the consent or assent of the municipality must be obtained for the particular vocation to be carried on by the applicant within such city or town before this Commission is vested with power to issue its certificate of convenience and necessity therefor."

To the same effect are:

Farmers Electric and Power Company v. Ault, P.U.R. 1920-D, 226.
Taylor v. Glenwood Springs, P.U.R. 1921-E, 526-535-536.
C.B. & Q.R.R. v. Public Utilities Commission, P.U.R. 1921-B, 734-738:: 193 Pac. 726.

Sub-section (7) of General Section 6524 R.S., 1908, defines the powers of incorporate towns or cities over streets therein. Among other things the legislature in this State has granted to towns and cities power with respect to streets, "to regulate the use of the same and to prevent and remove encroachments or obstructions upon the same." The Public Utilities Act in no method or manner confers jurisdiction upon this Commission over the streets and alleys of a municipality; and an applicant for a certificate of public convenience and necessity who desires to use them for any purpose, in contemplation of the Public Utilities Act, must obtain the consent or permit of the particular municipality involved and file the same with this Commission as a prerequisite to the granting of such certificate.

This principle of local self-government in a recent case decided by the District Court of the United States for the eastern district of Louisiana, Baton Rouge Division, February 15, 1923, construes the statutes of Louisiana upon this subject where the state Public Service Commission had ordered a railroad to construct a viaduct across certain railroad property within the city of New Orleans, and uses this language:

> "Before the railroad could be required to build a viaduct as ordered, Newton Street would have to be opened across the railroad property. * * * Furthermore, the order requires the use of Newton Street and the building of a structure, with consequent blocking of that street. This certainly is a regulation of the streets and the regulation of its grades.
>
> "The general rule regarding municipal corporations is that they have control of their own streets, with the right to fix grades, provide for pavement, regulate their use by steam and street railroads, and determine what structures in the nature of railroad tracks and appurtenances, telegraph poles, etc., may be erected and maintained on said streets. This is one of the ordinary governmental functions of a municipal corporation, exercised by virtue of the police powers delegated to the city by the state. There is no doubt that the city of New Orleans possesses this power to the fullest extent."

Morgan's Louisiana & T. R. & S. S. Co. v. Louisiana Public Service Commission, 287 Fed. Rep., 390-393, Fed. Rep. Adv. Sheets May 17, 1923.

For the reasons hereinabove stated, the Commission finds, first, that under all the facts and testimony herein there is not sufficient showing that the public convenience and necessity requires or will require the operation of the proposed motor bus line between Lafayette, Boulder and Lyons; and, second, applicant has not filed with the Commission the required consent, permit, vote or authority of the municipality of Boulder to vest the Commission with jurisdiction to grant the certificate of convenience and necessity prayed for in its application. The same will, therefore, be denied.

O R D E R

IT IS, THEREFORE, ORDERED That the application of The Paradox Land and Transport Company for a certificate of public convenience and necessity for the operation of a motor bus line between the towns and cities of Lafayette, through Boulder to Lyons, Colorado, be, and the same

is hereby, denied; without prejudice, however, to applicant to renew its application at such time as it may obtain the required consent of said municipality to operate its motor bus lines into and through said city, and as it may be further advised.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Grant E. Halderman

Commissioners.

Dated at Denver, Colorado,
this 14th day of June, 1923.

(Decision No. 614)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

In the matter of the application of)
Henry P. Kidd, George Nichols, Frank)
Martin and E. C. Martin for permis-)
sion to operate a motor truck line.)

APPLICATION NO. 189

June 15, 1923

Appearances: T. R. Woodrow, Esq., for The Denver and Rio Grande Western Railroad Company; J. Q. Dier, Esq., for The Colorado and Southern Railway Company; Erl H. Ellis, Esq., for the Atchison, Topeka and Santa Fe Railway Company; Protestants.

S T A T E M E N T

By the Commission:

On May 5, 1922, applicants filed a petition with the Commission seeking a certificate of convenience and necessity to engage in the business of transporting freight for hire between Denver and Colorado Springs and intermediate points. The applicants set forth in their application that the convenience of the public along said route demanded the proposed operation--the same to be over the usual route of motor vehicles between Denver and Colorado Springs.

Service was made of the application upon protestant carriers as well as upon the American Railway Express Company with the result that protestants each filed a protest and objection to the granting of the application.

Through application for continuances, the matter was not finally set for hearing until on January 22, 1923, when the same was set for hearing April 13, 1923, at the hearing room of the Commission, State Office Building, Denver, Colorado; thereafter, upon application of petitioners, hearing was continued for a period of sixty days and until the 13th day of June, 1923, at the same place. All parties in interest were notified

of such continuance, with the result that the matter came on for hearing June 13, 1923, with the appearance of protestants as hereinabove indicated. A day or two before the date upon which the hearing was held, applicants asked for a further continuance which was denied by the Commission except that applicants were advised that they had the right to appear and make such showing as would entitle them to a further continuance. No one of the applicants, however, nor any person representing them, appeared; with the result that the Commission sustained a motion made by protestants that the application be denied.

O R D E R

IT IS, THEREFORE, ORDERED That the application of the above named applicants for a certificate of convenience and necessity for the operation of a motor freight transportation line between Denver and Colorado Springs be, and the same is hereby, denied.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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