

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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

APPLICATION NO. 280

November 16, 1923

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

S T A T E M E N T

By the Commission:

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

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

Upon receipt of said letter, it was docketed as Application No. 130, and the railway company was advised to comply with the terms of General Order No. 34 of this Commission, which specifies the method of procedure to be adopted in the curtailment of a service such as is sought by applicant herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"It is not sufficient reason for curtailing the service on a branch line that the branch line alone is operating at a loss; the convenience of the public must be taken into consideration if that convenience is not otherwise supplied. * * * *

"On account of the stability of prices these mines (mines reached by some of the branch lines) are reopening and the mining business is brighter today than it has been for many years. Many men are now working in these mines and the indications are that the number will be greatly increased during the coming year. * * *

"The inhabitants of the territory traversed by each of these branch lines are now emerging from a condition of pessimism and financial depression to a condition of optimism and apparent prosperity. The conditions which existed in 1921, which naturally followed in the wake of a world war, have been accepted by these people, and they have been and are now banding their energies to restore their communities to their former normal condition. The curtailment of the present train service would be a set-back to the spirit of optimism now prevailing in these communities."

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

F, 1922.

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

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

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

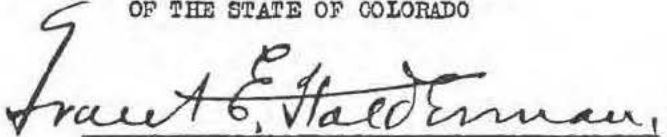


made de hors the record and is not to be considered by any party to this proceeding as being in any way an influence in the decision of this application.

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

O R D E R

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO




Commissioners.

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