

(Decision No. 72157)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE PETITION OF THE)
ATCHISON, TOPEKA AND SANTA FE RAILWAY)
COMPANY TO DISCONTINUE PASSENGER)
TRAINS 191-190 AND 201-200.)

APPLICATION NO. 23227

RE PETITION OF ATCHISON, TOPEKA AND)
SANTA FE RAILWAY COMPANY TO DISCONTINUE)
PASSENGER TRAINS 191-190 AND 201-200.)

INVESTIGATION AND SUSPENSION
DOCKET NO. 610

November 7, 1968

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S T A T E M E N T

BY THE COMMISSION:

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe)
filed its application to discontinue Passenger Trains 191-190 and
201-200 operating between Denver and LaJunta, Colorado, on May 31, 1968.
The discontinuance of these trains was to become effective July 10, 1968.

After receipt of numerous written protests against the application, the Commission entered Decision No. 71510 dated June 28, 1968, suspending the effective date of the proposed discontinuance of these trains and ordered an investigation into the proposal of the Santa Fe. Docket No. 610 was assigned to the investigation. The investigation and the application were consolidated for hearing.

Notice of hearing was entered by this Commission on August 2, 1968, and served upon all interested parties. Hearings were subsequently held in Denver, Colorado, on September 17 and 18, 1968; in Colorado Springs, Colorado, on September 20, 1968; and in LaJunta, Colorado, on September 24, 1968.

By Decision No. 71967 dated October 4, 1968, the Commission extended the period of investigation from October 8, 1968, to November 8, 1968. Briefs were filed by the applicant and the Staff of the Commission on October 14, 1968.

Among many factors to be considered in passing upon an application for authority to discontinue passenger train service are the operating profit or loss of the subject train, the use made by the public, the financial health of the carrier and the public need for the subject train. The Santa Fe operates the subject trains between Denver and LaJunta at the present time pursuant to the following schedule:

<u>TRAINS 201-200</u>			<u>TRAINS 191-190</u>		
<u>(Read Down)</u>			<u>(Read Up)</u>		
<u>TIME</u>		<u>STATION</u>		<u>TIME</u>	
	Lv.	LaJunta	Ar.	7:30 PM	
f 8:30 PM		Swink	f	7:15 PM	
8:37 PM		Rocky Ford		7:09 PM	
f 8:45 PM		Manzanola	f	6:59 PM	
f 8:55 PM		Fowler	f	6:49 PM	
f 9:03 PM		Boone			
f 9:19 PM		Avondale	f	6:25 PM	
f 9:25 PM		Devine			
f 9:31 PM		Pueblo(U.D.)	Lv.	6:05 PM	
9:45 PM	Ar.	Pueblo	Ar.	6:00 PM	
9:50 PM	Lv.	(D)Fountain(S)		f 5:23 PM	
f 10:25 PM		(S)Colorado Springs(D)	f	5:10 PM	
10:45 PM		(S)Palmer Lake(D)	f	4:35 PM	
f 11:22 PM		(D)Larkspur(S)	f	4:24 PM	
		(D)Castle Rock(S)	f	4:11 PM	
f 11:44 PM		(D)Littleton(D)	f	3:48 PM	
f 12:08 AM		Denver(U.D.)	Lv.	3:30 PM	
12:30 AM	Ar.				

Unless otherwise shown, all times are times of departure.
f - Flag Stop.

The subject train is a turnaround operation in that essentially one train is run from Denver to LaJunta to meet the Santa Fe Train No. 18, known as "The Super Chief-El Capitan", arriving from California and heading to Chicago. This connection is made at 8:25 P.M. This connection serves Chicago-bound passengers originating in Denver and other Colorado points generally south of Denver by meeting the Santa Fe trans-continental eastbound Train 18. At the same time the same train now renumbered 200-201 for its generally northbound direction, receives passengers from the same trans-continental Train No. 18 arriving from California in LaJunta and destined to Denver and other Colorado points north of LaJunta.

The subject trains in prior years had been used for connection with the Santa Fe trains formerly known as "The Chief" (Santa Fe Trains 19 and 20).

As the Santa Fe notes in its brief the subject trains are operated between Denver and LaJunta "for the principal purpose of connecting its (Santa Fe's) trans-continental trains at LaJunta". It is clear, therefore, that in viewing the public need for these trains, consideration must be given to this interconnection with trans-continental service, as well as the service rendered locally to Colorado points between Denver and LaJunta. The Santa Fe (applicant) introduced some 41 exhibits in support of its position that the subject trains should be discontinued. 6 witnesses were presented by the applicant, one of which was a public witness. 37 public witnesses appeared in opposition to the applicant's proposal.

The record discloses that the applicant had successfully prosecuted a discontinuance action before the Interstate Commerce Commission and was permitted by that Commission to discontinue its trans-continental Trains 19 and 20 ("The Chief"). The Interstate Commerce Commission required that the applicant keep its Trains 23 and 24 ("The Grand Canyon")

in service for an additional year. At the end of that year the applicant is free to post notice of discontinuance under the appropriate section of the Interstate Commerce Act. As a result of the discontinuance of "The Chief", the Santa Fe undertook to change the schedule of the subject trains (191-190 and 201-200) in June of 1968.

In respect to the exhibits of the applicant attempting to portray the results of operation of the subject trains during 1968, it must be seen that the trains served by the subject trains were under shadow of a pending discontinuance investigation during that entire time. The Santa Fe had posted notice proposing discontinuance of "The Chief" and "The Grand Canyon" on December 13, 1967. The Interstate Commerce Commission's decision was served on May 13, 1968. There was no showing by the applicant what effect this had upon the operation of the subject trains. No studies were undertaken in this regard. It is further clear from the record that no serious attempt was made by the applicant to maximize its revenues in respect to change of schedule. The record further discloses that very little, if any, notification was given to the traveling public within the State of Colorado that the schedule of the subject trains would be changed.

As a result of the Interstate Commerce Commission action, the applicant proceeded to change schedule as noted before of the subject trains to provide a connection at LaJunta with its Trains 17 and 18 ("The Super Chief-El Capitan"). It is interesting to note that the Interstate Commerce Commission in its decision in Finance Docket No. 24869 respecting the proposed discontinuance of Trains 19 and 20 and 23 and 24 noted that:

"... the facts of record (in that case) are convincing that the Super Chief-El Capitan train and the San Francisco Chief ... have neither the car capacity nor the seat capacity to provide transportation for the passengers of the Chief and Grand Canyon who might use the remaining trains to meet their reasonable traveling requirements."

If this is the case, and we have no reason to doubt the Interstate Commerce Commission on that set of facts in that particular case, a

reasonable question must arise in respect to the decision of the applicant to connect with trains that may not have the capacity to service the connecting Colorado passengers. Further, the beyond revenue exhibits filed by the applicant indicate that, by far, the revenues derived from interconnecting service to the west are greater to the applicant than those to the east. (The applicant indicates in its Exhibit 16 that the total beyond revenues accruing to the subject trains west of LaJunta in the year 1967 are \$238,566.00 while the same revenues accruing east of LaJunta are \$10,305.00.) However, the applicant saw fit to make its connection in LaJunta to serve outbound passengers from Colorado destined to the East. No study was offered to show whether or not greater beyond revenues might not be realized by the applicant if connections were made with westbound trains at LaJunta. Further, the Interstate Commerce Commission noted in its decision, supra, that although "The Chief" was a better patronized train than the "Grand Canyon", the services remaining unfulfilled for the public were those services required by the economy-minded passengers, and, therefore, the "Grand Canyon" was required to remain in service while "The Chief" was discontinued. This further indicates the lack of serious intent by the applicant to provide transportation services on the subject trains responsive to the needs of the public in Colorado. The summation is that the applicant changed connections on the subject train from "The Chief" to the luxury type train, "The Super Chief", rather than complying with the obvious intent of the ICC to meet the "Grand Canyon" which had been found by that Commission to supplement properly the needs of the traveling public.

While the applicant testified in respect to its advertising program, the Commission is not satisfied that such a program was even reasonably applied to the subject trains or was effective to notify the traveling public of the available service. The protesting witnesses made at least one thing quite clear, and that is that the applicant had not effectively communicated the availability of the service offered by

the subject trains nor the fact of its two changes of schedule in mid-year 1968. A fixed dollar budget for advertising was set for many years by the applicant and in these days of increasing inflation it is clear that less advertising is purchased with a fixed dollar budget than in earlier years.

The picture in respect to local patronage is not itself indicative of a mass desertion of the subject train by the riding public. Applicant's Exhibit 6 notes a downward turn in the number of passengers using the subject trains in 1967 from 1966. There was no explanation given of this downward turn. However, the same exhibit noted an upward turn in passenger revenue through 1967 from 1965. The record does not disclose specific reasons for changes of traffic patterns but this exhibit does indicate a definite fluctuation in passenger utilization of these trains since 1964. The same is true of the passenger revenues. No studies were offered to show that passenger traffic was diverted from these trains to other modes of public transportation. The record does not disclose that such is the fact nor does it disclose otherwise. In the months of June and July, 1967, the subject trains averaged approximately 30 passengers per day while the months of June and July, 1968, show an average of approximately 14 passengers per day. The effect of the change in schedule of June, 1968, may or may not be shown in the latter figures. Even this local patronage picture may be compared favorably with a situation recently presented to us. In the Matter of the Application of the Denver & Rio Grande Western Railroad Company to Discontinue the Operation of Passenger Trains Nos. 9 and 10 between Denver, Colorado, and Craig, Colorado (Decision No. 71034 dated March 18, 1968). In that case the average number of passengers entraining per day at Craig, Colorado, during the first six months of 1967 was 4.37; detraining per day at Craig was 3.86.

Further impinging upon the issue of public need is the factor of adequacy of alternative transportation services. The subject trains serve the three largest population centers in the State of Colorado. Of the three, Denver is adequately served by rail, air and bus common carrier

services to the east and west. There is, however, no north-south rail transportation available to the Denver market for transportation to the Colorado Springs and Pueblo markets. Rail transportation without the subject trains would be ended completely for the Colorado Springs and Pueblo markets. The subject trains constitute the last north-south rail passenger service in the State of Colorado from Denver to these other major centers. Although the record discloses that bus service is available to the points served by the subject trains, no study has been made to assist the Commission in determining what the adequacy of this bus service is to serve the public should the trains be removed from service. We are faced with the proposed discontinuance of the last of a series of passenger trains that until very recently served the traveling public between Denver and Pueblo. Part of the reasoning behind the discontinuance of the two pair of Colorado and Southern/Fort Worth and Denver Railroad trains (Nos. 1 and 2 and 7 and 8) as well as the Denver & Rio Grande Western Railroad trains (Nos. 1 and 2 and 3 and 4) was that the markets served by the subject trains would still have remaining rail passenger service after the discontinuance of those trains. That criterion is no longer valid.

On June 11, 1956, this Commission entered its Decision No. 45970 in the matter of the application of the Santa Fe to discontinue the sister trains of the subject trains here. At that time the applicant proposed an upgrading of service of the subject trains if it should be permitted to discontinue the sister trains. Through-Pullman and chair car accommodations were to be provided. This record discloses that such service has long since been discontinued as a matter of management discretion. The proposal by the applicant in the former case was to leave the subject trains in service which in turn would provide Colorado Springs with improved service to Chicago, Albuquerque and especially Southern California. The cities of Denver and Pueblo were also to be provided with this improved service which

was to be a great enhancement of service required by these cities. We deemed it inadvisable at that time to make definite findings in respect to the improved equipment and more direct connections offered by the applicant. We limited ourselves to stating that such service should be sufficient to meet the needs of the traveling public and should be in accordance with the promises and agreements existing between the Santa Fe and various interested Chambers of Commerce. All of these things have withered away to the point where we are now asked to discontinue the service altogether.

In respect to the financial results of the operation of the subject trains, it may be helpful to compare such results with other matters that have appeared before us. The only full year of data available to us in this record is the year 1967. The results of a portion of the year 1968 are undoubtedly distorted by the schedule changes and do not supply adequate information for analysis. The applicant alleges that the year 1967 resulted in a net out-of-pocket loss of \$212,220.00 from the operation of the subject trains in the year 1967. The applicant derives this figure from taking, at face value, its reported out-of-pocket loss from Exhibit 13 and applying one-half of the direct beyond revenues attributable to the subject trains from Exhibit 16. In our Decision No. 71034 dated March 18, 1968, where we granted the application of the Denver & Rio Grande Western Railroad Company to discontinue its trains Nos. 9 and 10 between Denver and Craig, the most recent full year of operations (1966) resulted in a net out-of-pocket loss to the Rio Grande of \$270,499.00. The loss in that case was in excess of 27 percent greater than the loss to the applicant here and, as we have noted previously, the patronage in this case is about 8 times greater.

By Decision No. 45970, supra, we permitted the discontinuance of the subject trains' sister train where the record disclosed that for the year 1955 those trains showed an operating deficit of \$443,648.00. Further,

the discontinuance of those trains still left the public with the subject trains here and four other pair of railroad passenger trains.

There is no doubt that the Atchison, Topeka and Santa Fe Railway Company is financially one of the healthiest railroad companies in the United States. It is also much larger than the Denver & Rio Grande Western. The record discloses that the Santa Fe's operating ratio in 1967 was 82%. This, in our opinion, discloses a healthy company.

The foregoing analysis is sufficient to indicate to us that the public need for the subject trains greatly outweighs the losses, if any, suffered by the applicant. As argued by the applicant in its brief, the subject trains are primarily interconnecting trains for the purpose of serving the Colorado passengers with trans-continental rail passenger service. The use of this service is best shown by Exhibit 16 where the beyond revenues directly attributable, by the applicant, to the subject trains exceed the total direct revenues received by the subject trains on its local run. It may be that the applicant will be able to encourage even greater patronage by a more judicious selection of schedules and interconnections.

Although our analysis of the financial results is sufficient, in our opinion, to find that the public convenience and necessity requires that the subject trains continue in operation and that the application be denied, it is of some significance to review the applicant's tendered evidence in respect to out-of-pocket expenses. The true test of applicable out-of-pocket expenses in the analysis of financial operations of the passenger train is in the avoidable out-of-pocket expenses. It is clear by now that the expenses that are not avoided by the discontinuance of the subject train do not properly constitute part of the probative showing of financial results. The maintenance of way and structures out-of-pocket expense has not been shown by the applicant to be an avoidable expense. The Interstate Commerce Commission has in many cases described such expenses

as too speculative in nature to be ascertainable in proceedings before that Commission. No procedures were shown to this Commission in this record that would indicate to us why such an expense should be allowable. The applicant has seen fit to incorporate maintenance of way and structures with its Denver Union Terminal expenses. No basis was shown for the allowability of the remaining portions of the Denver Union Terminal expenses. The applicant has only made a bare allegation that the number of dollars calculated through a certain arithmetic operation represents a certain proportion of a joint facility expense charged to the subject trains. This mere self-serving allegation is insufficient in itself to prove the allowability of such an expense. The record discloses that there are contracts which supposedly determined the rights of the parties involved in this "joint facility expense", but such contracts were never introduced into the evidence and, therefore, form no part of this record. The same is true as to the other depot expenses to the extent that joint facilities are involved. The same analysis is applied to the maintenance in operation of joint lines. A joint line is in the same position as a joint facility and no agreements or underlying basis was introduced into this record to show how the applicant was required to incur such expenses, how they were calculated and whether or not they are avoidable or would continue notwithstanding a discontinuance of the subject trains. These items constitute approximately \$200,000.00 of the out-of-pocket expenses for the year 1967.

The applicant claims that its methods of ascertaining out-of-pocket expenses are derived from ICC approved procedures. The record does not disclose otherwise except for the possibility of the use of system averaging in certain aspects. We, of course, do not pass upon the applicability of the Interstate Commerce Commission procedures here nor do we approve or disapprove of the procedures themselves. Suffice it to say that the methods used here have not been sufficient in many instances to apprise the Commission of the true facts in respect to out-of-pocket expenses.

The applicant used a system average to ascertain the amount of locomotive repairs which should be charged to the subject trains. However, it is clear that system averaging is a tool to be used when actual figures cannot be obtained. The record discloses that two units constituted the vast majority of the power used on the subject trains and it is our opinion that the use of system averaging is not appropriate in this circumstance. It is unknown whether the locomotive repairs would be higher or lower than the figures presented to us. The system of depreciation of equipment approved by the Interstate Commerce Commission can lead under appropriate circumstances to the depreciation of specific units of equipment through system averaging beyond the original cost plus the cost of additions and betterments. This depreciation method, therefore, does not give a true picture of the depreciation expense allowable for equipment on the subject trains. While the method may be quite applicable to the Interstate Commerce Commission where the subject is nationwide in scope and the trains are trans-continental in nature, the method does not necessarily readily transfer to a more localized situation.

In respect to revenues, it must be noted that if equipment rental is to be charged as an expense to the subject train, certainly the income derived on the opposite hand from the renting out of passenger equipment can properly be assigned on a system average basis, in part, to the subject trains. This latter analysis, while not complete, is an indication of the lack of complete, in-depth, information available to the Commission in this record.

On balance, the losses incurred by the applicant during the year 1967 may have been as much as \$212,220.00 as proposed by the applicant, but the portion of the expenses which are not allowable reduces this deficit considerably. If there is a loss incurred by the applicant in the operation of these trains, it has not been shown to have affected the financial condition of the company. The company is an extraordinarily healthy, vigorous corporation. The public need for these trains has been amply shown and, therefore, the application of the Santa Fe to discontinue

the trains should be denied.

FINDINGS OF FACT

THE COMMISSION FINDS:

From the above and foregoing statement, which, by reference is made a part hereof, the Commission is of the opinion, and finds:

1. That there is a strong public need for rail passenger connection services to the Santa Fe's trans-continental trains serving Colorado through LaJunta, Colorado, via applicant's trains 191-190 and 201-200.

2. That the applicant has not reasonably adjusted its schedules, operations and equipment to serve the traveling public between Denver and LaJunta.

3. That the costs of operation of these trains is not out of proportion to the revenues received by the applicant including the beyond revenues.

4. That the public need for Trains 191-190 and 201-200 outweighs the deficit, if any, incurred by the applicant in the operation of these trains.

5. That the public convenience and necessity requires that the Atchison, Topeka and Santa Fe Railway Company continue to operate and maintain passenger trains Nos. 191-190 and 201-200 between Denver and LaJunta, Colorado.

6. That the application to discontinue Trains 191-190 and 201-200 should be denied.

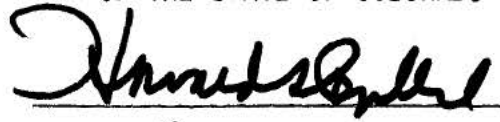
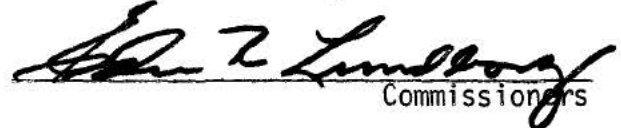
ORDER

THE COMMISSION ORDERS:

1. That the application of the Atchison, Topeka and Santa Fe Railway Company to discontinue operations of passenger trains Nos. 191-190 and 201-200 operating between Denver, Colorado, and LaJunta, Colorado, be and hereby is denied.

2. That this proceeding be and hereby is discontinued.
3. That this Order shall become effective as of the day and date hereof.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



Commissioners

Dated at Denver, Colorado, this
7th day of November, 1968.

CHAIRMAN HENRY E. ZARLENGO SPECIALLY CONCURRING:

I concur and additionally make reference to the basic reasoning in my dissent in the Matter of Application No. 22846 of the Denver & Rio Grande Western Railroad Company to Discontinue the Operation of Passenger Trains Nos. 9 and 10 between Denver, Colorado, and Craig, Colorado (Decision No. 71034, dated March 18, 1968), wherein I held that Trains Nos. 9 and 10 should be continued in service, as the basic facts are analogous.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Chairman

Dated at Denver, Colorado, this
7th day of November, 1968.

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