

ORIGINAL

B E F O R E

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF COLORADO

THE BRECKENRIDGE CHAMBER OF COMMERCE?)

Petitioner,)

vs.)

THE COLORADO & SOUTHERN RAILWAY COMPANY,)

a Corporation,)

Defendant.)

CASE NO. 37

Submitted October 19, 1915

Decided October 20th, 1915

APPEARANCES:

For The Breckenridge Chamber of Commerce,
Barney L. Whatley, Esq.

For The Colorado & Southern Railway Company,
E.E. Whitted, Esq.

S T A T E M E N T

On September 1st, 1915, the above named petitioner filed its petition with The Public Utilities Commission of the State of Colorado, the principal allegation of which was to the effect that the defendant herein contemplated and intended to abandon the whole or some portion of that part of their narrow gauge line between Denver and Leadville, commonly known as the South Park branch of the defendant's property, and leave the people residing along said line without the necessary facilities and service in the way of railroad transportation; and particularly alleged that the defendant intended to abandon that portion of its line between Como and Breckenridge,

thereby cutting off direct communication over its own line between Breckenridge and other points in Summit County, and the seat of the state government at Denver, which would compel the people desiring to reach Denver and other points east to travel by way of Leadville and the Denver & Rio Grande or Colorado Midland railroads, a distance greatly in excess of the direct route over its own line, and at a much greater delay and expense, and would cause like and similar inconvenience in the matter of receiving and shipping mail, express and freight; and further alleged that it was the intention of the defendant to inaugurate and furnish to the citizens of Summit County a mixed passenger and freight train service between Breckenridge and Leadville, in lieu of a through and exclusive passenger train service between Denver and Leadville, as now enjoyed by the said patrons of that line; and further alleged that the defendant refuses and declines to operate a Sunday passenger train over its line in Summit County, to the great detriment and inconvenience of the citizens of that community; and prayed for an order requiring the defendant to cease and desist from such violation of the Act concerning public utilities, and requiring it to operate the whole of said narrow gauge line of railroad from Denver to Leadville; and requiring it to operate a Sunday passenger train for at least six months in the Summer and Fall seasons; and that it provide through and exclusive passenger and freight service daily; and that it provide suitable and regular freight service for the handling of all kinds of freight and commodities; and for such further and additional relief as the Commission may deem just and proper.

The defendant herein filed its answer to the petition, admitting the mere formal allegations contained in the petition; admitting that it refuses to operate a Sunday passenger train over that portion of its line between Grant and Leadville, and as a

reason therefor, alleges there is not sufficient business to warrant it in so doing, and denies each and every allegation, and for further answer, alleges,

"That its line of road from Denver to Como is known as its Platte Canon district and its line of road from Como to Leadville as its Leadville district; that the last district was operated during the fiscal year ending June 30, 1915, at a loss of over \$75,000, not taking into consideration any return on the capital invested in said property; that the Platte Canon district was operated during the same period at a loss of more than \$50,000 a year, not taking into consideration any return on the capital invested; that the said line from Denver to Leadville has for many years not earned its operating expenses and any increase in the train service between Denver and Leadville will necessarily increase the deficit upon said narrow gauge line from Denver to Leadville; that under the most rigid economy and careful management during the last fiscal year in operating the line from Denver to Leadville in accordance with the order of the State Railroad Commission of Colorado, a deficit, as above stated, was the result of the operation of the line and such deficit will occur in any future operation of the property",

and prays to have the petition dismissed.

The issues involved in this case have been before this Commission and its predecessor, the State Railroad Commission, for several years. In Case No. 29, reported in the biennial report of the State Railroad Commission for the years 1911-12, at Pages 39-48, the defendant herein was ordered to re-establish freight and passenger service over Boreas Pass, situated between the towns of Como and Breckenridge, and to furnish certain train facilities between Leadville and Denver. The defendant refused to obey this order, which resulted in the Commission bringing a mandamus action in the district court of Summit County for the enforcement of same. The court sustained the order of the Commission and the railroad company was directed to obey the order of the Commission, whereupon an appeal was taken to the Supreme Court, which tribunal sustained the order of the Commission in every particular, which case is reported at 54 Colorado, 64-96.

In view of the fact that a statutory provision of the old Railroad Commission Act limited the orders of the Commission to a period not to exceed two years, it became necessary for The Breckenridge Chamber of Commerce to file a new action to have the order continued, which they did on September 2nd, 1913. On February 3rd, 1914, the Railroad Commission entered an order, the terms of which were identical with the former order, which became effective on March 6th, 1914, and ran for a period of two years, which case is reported in the Fourth Biennial Report of the State Railroad Commission, 1913-14, at Pages 125-130. On August 12th, 1914, the present Public Utilities Commission Law of this State became effective, and the Railroad Commission Law was automatically repealed. All orders and decisions of the former Railroad Commission, however, were validated and confirmed. It will thus be seen that the last order issued in this case by the former Railroad Commission is still in effect and, by its terms, will not expire until March 6th, 1916. The provision limiting the orders of the Commission to a period not to exceed two years has been eliminated in the present act, and the purpose of the petitioner in bringing this action at this time is to secure a renewal of the order without time limit, before the expiration of the former order.

After due notice to all interested parties, the cause was set down for hearing on October 19th, 1915, at the Hearing Room of the Commission, Capitol Building, Denver, Colorado. Barney I. Whatley, Esq., appeared for the petitioner, and Elmer E. Whitted, Esq., appeared for the defendant. No testimony or evidence was introduced. The parties agreed to settle the cause by a stipulation, and thereupon filed the following stipulation with the Commission:

"Come now The Breckenridge Chamber of Commerce, by Barney I. Whatley, its attorney, and The Colorado & Southern Railway Company, by E.E. Whitted, its attorney, and for the purpose of settling and disposing of the above entitled cause of action now pending before The Public Utilities Commission of the State of Colorado, hereby stipulate and agree as follows, to-wit:

"FIRST.- That the Public Utilities Commission of the State of Colorado may be and it hereby is authorized and directed to make and enter an order notifying and directing the defendant above named to, on or before the first day of January, 1916, and until the further order of the Commission in the premises, maintain, operate and conduct a through freight service from Denver to Leadville by way of Como and Breckenridge, at least three days each week, and from Leadville to Denver, by way of Breckenridge and Como, at least three days each week; and also that the defendant, The Colorado & Southern Railway Company do, on or before the said date and until the further order of the Commission in the premises, operate and maintain and conduct a through and exclusive passenger train 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 way of Breckenridge and Como.

"SECOND.- That when the order above specified and agreed to shall be made and entered by the said Commission, it shall stand as the disposition of the above entitled case so far as said Commission is concerned, and neither party thereto shall be required to produce any evidence concerning the matters and things at issue in the said cause.

"THIRD.- Provided that the defendant Railway Company may at any time hereafter file its petition herein for a modification of said order whenever, by reason of changed conditions or otherwise, a modification of said order may be just and reasonable."

An order will therefore be entered in accordance with the provisions of the above stipulation.

O R D E R

IT IS THEREFORE ORDERED, That the defendant, The Colorado & Southern Railway Company, be, and they are hereby, notified and directed to, on or before the first day of January, 1916, and until the further order of the Commission, maintain, operate and conduct a through freight service from Denver to Leadville by way of Como and Breckenridge at least three days each week, and from Leadville to Denver by way of Breckenridge and Como at least three days each week.

IT IS FURTHER ORDERED, That the defendant, The Colorado & Southern Railway Company, be, and they are hereby, notified and directed to, on or before the first day of January, 1916, and until the further order of the Commission, maintain, operate and conduct a through and exclusive passenger train service daily excepting Sunday from Denver to Leadville by way of Como and Breckenridge, and a through and exclusive passenger train service daily excepting Sunday

from Leadville to Denver by way of Breckenridge and Como.

Effective January 1st, 1916, and until the further order
of the Commission.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

A. S. Kendall

Geo. W. Bradley

Commissioners

Dated at Denver, Colorado,
October 20th, 1915.