

(Decision No. C78-1696)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)	
C. M. MOREY, DOING BUSINESS AS)	
"STAR MOTOR FREIGHT LINES," 1210 N.)	APPLICATION NO. 27916-Amended
CEDAR STREET, COLORADO SPRINGS,)	
COLORADO, FOR A CERTIFICATE OF)	SUPPLEMENTAL ORDER
PUBLIC CONVENIENCE AND NECESSITY.)	

December 22, 1978

S T A T E M E N T

BY THE COMMISSION:

On October 16, 1974, C. M. Morey, doing business as "Star Motor Freight Lines," (hereinafter "Star") filed an original application in this proceeding wherein he sought a certificate of public convenience and necessity authorizing the transportation as a motor vehicle common carrier of general commodities. On October 23, 1974, the application was amended. The amended application sought a certificate of public convenience and necessity authorizing the transportation, on schedule, of general commodities (except commodities in bulk, in tank vehicles, Class A and B explosives, household goods as defined by the Interstate Commerce Commission, commodities which because of size or weight require the use of special equipment, and commodities of unusual value) between Denver, Colorado and the Colorado-Oklahoma state line, where U.S. Highway 287 crosses the same via Interstate Highway 25, U.S. Highway 85, and U.S. Highway 87 between Denver and Pueblo; U.S. Highway 50 and U.S. Highway 50 bypass between Pueblo and Lamar; and U.S. Highway 287 from its point of intersection with U.S. Highway 50 north of Lamar to the Oklahoma state line; serving as intermediate points all points on and within one mile of those highways and also those points lying within a 5-mile radius of Denver, Colorado Springs, and Pueblo, Colorado.

On November 5, 1976, Hearings Examiner Robert L. Pyle entered his Recommended Decision No. 89637 wherein he recommended that Star be granted operating authority substantially as applied for, except as to that part of the application which proposed service south of Lamar to the Colorado-Oklahoma state line. Timely exceptions to the Recommended Decision of the Examiner were filed by Graves Truck Line, Inc. (hereinafter "Graves") and the Regular Route Common Carrier Conference of the Colorado Motor Carriers Association (hereinafter "Common Carrier Conference"). As a result of exceptions having been filed, Recommended Decision No. 89637 was automatically stayed and suspended, pursuant to CRS 1973, 40-6-109(2) pending a final determination of the matter by the Commission itself.

On April 5, 1977, the Commission entered its Decision No. 90451 wherein certain findings and conclusions of the Examiner were rejected, and the Commission entered its own findings, conclusions and order in the matter. In essence, the Commission Decision No. 90451 resulted in approval of Star's application to serve between Denver and Colorado Springs, and the denial of the balance of Star's application. Commissioner Sanders G. Arnold entered a dissent to Decision No. 90451 wherein he stated that he would affirm Recommended Decision No. 89637 of Examiner Pyle.

Subsequently, the Commission denied petitions for reconsideration or further consideration filed by Star of the partial denial of his common carrier application (Decision Nos. 90657 and 90780). Thereafter, pursuant to CRS 1973, 40-6-115, Star commenced an action in the District Court for El Paso County to review Commission Decision Nos. 90451, 90657, and 90780.

On September 9, 1977, the District Court for El Paso County entered a decision wherein it "modified" Commission Decision No. 90451, together with the two subsequent orders of the Commission denying reconsideration thereof by granting Star an enlarged certificate of public convenience and necessity embracing the additional operating authority which Examiner Pyle had originally recommended but which the Commission had denied. Motions for a new trial or to alter or amend the judgment were thereafter filed and denied by the District Court.

Subsequently, the decision of the District Court was appealed to the Supreme Court of Colorado in the case of C.M. Morey, doing business as "Star Motor Freight Lines" vs. Public Utilities Commission, et. al., Nos. 27932, 27935, and 27980.^{1/} On August 14, 1978, the Colorado Supreme Court entered its opinion and order affirming in part and reversing in part the decision and order of the District Court.

In essence, the Colorado Supreme Court held that the District Court had committed error by substituting its own findings of fact for those of the Commission. The Supreme Court also held, however, that the Commission did not apply proper decisional guidelines, and had misconstrued the doctrine of "regulated competition" in denying that part of the application of Star which sought authority to provide service south from Colorado Springs to Pueblo and east from Pueblo to Lamar. In its opinion, the Colorado Supreme Court emphasized that under the doctrine of regulated competition, "the controlling consideration is the public need," and that while "adequacy of existing service is a factor to be considered, it is no longer the controlling determinant" (582 P.2d at 687).

The Colorado Supreme Court remanded the matter to District Court of El Paso County which, in turn, remanded the matter to the Commission for consideration of Star's application in accordance with the legal concepts set forth in the Supreme Court's opinion. Pursuant to the order of remand, and in accordance with the mandate of the Colorado Supreme Court, the Commission has now reviewed the record in the within application in light of the guidance furnished by the opinion of the Colorado Supreme Court, and it now enters the following findings of fact, conclusions on findings of fact, and order which supercede Decision No. 90451 dated April 5, 1977.

FINDINGS OF FACT

1. C. M. Morey is the sole proprietor of a trucking business operating under the trade name "Star Motor Freight Lines" (hereinafter referred to as "Star"). The headquarters of this business is located

^{1/} Morey v. Public Utilities Commission, et. al., _____ Colo _____
582 P.2d 685.

at Colorado Springs, Colorado. Star is the holder of Contract Carrier Permit No. A-719 which authorizes the transportation of freight, as a contract carrier by motor vehicle --

Over U.S. 85 between Greeley, Colorado, and the Colorado-New Mexico state line and all intermediate points;

5/29/35 Extended to include Pueblo to Colorado-Oklahoma state line via Rocky Ford, La Junta, Lamar and Springfield via U.S. Highway 50
Pueblo to Lamar at 59 Lamar to State line;

Also pickup at Longmont and Fort Collins via U.S. 87.

By the present application, Star is seeking common carrier operating authority for those geographical segments of his contract carrier permit which authorize service between Denver and Pueblo, and between Pueblo and the Colorado-Oklahoma state line via Lamar. Star does not seek common carrier authority in lieu of his contract carrier authority north of Denver or south of Pueblo. If the application is granted, Star has signified his willingness to surrender for concurrent cancellation duplicated contract carrier authority.

2. Star has conducted operations under portions of Permit A-719, particularly the portion which authorizes service between Denver and Colorado Springs, for over 30 years. It is not altogether clear when operations were established from Colorado Springs south to Pueblo, but Star was not operating between these points until sometime after June, 1967 and the build-up of these operations to their current status has apparently taken place since 1970. Star's operations through the Arkansas Valley route--i.e. from Pueblo east to Springfield via Lamar, were commenced in September of 1974.

3. Star's operations are divided into two divisions for operational purposes. The "Denver Division" is responsible for traffic moving between Denver, Colorado Springs and Pueblo. The "South Division" is responsible for traffic moving to or from points east of Pueblo through the Arkansas Valley to Springfield. During 1975, Star had gross revenues, systemwide, of \$390,418.77. Most of this revenue was earned within the Denver Division, predominantly at Denver and Colorado Springs.

Based on a representative sampling of Star's traffic which was introduced into evidence, it appears that shipments moving locally between Denver and Colorado Springs or points intermediate thereto accounted for approximately 82 percent of both the total weight and revenue of the traffic handled by Star's Northern Division during 1975, and approximately 64 percent of the total weight which was transported between all points during the year. An analysis presented by Star showing the location of his customers during 1975 indicates that 621--or approximately 69 percent of the total of 894 customers which were shown on his annual customer list filed with the Commission--were located at Denver, Colorado Springs, or at intermediate points between these two cities.^{2/}

4. Within Star's "South Division," which covers operations over routes stretching over 200 miles from Pueblo to the Colorado-Oklahoma state line, the volume of traffic transported by Star during 1975 averaged approximately 392 pounds of freight originating at points on those routes, and approximately 13,177 pounds moving inbound into the area, per working day. The vehicles which Star is using to serve this territory are operating at considerably less than full capacity. Star's operations within this territory would not be feasible standing alone. The profitability of Star's overall operations has declined since the inception of the Southern Division operations in the fall of 1974. According to Star's annual reports on file with the Commission, its operating profit dropped from \$84,550 in 1973, to \$64,009.19 in 1974, and then to \$25,219.67 in 1975, although there was a 24 percent increase in gross revenue over this period of time.

^{2/} This includes points such as Fort Carson which are within the five-mile radius of Colorado Springs involved in the application, and all references in this decision to traffic between Denver and Colorado Springs include the five-mile radii of these two cities.

5. Star currently maintains terminal facilities for use in its operations at Denver, Colorado Springs and Rocky Ford. All of these facilities are leased. The Denver terminal includes a five-door dock and dispatch and billing offices. Most of the billing is done at this terminal. The Colorado Springs terminal includes a four-door dock together with office and storage areas. The terminal at Rocky Ford has a two-door dock and office space. As of July 1976, there were a total of 18 persons employed in a full or part-time capacity in the operations of Star. Two of these employees were stationed at Rocky Ford, and the remainder are either stationed at Denver and Colorado Springs or work as over-the-road drivers. Star does not maintain a terminal facility at Pueblo and has no definite plans at this time to establish one. As of the date of the hearing, Star was utilizing 22 owned and eight leased units of motor vehicle equipment in its operations.

6. Star does not, for the foreseeable future, intend to make any major changes in its existing operations other than establishing interline connections with other authorized common carriers for the movement of traffic to and from points beyond its own routes if the present application is granted. As a contract carrier, Star cannot now participate in such interline movements. The scheduled movement of freight over Star's own routes, however, would remain the same as it is now, offering generally an overnight service between the points which it serves. This is essentially the same service which is now offered by the protesting common carriers between the points which they serve. One of the protestants, Thacker Bros. Transportation, Inc., not only provides overnight service between Denver and Pueblo, but also provides same-day deliveries on one schedule each day.

7. Star is concerned that certain new contract carrier regulations which have been adopted by this Commission, particularly a provision which would require the execution of written contracts between a contract carrier and its customer in advance of providing transportation service, may require a substantial reduction in Star's service if

the present application is not granted. Star claims that it would be impractical for a carrier to obtain written contracts in advance of handling some shipments.^{3/} The prospect that these new regulations may become effective in the future was cited by Star as a reason for filing the present application. However, Rule 18 of the existing Contract Carrier Rules, which has been in effect at all times pertinent, provides that no contract carrier such as Star shall engage in any act of transportation for hire unless and until such carrier has a bona fide contract, either written or oral, with each shipper for whom transportation service is being performed, and further provides that any contract carrier operating in violation of this requirement shall be deemed prima facie to be operating unlawfully. Star has not used written bilateral transportation contracts with his existing customers. He does use ordinary bills of lading reflecting each shipment accepted. Accordingly, Star's operations are substantially similar to those of licensed common carriers.

8. Public testimony in support of this application was adduced either in person or by stipulation of 51 shippers or consignees, including four from Denver, 20 from Colorado Springs, nine from Lamar, eight from Rocky Ford, six from La Junta, two from Fowler, and two from Pueblo. They are all existing customers of Star and are very satisfied with the services which they are now receiving. The general theme of their testimony was to the effect that Star had been providing them with a highly responsive service tailored to their particular requirements, and that they wished this service to be continued.

9. The public testimony did indicate certain complaints concerning the services of existing common carriers. However, the testimony as a whole did not indicate the existence of material inadequacy or the existence of substantial deficiencies in existing common carrier service. No deficiency in existing common carrier service between Denver and Pueblo was shown. Nor did the public testimony

^{3/} These new regulations were promulgated in Decision No. 88644, on April 30, 1975. The enforcement of these regulations has been postponed during an appeal now pending in the District Court in and for Weld County, and their future status is therefore uncertain at this time.

indicate any complaint with respect to the recently established common carrier service of Graves through the Arkansas Valley from Pueblo east to Lamar. The adequacy of existing common carrier service to and from the remaining points involved in this application, from Lamar south to points such as Springfield and Campo was not questioned.

10. Evidence in opposition to the application was presented by seven authorized motor common carriers, namely Graves Truck Line, Inc. ("Graves"), Northwest Transport Service, Inc. ("NW"), Thacker Bros. Transportation, Inc. ("Thacker"), Ephraim Freightways, Inc. ("Ephraim"), Las Animas Transfer Co. ("Las Animas Transfer"), Denver-Limon-Burlington Transfer Company ("D-L-B"), and Triangle Freight Co. ("Triangle"). In addition, evidence was introduced, by stipulation or through testimony, concerning the operations of three other authorized motor common carriers which operate within the territory, Rio Grande Motor Way, Inc. ("Rio Grande"), Bill Clark Truck Line ("Clark"), and Cargo and Transportation Services, Inc. ("CATS"). A. R. Jackson, doing business as "Jackson Transfer and Storage" and "Jackson Trucking," filed a protest of the application but offered no evidence in opposition. The Common Carrier Conference was permitted to intervene and participated in the hearings on the application before the Commission.

Not all of the protestants who opposed the application before the Commission participated in the subsequent judicial review proceedings, and none of them has formally withdrawn its protest of the application.

11. Protestant Graves is authorized to provide scheduled, regular-route common carrier service over all of the routes and between all of the points involved in the present application except the segment from Lamar south to the Oklahoma state line. However, the authority of Graves is restricted against providing local service between Pueblo and Las Animas--i.e., it cannot pick up shipments at Pueblo destined to Las Animas, nor can it originate traffic at Las Animas destined to Lamar.

The intrastate operating authority under which Graves is operating was acquired, by purchase, from Red Ball Motor Freight, Inc. in a transaction approved by this Commission, and Graves commenced operations under this authority on or about March 17, 1976. Under the terms of its certificate of public convenience and necessity, Graves is also required to provide scheduled service, as is here particularly pertinent, south of Pueblo to Trinidad serving Walsenburg and other intermediate points. Graves interlines traffic to off-route points with other authorized motor common carriers, including those protesting this application.

12. Graves operates company-owned freight terminals at Denver, Colorado Springs and Lamar. In addition, it has plans to establish a terminal at Pueblo when the volume of traffic available to it warrants a facility at that location. As of the date of the hearing, Graves' investment in its terminal facilities at Denver, Colorado Springs and Lamar exceeded 1.3 million dollars. It had a total of 92 employees at these three locations. Graves operates an extensive fleet of motor vehicle equipment suitable for use in its operations. The investment of Graves in motor vehicle equipment used in its Colorado operations exceeds 2.1 million dollars.

13. Graves provides daily scheduled service, five days a week, Monday through Friday, between the points which it is authorized to serve within the scope of this application, providing generally for overnight service between all points. However, in terms of the volume of intrastate traffic now being handled, Graves is not operating to full and efficient capacity on its routes, particularly south of Colorado Springs to Pueblo, and between Pueblo and Lamar, despite the fact that it is also transporting interstate traffic over these same routes. During a 10-day traffic study during June 1976, the total intrastate traffic transported by Graves between Denver and Pueblo amounted to only 7,486 pounds--or an average of less than 750 pounds per working day; and the total weight of the traffic which it transported to and from points

in the Arkansas Valley was 31,985 pounds--or less than 3,200 pounds per working day. Graves is operating partially empty schedules daily over its routes south of Colorado Springs to Pueblo, and from Pueblo east through Lamar, in both directions--even with both intrastate and interstate freight on its equipment. The evidence indicates that Graves could efficiently handle, without adding any additional equipment, the entire volume of intrastate freight which Star is now handling to and from Pueblo and points in the Arkansas Valley.

14. No complaint concerning the service performed by Graves appears in this record. Graves offers and provides a service which is responsive to the needs of the public between the points in question, and it has already dedicated large investments to public use for the provision of such service. Graves is ready, willing and able to handle additional traffic in its operations, adequately and efficiently, in a manner which would be beneficial to the public.

15. NW holds certificated operating authority, as is here particularly pertinent, to transport freight, on schedule, between Denver and Trinidad, Colorado, over Interstate Highway 26 and U.S. Highways 85 and 87, serving all intermediate points. This authority was extended to provide for service from Pueblo west to Canon City. Under its authorities, NW provides daily scheduled service, five days a week, Monday through Friday, providing generally for overnight delivery of traffic between all points. NW maintains company terminals at Denver, Colorado Springs and Pueblo and, additionally, has an agency station and terminal at Trinidad. It owns and operates a large fleet of motor vehicle equipment suitable for the transportation of the traffic involved in this application, including 53 tractors and 318 trailers used in line-haul service, and a total of 71 local trucks and tractors utilized to perform pick-up and delivery service at Denver, Colorado Springs and Pueblo. NW has made substantial investments in the facilities and equipment utilized in its Colorado operations, especially in connection with the Denver-Pueblo-Trinidad service.

16. NW is transporting substantial volumes of traffic between Denver and Pueblo, and to a lesser degree, consistent with the size of those communities, to and from Walsenburg and Trinidad. During 1975, NW transported approximately 27,328,000 pounds of traffic between Denver and Pueblo, from which it derived revenues of \$257,696. During the same period, NW transported approximately 3,734,000 pounds of traffic from Denver to Trinidad and Walsenburg, and approximately 111,000 pounds from Trinidad and Walsenburg to Denver, from which in the southbound direction it derived revenues of \$157,055, and in the northbound direction of \$4,551. Pueblo traffic, particularly traffic moving northbound to Denver, is of vital importance to NW's ability to maintain efficient, daily scheduled service at Walsenburg and Trinidad.

17. For all practical purposes, equipment used to provide scheduled service at Walsenburg and Trinidad has to be deadheaded back to the Pueblo area for reloading northbound, because of the relative dearth of traffic originating at the points south of Pueblo. Traffic originating at Pueblo in effect balances NW's entire operation in the Denver-Trinidad traffic lane, and any further dilution of NW's traffic from Pueblo would likely result either in the equipment now operating to Walsenburg and Trinidad having to be deadheaded back to Denver, or in a reduction of service to the points south of Pueblo. In either event, a significant diversion of NW's traffic from Pueblo, such as might occur as a result of Star being authorized to provide full scale common carrier service from that point, could increase NW's costs of providing service to the Walsenburg and Trinidad areas to the point where the rates to cover service to these smaller, dependent points south of Pueblo would also have to be increased.

18. NW can now adequately and efficiently handle additional traffic between Denver and Pueblo, including, on its existing schedules, all of the traffic which Star now transports between these points. There is no evidence in this record of any complaint with the service of NW, or any deficiency, from the viewpoint of the public, in the service which this carrier now offers and provides over its certificated routes.

NW is providing adequate, efficient and economical service, responsive to the needs of the public, between the points which it serves.

19. Thacker also provides scheduled motor common carrier service for the transportation of general commodities, over the routes involved in the present case, between Denver and Pueblo, serving all intermediate points. Thacker operates multiple schedules each day, five days a week, providing for both overnight and same-day delivery service between these points. Thacker is headquartered at Pueblo. Terminals are maintained at Pueblo, Colorado Springs and Denver. Thacker operates a suitable fleet of motor vehicle equipment for the conduct of its common carrier service, with ample equipment being stationed at each of its three terminals.

20. During 1975, Thacker transported approximately 39,037,720 pounds of traffic between Denver and Pueblo. During this period, Thacker earned gross revenues of \$1,793,198.62, from the transportation of common carrier traffic within the scope of the present application, of which \$810,156.63 was derived from traffic terminating in the Pueblo area. Comparing the years 1975 to 1973, Thacker has experienced a decline in both volume and revenue. Thacker is not now operating to capacity, and it could have transported, in its existing schedules, without increasing its equipment in any way, substantially all of the traffic which Star transported during 1975 to and from Pueblo. The evidence in this proceeding did not disclose any deficiency in the service of Thacker, and the service which Thacker is rendering the shipping public is not only adequate but quite satisfactory. A grant of the common carrier authority which Star seeks to serve Pueblo could divert important traffic and revenue from Thacker which is needed by Thacker to maintain its level of service to the public.

21. Ephraim provides scheduled common carrier service for the transportation of general commodities over the routes involved in this application between Denver and Lamar, via Pueblo, serving all intermediate points except Las Animas, Manzanola and Fowler. It maintains terminals or agencies at Denver, Colorado Springs, Pueblo, La Junta and Lamar, for use in the conduct of its operations. Ephraim operates a

large fleet of motor vehicle equipment which is suitable for the transportation of the traffic in question, and stations appropriate equipment at each of its terminal and agency points. Ephraim operates multiple daily schedules, five days a week, providing for the overnight delivery of freight, between all of the points which it is authorized to serve.

22. During 1975, the volume of intrastate traffic transported by Ephraim between Denver and Pueblo was approximately 10,809,502 pounds. During the first six months of 1976, the volume of intrastate traffic transported by Ephraim between Denver and Pueblo was 4,715,871 pounds. During this same six-month period, Ephraim transported a total of 3,662,698 pounds of traffic to points in the Arkansas Valley such as Lamar, La Junta and Rocky Ford. The existing schedules of Ephraim are not operated to full capacity, particularly at points in the Arkansas Valley. During the first six months of 1976, for example, the total weight of intrastate traffic to Lamar ranged from a low of 14,783 lbs. to a high of 22,063 lbs. per schedule; to La Junta, from a low of 13,655 lbs. to a high of 17,665 lbs. per schedule; and to Pueblo, from a low of 21,489 lbs. to a high of 31,771 lbs. per schedule. Ephraim also transports interstate freight on its schedules, but even so these schedules are in most instances underutilized.

23. The profitability of Ephraim's operations in the Arkansas Valley is marginal. Ephraim is attempting to utilize its equipment and schedules to the best advantage of the public in maintaining daily overnight service to this area, and it is providing generally a reliable and satisfactory service. Nonetheless, the volume of Ephraim's traffic from Denver to Lamar, La Junta and Pueblo has decreased, both in volume and revenue, from 1974 to 1976.

24. Las Animas Transfer provides daily scheduled common carrier service for the transportation of freight between Pueblo and Las Animas, including points within a 15-mile radius of Las Animas such as Fort Lyon. Freight is interlined at Pueblo with other authorized common carriers for connecting service to Denver and other points in the state.

In connection with this interline service, the operating schedules of Las Animas Transfer provide for next-day delivery of freight from Denver to Las Animas and Fort Lyon. This carrier has been providing service between the points in question for over 30 years. Its schedules are normally not loaded to full capacity from Pueblo, and there is only a negligible amount of traffic moving outbound from Las Animas and Fort Lyon. Las Animas Transfer also handles interstate traffic on its schedules, but even with that there is ordinarily still not enough traffic available to fill the vehicles.

25. During the first five months of 1976, the average monthly volume of traffic transported by Las Animas Transfer ranged from a low of 3,600 lbs. per schedule during January to a high of 4,600 lbs. per schedule during May, with the average weight per schedule being less than 4,000 lbs. in each of the other months. During January 1976, the revenue derived from intrastate shipments handled on Las Animas Transfer's schedules was \$1,421, and the revenue from interstate freight was \$1,024.67. It is the experience of this carrier that there is not enough freight moving to and from Las Animas to support the number of carriers which are now trying to provide service, including Graves. In the words of the owner of Las Animas Transfer, "Nobody can make a living out of it" in the present circumstances.

26. There is nothing in the present record which would indicate any deficiency in the existing service provided by Las Animas Transfer, and it is obvious that the public service of this carrier would be adversely affected by any further dilution of the meager amount of traffic which has been shown to be available for transportation in the area which it operates. There is no indication in this record of any deficiency in the service being performed by this carrier. No one appeared in support of the present application from either Las Animas or Fort Lyon.

27. CATS is another small carrier providing local service in the Arkansas Valley. It was stipulated that this carrier is authorized to provide scheduled common carrier service for the transportation of freight, as is here pertinent, between Pueblo, Fowler and Manzanola, and that it is in fact conducting operations. Again, as far as the record shows, there is relatively little traffic moving to or from the points which CATS serves.

28. D-L-B provides scheduled common carrier service, as is here particularly pertinent, for the transportation of freight between Denver and Lamar, via routes traversing Limon, Hugo, Kit Carson and Eads, in connection with which, on related routes, service is also provided to numerous small communities in eastern Colorado including Genoa, Flagler, Siebert, Vona, Stratton, Bethune, Burlington, First View and Cheyenne Wells. Lamar is the largest population point served by D-L-B outside of Denver. With the exception of Burlington, all of the other communities which this carrier serves have populations less than 2,000. D-L-B maintains terminals at Denver, Limon, Genoa, Stratton, Burlington, Eads, Hugo and Lamar. As of the date of the hearing, it was operating a fleet of some 48 motor vehicles. Although D-L-B is engaged in some interstate operations, the traffic which it transports between Denver and Lamar is all intrastate.

29. D-L-B provides daily scheduled service between Denver and Lamar, five days a week, providing generally overnight service. The Lamar schedule also handles freight to smaller intermediate points such as Hugo, Eads, Cheyenne Wells, Kit Carson and Sheridan Lake, together with freight moving beyond Lamar to points such as Springfield, Walsh, Campo and Holly. On the average, this schedule is loaded to only about 75 percent of capacity. During the first three months of 1976, D-L-B had gross revenues of \$145,563, and a before-tax profit of \$2,631. Generally, D-L-B appears to be providing a service responsive to the needs of the public at the points which it serves, and the traffic moving to and from Lamar is of considerable importance in its operations. D-L-B states that it is having difficulty maintaining its

operation at Lamar at the present time, with the level of competition which presently exists which includes the recently established service of Graves, and that the added competition from Star as a common carrier could adversely affect D-L-B's service, possibly to the point of leading to a closure of its Lamar terminal.

30. Triangle is providing scheduled common carrier service for the transportation of freight, via U.S. Highway 287, between Lamar, Springfield and Campo, and is also providing scheduled service via Springfield to other points in Baca County such as Pritchett, Vilas and Walsh. Triangle also holds authority to provide scheduled service between Denver, on the one hand, and, on the other, Lamar and the several communities which Triangle is authorized to serve in Baca County, but its experience has been that there is not sufficient traffic available to make regular, direct service between these points a feasible operation. Accordingly, Triangle interlines freight moving to or from Baca County points at Lamar with other authorized common carriers such as D-L-B, Graves and Ephraim.

31. Triangle maintains a terminal at Springfield, and transports freight between Lamar and Springfield on daily schedules. Walsh and Vilas are also served with daily schedules from Springfield, and scheduled service is provided at Campo and Pritchett on a weekly basis. No witness appeared in support of the present application from any of the points which Triangle is serving south of Lamar. Triangle appears to be doing its best to provide the public in this sparsely populated area with a reasonable transportation service, and quite clearly needs all of the traffic available to sustain this service.

32. It was stipulated or otherwise established by the evidence that Rio Grande and Clark are providing scheduled common carrier service, as is here pertinent, between Denver and Pueblo, with Rio Grande also being utilized to serve the intermediate points between Colorado Springs and Pueblo. During 1975, Rio Grande and Clark transported, respectively, 3,939,052 and 307,539 pounds of traffic between Denver and Pueblo. No complaint was registered concerning the services provided by these carriers.

CONCLUSIONS ON FINDINGS OF FACT

Star's application for a common carrier certificate, as applied for between Denver and Colorado Springs, should be granted, and otherwise Star's application should be denied.

DISCUSSION

In re-evaluating the evidence in this case in the light of the instructions of the Colorado Supreme Court, the Commission carefully has reconsidered all the relevant evidence bearing upon the issue of public convenience and necessity pursuant to the doctrine of regulated competition as is mandated by CRS 1973, 40-10-105(2). Factors such as the availability, adequacy and competitive character of existing common carrier service in the territory, the relative abilities of Star and other carriers to provide all or portions of the service in question, and the effect which granting the application or portions thereof may have on the ability of other common carriers to continue in the future to provide efficient and economical service to the public, among other things, have also been taken into account. The foregoing considerations, of course, have been considered as ancillary to the ultimate determination of what would best serve the public convenience and necessity.

We have given complete consideration to the legislative mandate of "regulated competition" in the motor carrier industry with respect to the transportation of property.

Under the old doctrine of "regulated monopoly" the Commission was foreclosed from allowing an entry of an additional carrier into a territory which was being adequately served by an incumbent carrier. Under the doctrine of "regulated competition," however, adequacy of existing service no longer serves as a barrier to the certification of an additional carrier or carriers in a territory which is already served by others. It should nevertheless be understood that the doctrine of

"regulated competition" does not mandate that this Commission grant unlimited or free entry to a would-be common carrier simply because the would-be common carrier may have served a number of shippers who would like to do business with him. The doctrine of "regulated competition" does not permit this Commission to forego its responsibility to exercise such regulatory control over the motor carrier industry so as to prevent excessive or destructive competition in that industry. We have the statutory responsibility to exercise supervisory control over the certification of common carriers in such a manner as will promote safe, adequate, economical and efficient transportation service to the public and foster sound economic conditions in transportation.

Considering all the pertinent criteria, particularly public need as it has been manifested on this record, it is the opinion of the Commission that Star should be granted a certificate of public convenience and necessity authorizing part of the exercise of common carrier operating rights and duties which are contemplated by the present application. We find that the evidence does warrant certification of Star at this time to provide additional common carrier service between Denver and Colorado Springs, together with the intermediate and off-route points which are pertinent to this particular segment of the overall application. Star has been operating in this market for over 30 years, and there are sound and compelling reasons for authorizing Star to operate as a common carrier in this area.

The Commission is confident that Star will be able to operate as a common carrier in the Denver-Colorado Springs market, and to exercise all of the rights and duties inherent in that status in a manner which would serve the public interest. This is the market in which Star now provides a most extensive service as a contract carrier, and competitive conditions between Star and existing common carriers in the area have been stabilized to the point that we find certification of Star will

have no material adverse impact upon the established common carrier system. As a matter of fact, none of the existing common carriers has actively opposed the Denver-Colorado Springs portion of the within application. The lack of common carrier opposition with respect to this part of Star's application still does not relieve this Commission of its responsibility for acting in the interest of the public. However, the Commission is convinced that a public need does exist for additional common carrier service between Denver and Colorado Springs, and that Star is fully capable, financially and otherwise, of establishing and maintaining adequate, efficient and economical common carrier service between these two points.

As we review the balance of the application, we do not find that Star has shown a public need for additional common carrier service. It is true, of course, that there were a number of public witnesses testifying in this proceeding who indicated their individual needs for the service of Star. The Commission has given such testimony most careful consideration. However, this testimony must be weighed carefully in the light of other facts and circumstances which appear of record bearing on the question of what will best serve not only the needs of the witnesses who testified here, but those of the public as a whole. This, we believe, is our statutory obligation.

Turning to the other evidence which bears directly on the question of public need for additional transportation service between routes which Star seeks to serve from Colorado Springs south to Pueblo, the record establishes that there are presently six authorized motor common carriers operating between Denver and Pueblo, namely, Graves, Thacker, Ephraim, NW, Rio Grande and Clark. All of these carriers except Clark serve the intermediate points along these routes from Colorado Springs to south of Pueblo. In addition, as an integral part of this certificated operation between Denver and Pueblo, Graves and NW

are authorized and obligated to serve points beyond Pueblo including Walsenburg and Trinidad. The level of competition among the existing common carriers operating in the Denver-Pueblo corridor is vigorous and the services which they are providing are adequate and sufficient in all respects to meet the present and foreseeable future needs of the public. The record does not establish the existence of a public need for an additional common carrier service in this area. On the contrary, the interjection at this time of another common carrier in the area would unreasonably dilute the available traffic among several carriers to the point where adequate and efficient service to the public would be impaired rather than promoted, which would in turn result, in the judgment of the Commission, in an eventual deterioration of service and higher rates to the public. We also believe that granting this part of Star's application would adversely affect the abilities of NW and Graves to maintain adequate, efficient and economical service to points such as Walsenburg and Trinidad, because of the dependence of service at these points on the availability to these carriers of traffic at Pueblo. Star is not presently a major competitive factor in the relevant transportation market at Pueblo. Thus to grant this portion of Star's application, and thereby to impose on Star an obligation to establish and maintain appropriate common carrier service at Pueblo, would result, in our judgment, in a wasteful duplication of services and facilities. Such a wasteful duplication of services and facilities is destructive, rather than regulated, competition and is contrary to the public interest.

We also believe it would be contrary to the public interest to provide for the establishment of the common carrier service which Star proposes along the routes involved in this application from Pueblo east to Lamar, and from Lamar south to the Colorado-Oklahoma state line.

This is an area of relatively long operating distances, sparse population, and lack of significant growth in population. There are presently at least two, and in some instances three, authorized common carriers providing scheduled service vying for the limited amount of available traffic along the routes from Pueblo to Lamar. Graves is providing adequate and responsive service to all points in this area, and although Graves holds no authority to handle local traffic between Pueblo and Las Animas, this local service is being adequately and efficiently handled by Las Animas Transfer. Ephraim is also providing service at all points between Pueblo and Lamar except Manzanola, Fowler, and Las Animas. However, Graves and CATS are serving the first two of these points which are excepted from Ephraim's authority, and Graves and Las Animas Transfer serving the other. At the eastern terminus of this route, D-L-B, as well as Graves and Ephraim, are providing adequate and responsive service to Lamar. Triangle completes the established common carrier system in this area by providing scheduled service over the route from Lamar south to Campo. The flow of traffic in this area is mostly one-way moving inbound, with relatively little outbound traffic being generated from small communities along these routes. Many of the existing schedules along these routes are apparently running partially empty at the present time. Star conceded that this was often the case in his own operations, and that his operations in the Arkansas Valley, standing alone, are not economically feasible. As Graves increases its relatively new common carrier service in the area, the problem of excess competition among existing common carriers for the available traffic will undoubtedly become more acute. Further dilution of this traffic by mandating the establishment of another common carrier service in the area could, in the judgment of the Commission, result in higher per shipment operating costs for carriers serving the area. An inflation of the common carrier rate level or a curtailment of service on which the public now depends, if not both, is likely to result. Graves

also has recently invested in a new terminal at Lamar and is in the process of expanding the common carrier service in the area to meet the needs of the public.

Under all of the circumstances which we are called upon to evaluate, we believe the existing and future public need for adequate, responsive and economical transportation service would best be served by denying Star the common carrier authority which it seeks at this time to inaugurate additional common carrier service over the routes involved in this application from Colorado Springs south to Pueblo, from Pueblo east to Lamar, and from Lamar south to the Colorado-Oklahoma state line. Star will retain its existing contract carrier permit to operate over these routes and it will remain free to exercise that permit pursuant to applicable law and Commission regulations. Finally, the Commission notes that none of the shippers who testified in favor of Star categorically stated that it would not enter into contracts with Star for his service.

Premises considered, the following Order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. C. M. Morey, doing business as "Star Motor Freight Lines," Colorado Springs, Colorado, be, and hereby is, granted a certificate of public convenience and necessity to operate as a common carrier by motor vehicle for hire for the:

Transportation -- on schedule -- of

General commodities, except commodities in bulk in tank vehicles, Class A and B explosives, household goods as defined by the Interstate Commerce Commission, commodities which because of weight or size require the use of special equipment, and commodities of unusual value;

Between Denver, Colorado, and Colorado Springs, Colorado, via Interstate Highway 25 and U.S. Highways 85 and 87, serving as intermediate points all points on and within one (1) mile of said highways, and also those points lying within a five (5) mile radius of Denver and Colorado Springs,

and this Order shall be deemed to be, and be, a CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY therefor. The application in all other respects shall be, and hereby is, denied.

2. Effective as of the date that this Order becomes effective, and if C. M. Morey, doing business as "Star Motor Freight Lines," elects to accept the Certificate of Public Convenience and Necessity granted hereunder, Contract Carrier Permit No. A-719 shall be, and hereby is, concurrently cancelled and revoked, in part, insofar as said Permit presently authorizes any service between Denver, Colorado, and Colorado Springs, Colorado, and intermediate points. Henceforth, as of the date when said partial cancellation becomes effective, Contract Carrier Permit No. A-719 shall be redescribed so as to read in its entirety as follows:

Transportation of freight

Over U.S. Highway 85 between Greeley, Colorado, and the Colorado-New Mexico state line and all intermediate points.

5/29/35 Extended to include Pueblo to Colorado-Oklahoma state line via Rocky Ford, La Junta, Lamar and Springfield via U. S. Highway 50 Pueblo to Lamar and 59 Lamar to state line;

Also pickup at Longmont and Fort Collins via U. S. Highway 87.

Restriction: Restricted against service between Denver and Colorado Springs and points intermediate thereto.

3. C. M. Morey, doing business as "Star Motor Freight Lines," if he elects to accept the Certificate of Public Convenience and Necessity granted hereunder, shall file tariffs of rates, rules and regulations as required by law and the rules and regulations of this Commission within twenty (20) days from the date this Order becomes effective.

4. C. M. Morey, doing business as "Star Motor Freight Lines," shall operate his carrier system in accordance with the Order of the Commission, except when prevented by an Act of God, the public enemy, or extreme conditions.

5. This Order is subject to compliance by the Applicant with all present and future laws and rules and regulations of this Commission.

This Order shall be effective twenty-one (21) days from the day and date hereof.

DONE IN OPEN MEETING the 22nd day of December, 1978.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Edythe S. Miller
Commissioners

COMMISSIONER SANDERS G. ARNOLD
DISSENTS.

COMMISSIONER ARNOLD DISSENTING:

I respectfully dissent. The evidence in this proceeding clearly indicates the public need for additional common carrier service south of Colorado Springs and east of Pueblo, as Examiner Pyle found in his Recommended Decision No. 89637. Star is fully qualified to provide this service. The majority decision, in my judgment, focuses entirely too much on the effect on the other carriers in the area were the application to be granted. It is my view that the doctrine of regulated competition, as set forth in CRS 1973, 40-10-105(2) is designed for the benefit of the public emanating from competition rather than for the perceived health of the carrier industry itself.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Commissioner

jm/ss