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BOARD OF PUBLIC UTILITIES

Colorado Public Utilities Commission

BOARD OF PUBLIC UTILITIES

REPORTS OF DECISIONS

OF

The Public Utilities Commission

OF THE

State of Colorado

From May 1, 1917, to November 1, 1917.

VOLUME 4.

Compiled for the Commission by

Charles E. Neil.

1918

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MEMBERS OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO.

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DECISIONS OF
THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO.

F. G. BONFILS and H. H. TAMMEN, doing business under the style and firm name of THE DENVER POST COAL AND IRON COMPANY, and THE POST PRINTING AND PUBLISHING COMPANY,

v.

UNION PACIFIC RAILROAD COMPANY.

(Case No. 13.)

Procedure—Dismissal to expedite court ruling as to jurisdiction.

The Commission may dismiss a proceeding although it holds it has jurisdiction, where the dismissal will expedite a speedy jurisdiction ruling from the court, and if the Commission overrules the objection to its jurisdiction and proceeds, a court ruling cannot be had until a final order is made, which will require the expenditure of a large amount of time and money.

(May 3, 1917.)

PROCEEDINGS to obtain reparation on shipments of coal from mines in the Northern Colorado district on the Chicago, Burlington & Quincy Railroad, the Colorado & Southern Railway and the Union Pacific Railroad to Denver; dismissed in order to expedite court ruling on the Commission's jurisdiction.

APPEARANCES: John T. Bottom, Esq., and Whitehead & Vogl, for the complainants; C. C. Dorsey, J. Q. Dier and N. H. Loomis, for the defendant; William

R. Eaton and Ralph Hartzell, *amici curiae;* E. E. Whitted, Attorney of The Colorado and Southern Railway Company, as *amicus curiae.*

STATEMENT.

By the Commission:

This cause arises on questions of reparation in connection with alleged excessive charges on shipments of lignite coal from mines on the line of the defendant in the Northern Colorado Coal District to Denver, Colorado, from September 1, 1906, to and including November 24, 1914.

On December 6, 1909, an action was brought before the Railroad Commission of Colorado known as Consumers' League of Colorado v. Colorado & Southern Railway Company, Case No. 22, filed under the provisions of the Railroad Commission act, Chapter 208, Session Laws of 1907. At the time of the filing of that complaint the rates for the transportation of lignite coal from mines in the Northern Colorado Coal District on the Colorado & Southern Railway, the Chicago, Burlington & Quincy Railroad and the Union Pacific Railroad, were eighty cents, seventy cents and sixty cents, respectively, on lump, mine run and slack coal, to Denver, Colorado. The complaint was directed against these rates as charged and collected by The Colorado & Southern Railway Company, alleging that the same were exorbitant, unjust, unlawful and unreasonable for the service rendered. Subsequently the Chicago, Burlington & Quincy Railroad Company and the Union Pacific Railroad Company filed petitions for intervention and were thereupon joined with The Colorado & Southern Railway Company as defendants.

On April 4, 1910, the Railroad Commission issued its order in the cause establishing rates of fifty-five

cents, fifty cents and forty-five cents, on lump, mine run and slack coal respectively, from the Northern Colorado District to Denver, effective May 10, 1910, and for a period of two years thereafter. (Second Biennial Report, 1909-1910, page 58.) On April 9, 1910, an appeal was duly taken by the defendants to the District Court of the City and County of Denver, under Section 18 of the Railroad Commission Act. The defendants, in the appeal, questioned the constitutionality of the Railroad Commission Act, and on May 21, 1910, the District Court held the 1907 Act to be unconstitutional and set aside the order of the Commission.

On June 2, 1910, the case was docketed on error in the Supreme Court of the State of Colorado. The *scire facias* was served on October 7, 1910.

On May 6, 1912, the Supreme Court announced its opinion, holding the Railroad Commission Act of 1907 to be constitutional and reversed the decision of the District Court. Consumers' League of Colorado v. C. & S. Ry. Co., 53 Colo. 54. A motion for rehearing was filed therein but denied by the Supreme Court on July 1, 1912, and on July 3, 1912, the case was remanded to the District Court.

The Act of 1907 provided that orders of the Railroad Commission should remain in effect for a period of two years from the effective date, unless stayed by appeal to the District Court. Therefore, the two year limitation in the order of the Commission entered April 4, 1910, would have expired May 10, 1912. On February 23, 1912, there was filed with the Railroad Commission a complaint by Omar E. Garwood, entered as Docket No. 34. This action was brought under the provisions of the Railroad Commission Act of 1910, which became effective February 15, 1911, Chapter 5, Sessions Laws of 1910.

On March 20, 1913, the Commission entered an order in the case of Garwood v. C. & S. Ry. Co., *et al.* (Fourth Biennial Report, 1913-1914, page 55), establishing rates theretofore found reasonable in Consumers' League of Colorado v. C. & S. Ry. Co., *supra,* namely, fifty-five cents, fifty cents and forty-five cents, on lump, mine run and slack coal, respectively. This order was entered to take effect April 24, 1913, and to remain effective for a period of two years thereafter as provided by the Act of 1910. The Act of 1910 also contained a provision (Section 17) that orders of the Commission should be stayed or suspended by appeal to the District Court, and an appeal was taken to the District Court of the City and County of Denver on April 23, 1913.

On May 2, 1914, the District Court of the City and County of Denver, by Judge Perry, decided the case then pending before the Court on appeal from the decision of the Commission in Consumers' League of Colorado v. C. & S. Ry. Co., *supra.* (District Court No. 48606.) The judgment of the District Court construed the order of the Commission, and as so construed, affirmed the same. (A copy of that opinion and decision is attached hereto as appendix A.) On June 27, 1914, the defendants lodged an appeal in the Supreme Court of the State of Colorado from the order of the District Court. Tariffs were filed with the Railroad Commission effective July 1, 1914, in accordance with the carriers' construction of the terms of the order of Judge Perry of May 2, 1914, which established a basis of rates which applied when shipments were destined to public team tracks located on the tracks of the originating line only, and a higher basis when destined to sidings or industries on the originating line and sidings and industries of the first connecting switching line.

As the order of the Commission in Garwood v. C. & S. Ry. Co., *supra,* was limited by the Act to two years the same would have expired April 24, 1915, by limitation.

On July 3, 1914, a complaint was filed before the Railroad Commission by the Consumers' League of Colorado against The Colorado & Southern Railway Company, the Chicago, Burlington & Quincy Railroad Company, the Union Pacific Railroad Company, The Denver & Salt Lake Railroad Company, The Denver & Rio Grande Railroad Company and The Denver & Inter-Mountain Railroad Company, (Case No. 73) attacking the rates of the said carriers from the Northern Colorado District to Denver of seventy-five, seventy and sixty cents per ton on lump, mine run and slack coal respectively, when to industries or tracks on other than the originating lines, and a complaint was filed by the Consumers' League of Colorado against The Colorado & Southern Railway Company, the Chicago, Burlington & Quincy Railroad Company and the Union Pacific Railroad Company, (Case No. 74) attacking the rates of seventy-five, seventy and sixty cents on lump, mine run and slack coal, respectively, when to industries or tracks on the originating lines.

The Public Utilities Act, Chapter 127, Session Laws of 1913, established The Public Utilities Commission of the State of Colorado to supersede the Railroad Commission of Colorado, and provided that (Section 66) the Act should not affect pending actions or proceedings brought by or against the people of the State of Colorado or the Railroad Commission, or by any person or corporation under the provisions of Chapter 5 of the Laws of 1910, and that any investigation, hearing, or proceeding instituted under the Act of 1910 should be continued to a final determination in the same manner

and with the same effect as if the same had been commenced or instituted under the Public Utilities Act. The two cases (Nos. 73 and 74) filed by the Consumers' League of Colorado were therefore entered on the docket of the Public Utilities Commission, and for purpose of hearing were consolidated as Case No. 6 of the Public Utilities Commission.

On November 6, 1914, the Public Utilities Commission decided the issues in Case No. 6, Consumers' League of Colorado v. C. & S. Ry. Co., *et al.* (First Annual Report, page 163), and therein fixed rates of sixty-five, sixty and fifty-five cents per ton, for the transportation of lump, mine run and slack coal, respectively, from the Northern Colorado District to Denver when the shipments were destined to industries and tracks on the originating lines' terminals and the first connecting lines' terminals. The order named November 30, 1914, as the date on or before which the rates therein prescribed should take effect, and as the Public Utilities Act did not carry any provision similar to the two year limitation contained in the former Railroad Commission acts, no date of expiration was included in the order of the Commission. A petition for rehearing was filed by the complainants in the cause which was denied by the Commission on November 16, 1914. The defendant carriers thereupon filed tariffs with the Commission setting forth the rates prescribed by the Commission's order, effective November 23, 1914, or prior to the date specified in the order.

At the time of the decision in the foregoing case the case of Garwood v. C. & S. Ry. Co., *et al., supra,* was pending in the District Court on appeal. On November 21, 1914, the defendant carriers in the Garwood case petitioned the Commission to grant a rehearing in the said case and modify the order entered therein on March

20, 1913. The petition for rehearing and modification of the order stated that the original order entered was indefinite and ambiguous in its terms and failed to specify what terminal services were included in the rates as found reasonable in said order. On December 29, 1914, the Commission dismissed the petition for rehearing and modification of the order.

On December 23, 1914, the Consumers' League of Colorado v. C. & S. Ry. Co., *et al.,* Case No. 6, *supra,* was by the Consumers' League taken to the Supreme Court of Colorado on a writ of review, under Section 52 of the Public Utilities Act, and at the present time is pending in that court.

On November 29, 1915, the District Court of the City and County of Denver, by Judge Denison, announced an opinion sustaining the order of the Commission in Garwood v. C. & S. Ry. Co., *et al., supra,* District Court No. 55472. Motion for new trial was filed by the defendants and the case is still pending in the District Court thereon.

During the pendency of the litigation set forth above in the various cases the charges assessed and collected by the carriers were as published in the tariffs on file with the Railroad Commission and the Public Utilities Commission. The first order of the Commission in Consumers' League of Colorado v. C. & S. Ry. Co., *et al.,* Case No. 22, decided April 4, 1910, was stayed or suspended by the appeal to the District Court, as was the next subsequent decision in Garwood v. C. & S. Ry. Co., *et al.,* Case No. 34, entered March 20, 1913, and no change was made in the rates contained in the tariffs on file with the Commission.

The rates for the transportation of lignite coal in cents per ton of 2,000 pounds, from the mines in the Northern Colorado District to Denver, since the incep-

tion of the litigation against such rates have been as follows, according to the tariffs on file with the Commission:

C. & S. RY.	Lump	Mine Run	Slack and Pea
Dec. 6, 1909	80	70	60
July 1, 1914	a55	a50	a45
	b75	b65	b60
Nov. 23, 1914	c65	c60	c55

C. B. & Q. R. R.	Lump	Egg and Nut	Mine Run	Slack	Slack or Pea
Dec. 6, 1909	80	70	70	60	—
Sept. 20, 1911	80	80	70	60	—
July 1, 1914	a55	—	a50	—	a45
	b75	—	b65	—	b60
Nov. 23, 1914	c65	—	c60	—	c55

U. P. R. R.	Lump	Egg and Nut	Mine Run	Slack and Pea
Dec. 6, 1909	80	70	70	60
Aug. 15, 1911	80	—	70	62½
Sept. 8, 1911	80	—	70	60
July 1, 1914	a55	—	a50	a45
	b75	—	b65	b60
Nov. 23, 1914	c65	—	c60	c55

a. Applied when to public term tracks of original lines only.

b. Applied when to sidings or industries on originating lines and to industries and tracks on first connecting lines' terminals.

c. Applied when to industries or tracks on originating lines and on first connecting line's terminals.

On March 17, 1915, a complaint was filed with the Public Utilities Commission by the complainants herein alleging that from September 1, 1906, up to November 23, 1914, the defendant herein, the Union Pacific Railroad Company, had charged, assessed and collected certain amounts for the transportation of lignite coal from the mines in the Northern Colorado District to Denver which were in excess of charges based on reasonable and just rates, that the rates were excessive and unreasonable, that the Railroad Commission had found certain rates to be reasonable for such transportation and which the defendant had never made applicable to complainants' shipments, whereby the complainants were damaged in the amount of the difference between the amounts which would have accrued on reasonable and just rates, and the amounts collected, assessed and charged by the defendant, and whereby the complainants were entitled to reparation from the said defendant in the amount to be so determined by the Commission.

The defendant filed a motion to dismiss the complaint of the complainants. A replication was filed to the defendant's answer and the defendant then filed a motion to strike from the replication.

Thereupon, on January 11, 1916, an amended complaint was filed by the complainants setting forth more specifically and in greater detail the cause of action before the Commission.

The amended complaint alleges that the defendant is, and has been since the cause of action commenced to accrue, a common carrier and that the transportation service performed by the defendant common carrier from the mines on its line in the Northern Colorado Coal District is wholly within the State of Colorado, and as to such common carrier and such transportation was subject to the provisions of Chapter 208 of the Session

Laws of 1907; Chapter 5 of the Session Laws of 1910, and Chapter 127 of the Session Laws of 1913 during such periods as the said laws were respectively in effect.

That on or about September 1, 1906, and for a long time subsequent thereto the complainants received and shipped from the Northwestern Mine on the line of the defendant a large amount of lignite coal to the City of Denver; that from January 2, 1908, and until September 7, 1914, the complainants received and shipped from the Baum Mine on the line of the defendant a large amount of lignite coal; and that on and since September 7, 1914, the complainants had received and shipped large amounts of lignite coal from the mines of the National Fuel Company located on the line of the defendant near Dacono, to the City of Denver; that the complainants' Exhibit "A" attached to the complaint set forth a list of the shipments of coal transported by the defendant from May 25, 1910, to November 24, 1914, showing the car numbers, car initials, and the weight and kind of coal in each car; that the complainants have not in their possession detailed information as to the coal received by them prior to May 25, 1910, but allege that all of such information is within the knowledge of the defendant and a part of the defendant's records;

That upon all of the coal so received by the complainants prior to October 21, 1908, defendant charged as and for transportation charges thereon at the rate of sixty cents per ton on all slack coal and eighty cents per ton on all other grades of coal; that subsequent to October 21, 1908, the defendant charged as and for transportation charges thereon at the rate of sixty cents per ton on all slack coal, seventy cents per ton on all mine run coal, and eighty cents per ton on all lump coal received by complainants as aforesaid, all of which charges, except as thereinafter set forth, have been paid

by the complainant, The Post Printing and Publishing Company;

That the rates and charges so charged and collected by the defendant for the transportation of lignite coal from the mines on its lines to Denver were unjust, unreasonable, excessive, exorbitant, unlawful and in violation of the provisions of the statutes of Colorado;

That certain proceedings have been held by the Railroad Commission in which certain rates were found to be reasonable and just for the transportation of lignite coal from the Northern Colorado District to Denver, and that the defendant had failed and neglected to publish, charge and collect such reasonable rates and charges, and that the courts have affirmed and sustained all of said orders of the Commission;

(The orders and proceedings referred to have been set forth in detail *ante.*)

That as shown by the Exhibit "A" attached to the complaint the complainants received from the defendant during the period from May 25, 1910, to and including November 24, 1914, 262,494.54 tons of lump coal, 2,749.35 tons of mine run coal and 30,913.65 tons of slack coal, upon which shipments, if the rates had been charged and assessed at the rates of fifty-five cents, fifty cents and forty-five cents per ton on lump, mine run and slack coal respectively, the charges would have been $144,372.00 on the lump coal, $1,374.68 on the mine run coal and $13,911.14 on the slack coal, a total of $159,657.82;

That attached to the complaint is a schedule marked Exhibit "B" which shows the various sums actually paid by the complainants as freight charges on the aforesaid coal during the period from May 25, 1910, to and including November 24, 1914, the total of which sums is $213,944.05, or $54,286.23 in excess of the

amounts which would have been paid if the charges had been assessed and collected at the rates of fifty-five cents, fifty cents and forty-five cents per ton respectively, as above set forth;

That between September 1, 1906, and September 1, 1909, the complainants received from the defendant the following amounts of coal which defendant transported from the aforesaid mines to Denver and upon which complainants paid to defendant as freight charges the following:

49,829.8 tons at 80 cents	$39,863.84
6,219.1 tons at 70 cents	4,353.37
9,862.2 tons at 60 cents	5,917.32
	$50,134.53

That if the charges had been assessed upon said shipments at the rates of fifty-five cents, fifty cents and forty-five cents respectively, the amount of the charges so collected would have been:

49,829.8 tons at 55 cents	$27,406.39
6,219.1 tons at 50 cents	3,109.55
9,862.2 tons at 45 cents	4,437.99
	$34,953.93

The difference between the two amounts being $15,180.60.

That complainants have not the figures showing the amounts of coal received from the defendant between September 1, 1909, and May 25, 1910, from the Baum Mine, but allege that such shipments aggregated many thousand tons, the exact details of which are known to, and contained in, the records of the defendant herein. That upon all of such shipments the complain-

ants paid defendant charges at the rates of eighty cents, seventy cents and sixty cents per ton respectively, upon lump, mine run and slack coal;

That by reason of the matters set forth in the complaint the complainants have been damaged in the sum of $54,286.23 upon the shipments between May 25, 1910, and November 24, 1914, the further sum of $15,180.60 on the shipments between September 1, 1906, and September 1, 1909, and a further sum, the amount of which is unknown at present to the complainants, upon the shipments received between September 1, 1909, and May 25, 1910;

Wherefore, complainants pray that the defendant be required to answer the charges in the complaint; that an order be entered by the Commission requiring the defendant to furnish to the Commission a correct statement of the shipments of lignite coal delivered by it to complainants during the period from September 1, 1909, to May 25, 1910, together with the charges thereon; that a full hearing be had upon the matters therein set forth, and that upon such hearing and investigation an order be entered requiring defendant to pay to complainants as reparation and damages a sum equal to all sums paid by them or any of them to defendant as transportation charges for the hauling of lignite coal from the Northern Colorado Coal District to Denver in excess of the sums which would have been charged and collected for such transportation it assessed at the rates of fifty-five cents, fifty cents and forty-five cents per ton on lump, mine run and slack coal respectively during the period from September 1, 1906, to November 24, 1914, and for such other and further relief as to the Commission may seem just and equitable in the premises.

On the 11th day of April, 1916, there was filed with the Commission by the defendant an answer including

several motions to dismiss directed to the amended complaint. The defendant first moves to strike out the amended complaint, as filed, for the reason that the amended complaint sets forth a new cause of action from that attempted to be stated in the original complaint, and one which could only be presented, if at all, by the commencement of a new proceeding.

The defendant further moves that the amended complaint be dismissed as to certain items or causes of action therein attempted to be set forth, for the reason that the same are, and each thereof is, barred by one or all of the statutes of limitation hereinafter specically referred to, as appears upon the face thereof, to-wit:

(1) As to all claims or causes of action or items thereof which accrued at a date antedating the filing of the amended complaint or petition herein by any or all of the periods hereinafter specified.

(a) All which accrued more than one year prior to the filing of the amended complaint or petition;

(b) All which accrued more than two years prior to the filing of the amended complaint or petition;

(c) All which accrued more than three years prior to the filing of the amended complaint or petition;

(d) All which accrued more than six years prior to the filing of the amended complaint or petition.

(2) As to all claims or causes of action or items thereof which accrued at a date antedating the commencement of the proceedings by all or any of the periods hereinafter specified:

(a) All which accrued more than one year prior to the commencement of this proceeding;

(b) All which accrued more than two years prior to the commencement of this proceeding;

(c) All which accrued more than three years prior to the commencement of this proceeding;

(d) All which accrued more than six years prior to the commencement of this proceeding.

The defendant then moved to dismiss the amended complaint or petition as to the complainants F. G. Bonfils and H. H. Tammen, doing business under the firm name and style of The Denver Post Coal & Iron Company, for the following reasons, to-wit:

(1) That the amended complaint or petition does not state facts sufficient to constitute a cause of action or to justify any relief whatsoever in favor of said complainants or either of them;

(2) That it does not appear that the complainants named or either thereof have suffered any damage whatsoever because of all or any of the matters and things set forth in said amended complaint or petition, but, on the contrary, it appears that they have not nor has either of them suffered any damage whatsoever.

(3) Because it appears upon the face of said amended complaint or petition that said named complainants did not, nor did either of them, pay all or any portion of the freight charges in question.

The defendant then moved to dismiss the amended complaint or petition as to the complainant, The Post Printing and Publishing Company, for the following reasons:

(1) That the amended complaint or petition did not state facts sufficient to constitute a cause of action or justify any relief against the defendant in favor of the said complainant;

(2) Because it does not appear that the complainant has suffered any damage by reason of the matters set forth;

(3) Because it appears upon the face of the amended complaint or petition that the complainant was neither the consignor nor consignee of any of the shipments mentioned, nor was it in any wise connected therewith, and that the freight charges which it paid—if any—were paid purely as a volunteer and without any connection with the shipment or obligation, direct or indirect, immediate or remote, to make such payments.

The defendant then moved to dismiss said amended complaint or petition as to all the parties complainant, and as to certain items or causes of action therein attempted to be alleged or set forth, in the following respects and for the following reasons;

(1) As to all claims or causes of action or items thereof which, as appears upon the face of said amended complaint, accrued prior to the date when the Act of the Legislature of Colorado became effective, which is entitled "An Act concerning public utilities, creating a Public Utilities Commission, prescribing its powers and duties, and repealing certain acts and parts of acts in conflict herewith," and which was approved April 12, 1913, for the reason that the amended complaint or petition does not state facts sufficient to constitute a cause of action or ground of relief in respect to any thereof, and that the Commission is without power, authority or jurisdiction to deal therewith, or to afford any relief whatever in respect thereto, or to entertain any petition or complaint directed thereat.

(2) As to all claims or causes of action of items thereof which, as appears upon the face of said amended complaint or petition, accrued prior to the date when the Act of the Legislature of Colorado became effective, which was enacted at the extraordinary session of the Seventeenth General Assembly, convened at Denver, on

August 9, 1910, which was an act regulating common carriers, providing for a State Railroad Commission, prescribing and defining its duties, etc., which act was filed in the office of the Secretary of State on November 16, 1910, not signed or disapproved by the Governor, and which act is set forth in the Session Laws of 1910, commencing on page 45 thereof, for the same reason that said amended complaint or petition does not state facts sufficient to constitute a cause of action or ground of relief in respect thereof, and for the further reason that this Honorable Commission is without power, authority or jurisdiction to deal therewith, to entertain a petition or complaint in respect thereto, or to afford any relief whatever thereon.

(3) As to all claims or causes of action or items thereof which, as appears from the face of said amended complaint or petition, accrued prior to the date when the Act of the Legislature of Colorado became effective, which provided for the regulation of common carriers in this State and for the creation of a State Railroad Commission, which was approved March 22, 1907, and appears as Chapter 208 of the Session Laws of 1907, and beginning on page 531 thereof, for the reason that it does not state facts sufficient to constitute a cause of action or to afford any relief whatever in respect to the same or any part thereof, and for the reason that this Honorable Commission is without power, authority or jurisdiction to deal therewith, or to entertain any petition or complaint in respect thereto, or to grant any relief thereon.

(4) As to all claims or causes of action or items thereof relating to shipments upon which, as appears from said amended complaint or petition, the complainants have not paid freight charges or any part thereof.

The defendant then moves to dismiss the amended complaint or petition in its entirety for the following reasons:

(1) That the amended complaint or petition does not state facts sufficient to constitute a cause of action or complaint, or to justify any relief whatsoever against the defendant.

(2) That the amended complaint or petition does not aver, nor does it appear therefrom, that the complainants, or either or any of them, have suffered any damage whatsoever by reason of all or any of the matters or things alleged in the amended complaint or petition to have been done or omitted by this defendant.

(3) That there is a misjoinder of parties in the amended complaint or petition, in this, to-wit: That it does not appear therefrom whether the cause or causes of action therein attempted to be set forth inure jointly and equally to each and all of said parties complainant, nor does it appear which, if either, of said causes of action attempted to be set forth inure to any one or more of said complainants.

(4) That the parties complainant are, and each of them is, without legal capacity to maintain this proceeding, and without title to the cause or causes of action, or either or any thereof, therein attempted to be set forth.

(5) That the Commission is without power, authority or jurisdiction to entertain the amended complaint or petition or any of the claims or causes of action or items thereof therein attempted to be set forth, or to grant any relief in respect thereto.

The defendant then moves for an order requiring the complainants to produce and file, in support of their amended complaint or petition, the paid and receipted expense bills or freight bills covering the various ship-

ments set forth in the amended complaint, and showing the payment by the complainants of the rates and charges and sums of money concerning which relief is sought, and showing the date, weight, class of coal, car initial and number, and names of consignor and consignees in respect to such shipments, and that in default of the production and filing thereof that the proceeding be dismissed.

And for grounds for such motion the defendant shows that it is impossible for it to ascertain from its records what, if any, rates, charges, or sums of money on account thereof, have been paid by the complainants or either or any thereof; that the defendant is engaged in interstate commerce and that the complainants are now and in the past have been shippers over and patrons of defendant's railroad interstate commerce, and that under the law, including Interstate Commerce Commission Act, and pursuant to the rules, regulations and practices of the Interstate Commerce Commission, the production and filing of said paid expense bills and receipted freight bills is requisite and essential as a condition precedent to the maintenance of a proceeding such as this.

By way of answer the defendant generally denies the allegations of the complaint, and denies all of the allegations pertaining to shipments of coal, for the reason that it has not and cannot obtain sufficient knowledge and information upon which to base a belief.

The defendant admits that it received payments for certain coal transported from the Northern coal fields into Denver, the various sums set forth in Exhibit B, attached to the complaint, at or about the dates therein specified, with the exception of an item of March 29, 1913, amounting to $3,557.48, and an item of September 11, 1914, of $75.00, which two items the defendant is

unable to verify and concerning which it has not and cannot obtain sufficient knowledge and information upon which to base a belief, and therefore denies as to each of said items, and demands that strict proof thereof be made.

The defendant avers that as to whether or not the sums set forth in Exhibit B, attached to the complaint of the complainants, were actually paid by the complainants or either of them, and if so, by which, and as to whether or not the total of said sums set forth in Exhibit B is in excess of the amounts which would have been paid if the charges had been assessed at fifty-five, fifty and forty-five cents respectively, the defendant has not and cannot obtain sufficient knowledge and information upon which to base a belief and therefore denies the same.

The defendant, while denying that the exact dates or details of the shipments received by complainants between September 1, 1909, and May 25, 1910, or during any other period are known to or are contained in the records of defendant, admits that all shipments transported over its line, for any and all persons, from the Northern coal fields into Denver, during the period set forth, was at the tariff rate of eighty, seventy and sixty cents, respectively, upon lump, mine run and slack coal.

The defendant then sets forth in its answer certain affirmative defenses, and alleges that prior to October 21, 1908, the rate for coal from the Northern fields to Denver on the line of the defendant was eighty cents per ton on coal other than slack; on slack coal, sixty cents per ton.

That from October 21, 1908, to and including June 30, 1914, on lump coal eighty cents per ton, on run of mine coal seventy cents per ton, and on slack coal sixty cents per ton.

From July 1, 1914, to and including November 22, 1914, fifty-five cents on all kinds of coal except run of mine, slack or pea; fifty cents per ton on run of mine, and forty-five cents per ton on slack or pea, applicable only on coal consigned and billed direct from mines for delivery on Union Pacific Railroad public delivery team tracks at Nineteenth Street Yard, and so placed; and seventy-five cents per ton on all kinds of coal except run of mine, slack or pea; sixty-five cents per ton on run of mine, and sixty cents per ton on slack or pea, said rates by the filed tariffs being applicable to Union Pacific Railroad sidings, private spurs and industry tracks, and also to public delivery team tracks on diverted coal or hold-order coal, and also applicable to all tracks and locations within the Denver terminals of The Colorado & Southern Railway Company, Chicago, Burlington & Quincy Railroad Company, and The Denver & Rio Grande Railroad Company, to which switching service was accorded this defendant as provided in tariffs lawfully on file with the State Railroad Commission of Colorado, and subject also to certain other conditions, provisions and requirements, including additional charges for certain extra terminal service; all as more specifically set forth in the tariff on file with this Commission, being Union Pacific Railroad Company's tariff designated as Colo. P. U. C. No. 51, U. P. G. F. O. 13917, issued May 29, 1914, and effective July 1, 1914.

From November 23, 1914, to date—on all classes of coal except run of mine, slack or pea, sixty-five cents per ton; on run of mine, sixty cents per ton, and on slack or pea, fifty-five cents per ton.

The defendant further avers that all coal moved over its lines from Northern Colorado coal fields into Denver during the latter period, which comprises the entire period covered by the amended complaint or peti-

tion herein, has moved under rates specified in said respective tariffs and applicable at the time of such movement, and all persons for whom such transportation service has been performed have been required by defendant to pay such rates and no others; that under the law it was at all times the defendant's duty to accept and the duty of the shipper to pay said rates, and no others; and whatever freight charges, if any, have been paid by complainants, or either or any part thereof, for such transportation service during the periods aforesaid have been at such rates and no others; and that it would have been unlawful for the complainants, or either or any part thereof, to have procured, as it would have been unlawful for the defendant to have performed or furnished such service at any of said times at any other or different rate or rates whatsoever.

The defendant further avers that the first State Railroad Commission Act, being the first Colorado statute regulating common carriers, in effect at any time during the period covered by the amended complaint or petition, was approved March 22, 1907, and became effective ninety days thereafter, to-wit, on June 20, 1907, the same being Chapter 208 of the Session Laws of 1907, commencing at page 531 thereof.

The defendant further avers that on June 29, 1907, a proceeding in *quo warranto* was commenced in the District Court within and for the City and County of Denver, challenging the constitutionality, and consequent validity, of said legislative act, and that on the 29th day of July, 1907, the District Court determined that said act was in its entirety unconstitutional, and thereupon entered its judgment of ouster against the State Railroad Commission mentioned therein and the commissioners appointed pursuant thereto.

And the defendant further avers that that judgment remained in full force and effect until July 7, 1908, when, upon *remittitur* from the Supreme Court of Colorado, pursuant to a decision of that court which had been made on June 1, 1908, the judgment of the District Court was reversed and set aside, for the sole reason that *quo warranto* was not the proper remedy, the Supreme Court in no way criticising, commenting or reversing the determination which had been made by the District Court to the effect that said Act of the Legislature was unconstitutional.

The answer alleges that the opinion of the Supreme Court in this case is reported in 44 Colorado 345. That thereafter, in Case No. 22, on December 6, 1909, a petition or complaint was filed with the State Railroad Commission by the Consumers' League of Colorado, which alleged that it was a corporation, attacking said rates of eighty, seventy and sixty cents, then published and in effect covering Northern coal traffic. The defendant in said petition was the Colorado & Southern Railway Company, and the intervenors the Chicago, Burlington & Quincy Railroad Company and this defendant, and the defendant carriers thereupon forthwith raised in said cause the question of the constitutionality of the Railroad Commission Act of 1907; that on the 4th day of April, 1910, the State Railroad Commission entered its order in the proceedings specifying fifty-five, fifty and forty-five cents, respectively, as the rates to be charged by carriers for certain services in connection with the transportation of coal from the Northern coal fields into Denver. That such rates, however, did not cover, and were not intended to cover, the entire service of receiving said coal at the mines in said Northern fields, transporting the same to Denver and delivering the same to the ultimate consignee at the

latter point. That in and by the order it was provided that the new rates, thereby directed, should become effective May 10, 1910, and should remain in effect for a period of two years thereafter, said limitation being in accordance with the limitations of and by said statute it was provided, among other things, that "no order entered by the Commission shall go into effect until the expiration of five days after the entry thereof, and not then if either party shall have filed an appeal to the District Court;" that within the time provided by such statute this defendant and the other carriers interested duly filed and perfected their appeal to the District Court within and for the City and County of Denver, and that the said order of the State Railroad Commission never at any time went into effect; thereafter, on May 21, 1910, and prior to the date when the said order of the Commission would have been effective, even if such appeal had not been taken, the District Court entered its final order and judgment in said proceeding, holding and declaring said Railroad Commission Act of 1907 to be unconstitutional and wholly invalid, setting aside and annulling said order of said State Railroad Commission, and entering final judgment in said cause in favor of this defendant and the other carriers interested.

It is then alleged that no appeal was taken from the determination and judgment of the District Court, and that the same remained in full force and effect throughout the entire period during which the order of the State Railroad Commission in the Consumers' League case would, by its terms, or could, under the statute, have been in effect if the appeal to the District Court had not been taken.

It is then alleged that some time after the final order and judgment by the District Court, the Consumers'

League sued out from the Supreme Court a writ of error for the purpose of reviewing the same, and on October 7, 1910, served or caused to be served upon the defendant the writ of *scire facias* pursuant thereto; but it is averred that no application for writ of supersedeas in connection therewith was made; that said writ of error did not operate as a supersedeas, and that the final determination and judgment of the District Court remained in effect notwithstanding the pendency of the writ of error.

The defendant then states that thereafter, and on, to-wit, May 6th, 1912, the Supreme Court announced its determination upon the writ of error, to the effect that the Railroad Commission Act of 1907 was not unconstitutional and that the judgment of the District Court to the opposite effect should be reversed, the opinion of the Supreme Court being reported in 53 Colorado, page 54.

It is then stated that the decision was announced less than four days prior to the expiration of the period during which the Consumers' League order by its terms and by the statute under which it was made would have been effective if it had been permitted to go into effect at all. That thereafter petition for rehearing was filed in the Supreme Court, which was denied on July 1, 1912, and thereafter, on July 3, 1912, *remittitur* was issued, directing that said judgment theretofore entered by the District Court be set aside and a new trial had; that thereafter, pursuant to the decision of the Supreme Court and said *remittitur,* further proceedings were had in the District Court, all of which occurred long after the expiration of the period during which the order of the State Railroad Commission in the Consumers' League case would have been effective if it had been permitted to go into effect at all. Thereafter such pro-

ceedings were had therein that on February 2, 1914, the District Court, through His Honor Judge Perry, construed said order of the State Railroad Commission of April 4, 1910, determining that the rates therein specified did not cover, and were not intended to cover, all of the services rendered by the carriers in connection with the transportation of coal from the Northern Colorado mines for delivery at ultimate destination in Denver, but only a portion of said service; and determined that if the order had been permitted to go into effect during the period to which by its terms it related, the carriers would during all of said period have been entitled to charge for the transportation of said coal and its ultimate delivery in Denver various additional sums of money for services performed in connection with said transportation other than the mere line haul, and in addition to the sums mentioned in the order of the Commission, and affirmed said order of the Commission as so construed and not otherwise.

The defendant avers that, except as so construed, the order of the State Railroad Commission would not have been affirmed, but would have been reversed and set aside.

The defendant then answers that from May 10, 1912, to April 24, 1913, there was no order of the State Railroad Commission relating to said coal rates which was or could by its terms have been in effect, even if permitted to become effective; and that on or about March 20, 1913, in Case No. 34, before the State Railroad Commission, wherein Omar E. Garwood was petitioner and this defendant and other carriers were defendants, entered its order, in all respects similar and in substance the same as the order which it had theretofore entered in said Consumers' League Case No. 22, wherein and whereby, for the same service to which said

rates applied under the Consumers' League order, rates were specified of fifty-five, fifty and forty-five cents per ton on lump, mine run and slack coal respectively in carload lots, as had theretofore been done in said Consumers' League case, and in and by the order provided that said rates became effective on April 24, 1913, and remain in effect for a period of two years thereafter; that the order was in all respects the same, was subject to and necessarily bore the same construction and meaning as said prior order in the Consumers' League case as finally and conclusively determined by the District Court, but it is alleged that the order in the Garwood case never became effective.

It is then alleged that under the statute then in force an appeal to the District Court was permitted, and it was provided that the taking and pendency of such appeal should of itself stay and suspend the operation of the decision or requirement of the Commission; and that thereafter, in due time, and in accordance with the provisions of the statute in such case made and provided, the defendant carriers took their appeal to the District Court of the City and County of Denver, whereby the operation of said order was entirely suspended and said rates did not become effective, which appeal is still pending, and said matter on appeal has not yet been finally determined, although the period during which the rates specified in said order of the Commission would have been effective has heretofore expired.

Further answering, the defendant says that on November 6, 1914, in Case No. 6, before the Public Utilities Commission of the State of Colorado, which case was a consolidated case including Cases Nos. 73 and 74 before the State Railroad Commission, wherein the Consumers' League of Colorado, a corporation, was complainant, and this defendant and other carriers were defendants,

the Public Utilities Commission provided and required that on or before November 30, 1914, the carriers publish and thereafter charge, collect and receive for the transportation of coal from any of the mines in the Northern coal fields to Denver, including the switching and spotting of cars on any industry track or spur of any line of any of the defendant carriers within the limits of the City of Denver not exceeding sixty-five cents per ton, carloads, on lump coal; not exceeding sixty cents per ton, carloads, on mine run coal; and not exceeding fifty-five cents per ton, carloads, on slack coal.

And the defendant further avers that, pursuant to said order, it duly filed and published its tariff, putting in effect said rates of sixty-five, sixty and fifty-five cents per ton respectively, which rates became effective on and after November 23, 1914, and that these rates have ever since been and are now in effect.

The defendant further avers that the order of November 6, 1914, was not in any respect retroactive or retrospective in effect; that it dealt solely with transportation services rendered thereafter, and not theretofore, and did not in any manner relate to or affect any of the matters or things complained of in the amended complaint or petition in this cause.

The defendant further avers that none of the complainants herein were parties complainant, or otherwise, to the proceedings in any of the cases or proceedings relating to the Northern coal rates before the State Railroad Commission; and the defendant further avers that no orders whatsoever have been made or rates specified relating to Northern coal traffic either by the State Railroad Commission or the Public Utilities Commission, save and except as above stated.

The defendant further states that even though the orders in Cases Nos. 22 and 34 and the rates specified thereby had become effective, nevertheless, the orders, according to their meaning and intent and as finally and conclusively construed by the District Court, were such that the carriers participating in the Northern coal traffic, including this defendant, would have been at liberty to and would have imposed, in addition to said rates of fifty-five, fifty and forty-five cents per ton on the different classes of coal respectively, additional charges for the additional services necessarily performed by the carriers in respect to the transportation and delivery thereof. That the additional services for which additional charges could and would have been made were performed by this defendant in respect to each and every one of the shipments involved in this proceeding, and that the reasonable charges therefor which this defendant could and would have imposed, when added to the rates of fifty-five, fifty and forty-five cents per ton respectively, would have amounted in the aggregate, as to each shipment, to a sum at least as great as that which the complainants herein allege that they have paid under the existing and lawful tariffs in effect at the various times of said respective shipments.

Defendant further avers that the complainants herein have not, nor has either or any of them, suffered any damage whatever on account of the imposition by the defendant of all or any of the charges for transportation of the coal which are complained of in said petition or complaint, and that none of the coal has been brought into Denver for the use of said complainants, or either or any of them, as consumers, nor has it been so used, but said complainants have sold the coal to others, and that they have added to the actual cost of the coal at the mines the cost of transporting the

same to Denver, measured by the freight charges paid as aforesaid, and, in addition thereto have added all other costs of conducting said business, including a reasonable profit for themselves, all of which has been embraced in the price at which the coal has been sold to others, and thereby complainants have reimbursed themselves in full for the entire amount of any and all freight rates so charged and assessed and paid by them.

It is then alleged that the complainants conduct a daily newspaper, known as "The Denver Post," and that the business of bringing the Northern coal into Denver and selling the same has been conducted in connection with and as a department of the newspaper enterprise, and that the Denver Post has not conducted the coal business with any idea of making any profit therefrom, in a commercial sense, but solely in the interests of the public and for the purpose of furnishing coal to consumers at the lowest possible price, and at a price little if any in excess of the actual cost thereof including the cost of transporting the same from the mines to the point of ultimate delivery in Denver.

The defendant further avers that the complainants have fully recouped themselves and recovered back all costs thereof, including the freight rates assessed and paid as aforesaid, and in addition thereto a reasonable profit.

The defendant further avers that each and every of the payments of freight rates made by the complainants herein, or either or any of them, if any such payments were made, were voluntary payments and without protest.

The defendant states that in respect to all shipments of coal moving over the lines of defendant from and including August 18, 1914, to the end of the period covered by the amended complaint or petition, complainants

have not, nor has either or any of them, paid any sum or sums of money whatsoever on account of the rates or charges imposed for the transportation of the same, and that the reasonable and lawful charges assessed upon said shipments of coal during said period of time, in accordance with the lawful tariffs then in effect, amount to $21,694.00, and that the same has not nor any portion thereof been paid in whole or in part, either by the complainants herein, either or any of them, or by anyone else.

The defendant avers that until the said charges have been paid in full no complaint on account of the same and no petition for reparation in respect thereto can be entertained.

The defendant then answers that all shipments have been made by it in accordance with the lawful and published tariffs, and that to allow these complainants or any of them a refund or repayment of any portion of said charges would constitute discrimination against numerous other persons who have been required to pay like rates, and that discrimination would inevitably result from such reparation.

The defendant then states that the major portion of the claims or causes of action or items thereof attempted to be set forth in the amended complaint or petition accrued more than one year prior to the commencement of this proceeding, and that the same are barred by the statute of limitations of this state in such case made and provided, and relating to the recovery of a penalty; and that a large portion of the claims or causes of actions or items thereof attempted to be set forth in the amended complaint or petition accrued more than two years prior to the commencement of this proceeding, and are barred by the statute of limitation, and that this

Commission is without power, authority or jurisdiction to consider or determine the same.

The defendant avers that a large portion of the claims or causes of action or items thereof attempted to be set forth in the amended complaint or petition, accrued more than three years prior to the commencement of the proceeding, and that the same are barred by the statute of limitations of the state in such case made and provided.

It further avers that a large portion of the claims or causes of action or items thereof attempted to be set forth in the amended complaint or petition, accrued more than six years prior to the commencement of this proceeding, and that the same are barred by the statute of limitations of this state in such case made and provided.

The defendant further avers that a large portion of the claims or causes of action or items thereof attempted to be set forth in the amended complaint or petition, accrued prior to the date when the Act of the Legislature of Colorado became effective, by which the Public Utilities Commission of the State of Colorado was created, and from which it derives its powers and pursuant to which it acts, which Act of the Legislature was approved April 12, 1913; and that this Commission is without power, authority or jurisdiction to deal therewith, or to afford any relief whatever in respect thereto, or entertain any complaint or petition directed thereat;

The defendant further avers that a large portion of the claims or causes of action or items thereof attempted to be set forth in the amended complaint or petition, accrued prior to the date when the Act of the Legislature of Colorado became effective, providing for the State Railroad Commission, prescribing and defin-

ing its duties, etc., passed at the extraordinary session of the Legislature which convened at Denver, August 9, 1910; and that this Commission is without power, authority or jurisdiction to deal therewith, or to entertain a petition or complaint in respect thereto, or to afford any relief whatsoever.

The defendant further states that a large portion of the claims or causes of action set forth in the amended complaint or petition, accrued prior to the date when the Act of the Legislature became effective, which provided for the regulation of common carriers in this state and for the creation of a State Railroad Commission, which act was approved March 22, 1907; and that the Commission is without power, authority or jurisdiction to deal therewith, or entertain any complaint or petition in respect thereto, or to grant any relief whatsoever thereon.

It is then alleged that the Post Printing & Publishing Company, by its articles of incorporation, is limited to the printing and publishing and selling of a daily and weekly newspaper in the City and County of Denver, and was without power to engage in the coal business; and that the said coal business was conducted solely in the interests of F. G. Bonfils and H. H. Tammen and The Denver Post Coal & Iron Company; that the Post Printing and Publishing Company is therefore a stranger to all and each of the transactions and is in no wise connected with any of said shipments, and can not recover back any of said sums of money from the defendant.

On the 6th day of June, 1916, the parties in this cause appeared before the Commission in its hearing room and presented arguments pertaining to the many legal questions involved. It at once became apparent to the Commission that many important legal proposi-

tions must be ultimately determined by the Supreme Court of the State of Colorado, before the conclusions of this Commission in this cause could become effective. If the Commission should at this time overrule the contentions of the defendant and proceed herein, no ruling on the law points involved could be secured from the Supreme Court until the Commission had completed its investigations and made a final order or final adjudication herein. In the very nature of things, no final order or final adjudication can be made in these proceedings until a very large amount of effort and money have been expended, if certain of the legal contentions of the defendant are correct.

On the other hand, if the Public Utilities Commission, for the specific purpose of assisting to secure a speedy ruling from the Supreme Court, should dismiss these proceedings, any party aggrieved may, under the provisions of Section 52 of the Public Utilities Act, apply to the Supreme Court for a writ of review for a final determination of all points of law decided by this Commission in this proceeding. Under the provisions of Section 52 of the Public Utilities Act, such writ of review may be heard by the Supreme Court on the day the writ is returned. Hence, if this course is followed, a speedy determination of the issues of law by the Supreme Court can be had.

The Commission is stating the situation with absolute frankness, so that the parties may understand clearly the position of the Public Utilities Commission.

Other reparation complaints have been filed with this Commission, which embody the same legal questions as are herein presented, and it is proper that these cases should not be heard by the Commission until this cause is determined by the Supreme Court. All parties to this action have notified the Commission of their in-

tention of appealing to the Supreme Court from the conclusions of this Commission for final determination of the legal questions involved, and it is therefore the opinion of the Commission that all questions presented by the pleadings of the parties to this cause requiring a conclusion of this Commission as to points of law, should be determined by this Commission at this time for the purpose of a quick and speedy review by the Supreme Court of the State of Colorado.

The following propositions requiring a decision on points of law have been presented to the Commission:

1. *The Statute of Limitations.*

(a) This proceeding was commenced on January 11, 1916, when the amended petition of the complainants was filed. This is expressly conceded by the complainants, which concession is of record herein. Therefore, it would appear the applicable statute of limitations, if any, was first interrupted on that date. It is contended by the defendant in this cause that if, as claimed by counsel for the complainants, petitioners are entitled to the exact difference between a rate which the Commission may determine to be reasonable for any definite period and the rate charged, regardless as to whether they have actually suffered damage to that extent or at all, then the action is penal in its nature, recovery being allowed by way of punishment to the carrier instead of compensation to the shipper. It is the contention of the defendant that in the event the Commission should decide that the complainants are entitled to the difference between a rate which may be found by the Commission to be reasonable and the higher rate actually charged, then the one year statute of limitations should apply, being Mills' Annotated Statutes, Revised Edition, Section 4634; Revised Statutes 1908, Section 4068. If this proposition be correct, then the

cause must be dismissed by the Commission, for the reason that the complainants ask for no reparation during the period of one year just preceding the date of the filing of the complaint, January 11, 1916, all claims relating to shipments which occurred more than one year prior to January 11, 1916, being barred.

(b) The next contention of the defendant applicable to the statute of limitations is that if the action is not penal in its nature, then the two year statute of limitations, found in the Public Utilities Act, Chapter 127, Session Laws of 1913, and designated as Section 56, controls:

> Section 56. (a) When complaint has been made to the Commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the Commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the Commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection, provided no discrimination will result from such reparation.
>
> (b) If the public utility does not comply with the order for the payment of reparation within the specified time in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the Commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the Commission. The remedy in this section provided shall

be cumulative and in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey the order or decision of the Commission.

If this proposition be correct, all claims relating to shipments which occurred more than two years prior to January 11, 1916, are barred.

(c) The next contention of the defendant pertaining to the statute of limitations is that in the event the Commission should conclude that the one year statute and the two year statute are inapplicable, then the three year statute of limitations applies, and all claims relating to shipments which occurred more than three years prior to January 11, 1916, are barred. This statute is Section 4066, Revised Statutes 1908.

(d) It is the contention of the complainants that no statute of limitations prohibits the Commission from determining the amount of reparation due the complainants, but that should the Commission determine that a statute of limitations does apply, then the six year statute of limitations, Section 4061, Revised Statutes 1908, is applicable.

2. *Difference between reasonable and unreasonable rate, or actual damage.*

The complainants contend that should the Commission determine a rate charged to be unreasonable for any particular period, then the Commission should grant reparation in an amount equalling the difference between the reasonable rate so found by the Commission, and the rate actually charged by the carrier, without the submission of evidence by either party for the consideration of the Commission as to the question of actual damage to the shipper. It is the contention of

the defendant that this is not the proper test, but that the Commission should consider and determine the amount of reparation upon the actual damage suffered by the shipper, in the event the Commission determines that an unreasonable rate has been charged by the defendant carrier during any particular period.

3. *The decisions of Railroad Commission of the State of Colorado.*

It is contended by the complainants that the decisions made by the Railroad Commission of the State of Colorado in the Garwood case and the Consumers' League case, are binding upon the Commission and that the amount of reparation to be awarded the complainants by the Commission for certain periods, is the difference between the rates established by the decisions of the Railroad Commission in these cases, and the rates actually charged by the defendant carrier during the periods that the decisions of the Railroad Commission were stayed or suspended, as above stated, by reason of appeals taken by the carriers to the District Court and thence to the Supreme Court of the State of Colorado. The defendant contends that these decisions are not binding upon the Commission, but, on the other hand, should not even be considered by the Commission in its endeavor to determine reasonable rates for the shipments involved. There is also presented the question as to when the several causes of action accrued. Other less important matters requiring legal conclusions of the Commission were also raised by the defendant carrier, in its demurrer and answer in this cause.

For the reasons above set forth, it is ordered by the Commission:

ORDER.

1. That the one year statute of limitations found in Mills' Revised Statutes, Revised Edition, Section 4634; Revised Statutes 1908, Section 4068, is controlling upon this Commission in determining this cause of action, and therefore, all claims or causes of action which accrued more than one year prior to January 11, 1916, are barred.

2. It is the opinion of the Commission that if the one year statute is inapplicable and does not control the action of this Commission, the two year statute of limitations found in the Public Utilities Act of the State of Colorado (Section 56, Chapter 127, Session Laws of 1913), and set forth in the opinion of this Commission, is controlling upon the Commission, and therefore, causes of action accruing prior to the two year period preceding January 11, 1916, are barred.

3. It is the opinion of the Commission that if the one or two year statutes of limitations do not control the Commission in its action in this cause, then the three year statute of limitations, Section 4066, Revised Statutes of 1908, is controlling upon the Commission, and causes of action accruing prior to the three year period preceding January 11, 1916, are barred.

4. It is the opinion of the Commission that the amounts of reparation to be granted to the complainants in the event the Commission has the authority to grant reparation in this cause, should be the difference between the rates as may be found by the Commission in this cause to have been reasonable at the time of the transportation service performed in connection with said shipments, and the rates actually charged and collected by the carrier, and that no proof of actual damage

need be presented by the complainants to the Commission for its determination of the amount of reparation.

5. It is the opinion of the Commission that the orders of the Railroad Commission in the Garwood case and the first Consumers' League case do not establish rates which the Commission must in this cause assume to be reasonable rates for the periods prescribed by these orders, but that the Commission may consider, among other things, the matters contained in these orders in determining reasonable rates for the periods of time there prescribed as their effective dates.

6. It is the opinion of the Commission that each shipment constitutes a separate cause of action and that the cause of action accrues at the date of the delivery of the shipment.

7. All other objections raised by the defendant carrier, either to the jurisdiction of the Commission or of the sufficiency of the complaint of the complainants are overruled.

IT IS THEREFORE ORDERED, That the complaint of the complainants be and is hereby dismissed. Five days is hereby given to the parties to file petition for rehearing if they so desire.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 3d day of May, 1917.

APPENDIX A.

Opinion, Rulings on Evidence and Findings.

On December 6, 1909, the plaintiff filed with the State Railroad Commission a petition alleging that the defendant was a common carrier engaged in the transportation of passengers and property, including coal for fuel, between the town of Louisville, in the County of Boulder, and the City and County of Denver, that Louisville is twenty miles distant from Denver, that the defendant charged and collected upon all coal in carload lots from Louisville to Denver as follows, viz.: For the carrying of lump coal, 80 cents per ton; for the carrying of mine run coal, 70 cents per ton, and for the carrying of slack coal, 60 cents per ton; that such charges and each of them were unjust, unreasonable and exorbitant and in violation of the act regulating common carriers; that a just and reasonable rate for the service would be as follows, viz.: for carrying lump coal, 50 cents per ton; for carrying mine run coal, 45 cents per ton, and for carrying slack coal, 40 cents per ton; and praying, that the defendant be required to make answer to the complaint, that it be required to desist from charging the alleged unreasonable rates, and that the Commission be ordered to fix just and reasonable maximum rates and grant such other relief as the Commission might deem necessary in the premises.

2. On December 24, 1909, the defendant filed its answer. On January 25, 1910, the C., B. & Q. R. R. Co. filed its petition in intervention; on February 7, 1910, the Commission made and entered an order allowing the C., B. & Q. R. R. Co. to intervene; on February 11, 1910, the U. P. R. R. Co. filed its petition in intervention, and on February 21, 1910, the Commission made and entered an order allowing the U. P. R. R. Co. to intervene. On February 25, 1910, the U. P. R. R. Co. filed an answer,

which is, *mutatis mutandis,* the same as the answer filed by the C. & S. Ry. Co. No separate answer was filed by the C., B. & Q. R. R. Co., but it adopted the answer of the C. & S. Ry. Co.

3. The hearing before the Commission lasted from and including March 7 to and including March 23, 1910, the testimony covering 177 pages of typewritten matter. On April 4, 1910, the Commission made and entered the following order, viz.:

"It is ordered that the defendant and intervenors * * * be and they are hereby severally notified to cease and desist on or before the 10th day of May, 1910, and, during the period of two years thereafter, abstain from charging, demanding, collecting or receiving for the transportation of lump coal, mine run or slack coal from the mines on the defendants' and intervenors' lines, in and around Louisville, Lafayette, Marshall, Erie and the Dacono Frederick District, in the Counties of Boulder and Weld and in what is known as the Northern Colorado Coal Fields to Denver, in the State of Colorado, their present rates of 80 cents per ton on lump coal, C. L. (carload lots), and of 70 cents on mine run, C. L., and 60 cents per ton on slack, C. L., and publish and charge on or before the 10th day of May, 1910, and during the period of at least two years thereafter collect and receive from said mines to Denver, and for the transportation of lump coal from said mines to Denver, a rate not exceeding 55 cents per ton, C. L., and on mine run coal, a rate not exceeding 50 cents per ton, C. L., and on slack coal, a rate not exceeding 45 cents per ton, C. L., and said defendants are hereby authorized to make said rates effective upon three days' notice to the public and to the commission.

4. From this order the defendant and intervenors appealed to this court, the papers on appeal being filed herein on April 13, 1910. On May 21, 1910, the defend-

ant and intervenors filed a motion to dismiss the case, which was granted apparently upon the day on which it was filed. The case was taken to the Supreme Court upon a writ of error, where the above mentioned judgment of this court was reversed and the case was remanded for further proceedings. The case appears in the Supreme Court as No. 7203, Consumers' League of Colorado vs. The C. & S. Ry. Co. et al., and is reported in 53 C. 54.

5. After the case was remanded there was a trial lasting from and including the 7th day of October to and including the 23rd day of October, 1912, and resulting in a decree in favor of the plaintiff on October 28, 1912, and on November 6, 1912, the last mentioned decree was vacated and a new trial granted.

6. All of the foregoing proceedings were had before I became judge of this court. Since then there has been a second trial preceded by an argument and the determination of a motion on the part of the plaintiff to require the defendant and intervenors to assume the burden of proof, and I am now called upon to make my findings of fact and law and to enter a decree based upon such findings.

7. The statute in force on December 6, 1909, when the petition was filed with the commission, is to be found in the Session Laws of 1907, Chapter 208, pages 531 to 545. This statute remained in full effect until February 15, 1911, when an amendatory statute, to be found in the Session Laws of 1910, Chapter V, pages 45 to 64, became operative. The sections of the Act of 1907 to be considered are 2, 3, 4, 5, 6, 7, 13, 16, 21, 22, 23, 24 and 25, and the section of the law of 1910 to be considered is Section 15.

8. The answers of the carriers consist of a denial of all of the allegations of the petition and of the following special demurrers, viz.: (1) that the plaintiff has

no legal capacity to sue, (2) that the commission had no authority to fix rates, and (3) that the act of 1907 is unconstitutional and void. Each of these special demurrers was considered and overruled by the Commission, and my predecessor based his decision of May 21, 1910, solely upon the legal sufficiency of the third special demurrer.

9. The carriers contend that the commission had no right to disturb the "going rates," except on the ground that they were unjustly discriminatory or unduly preferential, and consequently no right to change the "going rates" and substitute its own rates therefor solely on the ground that the "going rates" were unreasonable, and the substituted rates are reasonable, and they called my attention to the fact that the words "unjust" and "unreasonable" do not appear in Section 15 of the Act of 1907 and first appear in the corresponding section, viz.: Section 15 of the amendatory Act of 1910. In 53 C. 54, the Supreme Court not only held, that the Act of 1907 was constitutional, but it also considered and overruled this identical objection. Assuming that the question is still open or that I may have wholly misunderstood the ruling of the Supreme Court on the subject, I call attention to the fact that there is manifestly a grammatical error in line 11 of Section 15 of the act of 1907, consisting in the omission of the conjunction "or" between the word "prefential" and the word "in," that, unless this conjunction is understood or supplied, either the section does not make good sense or the words "unjustly discriminatory or unduly preferential, in violation of the provisions of the act" must be held to be synonymous or to include rates which are unreasonable within the meaning of other sections of the act, notably Sections 2, 3 and 5, and to the further fact that this error was perceived by the framers of the amendatory act of 1910, who corrected the same by inserting the words "or

otherwise" between the word "prejudicial" and the word "in" in line 14 of Section 15 of the Act of 1910. The third special demurrer of the carriers was, of course, expressly overruled by the Supreme Court in 53 C. 54. The first special demurrer was not urged when the case was being considered upon the writ of error, it has not been urged before me. I understand that it has been abandoned. That it is without merit appears from the language used in Section 13 of the Act of 1907, which does not require the petitioner to allege or prove that he has any pecuniary interest in the controversy, and was undoubtedly intended to confer jurisdiction upon the Commission to act in the premises whenever its attention is called to an alleged violation of the law by any member of the community, and this also appears from the fact that a great number of suits which have been adjudicated and are now pending before the Interstate Commission and the railroad and other like commissions of the several states have been instituted by associations similar to the plaintiff.

10. The carriers contend, that the commission has made no findings upon which to base its order and that its order is therefore void. The record of the Commission's decision consists of its opinion, of its findings of fact and law and of its order, and while the paper may not be drawn up with technical precision, and while the only specific finding as to the old rates which it contains refers to lump coal, the opinion, findings and order taken together show that the commission must have held that the rates on mine run and slack coal were also unreasonable or that, if a reduction on lump coal should be made, a proportionate reduction on these lower grades should also be made. A court or other tribunal is under no obligation to make any special findings, and its decree or order is valid unless inconsistent with the findings which it actually makes.

11. The carriers have called my attention to the facts that under Section 15 of the Act of 1907, the order of the Commission could not continue in force for a longer period than two years, that the order in this case was to expire and did expire on May 10, 1912, that, if the rates were excessive the excess was paid by the shippers and that the shippers have been fully reimbursed by the consumers paying a price that was enhanced to the extent of the excess. I am not called upon to decide whether, if the order of the Commission shall ultimately be sustained, the shippers will not have a cause of action against the carriers for the reason that they have been fully reimbursed by the consumers, or that the consumers who have reimbursed the carriers will have no such cause of action for the reason that they have paid nothing to and have had no contractual relation with the carriers, nor am I called upon to decide what will be the effect of such an ultimate determination of the case. All that need be said in this connection is, that, if the carriers can violate a lawful order of the Commission and by the taking of appeals and the suing out of writs of error suspend the operation of the order until it expires by limitation, the law is a dead letter and should be repealed.

12. At the opening of the argument, and after all of the evidence had been received, counsel for plaintiff cited Luria vs. United States for the purpose of inducing me to change my ruling as to the party upon whom rested the burden of proof. Section 15 of the naturalization act of 1906 provides that, if an alien, who has secured a certificate of citizenship under that act shall, within five years after the issuance of the certificate, return to the country of his nativity or go to any other country and there take up a permanent residence, such fact shall be considered as *prima facie* evidence of a lack of intention on the part of the alien to become a citizen at the time

that he made application for the certificate of citizenship. During the progress of the bill through Congress there was, by amendment, added to the section a clause to the effect that the section should apply not only to certificates issued under the provisions of the Act of 1906, as undoubtedly was the full scope of the section as originally drafted, but also to certificates which had been issued theretofore. The Supreme Court held that, under the prior naturalization act, an intention of permanent residence in the United States after obtaining the certificate of citizenship was impliedly required, that Section 15 of the Act of 1906 referred not only to certificates of citizenship obtained under that act, but also to certificates of citizenship obtained under the prior act. It quotes from its decision in M. & C. R. R. Co. vs. Turnispeed, 219 U. S. 35-42-43, that the legislative presumption of the existence of one fact upon the proof of another fact does not constitute a denial of due process of law or a denial of the equal protection of the law forbidden by the Fourteenth Amendment, where there is a rational connection betwen the fact proven and the fact to be presumed and where therefore the inference is not arbitrary, and it also quotes with approval from Cooley's Constitutional Limitations, 7th edition, 524, to the effect that no one has a vested right in any rule of evidence, and that the legislature, even in those states where retrospective laws are forbidden, may change the rules of evidence. The motion to determine upon whom rested the burden of proof in the case at bar was argued in June, 1913, and the Luria case was not decided until October 20, 1913. I can find nothing in the opinion rendered by me on July 21, 1913, which is in conflict with the law laid down in the Luria case. I called attention to the right of the legislature to pass a statute making proof of one fact *prima facie* evidence of the existence of another, notwithstanding the constitutional inhibition against

retrospective legislation. My opinion was based upon the propositions that retrospective legislation, whether within the constitutional inhibition or not, was not favored, that it was always presumed that a statute should act retrospectively (*prospectively?*) in the absence of language clearly indicating a contrary intention upon the part of the lawmaking body, and there was not only nothing in the statute of 1910 manifesting an intent that it should have a retroactive operation, but that, from the statute itself, it was apparent that its operation was intended to be prospective and that, as it would work a hardship upon the carriers to give a retrospective operation to the statute of 1910, which was passed after the trial before the Commission by making the adjudication of the Commission *prima facie* evidence of its correctness upon an appeal to this court, this was an additional reason for presuming that the legislature intended the new statute to act prospectively and not retrospectively. Even if I were convinced that I had committed error in rendering that opinion, I could not now correct the error by reversing myself, for the reason that the trial has been had upon the law of the case as laid down in that opinion. The utmost that I could do would be to order a retrial and have the case tried upon the correct rule, but I am satisfied that I committed no error and I adhere to my decision.

13. All the courts, state and federal, agree that an order of a commission fixing rates is a legislative and not a judicial act, that the circumstance that the commission is obliged to accord to the parties a hearing and to receive and consider evidence does not change the character of the act, that the order of the commission is, in effect, a statute that, when the order is to be reviewed by a court, the same presumptions prevail in regard to its constitutionality as prevail in regard to the constitutionality and validity of any other legislative act, that

the order is not only *prima facie* constitutional and valid, but that its supposed unconstitutionality and invalidity must, as in the case of any other legislative act, be shown beyond a reasonable doubt and that, when the order is attacked by the carrier, it cannot be set aside by the court, except upon the ground that it has fixed rates which are confiscatory, and therefore in contravention of the constitution. While Section 21 of the Act of 1907, which requires a trial *de novo* upon appeal, does not permit the court to make a new rate or to do more than to pass upon rates fixed by the commission, it confers upon the court the legislative function of determining for itself whether what is in effect a statute shall be continued or repealed and, according to the plain meaning of the section, in reaching this determination, the court has to indulge in no presumption as to the constitutionality and validity of the statute fixing the rate. It must not only not hold that the statute is *prima facie* constitutional and valid and require that the party attacking it shall show its supposed invalidity and unconstitutionality beyond a reasonable doubt, but it must hold that the statute is to be assumed to be invalid and unconstitutional until the party who asserts its validity and constitutionality shall, by a preponderance of the evidence, not only prove that the rates fixed are not confiscatory and therefore not in contravention of the constitution, but also satisfy the trial judge that they are reasonable as well as not confiscatory. The only case cited to me which construes a statutory provision similar to Section 21 of the Act of 1907 is Steenerson vs. G. N. Ry. Co. (69 Minn. 353), 72 N. W. 512, where the court held that such a provision would be unconstitutional and void. In 52 C. 54, the Colorado Supreme Court decided that the Act of 1907 was constitutional as a whole and that the Commission might change going rates that were unreasonable and substitute reasonable rates therefor, although the going

rates did not appear to be unjustly discriminatory or unjustly preferential, but it did not decide that Section 21 of the Act of 1907 was constitutional or that the trial court, in passing upon the rates fixed by the Commission, could do more than determine whether they were confiscatory. As the late constitutional amendment known as "Recall of Judicial Decisions" in terms prohibits a trial judge from passing upon the constitutionality of a statute, as Section 21 of the Act of 1907, when relied upon by the carriers is not violative of the federal constitution and as the section had not been repealed or amended by the Act of 1910, I held at the instance of the defendant and intervenors and over the objection of the plaintiff, that the plaintiff had the burden of proving by a preponderance of the evidence, regardless of the finding and order of the Commission, that the rates fixed by the Commission were not only not confiscatory, but also that they were not unreasonable, and it was upon this theory that the case was tried and, so far as this court is concerned, it is upon this theory that the case must be decided.

I. C. C. v. L. & N. R. Co., 102 F. 709.
I. C. C. v. L. & N. R. Co., 118 F. 613.
D. M. R. Co. v. M. R. Co., 203 F. 864.
M. & St. L. R. Co. v. Minn. et al., 186 U. S., 256, 264, 270.
I. C. C. v. U. P. R. Co., 222 U. S. 541, 546, 547.
L. & N. R. Co. v. Garrett, 34 S. C. C. R. 48, 50, 52.
W. & L. T. R. v. Croxton, 31 L. R. A. (O. S.) 177, case note.
Asher v. H. W. L. & P. Co., 61 L. R. A. (O. S.) 52, case note.
Madison v. M. G. & E. Co., 8 L. R. A. (N. S.) 529, case note.

14. Although one of the parties to a suit may have the burden of proof when the trial commences, it is pos-

sible for him to shift the burden to his adversary during the progress of the trial. The following extract from Stephens Evidence, Art. 95, states the law on the subject, viz.: "The burden of proof in any proceeding lies at the first on that party against whom a judgment of the court would go if no evidence at all were produced on either side, regard being had to any presumption which may appear from the pleadings. As the proceedings go on the burden may shift from the party on whom it rested at the first by his proving facts which raise a presumption in his favor." The questions to be determined are (1) whether the plaintiff has shifted the burden of proof to the defendant and intervenors, (2) whether the defendant and intervenors have sustained this burden thus shifted, or (3) whether the plaintiff, independently of this rule as to the shifting of the burden of proof, has, by a preponderance of the evidence, established its case.

15. The average revenue per ton per mile, including long and short hauls, is taken by the courts as a basis of comparison for the purpose of determining whether a rate upon a given commodity is or is not unreasonable. This information is called for in the reports required by the Interstate Commission and by the Railroad Commission of this state. It is obtained by dividing the total freight revenue by the number of tons carried one mile. Although the Railroad Commission of this state required the carrier to show not only its revenue on the entire line, which includes interstate and intrastate traffic, but also to show separately its revenue on intrastate traffic alone, the courts, in applying rules about to be considered, do not restrict themselves to a comparison of the rate upon a given commodity with the average revenue per ton per mile on all strictly interstate traffic but compare that rate with the average revenue per ton per mile on all interstate and intrastate

traffic combined, because the average revenue in both instances is derived from voluntary rates, that is to say, rates fixed by the carriers themselves and such rates are by the courts presumed to be reasonably remunerative. If the revenue per ton per mile on a given commodity derived from the application of the rate fixed by the carrier is more than the average revenue per ton per mile on all traffic, or if the revenue per ton per mile on a given commodity derived from the application of the rate fixed by a commission is lower than the average revenue per ton per mile on all traffic, these are circumstances to be taken into account by the court in determining which rate is reasonable. The circumstances above mentioned raise presumptions against the carriers when the rate for carrying a commodity of a lower grade than the average commodity is compared with the average rate per ton per mile on all traffic and impose upon the carrier the burden of proving the reasonableness of its own or the unreasonableness of the commission's rate. Coal is practically the lowest graded of all commodities and certainly it is the lowest graded of all commodities hauled by the carriers in the case at bar, it is a prime necessity, the demand for it is constant and increasing, its supply is inexhaustible, the railroad can with certainty count upon a permanent revenue from carrying it, the revenue to be derived from carrying it is often the principal and sometimes the only inducement to build and operate a road, it requires no special equipment, it is loaded into the cars at one end by the shipper and unloaded at the other end by the consignee without any expense to the carrier, it is practically indestructible and it has such a low value when its mere bulk is measured in dollars and cents that in undertaking its shipment the carrier incurs the minimum of financial liability.

T. M. C. Logan, etc., v. C. & N. W. R. R., 2 I. C. C. R. 604, 612.

James & Abbott v. C. P. Ry., 5 I. C. C. R. 612, 628.

Denison L. & P. Co. v. M. K. & T., 10 I. C. C. R. 337, 338.

C. Y. P. Assn. v. I. C. R. Co., 10 I. C. C. R. 505, 535, 542, 543.

Bd. of Trade, etc., v. N. & W. Ry., 16 I. C. C. R. 12, 16.

Rainey & Rogers v. St. L. & S. F. R. R., 18 I. C. C. R. 88, 89, 90.

Idaho Com. Club v. O. S. L. R. R., 18 I. C. C. R. 562, 564.

M. & St. L. R. Co. v. Minn., etc., 186, U. S. 256, 266.

A. C. L. R. R. v. Florida, 203 U. S. 261, 270.

TABLE A.

EXTRACTS FROM ANNUAL REPORTS FURNISHED BY THE CARRIERS TO THE COMMISSION.

		C. & S. Mills.	C. B. Q. Mills.	U. P. Mills.
Average receipts per ton per mile on all kinds of traffic for entire system (Annual Reports, Page 93, Item 17)	1910	9.31	7.83	10.11
	1911	9.11	8.16	9.78
	1912	8.95	7.52	9.39
Average for each Company for three years		9.12	7.84	9.76

Average of all companies, 8.91 Mills.

		C. & S. Mills.	C. B. Q. Mills.	U. P. Mills.
Average receipts per ton per mile on all kinds of traffic for all Colorado traffic (Annual Reports, Page 93a, Item 17).	1910	Not	8.82	10.99
	1911	Giv-	8.89	10.27
	1912	en	8.82	9.63
Average receipts for each company for three years ..		....	8.85	10.30

Average for two companies, 9.58 Mills.

AVERAGE RECEIPTS ON NORTHERN COAL.

	Average Receipts per ton for entire haul	Average Receipts per ton per mile. Old Rate Mills	Com. Rate Mills
C. & S.			
Old rate	70.16 cents		
Com. rate	50.08 cents		
Average haul	22 miles	31.89	22.76
C. B. Q.			
Old rate	Not given		
Com. rate	50 cents		
Average haul	24 miles	Not given	20.83
U. P.			
Old rate	70.8 cents		
Com. rate	50.4 cents		
Average haul	26.9 miles	26.32	18.73
Average		29.10	20.77

From the foregoing tables it appears, that, under the old rates the consumers of the coal in controversy were required to pay for the transportation of the same 3¼ times per ton per mile and that, under the new rates, they are still required to pay more than two times per ton per mile the average rate per ton per mile charged

to all consumers of all traffic, as will appear by dividing 29.10 mills, the average old rate, and 20.77 mills, the average new rate, by 8.91 mills, the average revenue per ton per mile on all traffic.

17. In justification of the old rates and, as reasons for setting aside the new rates, the carriers have attempted to establish the following defenses, viz.:

First: That the cars used in the traffic are held for a great length of time, for which the carriers do not receive adequate compensation under the demurrage provisions of the statute.

Second: That, owing to the fact that the greater part of the cars used in this traffic have to be hauled to the mines empty, the carriers fall far short of obtaining the maximum efficiency of their equipment.

Third: That the cars used in this traffic cost considerably more than the average in the matter of repairs.

Fourth: That under the old rates traffic has moved freely and has constantly increased which demonstrates that the service must have been profitable to the public.

Fifth: That the rates between the three roads are competitive.

Sixth: (By the C. & S.) that coal constitutes the greater part of its tonnage and that, as the carrier is dependent upon coal for a great part of its revenue, it is entitled to make a higher rate.

Seventh: That the haul is a short haul.

Eighth: That the coal in question is lignite, that lignite coal slacks easily, that this property of the coal necessitates the consignment of the greater part of it to "shippers' orders," that, when coal is consigned to shippers' orders, it has to be held on the carrier's "hold track," that this holding of the coal on the hold track not only requires the carriers to use a part of their terminal facilities for storage purposes, but also requires extra services in re-consignments and switching, and

Ninth: That, in the old rates fixed by the carriers, there was and, in the new rates fixed by the Commission, there is included a charge of 20 cents for "absorbed switching."

18. In regard to the first defense. The statutes of this state have prescribed a sum denominated demurrage, which the shipper or consignee must pay for withholding the carriers' cars after the expiration of the free time allowed by law. In prescribing this sum the legislature has declared, that it is reasonable compensation to the carrier and it cannot be declared to be unreasonable except upon the ground, that this part of the statute is unconstitutional. As the sum prescribed by the legislature is reasonable compensation for withholding the cars of the carriers, they may not directly make an additional charge for such withholding nor may they accomplish the same indirectly by fixing rates which admittedly include an additional charge for such withholding. It will be seen in the discussion of the 8th and 9th defenses that, if demurrage is to be considered as a terminal service at all, it is not an incidental but an extra terminal service, and it is not to be considered by the carriers in fixing their rate and was not considered by the Commission in making its order. Being an extra, and not an incidental, terminal service, this case is distinguished from the case suggested by one of the counsel for the defendant and intervenors, viz.: where the legislature makes the haulage service more expensive to the carrier and a commission, in fixing the rate, does not take this extra expense into consideration. The following would be instances of the case supposed by counsel, viz.: where the legislature shortens the hours of labor, requires additional train crews, increases the pay or limits the tonnage to be carried per car or per train and the commission, in fixing its rate, does not take these matters into consideration. In this case the carriers do not con-

tend, that the demurrage is not an adequate compensation for the withholding of their cars, in fact they admit, that it is a penalty which implies, that it is more than adequate compensation and the evidence shows, that, when cars are withheld under circumstances not permitting the collection of demurrage, the price paid for the withholding of the same is about one-half of the demurrage charge; all that the carriers claim is, that, for some undisclosed reason, they fail to receive what they are entitled to collect. If this defense were allowed it would have the effect of permitting the carriers to collect demurrage from a shipper or a consignee who has not returned to the carriers their cars before the expiration of the free time allowed by law and that such a proceeding would be unjust and inequitable will not be denied.

19. While the matters alleged in the second and third defense are true in fact, the hauling of empty coal cars to the mines and the extra expense of keeping coal cars in repair are matters incidental to all coal traffic and are more than compensated by the considerations set forth in paragraph 15, *supra*, in regard to characteristics of low grade traffics. It was claimed at the trial, that the slacking qualities of the northern coal made it necessary to carry the lump coal in box cars, that there is a device known as a box car loader which batters the ends and sides of the car, thereby adding to the cost of keeping it in repair, but it was also shown, that, in the southern fields, where the coal does not readily slack, the C. & S. sought to compel all shippers to use box cars which were to be filled by these loaders.

20. I can see nothing in the fourth defense. Coal being a prime necessity, the demand for it necessarily increases with the growth of a city and the citizens pay the rate demanded by the carriers not because they are reasonable or unreasonable but because they are compelled to pay them. "The test of the reasonableness of

a rate is not the amount of the profit in the business of a shipper or manufacturer, but whether the rate yields a reasonable compensation for the service rendered."

C. T. P. Assn. v. I. C. R., et al., 10 I. C. C. R. 505 at 536, 6.

Com. C. of St. L. v. A. T. & S. F., 19 I. C. C. R. 218 at 220, 222.

B. C. of C. v. C., B & Q., 19 I. C. C. R. 71 at 75.

21. The matters alleged in the fifth defense are true to the extent, that, the three carriers are competitors for the business, and that there is no evidence of any combination between them, except, that they have severally decided if not jointly agreed upon the same lump rates which include a terminal service from which the defendant obtains a large revenue, and which imposes a corresponding burden upon the intervenors. Competition is presumed to have a tendency to reduce not only rates but also the price of commodities and upon this presumption are based the Interstate Commerce Act and all Federal and State Acts for the regulating of rates and the prevention of trusts and monopolies. If it is a fact that the three carriers in this case are competitors, their competition has not had the effect of lowering rates on the northern coal which have remained the same since September 25th, 1895, with the exception of what seems to have been the period of a rate war during three months of 1896. This case does not present the situation of rival roads charging the same rate for the hauling of the same commodity over different haulages or under different conditions nor the case of the charging the same average rate for the conveying of a commodity from rival shippers or producers and it is only in these cases that the question of competition becomes material.

Rainey & Rogers v. St. L. & S. F. R. R., 18 I. C. C. R. 88 at 89.

B. T. M. Co. et al. v. W. R. R., 19 I. C. C. R. 598 at 599.

I. C. C. v. L. & N. R. R., 118 F. 613.

Hooker v. I. C. C. et al., 188 F. 242.

22. The matters alleged in the sixth defense are true in fact, but the law applicable to the facts is exactly contrary to what it is conceived to be by counsel. The general rule is, that the greater the tonnage of an article of traffic the lower the rate should be, and no rule is more firmly grounded in reason and more universally recognized by the carriers. Furthermore, in determining the reasonableness of a rate, the court is to consider only the value of the service to the public, and the cost of, and the compensation to be derived from the rate by the carrier.

C. T. P. Assn. v. I. C. R. R. et al., 10 I. C. C. R. 500 at 509, 510, 546.

R. R. Com. cases, 116 U. S. 307, 325, 331 (29 L. Ed. 636, 642, 644).

23. The matters stated in the seventh defense are true in fact. Differences in the length of hauls is always to be taken into consideration, and the carrier may within certain limits charge more per ton per mile for a short haul than for a long haul but it is only when it is necessary to compare the rates on different hauls, that these rules are of service. The general statement that a certain haul is a short haul, and that carriers may charge more per ton per mile for a short haul than per ton per mile for a long haul does not aid the court in determining the reasonableness of a particular rate.

24. The matters alleged in the eighth and ninth defenses are true in fact, and they constitute the *crux* of this case. In order to determine whether a rate is reasonable, it is necessary to resolve the rate into its factors and ascertain whether any one or more of the factors used or not used by the carried or the Commission re-

spectively should have been excluded or included in whole or in part. Every charge for transportation comprehends compensation for initial terminal services, for haulage services and for final terminal services. In fixing a rate, all incidental terminal services, that is to say, all terminal services which appertain to the traffic as a whole, must be considered and the rate must include and must be understood to include these incidental terminal services. In fixing a rate, neither the carrier nor the commission has the right to consider any extra terminal services, that is to say, terminal services which do not appertain to the traffic as a whole but which are to be rendered in connection with certain parts of the traffic only and as occasion may from time to time require. Neither the carrier nor the Commission may fix a rate which will include these extra terminal services. A rate fixed, either by the carrier or Commission, is understood to mean simply for the haulage services, including the incidental and excluding the extra terminal services. In the case at bar the carriers admit, that, in making their rates, they included charges for the terminal services mentioned in the eighth and ninth defenses, as well as a terminal charge on account of the demurrage matters discussed in paragraph 18, *supra*, and they claim that the Commission, in fixing the rate should have considered these three matters and that this court, in passing upon the reasonableness of the rate fixed by the Commission, must also consider these matters. The carriers were under no obligation to permit their yards to be used for storage purposes without extra charge over and above the demurrage allowed by statute, which would not only compensate them for the use of their hold tracks for storage purposes but also compensate them for the extra service of reconsignments and increased switching. The carriers were under no obligation to deliver this coal except on their own tracks respectively. If the coal,

after reaching Denver, had to be transferred to the track of a second carrier, the shipper or consignee could be obliged to pay for this transfer either directly to the second carrier or to reimburse the first carrier for making or paying for the transfer; or, in railroad parlance, "Fo absorbing the switching." All of the charges above named are for extra as contradistinguished from incidental terminal services, as above defined. The carriers have no right to require any shipper or consignee to pay any such extra terminal services, except to the extent that they were rendered to such shipper or consignee respectively. The carrier had no right to charge the shippers and consignees indiscriminately and incidentally the public, for these extra services. Neither the carriers nor the Commission had a right to take these extra terminal services into account in fixing their respective rates and this court has no right to take them into account in passing upon the reasonableness of the rates fixed by the carriers or of the rates fixed by the Commission. That the statute contemplates and requires the fixing of special rates for extra terminal services is apparent from the language used by the legislature in sections 2, 3 and 6 of the Act of 1907. In fixing the rates in this case, the Commission simply determined what would be a reasonable charge for the line haul, including of course charges for incidental terminal services, and there is nothing in the order set out in paragraph 3, *supra*, nor in the law which prevented the carriers from making special charges for storage, reconsignments, absorbed switching and other extra terminal services and that the carriers understood that this is the meaning of the statute and that there was nothing in the order of the Commission to the contrary, is proven by the fact, that they have subsequently made special schedules covering some of the extra terminal services above mentioned. It was practically conceded at the trial, that the rates fixed

by the Commission would be reasonable if they did not preclude the carriers from collecting for these extra terminal services. After deducting from the old rates of 80, 70 and 60 and the average rate of 70 cents per ton respectively, the Commission rates of 55, 50 and 45, and the Commission's average rate, 50 cents per ton respectively the remainders are 25, 20, 15 and 20 respectively which practically represent the unlawful charge for "absorbed switching" alone.

Lanning and Harris C. & G. Co. v. A. T. & S. F. Ry., 12 I. C. C. R. 479, 480.

Leonard v. C., M. & St. P. Ry. Co., 12 I. C. C. R. 492, 494.

Wilson Produce Co. v. P. R. Co., 14 I. C. C. R. 170, 175.

N. Y. H. E. Assn. v. P. R. R. Co., 14 I. C. C. R. 178, 185.

R. H. M. Co. v. V. C. R. J. & P. Ry., 14 I. C. C. C. R. 299, 303-4.

Utica T. B. v. N. O. & W., 18 I. C. C. R., 168, 171.

Chicago Hay Rate case, 25 I. C. C. R. 680, 682.

Peoples F. & S. Co. v. G. W. W. Co., 27 I. C. C. R. 24, 28, 30.

Simpson v. Shepherd (Minn. rate case), 33 U. S. S. C. Rep. p. 8, par. V.

I. C. C. v. Stickney, 215 U. S. 105.

25. Although there is nothing in the Act of 1907 which specifically required, that The U. P. and C., B. & Q. should be made parties defendant or which specifically permitted them to become intervenors, it would have been proper to have made them original defendants, and it was proper to permit them to intervene, for the reason that the C. & S. was their competitor and that any reduction that their competitor was required to make would have to be met by themselves. If the intervenors had been original defendants or if the order were a joint

order against the three carriers, it is possible, that this court might have been obliged to pass upon the order as a whole and could not have sustained it as to any one or more of the carriers as reasonable and set it aside as to any one or more of them as unreasonable. The U. P. and C., B. & Q. were not original defendants, they appeared voluntarily; the order of the Commission is not joint but several and the mere voluntary intervention of the intervenors did not deprive the Commission of the power it would otherwise have had of determining what was a reasonable rate to be charged by the original defendant, if the intervenors had not intervened, and it does not deprive this court of the right of determining whether the order is reasonable as against the defendant alone. Furthermore, I am of the opinion that I must treat this as three separate suits which have been consolidated for the purposes of trial only. So far as haulage is concerned there can be no question that the rates fixed by the Commission, if a reasonable compensation to the defendant, is also a reasonable compensation to the intervenors. The defendant has extensive terminal facilities, including real estate, which it values at $5,341,529. The intervenors are practically without any terminal facilities and depend in a great measure upon the defendant for the delivery of the cars to consignees after they reach Denver. The defendant is entitled to be compensated for the use of its terminal facilities and the intervenors cannot be heard to complain, that the rates fixed by the commission do not enable them to make the same profit that can be made by the defendant because of their own lack of terminal facilities. If the intervenors wish to continue in this business, they must either build their own terminal facilities to handle this traffic, or continue to pay the defendant compensation for the use of its terminal facilities.

B. C. of C. v. C., B. & Q., 19 I. C. C. R. 71, 75.
C. C. of Salt Lake v. A., T. & S. F., 19 I. C. C. R. 219.
Adv. in rates W. case, 20 I. C. C. R. 307, 377.
I. C. C. v. L. & N. R. R., 118 F. 613.

26. Common carriers are engaged in the transportation of freight solely for profit. They endeavor to conduct and, because of the eminent ability of their officials, they succeed in conducting their business so as to derive the greatest profit therefrom. When carriers are not interfered with by the law, they make, maintain and advance rates to the highest point possible. The carrier's rule is to "Make the tariff all the traffic will bear." The existence of this rule is a matter of common knowledge, admitted by the carriers themselves and judicially noticed by the courts. The rule is not an odious one and the carriers are not to be criticised for adopting it, as all persons engaged in business adopt rules which are similar to it. The rates resulting from the adoption of the rule are not necessarily unreasonable or exorbitant. Self-interest will prevent the carriers from making rates so high that traffic will be discontinued or diminished. The traffic would not bear such a rate or, in the words of another expression used by the carriers, "The traffic would not move freely under such a rate." For the reasons above stated it is presumed that a voluntary rate is reasonably remunerative and while the presumption is not conclusive, the burden of showing the contrary is placed upon the carriers and where the voluntary rate has been maintained for a great length of time, the presumption is practically conclusive. Acting on this presumption, the courts hold, that, where it is shown, that one carrier conveys a certain commodity at a certain voluntary rate, this fact is competent evidence that a higher rate charged by another carrier on the same commodity under the same circumstances is unreasonable,

that, where a carrier has voluntarily fixed a rate upon a certain commodity, maintained the rate thus fixed for a considerable length of time and then attempts to advance the rate, the old rate is presumed to have been reasonably remunerative and the carrier has the burden of showing why the advance should be made, and finally that, where a carrier charges different rates for the transportation of the same commodity over different branches of its line the two rates on the different branches are presumed to be reasonably remunerative and the burden of proving the reason for the difference is placed upon the carrier.

T. M. C. Logan v. C. & N. W. R. R., 2 I. C. C. R. 604, 612.

James and Abbott v. C. P. Ry. Co., 5 I. C. C. R. 612, 621.

Holmes v. S. Ry. Co., 8 I. C. C. R. 568.

C. T. P. A. v. I. C. R., 10 I. C. C. R. 505, 535, 542, 543.

B. T. M. Co. et al. v. W. R. Co. et al., 19 I. C. C. R. 598, 599, 560.

M. F. B. v. St. L., etc., Ry., 22 I. C. C. R. 548, 555.

P. F. S. Co. v. G. T. W. Co., 27 I. C. C. R. 24, 29.

Argument of J. C. Carter in Smyth v. Ames, 169 U. S. 466 (42 L. S. 832).

I. C. C. v. G. W. Ry., 209 U. S. 108, 119, 120.

I. C. C. v. U. P. R. R., 222 U. S. 541, 549, 550.

27. The defendant is engaged in a coal traffic between Trinidad and Denver and Walsenburg and Denver, as well as in the northern coal traffic. Items B to K of the following table show a comparison between the rates per ton mile for hauling coal from Trinidad and Walsenburg respectively to Denver, with the rates per ton per mile for hauling coal from the Northern fields to Denver. Item A is given for the purpose of comparing it with all the other items on the page.

TABLE B.

	Mills
A.	
Average receipts per ton per mile on all traffic taken from annual reports: found by dividing the total freight revenue by the number of tons carried one mile. This information for Colorado only was not furnished to the Commission by this company.	9.12
B.	
Average old rate per ton per mile on the Northern coal traffic, found by dividing 70.16 cents, the average company rate, by 22, the average mileage of the haul.	31.89
C.	
Average new rate per ton per mile on the Northern coal traffic, found by dividing 50.08 cents, the average company (*commission?*) rate, by 22, the average mileage of the haul,	22.76
D.	
Average rate per ton per mile on Trinidad lump, found by dividing $1.85, the rate, by 203, the the average mileage.	9.11—
E.	
Average rate per ton per mile on Trinidad slack, found by dividing $1.50, the rate, by 203, the average mileage.	7.38
F.	
Average rate per ton per mile on all Trinidad coal, found by dividing $1.675, the average rate, by 203, the average mileage.	8.25
G.	
Average rate per ton per mile on Walsenburg lump, found by dividing $1.60, the rate, by 175, the average mileage.	9.14

H.

Average rate per ton per mile on Walsenburg slack, found by dividing $1.40, the rate, by 175, the average mileage. 8.00

I.

Average rate per ton per mile on all Walsenburg coal, found by dividing $1.675, the average rate, by 175, the average mileage. 9.57

J.

Average rate per ton per mile on all southern coal, found by dividing $1.675, the average rate, by 189, the average mileage. 8.86

K.

Miles	Divided by 22 miles equals	Times
203		9.22
175		7.95
189		8.59

Mills	Divided by Mills	equals	Times
31.89	9.11		3.50
31.89	7.38		4.32
31.89	8.25		3.86
31.89	9.14		3.48
31.89	8.00		3.98
31.89	9.57		3.33
31.89	8.86		3.60
22.76	9.11		2.49
22.76	7.38		3.08
22.76	8.25		2.75
22.76	9.14		2.49
22.76	8.00		2.84
22.76	9.57		2.37
22.76	8.86		2.56

28. From the foregoing table, it appears that, the average rate per ton per mile on all southern coal is less than the average rate per ton per mile on all traffic on the entire line and that, in fixing this rate on southern coal the defendant has followed the rule which, according to the principles laid down in paragraph 15, *supra,* should be followed in fixing rates for the transportation of low grade commodities. From the foregoing tables, it also appears that, while the average distance from the Southern fields to Denver is 8.59 (N. 189-S. 22) times the average distance from the Northern fields, the average old rate on the coal from the Northern fields was 3.60 (N. 31.89-S. 8.86) times the rate of the coal from the Northern fields and that the new average rate on coal from the northern fields is 2.56 (N. 22.76-S. 8.86) times the rate on coal from the Southern fields.

29. It cannot be contended that there is anything in the rules relative to long and short hauls which entitles a carrier not to take into account the length of the haul in making its rate, or that, other things being equal, the length of the northern haul when compared with the length of the southern haul justified the defendant in fixing the rate on northern coal so greatly in excess of the rate on southern coal or that, in fixing the present rate on northern coal the Commission has not had in mind the rules relative to long and short hauls. Therefore, whether the old rate on the northern coal is unreasonable when compared with the defendant's rate on southern coal will depend upon whether the cost of the northern haul is relatively so much higher than the cost of the southern haul as to have justified the carrier's old rate and to have made the commission's reduction unreasonable.

30. On both lines, the same sort of cars are employed and, while it is true that more box cars are employed on the northern than on the southern line and

that, because of the use of box car loaders the cost of repairs is more on the northern than on the southern line, this fact does not appear to have been considered a hardship by the defendant, inasmuch as the evidence shows that it sought to compel all shippers on the southern line to use box cars. The defendant loses something by reason of its failure to collect demurrage on the southern line and, while this loss is probably less than on the northern line, I have shown in paragraph 18, *supra,* that this item cannot be considered at all. On both lines the defendant allows the same privilege of consigning to "shippers' orders," with the same gratuitous services of reconsignment and of extra switching on the hold track and it absorbs the same switching charge and, while the evidence shows, that on the southern line there are fewer consignments to shippers' orders and consequently fewer reconsignments, less extra switching and less absorbed switching than on the northern line, I have shown in paragraph 14, *supra,* that none of these items can be considered in determining the reasonableness of a rate for a line haul with its incidental terminal services. The initial terminal services are more expensive, the wages paid are higher and the grades are greater on the southern than on the northern line. The average line haul and the average empty car haul is 8.59 times as great on the southern as on the northern line (S. 189—N. 22), the number of empty cars hauled is less on the southern than on the northern line, the length of the grade is five times as great on the southern as on the northern line (S. 22—N. 4), the average length of the spurs is 1.42 times as great on the southern as on the northern line (S. 8056—N. 55.91) and the defendant pays 10 cents per ton per mile to an independent carrier for bringing a considerable tonnage of its southern coal from the mines to its main track. As the rule in regard to long and short hauls cannot in this case be invoked to justify the unreason-

able excess of the defendant's old rates on the northern coal over its rates on the southern coal nor as the basis of an argument, that the excess of the commission's new rates o nthe northern coal over the defendant's rates on the southern coal are not reasonably high, and as the cost per ton per mile for carrying coal on the southern line is higher isntead of lower than the cost per ton per mile for carrying coal on the northern line, the rates on the two lines cannot both be reasonable and as the law presumes the voluntary rates on the southern line to be remunerative, I must hold that they are reasonable, and comparing these voluntary rates with the old rates on the northern line I must hold that these old rates were unreasonably high and comparing again these voluntary rates with the new rates on the northern line I must hold that the new rates are reasonably high. One of the officials of the defendant admitted on the stand that both rates were not reasonable and claimed, that it was the souther nrates that were unreasonably low and that these alleged unreasonably low rates were maintained for the purpose of enabling shippers of southern coal to compete with shippers of northern coal. This witness must be mistaken, at all events, I cannot agree with him without ignoring the legal presumption which is the basis of the rules allowing a comparison of rates, viz.: that a voluntary rate is reasonably remunerative and without holding that the defendant has, since January 24, 1900, without compulsion, been carrying coal from the southern fields at a loss or at a smaller profit than it could have obtained for the service and I cannot accept his opinion, that these alleged unreasonably low southern rates were fixed and have been maintained on account of any competition between the two coals for the reasons that no evidence of any competition, or at least of any considerable competition between them has been introduced and that such evidence on the subject as has

been introduced shows, that, as the northern coal is lignite and used exclusively for household purposes and the southern coal is bituminous and used almost if not quite exclusively for steaming purposes, there can be no competition, or practically no competition between them. The difference between the initial terminal cost of the two traffics not only appears from the evidence but it is also referred to in the following cases, viz.:

Cedar Hill, etc., v. C. & S., 17 I. C. C. R. 479 at 485.

Walsenburg Susp. case, 26 I. C. C. R. 85 at 89.

Sheridan C. of C. case, 28 I. C. C. R. 250 at 259.

31. In the leading case of Smyth v. Ames, 169 U. S. 466 at 547, the Supreme Court has laid down a rule which must guide legislatures and commissions in fixing rates and courts in determining the reasonableness of rates thus fixed, viz.: "What the company is entitled to ask is a fair return upon the value of that which it employs for public convenience. On the other hand, what the public is entitled to demand is that no more be exacted for the use of a public highway than the services rendered by them are reasonably worth." A carrier cannot charge more than enough to insure a fair return upon the value of the property employed in the service over and above the cost of performing the service, no matter how much the service may be worth to the public and the carrier cannot charge the public for services more than it is worth to the public, although the services thus performed will not return a reasonable interest on the property employed or will even result in a loss to the carrier. The only return to which a carrier is entitled, over and above the cost of the service is fair interest on its investment; it is not entitled to additional compensation for superintendence which is an item included in and paid for by the public in the cost of the services. The defendant has introduced evidence show-

ing the financial statistics of its entire system. If the reasonableness of an entire schedule were to be determined all of this evidence would have been material and necessary to be considered in order to ascertain whether the carrier could, under the rates fixed by the schedule, pay its operating and other expenses and then have a profit which would represent fair interest on its investment. This was the question presented in Smythe v. Ames, *supra*. The legislature of Nebraska had enacted an entire schedule, the rates fixed by the schedule were so low, that, not only was it impossible for the carriers to realize any interest on their investment, but it was also impossible for them to obtain revenue to pay their operating expenses under them and the U. S. S. C., as was to be expected, held, that such rates were confiscatory, and that the law fixing them was, therefore, unconstitutional and void. Where, as in this case, a commission was called upon to fix a rate upon a certain commodity, and the court is called upon to determine the reasonableness of the rates thus fixed, the evidence above mentioned throws little light on the subject and is practically worthless. In this and similar cases, the reasonableness of rates is to be determined by comparing, as I have done, the rates in question with other rates and by considering the cost of the particular service and the value of the particular property employed in the service affected by the rates. In this and in similar cases, the reasonableness of the rates cannot be determined with anything like mathematical certainty, some matters must be left to the judgment and discretion of the commission fixing the rate and where, as in this state, the statute requires the court to try the case *de novo,* something must be left to the judgment and discretion of the court passing upon the reasonableness of the rate thus fixed. Not only in this case and in similar cases but in all cases there is left to the judgment and discretion of the commission

and in this state under section 21 of the Act of 1907 there must be left to the judgment and discretion of the court the determination of the interest to be allowed on the property used in the service:—the law not requiring that that rate of interest should be the legal rate nor that it should be any particular rate of interest, but simply that it should be a reasonable rate of interest.

C. T. P. Assn. v. I. C. R., 10 I. C. C. R. 505, 538, 539, 540.

Adv. in rates W. case, 20 I. C. C. R. 307, 335, 347, 348.

L. V. R. Co. v. U. S. & I. C. C., Opinion 70, I. C. C. Oct. session 1911.

Road Co. v. Sanford, 164 U. S. 596.

I. C. C. v. U. P. R. Co., 222 U. S. 541, 549, 550.

W. & L. T. R. v. Croxton, 31 L. R. A. (O. S.), 177 case note.

Asher v. H. W. L. & P. Co., 61 L. R. A. (O. S.), 52 case note.

Madison v. M. G. & E. Co., 8 L. R. A. (N. S.) 529 case note.

C. & S. Ry. v. R. R. Com., 54 Colo. 64.

TABLE C.

C. & S. R. Co.—Operating Expenses.

	1911	1912	Average per year
Maintenance of Ways	$106,408.34	$120,918.19	
Maintenance of Equipment	113,905.44	97,512.35	
Transportation	414,306.87	421,803.56	
General Expense	22,675.09	23,093.18	
Hire of Equipment	49,324.16	42,062.90	
	$706,619.90	$705,390.18	$706,005.04
No. of cars handled in terminal	240,599	230,551	235,575
Equals operating expenses per car	2.94	3.06	3.00
Reproduction of entire main line terminal tracks of Colorado & Southern (Cowan)			$1,747,761.00
Deductions.			
Coach yards devoted to passenger service		$ 47,731.00	
Vegetable platforms (fols. 1316-1317)		147.97	
Vegetable platforms (fols. 1316-1317)		160.00	
Automobile platforms (fols. 1316-1317)		420.00	
Traveling crane (fols. 1316-1317)		474.60	
Coach yd. air line connection (fols. 1316-1317)		2,172.64	
Coach yd. water line (fols. 1316-1317)		4,000.00	
Machinery platform (fols. 1316-1317)		960.00	
Vegetable platform (fols. 1316-1317)		1,500.00	
Freight house (fols. 1316-1317)		56,410.70	
Office building in coach yard (fols. 1316-1317)		9,000.00	$122,976.91
			$1,624,784.09
McMurray's Real Estate Value			5,341,539.60
			$6,966,323.09
Less ($289,065.25) objected to by plaintiff and allowed by court			289,065.25
			$6,677,257.84
6 per cent interest on ($6,677,257.84)			$ 400,635.47
Total operating expenses of terminals			706,005.04
			$1,106,640.51

$1,106,640 divided between 235,575 cars—$4.70 per car.
Average car 31 tons, per ton, 15.16 cents.

TABLE D.

C. & S. Ry. Co.—Switching Expenses at Mines.

Total Tonnage of Coal handled in Northern fields by C. & S. Ry. Co.:

1910	1911	1912	Average per year
$505,523	$578,513	$641,069	$575,035

Wages of switching crew, $21.232 per day, or per year of 310 days	$6,581.92
Conductor	5.35
Engineer	5.20
Brakeman	3.746
Brakeman	3.746
Fireman	3.19
	$21.232

$6,581.92 total wages per year of switching crews divided by 575,035 average tonnage gives as cost of switching for each ton, 1.15 cents

TABLE E.

Resume.

	Cents per ton
Average receipts per ton per mile on all traffic for entire line. 9.12 mills multiplied by 23, the average mileage on northern coal:	20.06
This taken as the cost of the line haul according to rules discussed in paragraph 14, *supra*:—coal, being a low grade commodity, should be hauled at a lower rate than its average rate.	
Expense of operations in Denver terminals, interest on entire line used in coal traffic on terminal tracks and on other improvements used in connection with the northern coal traffic.	15.16
Switching at the mines.	1.15
Total cash,	36.37

Lowest Commission rate,	45.00
Average Commission rate,	50.00

Deducting 36.37 cuts the total cost from 45 cents, the lowest Commission rate, leaves a balance of 8.63 cents and multiplying together this balance and 575,035, the average tonnage, gives a product of $49,625.52.

Deducting 36.37 cents, the total cost, from 50 cents, the average Commission rate, leaves a balance of 13.63 cents and multiplying together this last balance and said 575,035, average tonnage, gives a product of $78,377.27.

32. As I have already stated, it is impossible to demonstrate to a mathematical certainty what is a reasonable rate to be charged for the carriage of a particular commodity. I do not pretend, that, in the foregoing calculations I have demonstrated that the rates fixed by the Commission are reasonable. What I claim is, that the calculations show that the Commission's rates were probably correct, and, when the calculations are considered in connection with the results obtained by comparing the average revenue per ton per mile on all traffic with the rates per ton per mile on this traffic charged by carriers and fixed by the Commission respectively (paragraph 15, *supra*), or when the calculations are considered in connection with the results obtained by comparing the rates charged by the defendant and fixed by the Commission respectively with the rates charged by the defendant for the hauling of southern coal (paragraphs 26 and 27, *supra*), and certainly when the calculations are compared with both of these results that it is morally certain that the Commission has made no mistake. There have been omitted from the calculations the general items of taxes, general expense and interest on the equipment used in the traffic. It was impossible to determine

what part of these items should be charged against this traffic. Moreover, according to the rule in regard to the shifting of the burden of proof, it was incumbent upon the carrier to show these matters as well as all other matters which in its judgment would demonstrate the reasonableness of its own and the unreasonableness of the Commission's rate, and this the defendant has failed to do: the defendant and the other carriers erroneously supposing, that, because the burden of proof was on the plaintiff at the commencement of the trial, it remained upon the plaintiff until the end of the trial and ignoring the fact that almost immediately after the trial began the evidence disclosed matters which raised presumptions against the reasonableness of the carriers' rates and in favor of the commission's rates. The product $49,625.52 and the product $78,377.27 will cover in whole or in part all missing legitimate items of cost. In this connection the following matters are also to be considered, viz.: in making the calculations it has been assumed that the whole of the main line from the northern fields and that part of the terminal facilities mentioned in the tables were used exclusively for this northern coal traffic. While it is true, that the main line is used principally for coal traffic, there is also some passenger traffic and some other freight traffic and while it is probably true, that this northern coal traffic uses more of said terminal facilities than any other traffic, these facilities are used for other traffic besides coal traffic and there is other coal traffic besides the northern coal traffic. From a digest of the evidence furnished me by the counsel for the defendant for the year 1912, which I assume to have been a representative year, it appears, that the total coal tonnage was 48.26 per cent; the lignite or northern coal tonnage 11.14 per cent and the bituminous or southern coal tonnage 37.32 per cent of the whole tonnage of the road, and further, that the revenue on the total tonnage

was 40.76 per cent, the revenue on the lignite or northern coal tonnage 7.57 per cent, and the revenue on the bituminous or southern coal tonnage 33.19 per cent of the revenue of the whole tonnage of the road. These figures show that the southern coal tonnage was considerable, but as all of the northern coal tonnage and only part and possibly only a small part of the southern coal tonnage is hauled to Denver, these figures signify nothing more than that the southern coal tonnage is considerable. No figures were given by either of the intervenors which I could use as in the case of the defendant in testing the probable accuracy of the results obtained by comparing the average revenue per ton per mile on all traffic with the rates per ton per mile charged by the intervenors and fixed by the carriers respectively on this traffic (paragraph 15, *supra*), and, as each intervenor has only one line engaged in the coal traffic, their cases were not, as was the case of the defendant, one where I could compare rates fixed by a carrier on the same commodity on different lines (paragraphs 26 and 27, *supra*). Therefore, as to the intervenors, I am compelled to base my decision upon the results obtained by comparing the average revenue per ton per mile on all traffic with the rates per ton per mile charged by them and fixed by the Commission, respectively, on this traffic (paragraph 15, *supra*), upon the ground that, as the intervenors are engaged in the same traffic as the defendant is engaged in and carry on this traffic under practically the same circumstances as it is carried on by the defendant, rates which are reasonable or unreasonable in the case of the defendant must necessarily be reasonable or unreasonable in the case of the intervenors and upon the fact disclosed by the evidence, that the intervenors, as well as the defendant, in fixing thir rates, have improperly included unlawful charges for uncollected demurrage, for storing cars on the hold track and for reconsignments

and extra switching necessitated by permitting cars to be consigned to shippers' orders and for "absorbed switching," and upon the ground that, when these unlawful charges are excluded, or when the unlawful charge for absorbed switching alone is excluded from the voluntary rates fixed by the three carriers themselves, what remains equals the rates fixed by the Commission.

33. The carriers have furnished me a number of tables which they think demonstrate the reasonableness of their old rates and the unreasonableness of the Commission's new rates. As I think that the tables of the U. P. R. R. Co. make for the carriers as strong a case if not a stronger case than the tables of the other roads, I will confine myself to an attempt to answer them alone.

1.

U. P. R. R.

TABLE A.

Northern Coal Traffic Since 1908.

A Tons	B Earnings at old rates	C Earnings at new rates	D Difference
115,364	$ 83,020.98	$ 58,778.79	$ 24,242.19
124,515	88,006.20	62,356.80	25,649.40
151,912	106,090.01	75,943.05	30,146.96
285,339	202,763.41	144,074.15	58,689.26
249,021	178,904.93	126,808.20	52,096.73
926,151	$658,785.53	$467,960.99	$190,824.54

2.

	Cents
Actual average rate for T. on gross earnings (71.13),	71.80
Com. average rate for T. on gross earnings (50.52),	50.90

Figures in parentheses mine. Found by dividing total B by total A and total C by total A, respectively.

3.

Actual average rate per T. on 150,862 T.

Carried during 1st 6 mos. 1912 after deducting $21,701.62 for absorbed switching, 56.90

4.

Com. rate on item 3 after same deduction, 36.30

The difference shown in item 1 is referred to by the carrier as a "loss." It is not a loss but a difference, if the Commission's rates are reasonable. Item 2 shows that since 1908 the carrier has earned 20.90 cents per ton more on the old rates than it would have earned under the Commission's rates, that is to say, .9 cents more than the difference between the Commission's average rate of 70 cents and the unlawful charge of 20 cents for absorbed switching. Item 3 shows that during the first six months of 1912, the carrier earned 26.90 cents more on the old rates than it would have earned under the Commission's rate, that is to say, 6.90 cents more than the difference between the Commission's average rate of 70 cents and the unlawful charge of 20 cents for absorbed switching. Item 4 is based upon the erroneous assumption that the carriers may not by proper special schedules charge 20 cents if reasonable for all switching actually absorbed in addition to the average rate of 50 cents which the Commission has fixed as the charge for the line haul and incidental terminal services. The above table fully justifies the statement contained in paragraph 24, *supra,* that the rates fixed by the Commission represent simply the difference between the old rates and this unlawful general charge for absorbed switching.

35. U. P. R. R. tables B, C and D are only elaborations of table A and they and table A are all based on

the erroneous assumptions, that it was lawful to add 20 cents for absorbed switching to the cost of the line haul and make one lump rate covering both items on all coal hauled, that every one should be charged for absorbed switching whether the service was performed for him or not, that this absorbed switching was included in the Commission's order and that it cannot be made the subject-matter of a special schedule.

36. U. P. R. R. supplementary table 1. This table is based upon the assumption that as this northern coal traffic is intrastate it should not be compared with the average revenue per ton per mile on interstate traffic alone. No authority is cited and no reason is given or can be suggested why this should be done or why in this case I am not to follow the general rule which allows the comparison to be made with the average revenue per ton per mile on all traffic. In this table reference is also made to the fact that there are a great many empty hauls. It is claimed that all of the cars are hauled empty one way, this is substantially the case, it is generally the case in coal traffic and has been considered by the Commission and courts who have notwithstanding laid down the rule that a low grade commodity should be hauled at less than the average rate per ton per mile on all traffic.

36. U. P. R. R.'s supplemental table 2 compares the northern coal traffic as a gross revenue producer with the average coal traffic of the entire system, and supplemental Table 3 compares the car earnings of the traffic with the average car earnings on the entire system. No authority is cited, no reason is given and no reason occurs to me why any such comparison can be of service in determining the reasonableness of any of the rates involved in this case.

37. U. P. R. R.'s supplemental table 4 assumes that, in considering the shortness of the northern haul, I must compare it only with the hauls in interstate traffic.

No reason is given and no reason suggests itself to me why I must do this. This table also assumes that the terminal services are three or four times the terminal services on average traffic. The case is just the contrary, the incidental terminal services (which exclude the extra terminal services above defined) are much less than the terminal services on average traffic.

38. Tables 5 and 6 are elaborations of Tables 2, 3 and 4.

39. U. P. R. R.'s supplemental table 7, like the other, is based upon the theory that the comparison must be made with the average revenue per ton per mile on strictly intrastate and not on all traffic, and upon the assumption that the incidental terminal services of the traffic are greater than similar incidental services on average traffic.

40. I sustain the plaintiff's objection to the following pieces of property referred to in the testimony of Mr. McMurray and Mr. Cowan, that is to say:

Item	Valuation	Deducted
2	$ 1,925.00	$ 1,604.25
3	3,870.80	3,096.00
4	18,000.00	3,600.00
6	3,140.00	3,140.00
7	8,400.00	8,400.00
9	192,000.00	192,000.00
10	27,900.00	20,925.00
14	55,000.00	55,000.00
21	1,300.00	1,300.00
		$289,065.25

41. I overrule the plaintiff's other objections to other pieces of property referred to in said testimony.

42. I find that all evidence in regard to loss of demurrage, all evidence in regard to the storing of cars on

the hold track with incidental necessity for reconsignments and extra switching, and all evidence in regard to absorbed switching is irrelevant and immaterial.

43. I find all of the issues for the plaintiff and against each and all of the carriers.

44. All rate cases are difficult, they are particularly difficult when a rate on a single commodity is to be fixed and this case was more difficult than an ordinary commodity rate case owing to the anomalous provision of Section 21 of the Act of 1907 in regard to trials *de novo*. The case was one of first impression with me and I am indebted to the eminent lawyers who have tried the case and who have by their industry and fairness enabled me to reach a decision which is satisfactory to myself at least.

45. All of the evidence practically was given by the officials of the carriers and I want to compliment them on the high character, frankness and regard for truth which were evinced by the testimony they gave and their manner of giving the same.

By the Court:

John A. Perry,
Judge.

E. KLINE, *et al.*,
v.
THE ADAMS EXPRESS COMPANY.

(Case No. 115.)

Rates—Express—Reasonableness of—Distance.

(1) In predicating block and sub-block express rates within the State of Colorado in accordance with the modified plan as adopted by the Commission, the distance actually traversed by the line of railroad is a factor to be considered as well as the air line route between the blocks or sub-blocks.

(May 5, 1917.)

COMPLAINT against the express rates of the Adams Express Company on laundry between Steamboat Springs and points between Kremmling and Craig on the Denver & Salt Lake Railroad; complaint dismissed.

APPEARANCES: For Complainants, A. L. Wessells; for Defendant, C. M. Day.

STATEMENT.

By the Commission:

On the 29th of December, 1916, a complaint was filed with the Commission by E. Kline of Steamboat Springs, representing the Steamboat Springs Steam Laundry, Cleaning and Dye Works, signed by Mr. Kline and fourteen patrons of this laundry located at various points along the line of the Denver & Salt Lake Railroad between Kremmling and Craig, protesting against the rates charged by the Adams Express Company for

laundry between Steamboat Springs and points on the Denver & Salt Lake Railroad between Kremmling and Craig.

Hearing in the cause was held in Denver on the 27th day of February, 1917, and at such hearing representative for complainants stated that shipments to and from Steamboat Springs were assessed at first-class rates in both directions; that to classify laundry at first class subjected complainants to unreasonably high rates, and that the failure of the defendant to include in its tariffs round-trip basket rates for the transportation of laundry shipments was unreasonable and unjust.

Throughout the United States laundry is classified by the express carriers at first class, and this is the basis established by the Interstate Commerce Commission in its orders in the express investigations, In re Express Rates, Practices, Accounts, and Revenues, 24 I. C. C. 380, 35 I. C. C. 131. The classification effective within the State of Colorado is that used upon interstate traffic, and likewise provides for first class upon shipments of laundry. There are a few specific commodity rates on laundry between certain points in Colorado, but such instances, however, will not exceed ten or twelve, and are special rates which have been in effect for many years and which the carriers agreed not to advance when the block and sub-block basis of rates was established within the State in 1914. The complainants thus receive the same classification upon their shipments as is applied to laundry shipments throughout the country uniformly, and the Commission finds that such classification does not subject complainants to unreasonable or unjust rates, and is further of the opinion that the absence of basket round-trip rates from de-

fendant's tariffs does not result in undue hardship upon shippers.

The first and second class rates between Steamboat Springs and points east thereof as far as Kremmling were established and filed with this Commission in 1914, based upon the Interstate Commerce Commission's block and sub-block system, and were filed with the tacit approval of this Commission, subject, however, to complaint by any shippers or persons interested and full hearing and investigation by the Commission. The Commission, in connection with the present issue, has again reviewed these rates and is of the opinion that the same are not in excess of the general level of the block and sub-block rates in similar territory in Colorado.

The rates between Steamboat Springs and points west thereof, however, were established subsequent to the filing of the block and sub-block tariffs. Such rates, therefore, have never received the approval, tacit or otherwise, of the Commission. While the laundry rates are the only ones in issue in the instant case, the Commission will herein review the first and second class rates to and from points west of Steamboat Springs, without, however, entering any order directed against the same.

Steamboat Springs is located in block 919-I, and the line of the Denver & Salt Lake Railroad, over which the defendant operates, runs westerly through blocks 919-E, 918-H, 918-M, 918-L, 918-G and into block 918-F, in which the town of Craig is situated, the same being the present terminus of the railroad. It will thus be seen that this route traverses or enters seven sub-blocks, although the distance from Steamboat Springs to Craig is only forty-one miles. The towns of Milner, Bear River, Mt. Harris and Dawson are in block 918-M, and

at the present time take Scale 8, or ninety cents for first class shipments in the fourth zone, based on a three sub-block haul. Due to the indirect line of the railroad, which enters two sub-blocks on the extreme edges thereof, the rates are somewhat higher than would be applicable for the mileage involved. (1) Distance is to be considered in the establishment of the express block rates, as well as the air line routes through the blocks or sub-blocks. The Commission believes that the points in sub-block 918-M should be placed on a sub-block haul basis, which would make applicable Scale 5, or seventy-five cents per hundred on first class commodities.

The towns of Hayden, Cary and Elkhead are in sub-block 918-L and at the present time receive Scale 11 rates, or $1.05 first class. Elkhead, the farthest point from Steamboat Springs, is only thirty-four miles distant, and the Commission believes that the proper basis to this sub-block should be Scale 8, that applicable to three sub-block haul, which would make the first class rate ninety cents. To Craig, which takes Scale 16 or $1.30 first class, the rates should not exceed those applicable to a four sub-block haul, or Scale 11, $1.05 per hundred, first class.

The defendant has informally advised the Commission of its intention to establish the rates suggested as above, and no order will be entered by the Commission in the instant case with reference thereto, inasmuch as only the laundry rates are in issue. The Commission will expect the defendant to publish, upon full statutory notice to the Commission and to the general public as provided in Section 16 of the Public Utilities Act, the rates as set forth above. If, however, such rates are not duly filed within a reasonable time the Commission will institute proceedings not inconsistent with the views herein expressed. With the establishment of the fore-

going rates the greater portion of the cause for complaint as made by the complainants will be removed.

ORDER.

IT IS THEREFORE ORDERED, That the complaint of the complainants in this cause be, and the same is hereby, dismissed.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 5th day of May, 1917.

THE GRAND MESA FUEL COMPANY
v.
THE DENVER & RIO GRANDE RAILROAD COMPANY.

(Case No. 119.)

Rates—Railroad—Reasonableness of—Differentials—Distance.

(1) It is impracticable to establish differentials which shall be applicable in all cases as between two competing districts and rates to points a short distance from the point of origination may quite properly be fixed without reference to rates from other districts, and to points great distances from point of origination may be the same as from competing districts, the differential being absorbed by the distance.

Rates—Railroad—Reasonableness of—Shippers' disabilities.

(2) It is not required of carriers that they shall absorb, in any amount, in freight rates the disabilities local to the shippers in transporting their commodities to the rails and cars of the carriers.

(May 5, 1917.)

COMPLAINT against the rates on coal from Delta to points on the Denver & Rio Grande Railroad Company; rates to Olathe and Montrose found unreasonable and reasonable rates prescribed for the future; balance of rates found to be reasonable.

APPEARANCES: Watson Ziegler, for Complainant; E. N. Clark and W. M. Lampton, for Defendant.

STATEMENT.

By the Commission:

On January 25th, 1917, a complaint was filed with the Commission by the Grand Mesa Fuel Company of Delta, Colorado, alleging that the rates charged by the Denver & Rio Grande Railroad Company for the trans-

portation of coal from Delta, Colorado, to various points on the line of said railroad are excessive in themselves, and discriminatory as compared with rates from other coal producing districts located on the line of the defendant company, namely, the Bowie and Somerset districts.

The Bowie and Somerset mines are located on a branch of the defendant's lines running from Delta to Somerset, which branch was constructed some sixteen or seventeen years ago primarily to enable growers of fruit and vegetables to transport their commodities to local and distant markets. According to the evidence in this cause, no coal mines were in operation at the time of the construction of the branch line, either at Somerset or in the vicinity of Somerset.

The mine of the complainant is located northeast of Delta, at a distance of approximately sixteen miles, and it is necessary to haul the product of the mine, which is a lignite coal, to Delta by wagons or trucks. Delta is the nearest point on the line of railroad at which the complainant can conveniently load its coal onto the cars of the railroad company. The production of the mines at Bowie and Somerset is a bituminous coal.

The Commission has never entered any order with respect to rates on coal from the Bowie and Somerset mines, but has considered the same in connection with rates from other districts which were in issue before the Commission. In Grand Junction Mining & Fuel Co. v. D. & R. G. R. R. Co., 2 Colo. P. U. C. 181, decided July 25, 1916, the Commission, in ordering the defendant to establish certain rates from the Cameo-Palisade district, stated:

"The rates from Bowie and Somerset are closely related to the rates from Cameo and Palisade, but as those rates are not before the Commission in this cause,

no opinion can be rendered as to the reasonableness or unreasonableness of such rates. It will be noted, however, that the rates named by the order here are less to certain points of destination than the rates from Bowie and Somerset, although the distance is greater, and will result in leaving a great many of the Bowie-Somerset rates out of line. While it is not within the province of this Commission to make the proper adjustment in this case, it is obvious that such a relation of rates cannot be allowed. It is expected that the defendant will make a proper and reasonable adjustment of the rates from Bowie and Somerset. If it should not do so, however, a complaint may be brought before the Commission, or the Commission may institute an investigation on its own motion, as may be necessary."

The rates prescribed by the Commission in its order from Cameo and Palisade became effective under the terms of the order, August 15, 1916. Prior to the time of publication by the defendant a basis of rates from Bowie and Somerset was submitted to the Commission for its approval in accordance with the views expressed in the order. The Commission scrutinized the proposed rates with especial care as to the probable effect their establishment might have, and as to their relation to the rates from other districts. With the revisions suggested therein by the Commission, the rates from Bowie and Somerset were published to become effective the same date as the revised rates from Cameo and Palisade, *i. e.*, August 15, 1916, under special permission from the Commission. All changes made from Bowie and Somerset were in the nature of reductions, and for the sake of uniformity, authority was granted the carrier to establish such rates on less than statutory notice. It will be seen, therefore, that the rates from Bowie and Somerset were established with the implied approval of this

Commission, and virtually bear the same effect as if established under the direct order of the Commission.

At the time of the revision of the rates from Bowie and Somerset, the carrier considered the advisability of making changes in the rates from Delta as published in D. & R. G. R. R. Co., Colo. P. U. C. No. 55, effective June 18, 1907. From the records of the carrier it was ascertained that no shipments had been made from Delta for a period of six months prior to the time of revision. It was not deemed necessary to make any change in the rates from Delta, inasmuch as no coal was moving therefrom. The filing of the complaint in the instant case was the first intimation that the carrier had of any prospect of movement of coal from Delta in any quantities.

Immediately upon receiving the complaint the carrier notified the Commission of its desire to make a revision in the rates from Delta, and asked permission to make same effective on less than statutory notice. This authority was granted and the new rates became effective February 18, 1917, in D. & R. G. R. R., Colo. P. U. C. No. 435. The rates in effect prior to this revision were in most instances the same from Delta as from Bowie and Somerset and under the revised basis were established from Delta on a differential of twenty-five cents per ton under the rates from Bowie and Somerset, when destined to points south and east of Delta as far as Ouray and Gunnison.

The rates to points north of Delta are upon the same basis as the rates from Bowie and Somerset. This is due to the fact that the rate to Grand Junction from Bowie and Somerset is $1.00 per ton for a haul of eighty-nine miles, established to meet the competition from mines located in the vicinity of Grand Junction. The Commission has already stated that the rate from Bowie

to Grand Junction should not be used as a criterion in the comparison of rates, Grand Junction Mining & Fuel Co. v. D. & R. G. R. R. Co., *supra,* at page 189. The distance from Delta to Grand Junction is fifty-one miles and the present rate, $1.00 per ton on lump coal. The Commission is of the opinion that this rate is not excessive for the service performed.

To points of destination south and east of Delta, the difference in distance between the Bowie-Somerset mines and Delta is approximately thirty-eight miles, which the carriers have recognized by establishing a differential of twenty-five cents per ton. This amount appears to compare favorably with differentials established between other producing districts in the State. The Commission, In re Eastern Colorado Coal Rates, 1 Colo. P. U. C. 48, found twenty-five cents per ton to be a reasonable differential as between the Walsenburg and Trinidad districts, an average distance of forty miles, and twenty-five cents reasonable between the South Canon and Cameo districts, a distance of almost sixty-seven miles.

(1) It is impossible to establish a differential which shall be applicable as between two competing districts and apply to all destinations regardless of distance. The Interstate Commerce Commission, in Williams Co. v. V. S. & P. Ry. Co., 16 I. C. C. 482, stated:

"Differentials diminish with increasing distance and vanish when the mileage on which the differential is based becomes inconsiderable in proportion to the total mileage from basing point to destination."

It would be improper to apply a fixed differential of twenty-five cents per ton, or other amount, as between the Delta and Bowie-Somerset districts regardless of the distance to destination. Rates to points located only a short distance from Delta should very properly

be fixed without reference to the rates from other districts, and to points located a great distance from Delta the rates may quite properly be the same as from the competing districts, the differential being absorbed by the distance.

The rate to Olathe from Delta at the present time is seventy-five cents per ton on lump coal and the distance eleven miles, while to Montrose the rate is $1.00 per ton and the distance twenty-one miles. Both of these rates are predicated upon the differential of twenty-five cents per ton lower than the rates from lished a rate of sixty cents per ton from Cameo and Bowie-Somerset. In Grand Junction Mining & Fuel Co. v. D. & R. G. R. R. Co., *supra,* the Commission estab- Palisade to Grand Junction, a distance of fourteen miles, a rate of 75 cents per ton to Ute, a distance of nineteen miles, and a rate of eighty cents per ton to Fruita, a distance of twenty-six miles. The Commission is of the opinion that the rates from Delta to Olathe and Montrose are excessive for the service rendered, and in the future should not exceed sixty cents to Olathe and seventy-five cents to Montrose.

(2) Considerable importance was given by the complainant to the fact that the wagon haul from complainant's mine to Delta necessitated a charge of approximately $2.00 per ton, which accrues before the coal is placed upon the cars of the defendant for shipment. The complainant stated that this charge should be absorbed by the defendant in making rates from Delta. No consideration need be given this tenet by the Commission as it clearly is not incumbent upon carriers to absorb any part of the operating disabilities of shippers.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, The Denver & Rio Grande Railroad Company, be, and it is hereby, notified and required to cease and desist, on or before May 20, 1917, and thereafter, to abstain from publishing, demanding or collecting rates for the transportation of coal in carloads from Delta in excess of those hereinafter prescribed for such transportation.

IT IS FURTHER ORDERED, That the defendant, The Denver & Rio Grande Railroad Company, be, and it is hereby, notified and required to establish, on or before May 20, 1917, upon notice to this Commission and to the general public by not less than five days' filing and posting, in the manner prescribed in Section 16 of the Public Utilities Act, and thereafter, to maintain and apply to the transportation of coal in carloads from Delta to Olathe sixty cents per ton of 2,000 pounds and from Delta to Montrose seventy-five cents per ton of 2,000 pounds, which rates have been found to be reasonable and non-discriminatory.

GEO. T. BRADLEY,
(Seal) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 5th day of May, 1917.

M. B. RATNER, et al.,

v.

THE DENVER GAS & ELECTRIC LIGHT COMPANY, a Corporation.

(Case No. 108.)

ORDER PERTAINING TO INVENTORY AND SERVICE TESTS.

(May 9, 1917.)

STATEMENT.

By the Commission:

WHEREAS, On the 3rd day of April, 1917, the Commission issued an order in this cause overruling that portion of the answer of the defendant corporation denying the jurisdiction of the Commission over the issues in this cause, and requiring the defendant corporation, within a reasonable time to be fixed by the Commission and under the direction of the Commission and its engineers, to make an inventory of all physical property of the defendant corporation in use and useful in the furnishing of electricity, gas or steam heat to the patrons and consumers of the defendant public utility; and,

WHEREAS, In the opinion of the Commission the inventory and appraisal of the properties of the defendant corporation should be made by the employes of the company under the direction and supervision of the Engineering Department of the Commission to the end that the classification of the properties, together with all in-

ventory and summarizing forms and methods employed in inventorying the property may first be approved by the Commission, so that the Engineering Department of the Commission may properly check the inventory work and also eliminate all duplications in the work required by the Commission.

IT IS THEREFORE ORDERED, That the representatives of the defendant corporation on or before May 31, 1917, confer with F. J. Rankin, Valuation Engineer for the Commission, and his assistants, and devise ways and means under the direction and supervision of Mr. Rankin for compiling an inventory of all of the properties of the Company, physical and non-physical, in any way utilized in supplying steam, gas or electric service to the City and County of Denver and territory contiguous thereto.

IT IS FURTHER ORDERED, That subsequent to the conference and at a date not later than June 25, 1917, the defendant corporation shall proceed with the annual field work of inventorying its properties under the direction and supervision of the Commission's Engineering Department, the official date of the inventory to be agreed upon at a later time.

IT IS FURTHER ORDERED, That the defendant corporation hold itself in readiness to assist in the preparation of such other data of a statistical, accounting, engineering or other nature as may be required by the Commission through its representatives, F. J. Rankin, Engineer, and F. W. Herbert, Chief Statistician.

IT IS FURTHER ORDERED, That F. J. Rankin, Engineer for the Commission, conduct a systematic study of service conditions generally, together with the quality and character of the service supplied by the de-

fendant corporation in the different sections of the City and County of Denver, giving special consideration to the quality of the gas so supplied.

GEO. T. BRADLEY,
(Seal) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 9th day of May, 1917.

JOHN LEESON, et al.,

v.

THE COLORADO SPRINGS & INTERURBAN RAILWAY COMPANY.

(Case No. 72.)

(May 12, 1917.)

PETITION for extension of Spruce Street line of the Colorado Springs & Interurban Railway; complaint dismissed.

APPEARANCES: For the Complainants, J. F. Sanford, Esq.; for the Defendant, Chinn & Strickler.

STATEMENT.

By the Commission:

On the 18th day of May, 1916, there was filed with the Commission a written petition signed by more than one hundred residents of the City of Colorado Springs, and more particularly that part of Colorado Springs lying north of the present terminus of the Spruce Street line, one of the lines of street railway, belonging to, and operated by, the defendant carrier within the City of Colorado Springs. The petition alleges that the petitioners are without adequate railway service and prays that after hearing the Public Utilities Commission order the defendant carrier to extend its line of street railway, known as the Spruce Street line, from its present terminus to a point to be decided upon by the Commission, which will adequately serve the petitioners with street car service.

On the 8th day of June, 1916, there was filed with the Commission by the defendant carrier an answer to the petition of the petitioners, alleging that the proposed extension of the Spruce Street line of railway as prayed for in the petition would be an unreasonable requirement of the defendant, and that the defendant would be unable to obtain sufficient return in revenues from the operation of the proposed extension to pay the necessary additional operating expenses, thereby impairing the ability of the defendant to furnish adequate service to the patrons of the system as a whole; that the initial cost of the proposed extension would be in excess of $16,000.00, and that in order to operate the proposed extension it would be necessary for the defendant to install an additional car upon its system, so as to keep the service on the fifteen-minute schedule now maintained upon its Spruce Street line; that the cost of operation of the proposed extension would be approximately $14,000.00 per year. It is further alleged that the topography of the country through which the proposed line of railway would be extended is such as to limit the building of homes, and consequently would not furnish a sufficient amount of traffic to justify the building and operation of the proposed line, and that the complaint should be dismissed.

This cause was heard by the Commission on the 23rd day of June, 1916, at the hour of 10 o'clock A. M. at the Council Chamber of the City Hall in the City of Colorado Springs. Numerous witnesses testified for the complainants and defendant, and the Commission ordered its engineers and inspectors to make a detailed investigation and report to the Commission upon the actual cost of the construction of the proposed extensions of street railway, together with the increased oper-

ating expenses and the estimated revenues to be derived from the additional service rendered.

The Commission's inspectors were requested to furnish to the Commission a report upon the feasibility and necessity of the extension prayed for, and on the 24th day of November, 1916, the Commission received from D. S. Hooker, then civil engineer for the Commission, a report showing the increased cost of operation in the event the proposed extension should be ordered by the Commission, together with a detailed estimate of the cost of construction. On the 22nd day of December, 1916, D. S. Hooker, then civil engineer for the Commission, filed with the Commission a written report showing in detail certain estimates of cost of construction and the additional cost of operation of the proposed extension of the Spruce Street line on the assumption that a twenty-minute schedule be maintained, requiring no additional cars or crews. Copies of these reports were forwarded by the Commission to representatives of the complainants and the defendant carrier.

On the 12th day of February, 1917, the Commission received written petitions signed by about two hundred patrons of what is known as the Institute car line, owned and operated by the defendant carrier in the City of Colorado Springs, objecting to a twenty-minute schedule of service on the Spruce Street car line, and alleging that this service would necessarily make a twenty-minute service on the Institute car line, which is a part of the Spruce Street car line, and now receives a fifteen-minute schedule of service.

In addition to the evidence submitted in this case, including the reports of D. S. Hooker, the Commission's engineer at the time of the submission of the reports, the Commission has made a personal inspection of the community desiring the proposed service, and has

traversed the course of the proposed extension of railway line, and in addition requested Chas. D. Vail, hydraulic and railway engineer for the Commission, to make a careful check of the report submitted to the Commission by D. S. Hooker, and file with the Commission a written report pertaining to the cost of construction of the proposed extensions, increased cost in operation and other matters pertaining to the extensions of railway line proposed by the complainants. On the 20th day of February, 1917, the Commission received a written report from Mr. Vail, which verifies the report of Mr. Hooker and gives to the Commission additional information of importance.

The community, in which reside those petitioners who are not already served by the defendant, can be reached by the defendant carrier by an extension of the present Spruce Street line or an extension of the defendant's line of railway known as the Roswell line. An extension of the Roswell line of sufficient length to serve the territory in which the petitioners reside would require a much longer length of track than the Spruce Street extension, as well as a more expensive construction, owing to the necessity of crossing Monument Creek and the main tracks of The Denver & Rio Grande Railroad Company. The Roswell extension would necessitate an additional mile of travel to reach the business district of the City of Colorado Springs, and as the Spruce Street extension has the advantage of directness of travel and a much less cost of construction and operation, it is the only proposition to be seriously considered by the Commission at this time.

There has been brought before the Commission for determination the feasibility and necessity of one of three proposed extensions of the Spruce Street line which now terminates at Walnut and San Rafael Streets.

The first proposition is an extension of this line north on Walnut Street three blocks to Columbia Street, thence west one and one-half blocks to Chestnut Street, thence north on Chestnut Street approximately five blocks to Holly Street, thence west on Holly Street to Low Street, thence north on Low Street to Elm Street. The estimated cost of construction of the extension of the Spruce Street line to Elm Street as of November, 1916, would be approximately $23,360.00. A large percentage of the people living north of Holly Street would be within three or four blocks of the car line, if it were extended to Holly Street, and when the cost of construction is considered by the Commission, together with the increased cost of operation, it appears that it is useless for the Commission to consider further the proposed extension of the Spruce Street line to Elm Street.

The second proposition submitted to the Commission for consideration is the proposed extension of the Spruce Street line upon Walnut Street from San Rafael Street north three blocks to Columbia Street, west two blocks on Columbia Street to Chestnut Street, thence north one block to Buena Ventura Street. Mr. Hooker and Mr. Vail estimated the cost of construction of this proposed extension as of November, 1916, (the present cost of construction being considerably higher) to be $7,264.00. The increased operating expense for this extension beyond the present terminus of the Spruce Street line would be $7.00 per day on a twenty-minute headway and $18.70 on a fifteen-minute headway, the difference being due to the necessity of an additional car and crew, whereas on a twenty-minute headway, the company would require no additional car or crew. Inasmuch as this proposed extension reaches only the block numbered 1600, and whereas the north boundary line of the district which the proposed extension would

serve is in the block numbered 2500, it will be seen that an extension to Buena Ventura Street would not meet the demands of the petitioners, and it is therefore not worthy of consideration by the Commission.

From the facts stated, it is apparent to the Commission that the proposed extension from the terminus of the Spruce Street line north on Walnut Street five blocks to Columbia Street, thence west on Columbia Street one and one-half blocks to Chestnut Street, thence north on Chestnut Street approximately five blocks to Holly Street, is the extension which the Commission should consider. The present Spruce Street line is now operated in connection with the Institute Street line on a fifteen-minute schedule and requires the use of three cars. In the event the Commission should order the defendant company to extend its line of street railway from the terminus of the Spruce Street line to Holly Street and the company should attempt to operate the Spruce-Institute line as reconstructed with the present equipment, it would necessitate a twenty-minute headway or schedule. Hundreds of patrons of the Institute line have objected to the Commission to a twenty-minute service on the Institute line and the defendant company objects to this plan, because of the fact that it would result in inadequate service at the Santa Fe depot. One witness suggested that the Spruce Street line should be extended and operated in connection with the Wahsatch line, which now operates a twenty-minute schedule. It would appear that the latter proposition is not practical inasmuch as the total length of these combined lines would require a schedule in excess of the speed limit permitted by ordinances of the City of Colorado Springs, which appears reasonable to this Commission, unless additional equipment were provided by the company. There appears to be no other feeder line on

the system that can be operated in connection with the proposed Spruce Street line on a twenty-minute schedule, and consequently the operation of this proposed extension must be considered by the Commission on the basis of a fifteen-minute headway, requiring an equipment of four cars.

The cost of extending this line to Holly Street based on the estimate of the Commission's engineers made in November of the year 1916 was $15,313.00, and the cost of an extra car to be operated by one man is approximately $5,000.00, making a total expenditure of $20,313.00. The additional cost of operation for this proposed extension on a fifteen-minute schedule would approximate $28.20 a day or $10,293.00 a year.

The territory which would be served by the proposed extension is a strip of land averaging about four blocks in width, lying between the railroad tracks of The Denver & Rio Grande Railroad Company on the east and the foot-hills on the west, and extending from San Rafael Street on the south to the limits of the City of Colorado Springs on the north, a distance of about one and one-quarter miles. It is occupied by 108 families, numbering about 325 persons, who are now patrons or prospective patrons of the railway of the defendant carrier. Of this number, about 125 are now within a radius of four blocks of the present line. Some of the remaining 200 persons now use the street cars, but a large majority of the remainder may be considered as prospective patrons of the defendant carrier if extended.

To properly meet the request of the petitioners, it is necessary for the street railway company to extend its present Spruce Street line from San Rafael Street to Holly Street and operate the same on a fifteen-minute headway. This would necessitate an additional capital investment of more than $20,500.00, and an additional

operating expense of $28.20 per day or $10,293.00 per year. These extensions are based upon prices made in November, 1916, and are greatly increased at the present time.

In view of the facts presented to the Commission, including a consideration of the size of the territory to be served, the number of persons residing in the same, existing prices of labor and material, together with the showing of revenues and operating expenses made by the defendant on its entire system, it is the opinion of the Commission that an order requiring the defendant company to make the proposed extension at the present time would be unreasonable.

ORDER.

IT IS THEREFORE ORDERED, That the petition of the petitioners be dismissed.

(Seal)

GEO. T. BRADLEY,
M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 12th day of May, 1917.

CITY OF BOULDER
v.
THE COLORADO & SOUTHERN RAILWAY COMPANY.

(Case No. 114.)

ORDER FOR SURVEY AND ESTIMATE OF PROPOSED CHANGE OF LINE, BOULDER, COLO.

(May 12, 1917.)

ORDER.

By the Commission:

IT IS HEREBY ORDERED, That The Colorado & Southern Railway Company make a final location of the proposed change of its main line at Boulder for the elimination of the Twelfth Street crossing, and that an estimated cost of this work be submitted to the Commission on or before the 1st day of June, 1917; the location and estimate to be based on a re-routing of the Denver & Interurban traffic over the main line of The Colorado & Southern Railway Company, and the diverting of all traffic during the period of construction of this proposed change of line, thus enabling a utilization of present material insofar as can be applied on the proposed change.

IT IS FURTHER ORDERED, That this work be done by the Railway Company in consultation with Chas. D. Vail, Railway Engineer of the Commission.

GEO. T. BRADLEY,
(Seal) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 12th day of May, 1917.

THE TELLURIDE IRON WORKS COMPANY
v.
THE DENVER & RIO GRANDE RAILROAD COMPANY AND THE RIO GRANDE SOUTHERN RAILROAD COMPANY.

(Case No. 127.)

COMPLAINT against the rate on scrap iron from Ouray to Telluride; satisfied by defendant and complaint dismissed.

(May 14, 1917.)

STATEMENT.

By the Commission:

On April 26, 1917, there was filed with the Commission a complaint by The Telluride Iron Works Company against The Denver & Rio Grande Railroad Company and The Rio Grande Southern Railroad Company, complaining that the existing rate of $4.20 per ton on scrap iron, carloads, from Ouray to Telluride, a distance of fifty-two miles, is excessive, unreasonable, unjust and discriminatory, and praying for a reasonable and just rate for such transportation.

On April 27, 1917, the complaint in this cause was served upon the defendants with an order to satisfy or answer the said complaint within ten days from the service. Subsequent to this service, the defendants announced their intention of satisfying the complaint by the publication of a rate of $3.50 per ton on scrap iron, carloads, from Ouray to Telluride, and the complaint thereupon notified the Commission that a publication of said rate would satisfy the complaint and prayed that

the complaint be dismissed upon the publication of said rate.

On May 12, 1917, the defendants asked permission of the Commission to establish the said rate of $3.50 per ton on scrap iron, carloads, from Ouray to Telluride, upon less than statutory notice, which permission was granted by the Commission. The said rate has been published by the defendants to take effect May 14, 1917, and it appears to the Commission that the complaint of the complainant having been satisfied by the defendants, the same should be dismissed.

ORDER.

IT IS THEREFORE ORDERED, That the complaint in this cause be, and the same is hereby, dismissed.

Geo. T. Bradley,
(Seal) M. H. Aylesworth,
A. P. Anderson,
Commissioners.

Dated at Denver, Colorado, this 14th day of May, 1917.

CITIZENS OF WILSON, COLORADO,
v.
THE COLORADO & SOUTHERN RAILWAY COMPANY.

(Case No. 125.)

(May 16, 1917.)

PETITION for additional freight facilities at Wilson; defendant ordered to provide adequate facilities.

APPEARANCES: For the Complainants, John S. Booher; for the Defendant, E. S. Koller, H. A. Johnson, A. S. Brooks.

STATEMENT.

By the Commission:

On the 9th day of April, 1917, there was filed with the Commission a complaint signed by The Snodgrass Food Company and 90 others, petitioning the Commission to require the defendant company to provide additional storage room for freight shipped from, or received at, the station of Wilson, Colorado, on the line of railway of the defendant company. The complaint alleged that the present facilities are inadequate, and that the complainants are entitled to relief. On April 20th, 1917, the defendant filed with the Commission an answer alleging that the facilities at Wilson are adequate and praying that the petition of the complainants be dismissed.

The hearing of this cause convened on the 11th day of May, 1917, at 10 o'clock A. M. at the hearing room of the Commission in the State Capitol Building in the City and County of Denver, where H. K. Lyon, Jr., Ass-

istant Engineer and Chief Inspector for the Commission, presented a written report to the Commission, which was prepared by the witness after apersonal investigation.

Mr. Lyon reported that the station of Wilson is in Las Animas County on the New Mexico District of the Colorado & Southern Railway, 49.8 miles south of Trinidad, 11.9 miles south of Trinchera and 19.9 miles north of Folsom, New Mexico. The settlement at the station of Wilson has a population of approximately 150 people and is of recent growth, as was brought out by the testimony of Mr. Lyon, who stated that one year ago there was one building located at this siding, while today there are between 60 and 70 buildings and others in progress of construction. The community is served by one general merchandise store, two hotels, two rooming houses, one restaurant, two grocery stores, two lumber yards, one feed and coal business, two garages, one drug store, one furniture store and several other smaller concerns. The country adjacent to Wilson has been devoted to the cattle and sheep business, but within the last few years many settlers have located on these lands. The accounts of the agent at Wilson, showing the total revenue for freight received at Wilson from December, 1916, to March, 1917, are as follows:

	Freight Received Total Revenue
December, 1916	$3,301.64
January, 1917	3,540.23
February, 1917	2,083.11
March, 1917	3,129.98

The revenue from the passenger business for the month of March, 1917, was $333.60

John S. Booher was a witness for the complainants and E. S. Koller testified for the defendant.

From an examination of the record in this case, the Commission is convinced that the freight room at Wilson is inadequate, and that to properly accommodate the freight received at, or shipped from, Wilson, additional room should be provided. Mr. Booher testifed that the future growth of this community is somewhat problematical and depends to a large extent upon the success of the settlers now located on the lands surrounding Wilson.

Mr. Koller, Vice President of The Colorado and Southern Railway Company, stated to the Commission that the defendant company desired to provide permanent facilities at the station of Wilson, but that the company had not as yet become assured of the stability and continued growth of the community. Mr. Koller pointed out to the Commission that the freight earnings were quite heavy on received business, which was accounted for by the fact that many of the outfits of the settlers had been received during the last year, as well as store supplies and material used in constructing buildings at Wilson. The witness stated, however, that practically nothing had been shipped from Wilson, and that the test of the growth and stability of the community was the outgoing business on the railroad, rather than the freight received. The witness also stated that the Company had not yet decided as to the policy of erecting a permanent depot at Wilson station, and that it is the desire of the railroad officials to devote all surplus revenues to the maintenance of equipment and motive power, as well as acquiring additional equipment and motive power on their main lines, as the government has called upon the carriers to have all equipment and motive power in condition to handle promptly all business of the government necessitated by existing abnormal conditions. The present depot at Wilson consists of two

box cars and a one-story house. The house is used as a residence for the agent, while one box car is used for freight and the other as an office for the agent and as a waiting-room for passengers.

The Commission is of the opinion that only such additional freight room should be ordered by the Commission at this time as will temporarily relieve the congested condition at Wilson station, and that in the event the business at Wilson station continues to grow, then the Commission can upon application order the defendant carrier to erect a permanent depot for the accommodation of freight and passengers at this point.

ORDER.

IT IS THEREFORE ORDERED, That the defendant carrier place an additional box car body at the station of Wilson on its line of railway sufficient in size to make adequate the depot facilities for the storing of freight at Wilson station, and that subsequent to the installation of the additional box car body, the defendant shall re-paint all of the depot facilities at Wilson, and shall erect a bulletin board thereon and maintain the same in accordance with the Commission's general order No. 12, and shall provide such additional seating capacity as is necessary in the passenger waiting-room at this station.

IT IS FURTHER ORDERED, That the defendant company shall comply with this order within a period of 60 days.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 16th day of May 1917.

THE CITY OF ENGLEWOOD, COLORADO,
v.
THE DENVER UNION WATER COMPANY.

(Case No. 124.)

COMPLAINT against water service and rates at Englewood; dismissed on motion of complainatns.

(May 18, 1917.)

ORDER.

By the Commission:

And now on the 18th day of May, 1917, the City of Englewood, complainant in the above entitled case, by Luke J. Kavanaugh, its attorney, having filed herein its motion to dismiss the above entitled action on the grounds, "That the supposed reason for the filing of said complaint does not now exist because the bond issue for a municipal plant, by means of which it was proposed to distribute water and for which meter rates were sought, failed to pass at the recent city election in Englewood. Therefore, Englewood at the present time is not in need of the remedy prayed for in its complaint, heretofore filed herein."

The Commission having duly considered the said motion, and after due consideration, it is hereby ordered that the above entitled action be, and the same is, hereby dismissed.

GEO. T. BRADLEY,
(Seal) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 18th day of May, A. D. 1917.

In re CROSSING PROTECTIONS BETWEEN DENVER AND BOULDER.

(Case No. 95.)

(June 5, 1917.)

STATEMENT.

By the Commission:

Whereas, On the 16th day of September, 1916, the Commission issued its certain order in the above entitled cause, of which one of the provisions was as follows:

"IT IS FURTHER ORDERED, That the electric trains of The Denver & Interurban Railroad Company shall cross the nine railway crossings at grade above named at a speed of not to exceed ten (10) miles per hour, with the exception of the railway crossing at grade at Broomfield, at which point the railway trains of said company shall come to a complete stop before crossing the highway;" and

"*Whereas,* It appears that the station of Broomfield has, since the promulgation of said order, been established as a regular stop for the trains of The Denver & Interurban Railroad Company, and that said crossing referred to in the Commission's order is in close proximity to the station at which said stops are made;

IT IS NOW ORDERED, That said provision of the Commission's order of September 16, 1916, be amended and modified to read as follows:

"That the electric trains of The Denver & Interurban Railroad Company shall cross the nine railway

crossings at grade above named at a speed of not to exceed ten miles per hour, with the exception of the railway crossing at grade at Broomfield, at which crossing all southbound cars, after stopping at Broomfield station, shall proceed over said crossing at a speed of not to exceed five miles per hour, and all northbound cars shall come to a complete stop before proceeding over said crossing."

GEO. T. BRADLEY,
(Seal) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 5th day of June, 1917.

THE BOARD OF TRUSTEES of Wray, Colorado, by George H. Carl, Mayor,

v.

THE WRAY LIGHT & POWER COMPANY,

(Case No. 112.)

(June 9, 1917.)

COMPLAINT against electric rates and service at Wray; complaint dismissed.

APPEARANCES: For Defendant, Mr. Matt Williams; for Complainants, M. M. Bulkeley, Esq., City Attorney.

STATEMENT.

By the Commission:

On the 6th day of December, 1916, there was filed with the Commission by the board of trustees of Wray, Colorado, by George H. Carl, mayor, a complaint directed against the defendant public utility, and praying for relief from alleged excessive rates and meter charges. It was further alleged that the rates were discriminatory, and that the defendant utility had installed meters at the expense of the consumer.

On the 11th day of January, 1917, the defendant utility filed with the Commission a general denial of the allegations set forth in the complaint of the complainants.

This cause was heard on the 4th day of May, 1917, at the council chamber of the city hall in the town of Wray, Colorado.

Fred W. Herbert, chief statistician for the Commission, presented a written report disclosing the operating expenses and operating revenues of the defendant utility for a period of eleven months preceding the date of this hearing, the present owner of this utility having acquired the property on May 1, 1916.

The operating revenues of the utility for the period above set forth were $6,516.30; the operating expenses for the same period, including taxes, were $6,472.44.

Fred J. Rankin, valuation engineer for the Commission, found the normal reproduction cost new of the physical properties of the defendant utility as of January 1, 1917, to be $22,935.00, and the present value of the physical properties of the utility as of January 1, 1917, to be $19,898.00.

It will be seen from the above conclusions that the defendant utility is not earning a fair rate of return upon the present fair value of its properties in use and useful.

Prior to the filing of the complaint with the Commission, and prior to the purchase of this property by Matt Williams, the present owner, a schedule of rates had been in force and effect in the town of Wray which was discriminatory, and practically all consumers purchased electric current upon a flat schedule of rates, the base rate being 20 cents per kilowatt hour. The minimum rate in effect in the town of Wray prior to the filing of the complaint was $1.50 per month.

Subsequent to the filing of this complaint, and on the 1st day of January, 1917, Matt Williams, the present owner of the defendant utility, filed with the Commission a schedule of rates to be charged by the defendant utility in the town of Wray. This schedule provides for a rate of 15 cents per kilowatt hour to business houses and residences using from 1 kilowatt to 50 kilowatts, 14 cents per kilowatt hour for 50 to 100 kilowatts, and 12 cents per kilowatt hour from 100 to 200 kilowatts, with a minimum of $1.00 and a 10 per cent discount on all bills if paid before the 10th day of each month. Street lighting rates provided for in this schedule are on the basis of $123.00 per month for eighty 40-watt lamps with all night service. All consumers are placed on a meter basis and a meter deposit of $5.00 is required of consumers in dwelling houses, and $10.00 of commercial consumers.

It will be seen that the present owner has placed all consumers on a meter basis, as required by the rules and regulations of this Commission effective January 1, 1917, and thus the objection of the town of Wray to the discriminatory rates has been eliminated. The minimum of $1.50 per month has been reduced to $1.00, which, in the opinion of the Commission, is a reasonable minimum for the town of Wray.

From the evidence submitted to the Commission it developed that some consumers of electric current confused the meter deposits required by the defendant utility with meter rent, which is prohibited by the Commission. This Commission permits a reasonable meter deposit in the event the public utility pays to the consumer interest on the deposit at the rate of 6 per cent per annum, as provided for in Rule 11 of the Commission pertaining to the regulation of service of electric companies. The Commission is of the opinion that the meter deposits required by the defendant utility are reasonable.

While no complaint was made of the service rendered by the defendant utility the engineering staff of the Commission reported on the service of this utility and found the same to be adequate.

The Commission is of the opinion that the rates now charged by the defendant utility in the town of Wray are reasonable, and that the service furnished by the defendant utility is adequate.

ORDER.

IT IS THEREFORE ORDERED, That the complaint of the complainants be dismissed.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners,

Dated at Denver, Colorado, this 9th day of June, 1917.

IN RE TRAIN SERVICE BETWEEN DENVER AND EASTONVILLE.

(Case No. 129.)

(June 18, 1917.)

COMPLAINT against discontinuance of passenger trains Nos. 39 and 40 between Denver and Eastonville; company ordered to continue operation of trains.

STATEMENT.

By the Commission:

On the 25th day of May, 1917, The Colorado & Southern Railway Company filed with the Commission a notice in writing, in accordance with the rules of this Commission, of its intention to discontinue passenger trains Nos. 39 and 40, operating between Denver and Eastonville, effective June 4, 1917.

On the 26th day of May, 1917, the Commission received a protest in writing, signed by Messrs. Ben Narron, Fred Long and J. E. Mayer, in behalf of the communities affected, requesting the Commission to investigate into the adequacy of the service, and objecting to the proposed discontinuance of trains Nos. 39 and 40 now operated by the respondent company.

On the 2nd day of June, 1917, the Commission initiated an investigation into the feasibility and necessity of the proposed discontinuance by the respondent company of its passenger trains Nos. 39 and 40 between Denver and Eastonville, and ordered the respondent carrier to appear before the Commission at the hour of 10:00 o'clock a. m., on the 12th day of June, 1917, to make such defense to the protests filed with the Commission as its interests seemed to require, and also ordered the respondent carrier not to discontinue the operation of its

passenger trains Nos. 39 and 40 until the further order of the Commission.

At the hearing of this cause before the Commission, witnesses from the communities and territory affected by the proposed discontinuance of passenger trains Nos. 39 and 40 presented evidence in support of the protests filed with the Commission; the Chamber of Commerce of Colorado Springs was permitted to intervene, and presented evidence, and witnesses representing the respondent carrier attempted to justify the changes proposed by the respondent company.

The Commission now being fully advised in the premises is of the opinion that the showing made by the respondent carrier does not at this time justify the discontinuance of passenger trains Nos. 39 and 40.

ORDER.

IT IS THEREFORE ORDERED, That the respondent company, The Colorado & Southern Railway Company, shall not discontinue the operation of its passenger trains Nos. 39 and 40 between Denver and Eastonville until the further order of this Commission.

Geo. T. Bradley,
(SEAL) M. H. Aylesworth,
A. P. Anderson,
Commissioners.

Dated at Denver, Colorado, this 18th day of June, 1917.

FRANK M. STREAMER, et al.,
v.
THE DENVER & INTERURBAN RAILROAD COMPANY.

THE CITY OF BOULDER, CHARLES O'CONNER, ET AL., *Intervenors.*

(Case No. 130.)

Jurisdiction of Commission—Public Utilities Subject.

(1) The Public Utilities Commission has repeatedly held that it has original, exclusive jurisdiction over every public utility operating within the State of Colorado defined by the Public Utilities Law to be a public utility, and that the jurisdiction of the Commission extends to all matters pertaining to rates and service of all public utilities, and such position is sustained by the decision of the Supreme Court of the State of Colorado in the casé of The Denver & South Platte Railway Company v. City of Englewood, decided July 3d, 1916.

Service—Street Railways—Effect on Real Estate Values.

(2) Every public utility under the jurisdiction of the Commission must furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the health, comfort and safety of its patrons, employees and the public, and as shall in all respects be adequate, efficient, just and reasonable; and the Commission has no power to order an extension of a street railway line because it will enhance the value of the property, nor has it the authority to prohibit the removal of street railway tracks solely on the ground that the removal of said tracks will depreciate the value of the property.

(June 23, 1917.)

APPLICATION of The Denver & Interurban Railroad Company to make changes in routing of cars in and through Boulder, discontinue certain service in Boulder and remove certain tracks in Boulder; application granted.

APPEARANCES: For the Complainants, Frank F. Dolan, Esq. For the Defendant, Messrs. E. E.

Whitted and A. S. Brooks. For the City of Boulder, Frank L. Moorhead, Esq., City Attorney.

By the Commission:

On the 11th day of June, 1917, the Commission received an application in writing from the defendant, The Denver & Interurban Railroad Company, for permission to make certain changes in the routing of its cars in and through the city of Boulder, to discontinue service over a portion of its lines in said city, and to take up the tracks from certain of the streets therein. The application was made in accordance with the Commission's General Order No. 15 requiring written notice to the Commission prior to the discontinuance of service, abandonment of tracks, or changes in the routing of cars. The petition of the defendant carrier specifically described the proposed changes as follows:

"Leaving the present line on Pearl Street a short distance west of the eastern city limits, and connecting at that point with the main track of The Colorado & Southern Railway Company on its own private right of way south of Pearl Street, as shown on blue print map track of The Colorado & Southern Railway on its own private right of way, over said track, by the erection of poles and the stringing of wires for that purpose, to a point on Water Street near Twenty-second Street, where the track of The Colorado & Southern Railway leaves the Company's right of way and enters upon Water Street under the provisions of an ordinance heretofore adopted by the City of Boulder, granting a franchise for steam southern city limits of the City of Boulder. Also, in connection therewith, for the extension of certain side and wires, along the main track of The Colorado & Southern Railway on Water Street to Twelfth Street, at which point the route of The Denver & Interurban Railroad will continue as at present, southerly and easterly to the

passing tracks and the electrification thereof, between Twelfth and Seventeenth Streets in the city of Boulder, as shown on blue print map 'B' hereto attached.

"In connection with, and as part of this change railroad tracks to The Greeley, Salt Lake and Pacific Railway Company, predecessor in interest to The Colorado & Southern Railway Company; thence by an electrification and the erection of poles and the stringing of of route, the present tracks of The Denver & Interurban Railroad on Pearl Street, between the point of connection shown on blue print 'A' near the eastern city limits of the city of Boulder and Twelfth Street, and on Twelfth Street between Pearl Street and Water Street where the new route connects with the old route, are to be abandoned."

The petition of the defendant carrier also set forth a certain resolution adopted by the city council of the city of Boulder on the 8th day of June, 1917, which provided, in substance, that the proposed changes, discontinuance of service and removal of tracks by the defendant carrier were granted on condition that the consent of the Public Utilities Commission of the State of Colorado be first obtained, and that the railroad company make certain improvements in regard to the proposed change of service which, in the city council of the city of Boulder, appeared necessary. The resolution of the city council is attached to the application of the defendant carrier, and contains the requirements upon which the application of the defendant carrier to the city of Boulder was favorably acted upon. Maps and profiles of the proposed changes were also attached to the application to the Commission of the defendant carrier, as required by the rules of the Commission.

On the 15th day of June, 1917, the complainants, Frank M. Streamer, O. D. Webb, W. W. Potter and J. W. Valentine, by their attorney, Frank F. Dolan, Esq., and

for themselves and sixty other residents of the city of Boulder, filed with the Commissino written objections to the changes proposed in the application of the defendant carrier to the Commission. This protest alleged, in substance, that the present operation by the defendant carrier of its electric trains is more convenient and beneficial to the traveling public than the proposed operation, and that if the Commission consented to the proposed changes great hardship would result to the traveling public. It was further alleged that the Commission is without power, authority and right to grant the defendant company's request, and is without jurisdiction to hear and determine the same.

(1) On the 15th day of June, 1917, the Commission issued an order overruling the objections of the protestants to the jurisdiction of the Commission, calling the attention of the protestants to the order of the Commission in the case of Thorman, et al., v. The Denver & Interurban Railroad Company, 2 Colo. P. U. C. 171, 176; P. U. R. 1916E, 421, in which the Commission stated:

"The Commission has held many times that it has original and exclusive jurisdiction over every public utility defined by the Public Utilities law to be a public utility, operating within the State of Colorado, and that the jurisdiction of the Commission extends to all matters pertaining to the service and rates of all public utilities specifically designated by the legislature as public utilities, street railways having been so designated.

"It is not necessary, however, for further discussion of this question as the Honorable Supreme Court of the State of Colorado on the 3rd day of July, 1916, in the case of Denver & South Platte Railway Company v. City of Englewood, fully sustained the position heretofore taken by the Commission, and in the opinion of the Court, written by Mr. Justice Scott, we find the following:

" 'This act is very broad and seems to confer the absolute power to regulate, both as to rates and otherwise, all public utilities within the state, at least all such as are specified in the act, and among which are street railways. * * *

" 'From the sections quoted, and from other provisions of the act, it fully appears that the legislature intended to delegate to the Public Utilities Commission the administration, supervision and regulation of all service rendered to the public throughout the state, including municipalities. Rates and regulations fixed by contract are specifically included within the powers of the commission. * * *

" 'It follows, therefore, that the power to regulate the rates of the public utility in question, is vested by the act exclusively in the Public Utilities Commission. The law fully provides that every order or decision made by the Commission, may be reviewed by the Supreme Court upon the application of either party, or of any person pecuniarily interested in the utility, for the purpose of having the lawfulness of the order or revision determined.' "

It was further ordered by the Commission that the defendant carrier, The Denver & Interurban Railroad Company, should in no way change the routing of its cars, remove its tracks or discontinue a portion of its service in the city of Boulder until the further order of the Commission.

This cause was set for hearing at the hearing room of the Commission in the State Capitol building in the city and county of Denver, State of Colorado, on Wednesday, June 20, 1917, at the hour of 10:00 o'clock a. m., permission being given to the city of Boulder to intervene and present such evidence to the Commission as its interests seemed to require.

On the 20th day of June, 1917, the Commission received an additional petition from residents of the city of Boulder protesting against the proposed changes of the defendant carrier, and a petition signed by Charles O'Connor and some two hundred other residents of the city of Boulder, urging the Commission to sustain the action of the city council of Boulder and permit the defendant carrier to make the changes proposed.

This cause came on for hearing before the Commission on June 20, 1917. Witnesses testified for the complainants and protestants, the defendant railroad company, and in behalf of the petitioners urging action by this Commission favorable to the application of the defendant carrier and the resolution of the city council of Boulder.

It appears from the evidence that the defendant carrier operates an electric railroad between the city of Denver and the city of Boulder and intermediate stations. The electric trains operated from Denver to Boulder leave Denver from a loop located on Arapahoe Street between 14th and 15th Streets, and proceed on Arapahoe Street in an easterly direction to Globeville over the right-of-way of the Denver Tramway Company, and are under the control and operation of the Tramway Company between the Denver loop and Globeville. From Globeville to Boulder these trains are operated over the right-of-way and tracks of The Denver & Interurban Railroad Company and the Colorado & Southern Railway Company, and enter the city of Boulder on east Pearl Street, making some twenty-three stops within the city of Boulder, if required by patrons desiring to board or alight from the trains of the defendant carrier, prior to arriving at the Boulder terminus located at 12th and Pearl Streets. Pearl Street is the principal business thoroughfare of the city of Boulder. The city of Boulder is also served by a street railway owned and operated by

The Western Light & Power Company. The Boulder depot of the defendant carrier is located at 12th and Pearl Streets, and the depot of The Colorado & Southern Railway Company, owner of the majority of stock of the defendant carrier, is located at 14th and Water Streets, and about two blocks from the center of the business district.

The testimony developed the fact that the defendant carrier for a period of years has desired to depart from the terms of its Boulder franchise and to facilitate the operation of its electric trains by arriving and departing from Boulder at the station of the Colorado & Southern Railway Company, and over the tracks of the Colorado & Southern Railway Company to a point a short distance east of the city limits of Boulder, and entering and departing from the city of Denver at the Union Terminal station, thus facilitating the movement of trains between Denver and Boulder and eliminating the slow operation through congested streets in Boulder and Denver. It also appears from the evidence that the city of Boulder now desires to pave Pearl Street, and it is thus apparent that if the proposed change in the routing of cars is to be made by the defendant carrier the matter should be acted upon at this time for the convenience of the public, the defendant carrier, and the municipality of Boulder. It was evidently upon this theory that the city council of Boulder adopted the resolution set forth in the application of the defendant carried; it therefore becomes the duty of this Commission to dispose of the issues in this cause at this time.

(2) There was an attempt made by the complainants and the defendant railroad company to introduce testimony as to alleged depreciation and appreciation of property in the event the proposed changes are permitted. This evidence was not received by the Commission. In the case of Thormann, et al., vs. The Denver

& Interurban Railroad Company, *supra,* on page 179 the Commission stated:

"Evidence introduced by property owners to the effect that abandonment of street car service and the removal of street railway tracks will depreciate the value of property, or to the effect that an extension of street railway tracks will appreciate the value of property, cannot be considered by the Commission. Every public utility under the jurisdiction of the Commission must furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the health, comfort and safety of its patrons, employes and the public, and as shall in all respects be adequate, efficient, just and reasonable, but the Commission has no authority to order an extension of a street railway line because it will enhance the value of property, nor has it the authority to prohibit the removal of street railway tracks for the reason that the removal of said tracks will depreciate the valeu of property. This Commission is not an instrument to aid in increasing real estate values, nor to lend assistance to property owners to maintain the present value of their property."

Some testimony was introduced by the complainants for the purpose of proving that the defendant carrier served the city of Boulder as an urban railroad, but from a careful study of the witnesses' statements the Commission is convinced that the city of Boulder, with its 10,000 or 12,000 people, does not need two local street railways, and, in fact, from the evidence introduced, the Commission is convinced that not one per cent of the revenue of the defendant carrier is developed from local traffic in Boulder. It was also shown that the local street railway serves east Boulder and traverses Pearl Street for a large portion of the distance traversed by the line of the defendant carrier.

Witnesses for the defendant carrier testified that the cars operated by it weigh sixty tons, and are entirely too heavy to be operated in local street railway service. Witnesses testified, and a map was introduced by the city engineer of Boulder to bring before the Commission the point, that 12th Street in the city of Boulder at the point where the defendant carrier loads and unloads passengers at its terminal, is greatly congested due to automobile traffic and the local street railway lines traversing this street at that point, and that at the corner of Pearl and 12th Streets, at the point where the defendant carrier urns its electric cars east on Pearl Street, it will be impossible for the city to properly install a curbing, due to the position of the tracks and cars, and it will also be impossible to change the curve at this point due to long truck centers of the cars of the defendant carrier.

The witnesses for the defendant carrier also testified that it is impossible, under the present arrangement, to store within the city of Boulder extra cars for use during rush periods of the day owing to the congested conditions at the present Boulder terminal, but that in the event the Commission permits the proposed changes the company proposes to electrify a storage track at the Colorado & Southern depot, the proposed terminal of the defendant carrier in Boulder.

The Commission, in another case, ordered the Denver & Interurban Railroad Company to place a car for congested traffic at Broomfield, an intermediate station on its line, but this arrangement has been unsatisfactory to the Commission due to the number of passengers compelled to stand between Boulder and Broomfield. Under existing conditions, however, the Commission is unable to remedy this inadequate service.

Mass meetings were held in the city of Boulder at the call of the mayor to determine the desires of the trav-

eling public as to the changes proposed by the defendant carrier, and the city council took action only after careful investigation. While the Commission realizes that the action of the city council is in no way binding upon it, yet this action is of serious import and has received the careful consideration of this Commission.

Witnesses for the defendant carrier also testified that the proposed changes would result in reduced running time between Boulder and Denver, thus resulting in a convenience to a great majority of the passengers of the defendant carrier riding between Denver and Boulder and points intermediate.

ORDER.

The Commission, being fully advised in the premises, now orders:

1. That the application of The Denver & Interurban Railroad Company, filed with the Commission on June 11, 1917, for an order of this Commission permitting certain changes in the routing of cars in and through the city of Boulder, discontinuance of service over a portion of its lines in the city of Boulder, and removal of its tracks from certain of the streets in Boulder, as specifically described in the application now filed with the Commission, be and is hereby granted.

2. That the conditions set forth in a certain resolution of the city council of Boulder, adopted on June 8, 1917, be complied with by the defendant carrier unless this Commission shall issue a subsequent order altering or modifying said conditions.

3. That the defendant carrier shall electrify a track in the vicinity of the Colorado & Southern depot, the proposed terminal of the defendant carrier at Boulder, and place thereon a car or cars to be used during periods of congested traffic out of Boulder on the cars of the de-

fendant carrier, and that no electric trains shall depart from the city of Boulder on the line of the defendant carrier, after the proposed changes have been completed, without each passenger thereon being provided with seating accommodations.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 23rd day of June, 1917.

THE COLORADO-UTAH COAL COMPANY, THE VICTOR-AMERICAN FUEL COMPANY, THE MOFFAT COAL COMPANY, and THE BEAR RIVER COAL COMPANY,

v.

THE DENVER & SALT LAKE RAILROAD COMPANY.

(Case No. 122)

(June 23, 1917.)

COMPLAINT against the elimination of a rule of The Denver & Salt Lake Railroad Company providing that an allowance of 50 cents per car will be made for car door boards on coal cars; defendant ordered to reinstate rule.

APPEARANCES: For the Complainants: Messrs. Caldwell Yeaman and Kenaz Huffman; for the defendant: Messrs. Dines, Dines & Holme.

STATEMENT.

By the Commission:

On the 8th day of March, 1917, the complainants filed with the Commission their complaint in this cause, alleging, in substance, that they are coal operators engaged in the business of the mining, sale and distribution of coal in the State of Colorado, and for a considerable length of time last past have routed and shipped coal from their mines over the lines of the defendant in Colorado, and are doing the same now; that heretofore the defendant, The Denver & Salt Lake Railroad Com-

pany, promulgated a rule concerning an allowance for car door boards, which rule is as follows:

"ALLOWANCE FOR CAR DOOR BOARDS: An allowance of fifty cents per car will be made shippers for car door boards applied by them to box or stock cars loaded with coal. In the event that lumber or slabs is furnished shippers by the railroad company for car door boards the above charge will not apply, nor will any allowance be made to the shippers for their services in applying the same."

The complainants alleged that the rule has been continually published in the tariffs and supplements thereof of the defendant for many years last past, and that during said period the rule has been regularly followed and strictly complied with.

It was further alleged that the actual cost of furnishing and applying car door boards upon each car exceeds the allowance of 50 cents per car made; that it has been the general custom among railroads of this state, and in other states, to either allow the sum of 50 cents to shippers for furnishing and applying car door boards to cars in which coal is shipped, or to furnish the proper lumber or slabs for such use at a place designated by the shipper; that the defendant followed this rule up to January 18, 1917, at which time the cancellation of said rule became effective, said cancellation being contained in defendant's local freight tariff No. 1-B, Supp. No. 9 to Colo. P. U. C. No. 36, Item 140-A. (Effective intrastate December 26, 1916, Supp. No. 6.)

It was alleged that the rule and custom are just and fair to both the complainants and the defendant; that they are necessary for the full protection of complainants' rights and to prevent an unjustified financial loss to and discrimination against complainants; that said rule embodies and expresses a duty imposed upon the defendant to furnish cars suitable for the purpose for

which they are intended, and a duty of the defendant to serve complainants in such a manner as to cause them no loss.

It was further alleged that the defendant requires, by its tariff and otherwise, that cars shall be loaded to a certain minimum or full capacity with coal, and that this requirement cannot justly or properly be met without the use of car door boards; that defendant's cars are incapable of properly containing or transporting a minimum or full capacity load without the protection of car door boards.

The complainants ask that an allowance for car door boards, when box or stock cars are to contain or do contain coal, be fixed and established in the sum of 50 cents per car; that defendant be required to furnish and deliver to complainants lumber or slabs of proper size and quality at such places as complainants shall request, or that defendant be required to reinstate and continue in its tariffs and regulations the same rule the cancellation of which is complained of.

On March 20, 1917, the defendant herein filed its answer to the complaint of the complainants, in which it admitted that the defendant had formerly promulgated a rule concerning an allowance for car door boards in substance as set out in the complaint. It admitted that said rule had been contained in its tariffs and while therein was strictly complied with; that formerly it was the general custom among railroads to either allow the sum of 50 cents to shippers for furnishing and applying car door boards, or to furnish a sufficient number of slabs for such use by the shipper. The answer admitted that said rule was cancelled by the defendant on or about January 18, 1917, but denied that said alleged universal custom is either just or fair to the defendant, and also denied that said rule is either necessary or proper for the protection of complainants' rights or to prevent an unjustified finan-

cial loss to or discrimination against the complainants. The defendant denied that any duty rests upon it to serve complainants in such a manner as to cause them no loss. Defendant admitted that its tariffs provide for certain minimum loads of coal; but denied that said provision cannot justly or properly be met or complied with without the use of car door boards. It admitted that complainants have been and are compelled to use for their respective coal shipments such cars as are available to this defendant from its own cars and cars of its connections.

The answer further denied that any of said cars are incapable of properly containing or transporting minimum loads in accordance with the tariffs of this defendant without the protection of car door boards, and asserted that any order granting all or any of the prayer in said complaint contained would be unjust or unfair to the defendant.

This cause came on for hearing before the Commission at its hearing room in the State Capitol building in the city of Denver on the 21st day of May, 1917.

From the complaint herein and from the testimony introduced at the aforesaid hearing it appears that car door boards are used inside of the regular car door for the purpose of holding the coal and preventing the same from escaping from the car, as well as for the purpose of protecting the regular car door so that, after the coal is loaded, the door may be opened and closed. It was contended by the complainants that car doors cannot be closed after the car is loaded, nor opened after shipment's arrival at destination, if car door boards are not used.

It is the contention of the defendant that car door boards are not actually necessary in the loading and transporting of coal; that cars may be properly and adequately loaded to the minimum capacity without the use

of car door boards; that by a proper method of loading, viz., by distributing the coal in the farthest ends of the car, and not loading the coal so that it comes in contact with the regular car door, the car may be loaded to minimum capacity without the protection of car door boards.

Numerous witnesses were examined by the Commission at the hearing to enable the Commission to arrive at an intelligent determination of this cause. Several witnesses for the complainants testified that they had had many years' experience in the mining, transporting and distribution of coal, and that in all their experience they had not themselves attempted, or known of others attempting, to ship or transport coal in box or stock cars without the protection of car door boards. No witnesses of any experience in the transportation of coal testified that the use of car door boards is unnecessary.

The defendant carrier contended that the minimum capacity can be loaded in cars without the protection of car door boards, but witnesses most familiar with the transportation of coal, testified that in loading a box or stock car by piling up coal in each end of the car, during the transportation of the car the coal rolls to the center of the car, thereby blocking the doors and rendering it impossible to open them when the car arrives at its destination.

Mr. W. H. Paul, testifying on behalf of the defendant, stated that he is the general freight and passenger agent of the defendant, The Denver & Salt Lake Railroad Company. He also testified, in part, as follows:

> "We are frankly willing to amend our tariff providing that when cars are less than 36 feet in length, box and stock cars, we would stand the expense of 50 cents allowance for car door boards, but we have felt that we could not afford to do it on all box cars."

After carefully considering the testimony in this cause the Commission is of the opinion, and so finds, that the use of car door boards is actually necessary in the transportation of coal in box and stock cars. The question then arises as to who should bear the expense of furnishing and placing car door boards on box or stock cars used in transporting coal. It appears to the Commission that it is the duty of the defendant carrier to furnish to its patrons cars in such condition that such patrons may properly load and transport their products. It appears also that within the State of Colorado the defendant, The Denver & Salt Lake Railroad Company, is the only one of the principal coal carriers which does not provide in its tariffs this rule for an allowance of 50 cents per car for furnishing car door boards. The Denver & Rio Grande Railroad Company, The Colorado Midland Railway Company, The Colorado & Southern Railway Company, and The Atchison, Topeka & Santa Fe Railway Company all publish a rule making an allowance of 50 cents per car to shippers who furnish and place car door boards on cars for the shipment of coal. While the rule is not universal it seems that other carriers extensively engaged in the transportation of coal within the state do make this allowance of 50 cents per car.

It is the opinion of the Commission, and it so finds, that it is the duty of the defendant carrier to make an allowance to shippers of 50 cents per car for furnishing and placing of car door boards.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, The Denver & Salt Lake Railroad Company, shall, on or before the 13th day of July, 1917, publish and file with this Commission, to become effective within the time provided by the rules of this Commission, an amendment to its tariff which shall read as follows:

"ALLOWANCE FOR CAR DOOR BOARDS.—An allowance of 50 cents per car will be made shippers for car door boards applied by them to box or stock cars loaded with coal. In the event that lumber or slabs be furnished the shipper by the railroad company for car door boards the above charges will not apply, nor will any allowance be made to shippers for their services in applying the same."

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 23rd day of June, 1917.

INVESTIGATION AND SUSPENSION DOCKET No. 9.

IN RE ADVANCES IN FREIGHT RATES IN COLORADO.

(July 5, 1917.)

STATEMENT.

By the Commission:

IT APPEARING, That by order dated the 19th day of June, 1917, the Public Utilities Commission of the State of Colorado entered upon an investigation and hearing concerning the propriety of the proposed fifteen per cent advances in freight rates in Colorado, stated in schedules contained in tariffs enumerated and described in said order, and set July 10th, 1917, as the date for hearing thereon,

IT FURTHER APPEARING, That pending such hearing and decision thereon, the Commission ordered that the operation of the schedules contained in the tariffs described in the said order of investigation be suspended and that the use of the charges, rules and regulations therein stated be deferred upon intrastate traffic until the 1st day of November, 1917;

IT FURTHER APPEARING, That certain of the carriers issuing tariffs described in the said order of investigation have filed supplements with the Commission, cancelling the schedules contained in the tariffs described in the said order of investigation and that other carriers have signified their intention of immediately filing tariffs withdrawing the proposed schedules;

IT IS ORDERED, That the hearing set for July 10th, 1917, be, and the same is hereby, vacated.

IT IS FURTHER ORDERED, That the carriers involved as respondents in the said order of investigations be, and they are hereby, permitted to file supplements withdrawing and cancelling, effective July 1st, 1917, the tariffs containing the proposed schedules and described in the said order of investigation.

IT IS FURTHER ORDERED, That the Secretary of this Commission be, and he is hereby, directed to serve upon the carriers issuing, and the carriers participating in, the schedules contained in the tariffs described in the said order of investigation, a certified copy of this order.

Geo. T. Bradley,
(SEAL) M. H. Aylesworth,
A. P. Anderson,
Commissioners.

Dated at Denver, Colorado, this 5th day of July, 1917.

IN RE APPLICATION OF THE COLORADO SPRINGS & INTERURBAN RAILWAY COMPANY TO CHANGE EXISTING STREET CAR OPERATION AND SERVICE WITHIN THE CITY OF COLORADO SPRINGS.

(Case No. 132.)

(July 18, 1917.)

APPLICATION of The Colorado Springs & Interurban Railway Company to change street car service in Colorado Springs and change certain tracks; application granted.

APPEARANCES: For the Petitioner, Messrs. Chinn & Strickler, Mr. B. M. Lathrop.

STATEMENT.

By the Commission:

On the 26th day of June, 1917, there was filed with the Commission, by The Colorado Springs & Interurban Railway Company, an application in writing requesting an order of this Commission permitting the petitioner to discontinue street car service and remove its tracks on what is known as the Nob Hill line of railway on Kiowa Street from Wahsatch Avenue to El Paso Street, a distance of two blocks; and to extend its line of railway on El Paso Street for one block between Kiowa Street and Pike's Peak Avenue, resulting in direct service to the Santa Fe railroad depot by way of the Nob Hill line and the Institute Street line.

The petition alleges that in the event the Commission permits the petitioner to discontinue the operation of its

Nob Hill line on that portion of Wahsatch Avenue and Kiowa Streets upon which it now operates the same, and permits the petitioner to extend this line from the intersection of Kiowa and El Paso Streets for a distance of one block on El Paso Street to Pike's Peak Avenue, all patrons of the Nob Hill line will have direct service to the Santa Fe depot and the citizens of Colorado Springs will have additional street car service from the downtown district to the Santa Fe depot without any material additional operating expense to the petitioner, or material inconvenience to patrons of the petitioner's system of street railway lines.

This cause was set for hearing at the Council Chamber in the City Hall at Colorado Springs on the 10th day of July, 1917, at 2:00 o'clock p. m., after notice had been given to the citizens of Colorado Springs by publishing in the newspapers of the city of Colorado Springs the request of the petitioner, together with the date and place of the hearing of the cause. An invitation was extended by the Commission to those interested to appear at the hearing and present such testimony as their interests would require.

At the hearing B. M. Lathrop, Superintendent of The Colorado Springs & Interurban Railway Company, appeared as a witness for the petitioner and testified that the proposed changes would result in increased service at the Santa Fe railroad depot, giving to all patrons of the Nob Hill line direct service to the Santa Fe depot without transfer, and would eliminate two curves—one at the intersection of Kiowa Street and Wahsatch Avenue, and one at the intersection of El Paso and Kiowa Streets.

Mr. Lathrop also testified that the proposed extension on El Paso Street would necessitate a curve at the intersection of Pike's Peak Avenue and El Paso Street, leading into the subway on Pike's Peak Avenue, over

which the Atchison, Topeka & Santa Fe Railway is constructed.

City Commissioners of Colorado Springs were given an opportunity to present testimony in behalf of the municipality, but the Commission was informed by the City Attorney that the City Commissioners had determined that the Public Utilities Commission should determine the matters at issue upon the evidence received, and without suggestions from the city officials.

No protests were filed with the Commission, and after a thorough examination of the petitioner's witnesses, members of the Commission visited the locations of the proposed changes.

ORDER.

The Commission, now being fully advised in the premises, orders:

1. That The Colorado Springs & Interurban Railway Company be permitted to discontinue street car service on Kiowa Street between Wahsatch Avenue and El Paso Street and remove its railway tracks therefrom.

2. That The Colorado Springs & Interurban Railway Company shall apply to the City Commissioners of the City of Colorado Springs for a revocable permit, which will if granted authorize an extension of the line of railway of The Colorado Springs & Interurban Railway Company on El Paso Street between Kiowa Street and Pike's Peak Avenue.

3. That The Colorado Springs & Interurban Railway Company shall cause all of its street cars operating on El Paso Street and Pike's Peak Avenue and turning at the intersection of Pike's Peak Avenue and El Paso Street to come to a full stop at the intersection of El Paso Street and Pike's Peak Avenue before proceding on Pike's Peak Avenue or El Paso Street.

4. That The Colorado Springs & Interurban Railway Company, upon the removal of its tracks on Kiowa Street, shall place that portion of Kiowa Street heretofore occupied by its railway tracks in a condition of good repair and in accordance with any reasonable orders pertaining thereto made by the City Commissioners of Colorado Springs.

Geo. T. Bradley,
(SEAL) M. H. Aylesworth,
A. P. Anderson,
Commissioners.

Dated at Denver, Colorado, this 18th day of July, 1917.

CITIZENS OF THE CITY OF COLORADO SPRINGS
v.
THE COLORADO SPRINGS & INTERURBAN RAILWAY COMPANY.
(Case No. 131.)

Service—Street Railways—Effect on Real Estate Values.

(1) Every public utility under the jurisdiction of the Commission must furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the health, comfort and safety of its patrons, employees and the public, and as shall in all respects be adequate, efficient, just and reasonable; and the Commission has no power to order an extension of a street railway line because it will enhance the value of the property, nor has it the authority to prohibit the removal of street railway tracks solely on the ground that the removal of said tracks will depreciate the value of the property.

(July 19, 1917.)

PETITION for changes in Wahsatch line of The Colorado Springs & Interurban Railway Co.; changes ordered by Commission.

APPEARANCES: For the Complainants, Mr. J. E. Johnson; for the Defendant Company, Messrs. Chinn and Strickler; for the Protestant Intervenors, Arthur Cornforth, Esq.

STATEMENT.

By the Commission:

On the 26th day of June, 1917, there was filed with the Commission a written petition signed by Joseph Yeamons, C. G. Strang and J. E. Johnson, a committee representing citizens of the City of Colorado Springs residing north and east of the intersection of San Miguel and Corona Streets, praying for an order of this Commission re-

quiring the Colorado Springs & Interurban Railway Company to reconstruct the Wahsatch Avenue line of its electric railway system within the city of Colorado Springs, and alleging that the reconstruction of this line is necessary to afford adequate service to patrons of the defendant company. The defendant company joined in the petition of the complainants, expressing its willingness to reconstruct its Wahsatch line in such a manner as might be prescribed by the Public Utilities Commission.

This cause was set for hearing at the Council Chamber in the city hall in the City of Colorado Springs on the 10th day of July, 1917, at the hour of 11:00 o'clock a. m., after notice had been given to the citizens of Colrado Springs by publishing in the newspapers of the city of Colorad Springs the request of the complainants, together with the time and place of the hearing of said cause. An invitation was extended by the Commission to those interested to appear at the hearing and present such testimony as their interests would require.

At the hearing of said cause Arthur Cornforth, Esq., requested and received permission to intervene in behalf of property owners on Weber Street, who desired to resist the application of the complainants.

Upon the request of the Commission, D. P. Strickler, representing the defendant company, introduced an exhibit showing the proposed changes and explained that the complainants desired an order of the Commission requiring the defendant railway company to extend the Wahsatch line—a part of the street railway system of the defendant company—from a point at the intersection of San Miguel and Corona Streets, north on Corona Street to Fontanero Street, which would result in the defendant company discontinuing the operation of the Wahsatch line for a distance of two blocks on San Miguel Street between Corona and Weber Streets, and for a distance of five blocks between San Miguel and Fontanero Streets

on Weber Street, and on Fontanero Street between Weber Street and Corona Street. About ninety persons desiring the reconstruction of the Wahsatch line appeared at the hearing of the cause and offered to submit evidence in support thereof, while several property owners residing on Weber Street presented testimony contending against the wishes of the complainants. At the request of the Commission the complainants chose a representative, J. E. Johnson, to present the case of the complainants, while property owners on Weber Street were permitted to present objections to the proposed changes.

B. M. Lathrop, superintendent of the defendant company, appeared as a witness for the defendant railway company, and the city commissioners of the City of Colorado Springs were given an opportunity to present testimony in behalf of the municipality, but the Commission was informed by the city attorney that the city commissioners had decided that the Public Utilities Commission should determine the matters at issue upon the evidence received, and without suggestions from the city officials.

(1) The complainants and protesting intervenors offered testimony as to alleged depreciation and appreciation of property in the event the proposed changes were ordered by the Commission. This testimony was rejected by the Commission. In the case of Thormann, et al., v. D. & I. R. R. Co., 2 Colo. P. U. C. 171, at p. 179, P. U. R. 1916E, 421, the Commission stated:

"Evidence introduced by property owners to the effect that abandonment of street car service and the removal of street railway tracks will depreciate the value of property, or to the effect that an extension of street railway tracks will appreciate the value of property, cannot be considered by the Commission. Every public utility under the jurisdiction of the Commission must

furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the health, comfort and safety of its patrons, employes and the public, and as shall in all respects be adequate, efficient, just and reasonable, but the Commission has no authority to order an extension of a street railway line because it will enhance the value of property, nor has it the authority to prohibit the removal of street railway tracks for the reason that the removal of said tracks will depreciate the value of property. This Commission is not an instrument to aid in increasing real estate values, nor to lend assistance to property owners to maintain the present value of their property."

See also Streamer, et al., v. D. & I. R. R. Co., Case No. 130, 4 Colo. P. U. C. 122.

In the case of City of Colorado Springs v. C. S. & I. Ry. Co., 3 Colo. P. U. C. 1, the Commission ordered thsi defendant to operate its Wahsatch line with a twenty-minute headway, except between the hours of 4:30 p. m. and 6:30 p. m., during which time a 15-minute service was ordered.

Witnesses for the defendant street railway company testified that if the proposed changes were ordered by the Commission the Wahsatch line would operate throughout the entire operating day on a 15-minute headway. The Wahsatch line, as now operated by the defendant company, is operated north on Corona Street to San Miguel Street, thence west two blocks on San Miguel Street, thence north five blocks on Weber Street to Fontanero Street, thence east on Fontanero Street to the golf club. The proposed changes, as prayed for by the complainants and agreed to by the defendant railway company, contemplate the operation of the Wahsatch line on Corona Street from San Miguel to Fontanero Street, and the discontinuance of service and removal of tracks on San Miguel Street and Weber Street and on Fontanero

Street between Weber and Corona Streets. Witnesses for the complainants testified that the proposed changes would, if allowed, give the residents of Corona Street and east thereof adequate street car service, which is not now afforded to those residing east of Wahsatch Avenue. The Wahsatch line, as now operated, runs parallel to and two blocks from the Tejon Street line (one of the main lines of the defendant company) from San Miguel to Fontanero Street, a distance of five blocks, the Tejon Street line operating on a 7½-minute headway, and the Wahsatch line on a 20-minute headway with the exceptions above stated.

It appears to the Commission that the Street Railway Company should have originally constructed the Wahsatch line north on Corona Street from San Miguel Street, rather than on the present course, due to the close proximity of the Tejon Street line from San Miguel Street to Fontanero Street, thus affording to the residents of Corona Street and east thereof a better street car service, with resulting good service to those residing on Weber Street and Nevada Street, who would have the choice of the Tejon Street line with 7½-minute headway and the Wahsatch line operating on Corona Street with a 15-minute headway, which is the schedule upon which the defendant company contemplates operating the Wahsatch line if the proposed changes are permitted by the Commission.

The testimony developed the fact that the proposed changes would necessitate the Wahsatch line crossing the tracks of The Atchison, Topeka & Santa Fe Railway Company at the intersection of Columbia and Corona Streets, but representatives of the street railway company replied to this with testimony showing that the Wahsatch line as now operated crosses The Atchison, Topeka & Santa Fe Railway Company's tracks on Fontareno Street, and expressed a willingness to move the

interlocking plant located at the intersection of the street railway tracks with The Atchison, Topeka & Santa Fe Railway Company's tracks on Fontanero Street to the intersection of Columbia and Corona Streets where the proposed Wahsatch line will cross the Santa Fe tracks. In the case of the Colorado Springs & Interurban Railway Company v. A., T. & S. F. Ry. Co., 2 P. U. C. 219, at p. 225, in which the Colorado Springs & Interurban Railway Company prayed for an order of this Commission permitting the removal of the interlocking plant located on Fontanero Street, due to an alleged excessive cost of operation, the Commission stated:

"It is admitted by the complainant and by the engineer of the Commission that an interlocking plant is the most efficient and safest device that may be installed at the intersection of railway tracks. It would appear, therefore, that before the Commission would be justified in ordering the removal of this device from the Fontanero Street crossing, there must be evidence of a different nature than has been introduced in this case. It is the opinion of the Commission that the record does not disclose sufficient evidence upon which the Commission may base an order eliminating the interlocking plant and substituting therefor a device which is no safer and perhaps less safe. It must be a rare case indeed in which a public utility commission will order the removal of an admittedly efficient crossing protection installed through a written agreement of two public utilities with one of the parties objecting to the removal of the crossing protection on the ground that it will result in a dangerous crossing. Such an order would be a detriment to adequate crossing protection and would no doubt leave the impression with the various public utilities of the state that safety was less important than operating revenues."

The Commission is satisfied that the removal of the interlocking plant from Fontanero Street to the inter-

section of Columbia and Corona Streets will provide an absolutely safe crossing at the last named point, and that if the proposed changes are permitted no necessity arises for the future operation of the interlocking plant on Fontanero Street, as the Wahsatch line would no longer be operated on Fontanero Street between Weber and Corona Streets.

It appears from the evidence submitted that the defendant company would have originally constructed the Wahsatch line from San Miguel Street directly north on Corona Street had Corona Street been open between San Miguel and Columbia Streets.

Witnesses for the defendant company testified that the condition of the tracks of the Wahsatch line on San Miguel and Weber Streets is unsatisfactory, and that it is necessary at this time to re-tie a large portion of this line, and if the proposed changes are to be put in effect by the Commission or the company within the near future the reconstruction should be made at the present time to save the defendant company needless expense.

At the conclusion of the hearing in this case members of the Commission made a thorough inspection of the territory now served by the Tejon Street line, the Institute line, the Wahsatch line, and the proposed changes suggested by the complainants and the defendant railway company, and the Commission is of the opinion that the Wahsatch line of the defendant company, as now operated, does not serve adequately the people of Colorado Springs, nor does the railway system of the defendant company serve adequately the people of Colorado Springs unless the proposed changes of the Wahsatch line are permitted by this Commission. The reconstruction of the Wahsatch line as proposed will result in a 15-minute service on the Wahsatch line throughout the operating day, and, when the proposition is considered together with the operation of the Tejon Street line, the

Commission is of the opinion that all street car patrons residing east of Tejon Street and west of Corona Street will be adequately served, while those residing east of Corona Street will then receive adequate service where heretofore they have been discriminated against.

ORDER.

IT IS THEREFORE ORDERED:

1st. That the defendant company, The Colorado Springs & Interurban Railway Company, shall apply to the city commissioners of the City of Colorado Springs for a revocable permit which will, if granted, authorize the extension of the Wahsatch line of railway of The Colorado Springs & Interurban Railway Company on Corona Street from San Miguel Street north to Fontanero Street.

2nd. That in the event the commissioners of the City of Colorado Springs shall grant a revocable permit for the proposed extension of the Wahsatch line on Corona Street, The Colorado Springs & Interurban Railway Company shall be permitted to discontinue street car service on San Miguel Street between Corona Street and Weber Street, and on Weber Street between San Miguel Street and Fontanero Street, and on Fontanero Street between Weber Street and Corona Street.

3rd. That The Colorado Springs & Interurban Railway Company shall then cause its Wahsatch line to be operated on Corona Street between San Miguel Street and Fontanero Street, thence east on Fontanero Street, on a 15-minute headway throughout the entire operating day.

4th. That The Colorado Springs & Interurban Railway Company and The Atchison, Topeka & Santa Fe Railway Company shall remove the interlocking system, now located on Fontanero Street at the intersection

of the tracks of the defendant company with those of the Santa Fe Railway Company, at the intersection of the tracks of the defendant company with the tracks of the Atchison, Topeka & Santa Fe Railway Company at Columbia and Corona Streets, and that the interlocking plant as located at Columbia and Corona Streets shall be operated under the same rules and regulations pertaining to safety of operation as are now in force and effect.

5th. That The Colorado Springs & Interurban Railway Company, upon the removal of its tracks on San Miguel Street between Corona and Weber Streets, and on Weber Street between San Miguel and Fontanero Streets, and on Fontanero Street between Weber Street and Corona Street, shall place those portions of San Miguel Street, Weber Street and Fontanero Street now occupied by its railway tracks, in a condition of good repair and in accordance with any reasonable orders pertaining thereto made by the city commissioners of the City of Colorado Springs.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 19th day of July, 1917.

THE OAKDALE COAL COMPANY, ET AL.,
v.
THE COLORADO & SOUTHERN RAILWAY COMPANY, ET AL.
(Case No. 103.)

Rates—Railroads—Prior Reasonableness—Rehearings.

(1) The fact that rates have been found to be reasonable by the Commission does not act as a bar to the future consideration of the same rates in connection with the evidence presented at such subsequent hearing, and the Commission, under Section 49 of the Act, may rescind, alter or amend any order or decision after full hearing.

Rates—Railroads—Coal Differentials.

(2) The Commission was of the opinion that it would be impossible to establish a differential as between the various grades of coal which could be made applicable throughout the state.

(July 19, 1917.)

COMPLAINT against the rates on coal from the Walsenburg and Trinidad districts to points on the Atchison, Topeka & Santa Fe Railway and the Missouri Pacific Railroad; differential of 10 cents per ton over Canon City rates prescribed from Walsenburg district to points Baxter to Swink; differential of 30 cents per ton over Trinidad rates prescribed from Walsenburg district to points Poso to Ormega, and points east of Swink on A., T. & S. F. Ry.; balance of complaint dismissed.

APPEARANCES: Messrs. Whitehead & Vogl, for all complainants; Messrs. E. E. Whitted and A. S. Brooks, for The Colorado & Southern Railway Company; Messrs. E. N. Clark, J. G. McMurry and B. W. Robbins, for The Denver & Rio Grande Railroad Company; Messrs. J. J. Coleman, H. T. Rogers and Geo. A. H.

Fraser, for The Atchison, Topeka & Santa Fe Railway Company; Messrs. Devine & Preston, and C. E. Warner, for the Missouri Pacific Railroad Company.

STATEMENT.

By the Commission:

On October 3, 1916, a complaint was filed with the Commission by the Oakdale Coal Company, the C. K. & N. Coal Company, the Rugby Fuel Company, the Huerfano Coal Company, the Temple Fuel Company and the Aztec Coal Mining Company, seeking a readjustment of rates on coal from the Walsenburg and Trinidad districts to points in Colorado on the line of The Atchison, Topeka & Santa Fe Railway Company east of Trinidad and Pueblo, and on the line of the Missouri Pacific Railroad.

It is alleged by the complainants that the absence of rates from the Walsenburg district to points on the line of the Atchison, Topeka & Santa Fe Railway between Pueblo and Fowler entirely excludes their product from such markets, and that the rates to the other points are of such unjust and discriminatory nature as to prevent their securing their just proportion of the business. Comparisons are made by the complainants of the rates from the Walsenburg and Trinidad districts with the rates from competing districts, and the Commission is asked to place the Walsenburg and Trinidad districts on a parity with such other districts.

The specific relief and the proposed bases of rates prayed for by the complainants are as follows:

(a) Rates on lump and nut coal from the Walsenburg district to destinations between Pueblo and La Junta on The Atchison, Topeka & Santa Fe Railway on the Canon City basis.

(b) Rates on lump coal from the Walsenburg district to destinations from La Junta to Holly on The At-

chison, Topeka & Santa Fe Railway on the Dawson, New Mexico, basis.

(c) Rates on all grades of coal from the Walsenburg district to destinations between Trinidad and La Junta on The Atchison, Topeka & Santa Fe Railway on the Dawson, New Mexico, basis.

(d) Rates on slack and mine run coal from the Walsenburg district to destinations on The Atchison, Topeka & Santa Fe Railway from Fowler to Holly on the Dawson, New Mexico, basis.

(e) Rates from the Trinidad district mines on the Colorado & Southern Railway and the Denver & Rio Grande Railroad to destinations on the Santa Fe on the Dawson, New Mexico, basis.

(f) Rates from the Walsenburg and Trinidad districts to destinations on the Missouri Pacific Railroad between Pueblo and Towner at not to exceed the rates from the same districts to cross-country points on the Atchison, Topeka & Santa Fe Railway.

(g) The establishment of a reasonable differential between lump and nut coal.

Answers were filed by the several defendants generally denying the allegations of the complaint and pleading that the Commission, In re Eastern Colorado Coal Rates, 1 Colo. P. U. C. 48 and 99, has already determined the issues of the instant case and that the rates to all points of destination named in the complaint are in no case greater, and in some are less, than the rates prescribed by the Commission in the case referred to, and that all the rates in effect at present are fair and reasonable and do not furnish more than a fair and reasonable compensation for the service rendered.

The separate answer of The Denver & Rio Grande Railroad Company, adopted by The Colorado & Southern Railway Company, further alleges that the Denver & Rio Grande Railroad Company is willing to participate

in the establishment and application of reasonable rates to destinations not now covered by rates or tariffs where necessary for the transportation of existing business, but denies that the Commission has power to establish rates via the defendant's line to meet rates via other lines which serve all reasonable requirements of transportation, and denies that the Commission has power to prescribe rates via the line of the defendant based solely upon rates from other coal producing territory and via other lines of transportation for the purpose of bringing one territory into favorable competition with the other.

At the time of the filing of the complaint The Missouri Pacific Railway Company was being operated by B. F. Bush, Receiver, but adoption notices by the Missouri Pacific Railroad Company have since been filed with the Commission adopting and ratifying all tariffs, powers of attorney and other instruments formerly filed by B. F. Bush, as Receiver. This carrier will therefore be referred to as the Missouri Pacific Railroad Company in this decision.

The Commission has considered the contentions of the defendants with respect to the issues in the instant case being the same as those involved In re Eastern Colorado Coal Rates, *supra*. The former case was initiated on January 11th, 1915, on the Commission's own motion, for the purpose of ascertaining if inequalities existed in the rates on coal to points in eastern Colorado from the various coal producing districts, and, if discrimination were found to exist, to remove the same by the establishment of rates which should place the points of destination on a basis of equality. As stated by the Commission at page 50:

"Upon making an examination of the various tariffs and rates, as shown by the schedules filed by the common carriers, many apparent discrepancies were discovered, and the Commission felt that it would be a loss of time,

without any general benefit, to attempt to justify any specific rate without making an investigation as to the whole situation, owing to the fact that the coal rates in the state are so closely related to each other, from the various producing points, that if one rate or set of rates were disturbed the change would immediately affect every other rate. Thus, from the very nature of the situation, it became necessary for the Commission to investigate the entire field at one and the same time, to the end that no injustice would result to any of the carriers and no discrimination would result to either the coal-producing centers or the various coal-consuming places.

* * * * * *

* * * and it will be the purpose of this Commission not only to establish, by order, what we believe to be just and reasonable rates from one coal-producing point to points of consumption, but also to make the rates uniform and harmonize with each other from the various coal-producing sections.

* * * * * *

"This case was brought primarily for the purpose of relieving the towns of these inequalities, which it cannot be denied exist."

After a hearing and investigation the Commission found that many discrepancies and discriminations were existent and prescribed rates on lump coal from the various coal districts to eastern Colorado points on the prairie lines which eliminated the inequalities caused by blanket rates covering long stretches of lines and utterly disregarding short hauls. The principle which governed the Commission in the predicating of such rates was that the rate per ton mile should decrease as the distance increases, and the rates, therefore, were made by distributing the spread equally along the lines. The Commission found that the transportation and operating conditions on the prairie lines were not so dissimilar as to

preclude the Commission from considering a revision of the rates on this basis as a whole, nor to prevent the application of that principle to those lines.

The only rates considered by the Commission in the case referred to were those applicable to lump coal. As stated at page 55:

"Inasmuch as the transportation of slack and mine run coal seems to carry with it such special conditions and requirements in regard to rates, no consideration has been given to it, except that the rates herein fixed by the Commission for the transportation of lump coal shall in every instance be considered a maximum rate for all other classes of coal, except as otherwise specified in this order."

In that case rates on lump coal were established by the Commission, and filed in tariffs taking effect August 1st, 1915, from the Walsenburg and Trinidad districts to all points of destination involved in the instant case, except that no rates were prescribed from the Walsenburg district to points on the line of the Atchison, Topeka & Santa Fe Railway between Pueblo and Fowler.

Prior to the hearing in that case no rates had been applicable on coal from the Walsenburg district to points on the Atchison, Topeka & Santa Fe Railway via the Pueblo junction, and no evidence appeared in the record to justify the Commission to, at that time, require the opening of such gateway. Rates were in effect, however, from the Walsenburg district to points on the Atchison, Topeka & Santa Fe Railway when routed via Trinidad and the Commission, in its order, prescribed rates to only such points as had hitherto had the benefit of rates from the Walsenburg district.

(1) The Commission cannot agree with the contention of carriers that no change should be made in rates formerly fixed by the Commission solely because such rates were found by the Commission, at some prior time,

to be reasonable and just. The carriers cite from an Interstate Commerce Commission opinion, in Traffic Bureau of Nashville v. L. & N. R. R. Co., 43 I. C. C. 369, to the effect that that body will, when it has reached a conclusion regarding a certain rate upon a given state of facts, adhere to that conclusion in subsequent proceedings regarding the same rate, unless new facts are presented to it, conditions are shown to have undergone a material change, or it has proceeded on a misconception or misapprehension.

The Act to Regulate Commerce, as amended, differs from the Colorado Public Utilities Act with respect to the provisions governing the duration of the orders of the Commission. The Interstate Act provides that the orders of the Commission shall continue in force for a period of time not exceeding two years, whereas no such provision is contained in the Colorado Public Utilities Act.

The Public Utilities Act provides that the orders of this Commission shall continue in force either for a period of time which may be designated therein or until changed or abrogated by the Commission. There is no inhibition in the Act which debars the Commission from at any time ordering the reopening of any case in which a decision previously has been rendered by the Commission, or from in any way rehearing the issues of a case for the purpose of receiving new evidence or testimony which had not been adduced at the prior hearing of the cause. In fact, quite the contrary is the case, as section 49 of the Act, specifically provides that the Commission may, after proper notification to the affected utilities and after full opportunity for hearing, rescind, alter or amend any order or decision made by it. The Commission will consider the issues in the instant case in accordance with the evidence presented therein. The matters

will be considered seriatim in the order presented by the complainants.

(a) Rates on lump and nut coal from Walsenburg district to destinations between Pueblo and La Junta on the basis of the Canon City district rates.

As hereinbefore set forth, no rates were established by the Commission In re Eastern Colorado Coal Rates, *supra,* from the Walsenburg district to these points owing to the fact that no rates had formerly been carried to such points by the carriers themselves and no evidence was introduced into the cause showing necessity for such rates. In the instant case, however, the Commission is of the opinion that the evidence clearly shows a necessity for the establishment of rates from the Walsenburg district to points between Pueblo and La Junta. At present rates are in effect to points from Fowler to La Junta when the traffic moves via Trinidad. The mileage to La Junta is practically the same whether moving via the Pueblo or the Trinidad junction, but to points west of La Junta the shortest mileage is via Pueblo.

The Commission is not convinced, however, that the rates from the Walsenburg district to such points should be placed on the Canon City basis. At present the rates from Walsenburg to points on the Atchison, Topeka & Santa Fe in eastern Colorado are 10 cents per ton higher than the rates from Canon City. The rates to interstate points upon the Atchison, Topeka & Santa Fe are likewise upon this basis, the differential having been prescribed by the Interstate Commerce Commission in Rates from Walsenburg Coal Fields, 26 I. C. C. 85. The rates to points within the state were those prescribed by this Commission In re Eastern Colorado Coal Rates, *supra,* and the Commission is unable to find any evidence warranting the establishment of rates to points between Pueblo and Fowler from Walsenburg on the Canon City basis. The Commission finds, however, a reasonable dif-

ferential on lump and nut coal from the Walsenburg district to such destinations to be 10 cents per ton higher than the rates from the Canon City district. The average distance from the mines in the Walsenburg district to such points via the Pueblo gateway is 28 miles greater than the average distance from the mines in the Canon City district.

(b) Rates on lump coal from the Walsenburg district to destinations from La Junta to Holly on the basis of the Dawson, N. M., district rates.

At the time of the filing of the complaint in this cause the rates from the Dawson district, as well as from the Raton district, to destination in Colorado on the Atchison, Topeka & Santa Fe were 10 cents per ton higher than the rates from the mines in the Trinidad district on the Atchison, Topeka & Santa Fe. On January 20, 1917, tariffs became effective cancelling that basis of rates from Dawson and establishing a differential of 30 cents per ton on lump coal higher than the Trinidad rates. The rates on other grades of coal were cancelled from the tariffs. No change was made in the rates from the Raton district and such rates are therefore still at 10 cents per ton higher basis than the Trinidad rates.

It was admitted by the witness for the defendant, The Atchison, Topeka & Santa Fe Railway Company, that this action in raising the Dawson rates was the direct result of the instigation of the present case, and that the rates were advanced because it was recognized by the carrier that the rates involved a two-line haul, and that there was an apparent discrimination from the Dawson district which should be removed.

The complainants hold that the fact that the Dawson rates have been advanced does not in any way diminish the force of their contentions, or comparisons, inasmuch as the defendants have not changed the rates from the Raton district and that, therefore, the Commission

should substitute comparisons of the Raton district rates in lieu of those made of the Dawson district rates, and that the rates on lump coal from the Walsenburg district to points La Junta and east should be at no higher basis than the Raton district rates.

The existing tariff rates from Walsenburg to points La Junta and east on lump coal are upon the basis of 30 cents per ton higher than the Trinidad district rates, having been prescribed by this Commission In re Eastern Colorado Coal Rates. As hereinbefore stated all rates from the Walsenburg district to points on the Atchison, Topeka & Santa Fe prior to the investigation and decision by the Commission in that cause were applicable only through the Trinidad junction, and such rates as were established and prescribed by the Commission were likewise through such gateway. The average distance from the mines in the Walsenburg district to points on the Atchison, Topeka & Santa Fe when routing via Trinidad is approximately 40 miles greater than the average distance from the Trinidad mines to the same points. The rates from the Canon City district to points La Junta and east thereof are at 20 cents per ton higher than the rates from the Trinidad district, and the Walsenburg rates are therefore 10 cents per ton higher than the Canon City rates to like points.

The Commission is of the opinion that the foregoing adjustment is proper and reasonable and should continue in effect, and that, therefore, no change should be made in the rates on lump coal from the Walsenburg district to points on the Atchison, Topeka & Santa Fe from La Junta to Holly.

(c) Rates on all classes of coal from the Walsenburg district to destinations between Trinidad and La Junta on the Dawson basis of rates.

What has been stated by the Commission above, with specific reference to the comparisons and conten-

tions of the complainants respecting the Dawson district rates and the changes therein, applies with equal effect to the relief requested to stations between Trinidad and La Junta.

There are no rates in effect from the Walsenburg district to these destinations and the Commission believes that reasonable rates should be established allowing the Walsenburg coal operators to reach such markets. The shortest distance is, of course, via Trinidad, and the Commission further believes that a differential should be fixed from the Walsenburg district over the Trinidad district and that the rates should apply to all stations from Poso to Ormega, both inclusive. The Commission is of the opinion that the differential to be thus established and prescribed should apply to all grades and classes of coal and should be at not to exceed 30 cents per ton.

(d) Rates on slack and mine run coal from the Walsenburg district to points from Fowler to Holly on the basis of the Dawson district rates.

For the same reasons as set forth herein with respect to the lump rates to points La Junta and east the Commission is of the opinion that the rates on slack and mine run coal from the Walsenburg district to points on the Atchison, Topeka & Santa Fe should take the same differential over Trinidad as that applicable on lump coal.

The present rate on slack coal from the Trinidad district to points from Fowler to Holly is $1 per ton, which applies as a blanket rate to all points regardless of distance. The mine run rate from Trinidad to such points is $1.25 per ton and likewise applies to all points. The rates on slack and mine run coal from the Walsenburg district to the same points are 45 cents per ton higher than the Trinidad rates. The defendants' witnesses stated that the rates on slack and mine run coal were very low, and were established to foster the beet

sugar industry throughout the Arkansas Valley. The Commission will require that the rates on slack and mine run coal from the Walsenburg district to points between Fowler and Holly shall be at not to exceed 30 cents per ton higher than the rates on like classes of coal from the Trinidad district.

(e) Rates from the mines on the Colorado & Southern Railway and the Denver & Rio Grande Railroad in the Trinidad district to destinations on the Atchison, Topeka & Santa Fe on the Dawson basis of rates.

Subsequent to the filing of the complaint and the hearing held in this cause the carriers defendants hereto filed tariffs with the Commission placing certain of the mines in the Trinidad district located on the line of The Colorado & Southern Railway Company on the Trinidad basis of rates, and the complainants have, therefore, withdrawn their request for the consideration of the establishment of rates from such mines.

(f) Rates from the Walsenburg and Trinidad districts to destinations on the Missouri Pacific between Pueblo and Towner at the same rates as are applicable to corresponding cross-country points on the Atchison, Topeka & Santa Fe.

The lines of the Atchison, Topeka & Santa Fe and the Missouri Pacific are parallel from Pueblo to Nepesta, each touching the same points between such stations, and then diverging beyond Nepesta until a maximum distance apart of approximately 40 miles is reached at Towner on the Missouri Pacific corresponding to Holly on the Atchison, Topeka & Santa Fe. In re Eastern Colorado Coal Rates, *supra,* the Commission considered the rates to points on the Missouri Pacific and prescribed revised rates, which were made effective by the carriers. There is nothing in the evidence in the instant case to justify the Commission making any changes from the rates then

established, and such rates will, therefore, be left undisturbed.

(g) The establishment of a reasonable differential between lump and nut coal.

(2) The Commission readily recognizes the advantages accruing from an established ratio between lump and other grades of coal, but is of the opinion that it would be entirely impracticable to fix such a differential in the instant case, even were it possible to determine a reasonable differential. To prescribe a differential between lump and slack coal would necessitate the entire revision of the slack rates and possibly require certain advances in such rates which would seriously disrupt the slack coal markets at the points of consumption.

The question of the determination of a proper relationship has been before the Commission previously, but the Commission never has prescribed any fixed differential between the various classes of coal, believing that each case should be treated on its own merits according to the differences in conditions prevailing in the several districts and on different lines. In re San Luis Valley Freight Rates, 2 Colo. P. U. C. 161, at 163, the Commission stated:

"The Commission has endeavored to ascertain the general practice throughout the country of making differentials on nut and slack coal rates from bituminous coal districts, and has examined many cases decided by various regulatory bodies. No reference to an established differential as between lump and nut or between lump and slack has been found in the Interstate Commerce Commission opinions in the western part of the country. There have been many cases decided, however, without establishing a fixed differential, the facts in each case determining the proportion which the nut or slack rate should bear to the lump rate. * * *

"A case which involved, among other things, the reasonableness of the spread between lump, nut and slack

coal, was decided by the Kansas Supreme Court on May 18th, 1915, in the case of Union Pacific Railroad Company v. Public Utilities Commission of Kansas, 95 Kan. 604, 148 Pac. 667, wherein it was stated 'that in making rates for slack, nut and pea coal, the custom is to fix them at 80 per cent of bituminous coal.' "

The Commission, in the San Luis Valley case, did not approve the 80 per cent basis, or any fixed ratio, but on slack coal prescribed rates which resulted in differentials varying according to the distance. As was stated at page 166:

"While a fixed differential might be desirable on the slack coal, it has been found impossible to arrive at any such differential, as to do so would increase a large number of rates which are admitted by the defendant carrier to be reasonable."

To fix a rigid differential between lump and slack coal in the present case would likewise result in the necessity of increasing certain of the slack rates to the points furthest distant from the mines, which rates the carriers recognize as being practically essential to the transporting and marketing of slack coal.

The Interstate Commerce Commission considered the advisability of requiring a differential in rates on higher and rates on lower grades of coal in two recent cases: Alpha Portland Cement Co. v. B. & O. R. R. Co., 34 I. C. C. 414, and Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336. In these cases the Commission found that difference in value of the slack coal did not warrant the fixing of lower rates on that class of coal than on lump coal.

If there are conditions or circumstances which would justify the Commission in predicating an established ratio between lump, nut and slack coal rates, none has been presented to the Commission in the evidence in this

cause and the Commission, will, therefore, dismiss that portion of the complaint praying for such a differential.

An order will be entered by the Commission in accordance with the foregoing findings, requiring the carriers to observe the differentials and rates therein fixed.

ORDER.

IT IS THEREFORE ORDERED: That the defendants, The Colorado & Southern Railway Company, The Denver & Rio Grande Railroad Company and The Atchison, Topeka & Santa Fe Railway Company be, and they are hereby, notified and required to cease and desist, on or before the 20th day of August, 1917, and thereafter to abstain from publishing, demanding, or collecting for the transportation of coal, in carloads, from the Walsenburg district to stations in Colorado on the line of the defendant, The Atchison, Topeka & Santa Fe Railway Company, rates which exceed the rates hereinafter prescribed for such transportation.

IT IS FURTHER ORDERED, That the said defendants be, and they are hereby, notified and required to establish, on or before the 20th day of August, 1917, upon notice to this Commission and to the general public by not less than 5 days' filing and posting in the manner prescribed in section 16 of the Public Utilities Act, and thereafter to maintain and apply to the transportation of lump, nut, mine run and slack coal from the Walsenburg district to stations on the line of the defendant, The Atchison, Topeka & Santa Fe Railway Company, from Baxter to and including Swink, rates which shall not exceed by more than 10 cents per ton the rates contemporaneously maintained and applied by them or any of them to the transportation of like classes of coal in carloads from the Canon City district to the same destinations.

IT IS FURTHER ORDERED, That the said defendants be, and they are hereby, notified and required to establish, on or before 20th day of August, 1917, upon notice to this Commission and to the general public by not less than 5 days' filing and posting in the manner prescribed in section 16 of the Public Utilities Act, and thereafter to maintain and apply to the transportation of lump, nut, mine run and slack coal from the Walsenburg district to stations on the line of the defendant, The Atchison, Topeka & Santa Fe Railway Company, from Poso to and including Ormega, from La Junta to and including Holly, and to stations on the Arkansas Valley line from Swink to and including Delite and including stations on the branches of the Arkansas Valley lines, rates which shall not exceed by more than 30 cents per ton the rates contemporaneously maintained and applied by them or any of them to the transportation of like classes of coal from stations in the Trinidad district on the line of the defendant, The Atchison, Topeka & Santa Fe Railway Company, to the same destinations.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 19th day of July, 1917.

INVESTIGATION AND SUSPENSION DOCKET No. 10.

In re ADVANCE IN RATES ON COAL FROM LENOX MINE.

(July 21, 1917.)

STATEMENT.

By the Commsision:

On the 29th day of June, 1917, a complaint was filed with the Commission by the Federal Coal Mining Company, of Denver, Colorado, alleging that The Denver & Salt Lake Railroad Company had issued and filed tariffs proposing an increase of 10 cents per ton for the transportation of coal from the Lenox Mine, on the line of said railroad near Milner, to Denver, Colorado, and petitioned the Commission to suspend the said proposed increase pending an investigation and hearing as to the propriety of such rate.

The Commission did then issue, on the 7th day of June, 1917, an order suspending the operation of amendment No. 92 to Denver & Salt Lake Railroad tariff 2-B, Colo. P. U. C. No. 25, and supplement No. 7 to tariff 252-A, Colo. P. U. C. No. 40, until the 12th day of November, 1917.

It now appears that the rates as published in the aforesaid schedules from the Lenox Mine are new rates and established by the carrier under authority of the Commission's Administrative Ruling No. 3, allowing carriers to establish rates on newly constructed lines, or branches of lines, by the filing of the tariffs with the Commission one day in advance of the effective date. An examination of the tariffs in effect prior to the issu-

ance of the suspended schedules indicates that no rates have been carried heretofore from the Lenox Mine and that, so far as lawful tariff publication of rates is concerned, the rates are virtually new rates, therefore properly coming under the application of the administrative ruling referred to.

This situation places the complaint of the complainant in the nature of a formal complaint against existent rates and the Commission will, therefore, vacate the suspension order and transfer the complaint to the formal docket.

ORDER.

IT IS ORDERED, That the order of the Commission in this cause entered July 7, 1917, be, and the same is hereby, vacated.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 21st day of July, 1917.

In re DEMURRAGE CHARGES AND RULES.
(Case No. 12.)

Interpretation of AVERAGE AGREEMENT.

(July 24, 1917.)

REQUEST of carriers for interpretation of average agreement rule under $3 demurrage rate; held, that credits and debits have equal monetary value, and that the value of a credit is equal to that of a debit accrued on the first day's detention of a car held over the free time.

STATEMENT.

By the Commission:

Some confusion having arisen in the proper application of the average agreement demurrage rules under the demurrage tariffs as filed with the Commission, in effect on and since November 1, 1916, the carriers and shippers have applied to the Commission for a ruling as to the correct interpretation of such rules.

On March 29, 1915, the Commission issued an order, after investigation and hearing, adopting the National Car Demurrage Code and made same effective on Colorado intrastate traffic April 1, 1915. In re Demurrage Charges and Rules, 1 Colo. P. U. C. 21. Certain exceptions were made to the national code to properly take care of the peculiar and local conditions obtaining in Colorado. In the original order charges of $1 per car per day upon cars other than refrigerator, and $1 per car per day for the first three days and $3 per car per day for each succeeding day on refrigerator cars, after the expiration of the two days' free time allowed by said order, were prescribed. The charge of $1 on the cars

other than refrigerator, therefore corresponded to the charge on cars moving in interstate traffic.

The average agreement as adopted and prescribed by this Commission in the said order was the same as was applicable to interstate business, and credits and debits accruing under the same were exchanged by the carriers upon all cars of the shipper entering into the agreement regardless of whether or not the cars were of intrastate or interstate movement.

In the fall of 1916 a serious car shortage became prevalent over the entire United States and was particularly acute in the State of Colorado. Upon the application of the carriers the Commission authorized the publication and filing of tariffs upon intrastate traffic providing for a demurrage charge of $3 per car per day on all classes of cars, and the said charge became effective on November 1, 1916, upon certain of the roads and shortly thereafter upon the balance, the delay being occasioned by the time requisite for the publication of the tariffs. At the same time application was made by the carriers to change the rates upon interstate traffic, which was granted by the Interstate Commerce Commission in a temporary order, allowing the charges prescribed therein to remain in effect until May 1, 1917. The new interstate charges became effective on or about December 15, 1916, and provided for a rate of $1 per car per day for the first day after the expiration of the free time, $2 for the second day, $3 for the third day, and $5 for each succeeding day.

On April 21, 1917, the Interstate Commerce Commission issued a second temporary authority, permitting the carriers to establish charges for demurrage on interstate traffic of $2 per car per day for the first five days after the expiration of the free time, and $5 per car per day for each succeeding day, to take effect May 1, 1917 (the date of the expiration of the charges authorized in the

prior authority) and to expire May 1, 1918. During the period from the time of the first change in the interstate charges the charge upon Colorado intrastate traffic has been, and still is, $3 per car per day. It will thus be seen that the charges upon intrastate and interstate traffic have differed since November 1, 1916.

The particular question raised by the carriers and shippers at the present time is as to the amount at which credits shall be computed under the average agreement on intrastate traffic, on and since the time at which the interstate and intrastate charges differed.

The Commission is of the opinion that there is no question at this time as to the matter of intermingling interstate and intrastate credits and debits. In order to obviate any misapprehension in this phase of the average agreement rules, however, the attention of the carriers and shippers is drawn to the fact that it is unlawful to interchange credits or debits accruing on intrastate traffic with those accruing on interstate traffic where the rules governing the free time or demurrage charges are different on intrastate and interstate traffic. This view has likewise been held by the Interstate Commerce Commission.

The essential sections, relating to the assessment of charges, of the average agreement as at present constituted within the state are as follows:

"Section A. A credit of one day will be allowed for each car released within the first twenty-four hours of free time (except for a car subject to Rule 2, Section B, Paragraph 5). A debit of one day will be charged for each twenty-four hours or fraction thereof that a car is detained beyond the first forty-eight hours of free time. In no case shall more than one day's credit be allowed on any one car, and in no case shall more than five (5) days' credit be applied in cancellation of debits accruing on any one car. When a car has accrued five (5) debits,

the charge provided for by Rule 7 will be made for all subsequent detention, including Sundays and holidays.

"Section B. At the end of the calendar month the total number of days credited will be deducted from the total number of days debited, and $3.00 per day charged for the remainder. If the credits equal or exceed the debits, no charge will be made for the detention of the cars, and no payment will be made to shippers or receivers on account of such excess of credits, nor shall the credits in excess of the debits of any one month be considered in computing the average detention for another month."

This excerpt is taken from Rule 9 of the Colorado demurrage rules as prescribed by this Commission in the demurrage case referred to above and is contained in the published and filed tariffs of the carriers.

An exception is carried in the tariffs of the Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island & Pacific Railway Company and the Union Pacific Railroad Company, providing that credits earned under the average agreement cannot be used to offset any charges, accruing under the demurrage charge rule, which are in excess of $1 per day.

The purpose of the average agreement, as will readily be seen by a study of same, is to give the shipper, who elects to take advantage of such agreement, opportunity of obtaining credits for prompt unloading of cars to offset the debits which may arise through delays in unloading other cars.

In the opinion of the Commission, the only interpretation that can be placed upon the value of a credit is that the same shall be equal in value to that of a debit accrued on the first day's holding of a car over the free time. Thus, if the charge on a car held over the free time is at the rate of $1 for the first day over such free time, regardless of the rate for the holding of the car any

additional time, then the value of a credit obtained on a car unloaded within the first twenty-four hours of free time is also $1. Likewise, if the debit on a car is at the rate of $3 for the first day over the free time, then the credits shall be at the same rate. To hold otherwise would be to destroy the purpose of the average agreement rule itself.

It is contended by certain of the carriers that the Commission, in placing the $3 rate in effect on straight demurrage, intended to make the same rate applicable to the debit side of the average agreement without changing the credit side. The Commission cannot agree with this view. It is constrained to hold that the value of a credit is equal to that of a debit accruing on the first day's detention of a car held beyond the free time. This interpretation is placed upon the present interstate rules by the carriers in allowing credits equal to $2 per day, and debits at the same rate. It is not to be presumed that, had the former rate been $3 per car per day for demurrage, in making a change to $1 per car per day the carriers would have contended that the change should apply to the debits only, making the value of a day's debit $1 and allowing the credits to retain the value of $3.

The Commission must interpret the present average agreement rule in the light of the above reasoning and therefore holds that under the present tariffs, and under the tariffs in effect on and since November 1, 1916, the value of a credit under the said average agreement rules is equal to the value obtaining on a debit accruing on a car held one day over the free time.

The suggestion is made to the carriers, in the hope that it will receive their earnest consideration, that, inasmuch as the demurrage rules within the State of Colorado are prescribed by the order of the Commission and practically uniform for all standard gauge carriers, it

would be advisable to issue such rules in a joint tariff applicable upon all such carriers' lines. The present tariffs are exceedingly confusing and difficult of proper interpretation and to combine these individual tariffs in one schedule issued through an agent would greatly facilitate the proper application of demurrage charges and rules.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 24th day of July, 1917.

THE COPELAND ORE SAMPLING COMPANY
v.
THE MIDLAND TERMINAL RAILWAY COMPANY, ET AL.

(Case No. 113.)

Reparation—Jurisdiction of Commission.

(1) The Commission's jurisdiction to award reparation and to regulate rates of public utilities is paramount to that of the courts, and, while an award of reparation ordered by the Commission is enforceable through a suit for the collection of the same in a court of competent jurisdiction, the finding of the Commission that the rates or charges assesed and collected were unreasonable and unjust is a condition precedent to action by the courts.

Reparation—Evidence—Prima Facie.

(2) The Commission held that neither the absence of, nor the presence of, a provision in the reparation section of the act providing that the findings and order of the Commission, in an award of reparation, are prima facie evidence of the facts therein stated, is essential to the determination of the validity of the power conferred upon the Commission by the act to award reparation.

Rates—Railroad—Value of Commodity.

(3) The Commission was of the opinion that the value of a commodity should be considered as a factor in the determination of reasonable rates.

(July 31, 1917.)

PETITION for reparation on six carloads of ore shipped from Bull Hill to Denver; reparation denied.

APPEARANCES: For the Complainant, Mr. P. H. Holme; for The Colorado Midland Railway Company, George W. Vallery, Receiver, Mr. George A. H. Fraser; for The Midland Terminal Railway Company, Messrs. J. H. Rothrock and F. C. Matthews; for The Colorado & Southern Railway Company, Mr. George Williams.

STATEMENT.

By the Commission:

On the 19th day of December, 1916, a complaint was filed with the Commission by The Copeland Ore Sampling Company in which it was alleged that two shipments of ore were made from the station of Bull Hill, in the Cripple Creek District on the line of The Midland Terminal Railway, to the Globe Plant of the American Smelting & Refining Company at Denver, Colorado, routed via The Midland Terminal Railway, The Colorado Midland Railway and The Colorado & Southern Railway; that the first shipment was made on January 27, 1915, consisting of three carloads of bulk ore weighing 172,140 pounds, valued at $3,720 per ton, upon which a rate of $40.70 per ton was assessed, the charges thereon totaling $3,503.05; that the second shipment was made January 27, 1915, consisting of three carloads of bulk ore weighing 145,160 pounds, valued at $1,598 per ton, upon which a rate of $19.48 per ton was assessed, the charges thereon totaling $1,413.86; that the charges assessed on the two shipments were based on the rate as set forth in item 122 of the then Florence & Cripple Creek Railroad Tariff No. 227, C. S. & C. C. D. Ry. Colo. P. U. C. No. 8, which rate was applicable on ore and concentrates, actual value over $300 per ton and not released to that figure, minimum car load weight 24,000 pounds, the rate being $6.50 per ton plus 1 per cent of value in excess of $300 per ton; that to charge a higher rate on shipments in carload lots than upon the same shipments if carried in less than carload lots was unjust and unlawful; that the less than carload rate applicable to shipments similar to shipments made by complainant would have been as specified in item No. 124 of the said tariff, or fourth class rate of 65 cents per hundred pounds; that charges based on the less than carload rate were the only legal charges which should have been collected, and

that the total charges on the two shipments at the less than carload rate of 65 cents per hundred pounds would have been $2,062.45; whereby the complainant was damaged to the amount of $2,854.46 which was wrongfully collected and assessed; and that the complainant is lawfully entitled to reparation in the amount of $2,854.46 with interest from the 15th day of February, 1915, at the rate of eight per cent per annum.

The defendants admit generally the allegations in the complaint as to the facts of the shipments, the weights, the date of shipment, the charges collected, etc., but deny that the charges have been illegally collected or assessed in any manner other than as required by the tariffs legally in effect and on file with the Commission at the time of the shipments.

The defendant, The Midland Terminal Railway Company, in its answer, denies the jurisdiction of the Commission over the issues presented in this cause, and alleges that the proceeding is in the nature of an action or suit at law to recover for money had and received; that the defendant, by the Constitution of the United States and by the Constitution of the State of Colorado, is entitled to have the issues joined herein tried by jury and asserts and insists upon such right and denies that the Commission has power to impanel a jury to try said issues; that no order or finding that the Commission may make herein can be enforced, for the reason that the law provides no means of enforcing such findings or order, other than by a suit in a court of competent jurisdiction to recover the amount the Commission may find to be due, and the law does not provide that in such suit the findings or orders of the Commission shall be taken as prima facie evidence; that therefore any findings or order the Commission may make would be null and void and without effect and the remedy of the plaintiff, if any, is solely by a suit at law in a court of competent juris-

diction, and further, that Section 56 of the Public Utilities Act, (Chap. 127, Session Laws of 1913), is void for that by its enactment the legislature attempted to vest in the Commission judicial power of the State as to matters of law and equity in violation of Section 1 of Article 6 of the Constitution of the State of Colorado.

The defendant, The Colorado & Southern Railway Company, likewise denies the jurisdiction of the Commission over the issues in the cause, but does not specifically set forth the grounds for such denial.

The arguments relied upon chiefly by counsel for defendant, The Midland Terminal Railway Company, in support of their contention that the Commission is devoid of jurisdiction are, first, that the only authority under which the Commission might presume to act is Section 56 of Chapter 127 of the Laws of 1913, reading as follows:

"Section 56. (a) When complaint has been made to the Commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the Commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the Commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection, provided no discrimination will result from such reparation.

"(b) If the public utility does not comply with the order for the payment of reparation within the specified time in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the Commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in

the court within one year from the date of the order of the Commission. The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey the order or decision of the Commission";

that the said section is modeled after the reparation sections of the Act to Regulate Commerce, as amended, but is inoperative by reason of the fact that the said section does not contain the provisions requiring that the Commission shall include the findings of fact on which the award is made, nor that providing that in a suit brought in a competent court for the enforcement of the Commission's order the findings and order shall be prima facie evidence of the facts therein stated; second, that the Commission would constitute itself a court in assuming or taking jurisdiction over the issues in the cause, contrary to the provisions of the Constitution of the State of Colorado.

No authorities have been cited by counsel for this defendant in support of the contentions made, and the Commission is unable to find any decisions whatsoever that uphold the position taken by the defendant. In fact, all authorities are directly in contravention to such principles.

The Public Utilities act vested in the Public Utilities Commission the power, and made it the duty of the Commission, to govern and regulate all rates, charges and tariffs of all public utilities within the State and expressly provided that the Commission shall determine and prescribe just, reasonable, or sufficient rates, charges, rules or regulations of the utilities providing the Commission shall find the rates, charges, rules or regulations observed and collected by the utilities are unjust, unreasonable or insufficient. The Supreme Court of the State of Colorado, in Denver & South Platte

Railway Co. v. Englewood, 62 Colo. —, 161 Pac. 151; P. U. R. 1916E, 134, stated that, from the powers delegated to the Commission by the Act, the Commission was intended by the legislature to administrate, supervise and regulate all service of the utilities throughout the state, and that the Commission has exclusive power in the regulation of rates of public utilities.

The powers, conferred upon the Commission by section 56 of the Act, to order public utilities to make reparation for any service rendered, or commodity or product furnished, contemplate the finding of rates or rules unreasonable or unjust and the prescribing of rates or rules that have been found by the Commission to be just and reasonable at the time the service was rendered, or the commodity or product furnished. Thus, the reparation powers of the Commission are inherently a part of, and consequent upon, the regulation and supervision of rates of public utilities and therefore subject to the jurisdiction of the Commission in its administrative powers.

(1) To hold other than that the Commission has original, exclusive jurisdiction over rates of public utilities would deprive the shipper or consumer of the equality guaranteed to him under the Act, and result in the placing of the rate fabric of the state in an extremely chaotic condition due to duplication of authority over rates. The jurisdiction of the Commission is paramount to that of the courts in the question of regulation of rates of public utilities, and, while an award of reparation ordered by the Commission is enforcible through a suit for the collection of the same in a court of competent jurisdiction, the finding of the Commission that the rates or charges assessed and collected were unreasonable and unjust is a condition precedent to action by the courts. Perhaps the best enunciation of the principle of affording equality of rates to all through the exclusive and original jur-

isdiction of commissions over the same, to the exclusion of that of the courts, is that found in Ruling Case Law:

"The rule has been laid down that there can be no recovery of damages for unjust discrimination under the Interstate Commerce Act in the absence of a finding by the Interstate Commerce Commission that the published rates of the carrier are unjustly discriminatory. The reason for this rule is that the existence and exercise of a right to maintain an action of that character, in the absence of such an investigation and order, would be repugnant to the declared rule that a rate established in the mode prescribed should be deemed the legal rate, and obligatory alike upon carrier and shipper until changed in the manner provided, would be in derogation of the power expressly delegated to the Commission, and would be destructive of the uniformity and equality which the act was designed to secure." 4 R. C. L. 654.

The United States Supreme Court has uniformly held that shippers may not maintain an action at law in the courts for the recovery of damages from the collection and assessment of unreasonable rates where the charges have been collected and assessed in accordance with the published and filed schedules, and that a shipper seeking reparation predicated upon the unreasonableness of an established freight rate must invoke redress primarily through the Interstate Commerce Commission. Texas, etc., R. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 51 L. Ed. 553, 9 Ann. Cas. 1075; Southern R. Co. v. Tift, 206 U. S. 428, 51 L. Ed. 1124, 11 Ann. Cas. 846; (see also note at 11 Ann. Cas. 849); Robinson v. Baltimore & O. R. Co., 222 U. S. 506, 56 L. Ed. 288.

The Supreme Court of Wisconsin has likewise held that actions for the recovery of excess freight charges paid lie in the original instance in the Railroad Commission, to the exclusion of the courts. Graham Ice Co. v. Chicago, M. & St. P. Ry. Co., — Wis. —; 140 N. W. 1097.

The reasoning of the court in that case is particularly apropos to the instant case, the issues and arguments in both cases being somewhat analogous. The court stated, *inter alia* (italics ours):

"There is no doubt but that the fixing of rates to be charged by railroad companies may be controlled by the legislature within constitutional bounds. True, the question of whether rates fixed are confiscatory or within constitutional limitations is a judicial question. (Citing cases.) But the legislature has power to fix either directly or by delegation of authority to an appropriate agency, provided the rates fixed are such as to afford reasonable compensation for the service rendered. (Citing cases.)

"It is plain from the statutes upon the subject that the legislature intended to and did provide an exclusive remedy for the fixing of freight charges.

* * * * *

"The contention of counsel for appellant that the remedy provided by sections 1797-37m and 1797-12a is concurrent, alternative and not exclusive cannot be sustained. The statutes referred to show *that the whole matter of fixing rates and the remedies for excessive charges is lodged with the Railroad Commission.* The rates in the schedule made and filed constitute the lawful rates until changed in the manner provided on application to the Commission. The schedule rates being by the express terms of the statute the lawful rates, the railroad companies have not authority to charge different rates. They are prohibited by statute from so doing. They can charge neither more nor less than such rates. In a common-law action, therefore, to recover for excessive rates the courts cannot say that the schedule rates are unlawful rates. This obviously is necessary in order to preserve equality and uniformity in rates and the carrying out of the system established by the legislature

in creating the Railroad Commission. Texas & P. R. Co. v. Abilene C. O. Co., 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553, 9 Ann. Cas. 1075. *True, that case arose out of the Interstate Commerce Act, but the reasoning of the court is quite in point here.* See, also, Southern Ry. Co. v. Tift, 206 U. S. 428, 27 Sup. Ct. 709, 51 L. Ed. 1124, 11 Ann. Cas. 846; Baltimore & O. R. Co. v. United States ex rel Pitcairn C. Co., 215 U. S. 481, 30 Sup. Ct. 164, 54 L. Ed. 292; Robinson v. Baltimore & O. R. Co., 222 U. S. 506, 32 Sup. Ct. 114, 56 L. Ed. 288.

* * * * *

"It is insisted, however, by counsel for appellant that section 1797-37m (Chapter 582, Laws of 1907), and section 1797-12a (Chapter 271, Laws of 1909), contemplate that the shipper can recover in a common-law action a part of the money paid, although not in excess of schedule rates. These statutes, however, do not provide or contemplate that any reparation can be made until the Railroad Commission has passed upon the question as to whether the schedule rates are excessive. They provide expressly for proceeding before the Commission in the manner specified in section 12, c. 362, Laws of 1905, and clearly show that the schedule rates are the lawful rates until the question is first passed upon in a proceeding before the Commission in the manner provided.

* * * * *

"* * * The plaintiff has no standing in any court for reparation until it first applied to the Railroad Commission for relief in the manner provided by the statutes."

The Wisconsin Railroad Commission, in the case of Connor Land & Lumber Co. v. C. & N. W. R. Co., 1911, 7 Wis. R. C. R. 774, had previously held to the same effect, deciding that no action in court can be instituted to recover any alleged overcharge exacted by carriers

until the Commission has condemned under the statute the charge actually collected; that the Act of 1905, granting the Commission power of awarding reparation, superseded the common law and that the amendment of 1907 was not merely remedial in its character, but conferred the right and provided the remedy to enforce it.

Counsel further contends that an award of reparation by the Commission would deprive the defendant of due process of law in that defendant is entitled to right of trial by jury and that the Commission has not the power to impanel a jury or to try the issues. This contention was well commented upon in the case of Graham Ice Co. v. Chicago, M. & St. P. Ry. Co., *supra,* wherein it was stated:

"It is further urged by counsel for appellant that sections 1797-37m, Stats., and section 1797-12a, of Laws 1909, c. 271, are unconstitutional, because they deny the right of trial by jury guaranteed by the state and federal Constitutions. This contention is unsound. No one has a vested right to the continuance of a common-law remedy to redress future wrongs. In Mondou v. New York, N. H. & H. R. Co., 223 U. S. 1 at page 50, 32 Sup. Ct. 169, at page 175 (56 L. Ed. 327, 38 L. R. A. (N. S.) 44), the court said: 'A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will * * * of the Legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances.' (Citing cases.)

"Moreover, as before observed, the legislature has the right, within constitutional bounds, to fix rates, and

a remedy by action against the Railroad Commission is preserved in favor of any aggrieved party, so the rights of all parties are well guarded under the law. Chapter 362, Laws of 1905; Minneapolis, St. P. & S. S. M. R. Co. v. Railroad Commission, 136 Wis. 146, 116 N. W. 905, 17 L. R. A. (N. S.) 821."

Also, in Meeker v. Lehigh Valley R. Co., 236 U. S. 412, 59 L. Ed., 35 Sup. Ct. 328, P. U. R. 1915D, 1072, the Supreme Court of the United States held that the provisions contained in section 16 of the Act to Regulate Commerce, as amended, conferring reparation powers upon the Interstate Commerce Commission, do not infringe upon the right of trial by jury, nor deny due process of law.

In Turner Creamery Co. v. Chicago, M. & St. P. Ry. Co., — S. D. —, 154 N. W. 819, P. U. R. 1916A, 1083, the South Dakota Supreme Court refers to the contentions of counsel alleging that the Board of Railroad Commissioners was without power to award reparation; that the plaintiff had an adequate remedy at law; and that carriers appellants therein would be deprived of property without due process of law in that no right of trial by jury was granted under the Railroad Commission act. The court held that the mere fact that the Board has no power to enforce its orders cannot be successfully urged as a denial of the power to make the order, when the statute expressly gives it that power, and that the due process of law was not violated or abridged by the requirements of the statute complained of.

The contention of counsel, that section 56 of the Public Utilities Act, Chap. 127, Laws of 1913, is unconstitutional, void and inoperative by reason of the fact that the said section does not contain a counterpart of that provision in the Interstate Commerce Act which provides that the findings and order of the Commission

are prima facie evidence of the facts therein stated, is equally without force. Section 56 of the Colorado statute is modeled after, and a duplicate of, section 71 of the Railroad Commission Act of California (Chap. 14 of Laws of 1911, Extraordinary Session; at present section 71 of the Public Utilities Act, Chap. 91 of Laws of 1915), which contains no reference to such a provision. The California Railroad Commission has, since the vestment in it of reparation powers by the said section, rendered many awards of reparation.

This section has been held by the California Supreme Court to be valid, and the construction placed upon the interpretation of the same is quite in point to the instant case. From the Court's headnotes in this case, Southern Pacific Co. v. Superior Court, — Cal. —, 150 Pac. 397, the following is taken:

"Where a railroad for the carriage of freight overcharges a shipper by following an unreasonable or discriminatory schedule of tariffs, proceedings for the recovery of such overcharge would be primarily within the exclusive jurisdiction of the Railroad Commission, since such Commission may regulate and change the tariffs themselves and award suitable reparation for any wrong done."

The courts have expressly held that the absence of such a provision does not invalidate the jurisdiction of the commissions in the exercise of the powers conferred upon them by the statute. It has been so held in Public Service Commission v. Northern C. R. Co., 122 Md. 388, 90 Atl. 118; Minneapolis, St. P. & S. S. M. R. Co. v. Railroad Commission, *supra;* Interstate Commerce Commission v. Illinois C. R. Co., 215 U. S. 470, 54 L. Ed. 287, 30 Sup. Ct. 160; Pennsylvania R. Co. v. Towers, — Md. —, 94 Atl. 330, P. U. R. 1915D, 398; and Meeker v. Lehigh Valley R. Co., 236 U. S. 412, 59 L. Ed. 644, 35 Sup. Ct. 328.

(2) From the decisions referred to it will clearly be seen that neither the presence of, nor the absence of, such a provision is essential to the determination of the validity of the power conferred upon the Commission to award reparation. From the preponderance of authority, in support of the jurisdiction of the commissions to make awards of reparation similar to the powers vested in this Commission, the Commission must hold that it has full, original and exclusive jurisdiction over the issues in this cause; that it is proceeding in a proper manner in determining the said cause; and that the contentions and objections of counsel for defendants, The Midland Terminal Railway Company and The Colorado & Southern Railway Company, against the jurisdiction of the Commission cannot be sustained.

The issues presented by the complainant are as follows:

First: The rates charged were improper because they were not applicable under the rules of Western Classification No. 52, R. C. Fyfe's Colo. P. U. C. No. 1, which governed said shipments.

Second: The rates imposed on the six cars of ore were unreasonable.

Third: The rates imposed on the six cars of ore were unduly discriminatory.

The Commission is unable to find that the charges have been improperly collected or assessed, or in any other way than in accordance with the legal tariffs as on file with the Commission. It is not denied that the shipments were offered to the defendants for shipment as carload shipments, that cars were ordered from the defendants for such shipments, and that the entire transaction was in the nature of carload shipments. The contention is made, however, by complainant that the charges upon the shipments as carload shipments were in excess of what the charges would have been had the

shipments been made as less than carload shipments, and therefore improperly collected to that extent. Rule 18, section 3, of the then current Classification is relied upon by complainants for such contention. This rule is as follows:

"The charge for a car fully loaded must not exceed the charge for the same lot of freight if taken as a less-than-carload shipment."

The charges as assessed and collected by the carriers were based on item 122 of Florence & Cripple Creek Railroad Tariff No. 227, Colo. P. U. C. (C. S. & C. C. D.) No. 8, to which tariff defendants were participating carriers. This item names a rate of $6.50 per ton of 2,000 pounds, plus 1 per cent of value in excess of $300 per ton, upon Ore and Concentrates, actual value over $300 per ton and not released to that figure, minimum carload weight 24,000 pounds, from points in the Cripple Creek district, including Bull Hill, to Denver. A note is carried in connection with this item, reading in part as follows:

"All ore and concentrates must be way-billed at rate of $4.50 per ton. Assay certificates must be presented for each carload, showing actual gross value, without any deduction for freight, smelter, or other charges, from which Local Agent can determine rate to be applied, and correction in freight charges will be made in accordance with rates and values shown herein.

"Certificates presented by consignees, which do not show a valuation, but which bear endorsement, "Released to $300 per ton," must be accompanied by a bill of lading to the same effect, signed by shipper.

"It is distinctly understood that the Railway companies' liability for ore and concentrates, a value for which is not given by the consignees, and which is not released in accordance with the above, shall be limited to the actual value thereof; provided, that in no instance,

when the value is not given, shall they be liable for an amount greater than Five Hundred and Fifty ($550) Dollars per ton."

A separate item is carried in the same tariff in the commodity section, naming fourth class rates on ore, less than carloads, when all charges are prepaid, from points in the Cripple Creek district to Denver. Evidence was offered at the hearing, and some argument indulged in in the briefs, with respect to the applicability of the rules and classifications contained in the Western Classification to the shipments in question. The rules and regulations of the Western Classification could have no bearing upon the shipments, nor upon shipments of ore shipped as less than carload shipments, for item 134 of the tariff referred to above specifically provides that the rules and regulations of the Western Classification will not apply to shipments handled on the commodity rates named in the tariff or supplements thereto. This rule clearly eliminates all necessity for a consideration of the rules of the Classification in connection with the determination of the proper and reasonable rates and charges.

The complaint in this cause, as filed, alleged only that the charges had been illegally and improperly assessed and collected. At the hearing, however, and in the briefs of the complaint, a new proposition was injected into the issues by the contention that the rates as charged were unreasonable and discriminatory.

The record indicates that the complainant abanddoned the contention that the rates were improperly collected and assessed. This is best explained in the reply brief of complainant:

"We do not contend that under the circumstances defendants could have applied any other rate than that which was applied. Our contention, under subdivision I, beginning on page 3 of our original brief, is merely that the rate applied was an improper rate, because it did

violence to a fundamental rule of rate-making, and was repugnant to Rule 18, section 3, of said Western Classification (admittedly applicable to this shipment), because under it defendant could charge more for a carload shipment than it could for the same lot taken as a less-than-carload shipment."

However, as hereinabove stated, the Western Classification rules and regulations were not applicable to the shipments in question, and would not have been even had same been shipped as less than carload shipment, the only rates, rules and regulations applicable to the shipments being those contained in the F. & C. R. R. Tariff 227. The shipments were not made as less than carload shipments, which is plainly admitted by complainant, and none of the provisions of the less than carload rate were complied with which of necessity must be observed by shippers to obtain the rates provided. Had the carriers collected charges on these shipments upon the basis of the less than carload rate they would have been illegally applying and assessing rates and charges contrary to the rates as published and filed with the Commission.

The issues thus resolve themselves into a question of reasonableness of the rate applied to the shipments. The complainants are not protesting that the present rate is unreasonable, nor that rate assessed was unreasonable at any other time than that at which the shipments moved. It is submitted by counsel for complainant that the rate was both relatively and per se unreasonable. Comparison is made with the rate upon less than carload shipments of ore and with rates on other grades of ore between Cripple Creek and Denver.

The Commission has reviewed the record in this case and is unable to find the evidence to justify it in finding that the rate applied to these shipments was other than reasonable and just. The rate of $6.50 per ton on ore

of value up to $300.00 per ton was the basic rate and was, without doubt, predicated upon and after a full consideration of the general elements entering into the making of freight rates. However, it is not necessary for the Commission to determine in this cause, as to the reasonableness of this rate as there is no complaint that the said base rate was, or is, unreasonable. The rates upon ores of value exceeding $300 per ton graduate concurrently with the increase in the value, the addition to the rate applicable on $350 valuation being 1 per cent of the value in excess of that amount.

The principle of grading rates in accordance with the value of the article is one well recognized in rate-making and has been approved and utilized by the various regulatory commissions. The principle is based upon the underlying fact that the greater the value, the greater is the risk. See Interstate Commerce Commission v. D. L. & W. R. Co., 64 Fed. 723; Interstate Commerce Commission v. C. G. W. R. Co., 141 Fed. 1003; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186; Iowa Railroad Commissioners v. A. T. & S. F. R. Co., 36 I. C. C. 79; Northern Pacific R. Co. v. North Dakota, 236 U. S. 585; and National Society of Record Associations v. A. & R. R. R. Co., 40 I. C. C. 347.

In the last named case the Interstate Commerce Commission prescribed rates for additions above the standard values applicable in connection with basic rates which should be upon the basis of an addition of 2 per cent of the rate for each additional 50 per cent or fraction thereof, of additional value.

The Commission, from the record in this cause, is convinced that the correct rates have been applied to the shipments in question, that no evidence has been brought to its consideration to warrant a finding that the rate was unreasonable or discriminatory. An order will be

entered denying the reparation and dismissing the cause.

ORDER.

IT IS ORDERED, That the complaint in this cause be, and it is hereby, dismissed.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 31st day of July, 1917.

IN THE MATTER OF AN INVESTIGATION AND HEARING, ON MOTION OF THE COMMISSION, INTO THE REASONABLENESS OF EACH AND EVERY RATE OR CHARGE, AND INTO THE ADEQUACY OF THE SERVICE, AND THE RULES, REGULATIONS AND PRACTICES OF THE COLORADO SPRINGS LIGHT, HEAT & POWER COMPANY, A CORPORATION.

(†Case No. 24.)

In re INVESTIGATION OF THE REASONABLENESS OF SCHEDULES OF RATES AND CHARGES ORDERED BY THE COMMISSION, EFFECTIVE MARCH 1, 1916.

Valuation—Contractors' profits.

(1) Where it developed that property had been installed by and under the supervision of a utility's employes, the Commission held that no allowance for contractors' profits should be made under construction overheads.

Valuation—Insurance during construction.

(2) In the absence of specific information as to the amount actually paid by a utility to cover insurance during the construction period the Commission was of the opinion that it would be proper to include under insurance the amount which the company would actually be required to pay at the present time for employes' and public liability insurance, and for fire and tornado insurance, on such property as it would be advisable to insure.

Valuation—Interest during construction.

(3) The Commission was of the opinion that, in the valuation of a utility for rate making purposes, interest during the construction period should be considered in arriving at the fair value of the property, whether any such amounts were in fact made, as money was tied up in construction work for certain periods and the interest on such money was foregone by the company.

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†(The proceeding also embraces complaint in City of Colorado Springs v. The Colorado Springs Light, Heat & Power Co., Docket No. 99.)

Valuation—Taxes during construction.

(4) In the valuation of a utility for rate making purposes, the Commission was of the opinion that a certain portion of taxes paid by the company should be charged to its fixed capital accounts, and that the inclusion of taxes as a construction overhead was a proper allowance, provided the operating expenses of the utility are properly credited with such amounts as are charged to its construction accounts.

Valuation—Miscellaneous construction expenses.

(5) An allowance included under construction overheads of approximately 2 per cent for general and miscellaneous expenses during construction was found by the Commission to be reasonable and proper in the valuation of a utility for rate making purposes.

Valuation—Discount on bonds.

(6) In the valuation of a utility for rate making purposes, the Commission held that no allowance whatever should be made for discount on bonds or other financial expenses in determining the fair value of the property.

Return—Amortization of investigation expenses.

(7) In the valuation of a utility for rate making purposes the Commission was of the opinion that the cost of making inventories and conducting rate hearings, even if allowable as an operating expense, should not be included in the operating expenses for any one year, but apportioned over a period of years, and that such expense would not be properly apportionable to the combined properties of the company on the basis of gross revenue.

(July 31, 1917.)

INVESTIGATION on Commission's motion into the rates of The Colorado Springs Light, Heat & Power Company at Colorado Springs as prescribed by the Commission in previous orders, and

COMPLAINT against the schedules for municipal street and ornamental lighting; revisions in schedules made.

APPEARANCES: R. L. Holland, Esq., for The Colorado Springs Light, Heat & Power Company; J. L. Bennett, Esq., City Attorney, for the City of Colorado Springs, Colorado.

STATEMENT.

By the Commission:

On December 15, 1915, the Commission entered its first order in the above entitled case fixing the fair value of the defendant's gas and electric properties, and establishing rates for electric service. (1 Colo. P. U. C. 159; P. U. R. 1916A, 872.) Briefly summarized, the Commission at that time found that the fair value of the defendant's electric property, for rate making purposes, was $1,481,762.00; that the company was earning at that time, in addition to its reasonable operating expenses and an annual depreciation requirement of $52,000.00, 12.27 per cent on the fair value of its electric property; that the company should be entitled to set aside as an annual depreciation requirement for its electric property the sum of $52,000.00; that the fair value of the defendant's gas property for rate making purposes was $710,917.00, and that after providing for an annual depreciation requirement for the gas property of $20,000.00, the net earnings of the gas department of the company were 1.16 per cent on the fair and reasonable value of the property used and useful in supplying gas service; that the present fair value of the defendant's steam heating property at that time in use and useful for the purpose of supplying steam heat, was $122,774.00, and that after providing for an annual depreciation requirement of $8,000.00 for the steam heating department there was an annual deficit on account of the operations of the steam heating department of $13,912.00.

The Commission further found at that time that the defendant's gas, electric and steam heating properties should be segregated for the purpose of determining fair and reasonable rates to be paid by its gas, electric and steam heating consumers, but that the laws of Colorado pertaining to public utilities and to the regulation thereof by the Public Utilities Commission of the State of

Colorado, enumerated by name all public utilities which shall be under the jurisdiction of this Commission, and that since steam heating utilities are not specifically named in the Public Utilities Act the Commission is without jurisdiction over steam heating utilities.

The order of the Commission entered on the above date established rates for the various classes of electric consumers, to become effective January 1, 1916, which rates the Commission found would yield over and above operating expenses and the annual requirement for depreciation, a return in excess of 7½ per cent upon the fair value of the defendant's electric properties.

The Commission did not establish rates and charges for gas service at the time of the above order, but ordered that the schedule of rates and charges covering the sale of gas by The Colorado Springs Light, Heat & Power Company, then on file with the Commission, should be temporarily approved.

On the 29th day of December, 1915, the defendant company filed an application to extend the time of the effective date of the order of the Commission until the 1st day of February, 1916. This application was granted, and on the 31st day of January, 1916, the defendant, The Colorado Springs Light, Heat & Power Company, petitioned for a rehearing of the issues in this cause, and the effective date of the schedule of rates was extended until the Commission should rule upon the company's application for a rehearing. The petition for rehearing, as filed by the defendant company, set forth in detail the grounds upon which a rehearing was requested, but the Commission, after a careful examination of the issues involved and of the many points presented by the defendant, denied the application for rehearing in an opinion written on the 24th day of February, 1916, and found in 2 Colo. P. U. C., 25; P. U. R. 1916C, 464, but modified to some extent its original schedule of rates by the substi-

tution of a new schedule of rates and charges for the sale of electricity, to become effective on March 1, 1916. The Commission stated, in part:

"The order of this Commission in this cause, entered December 15, 1915, and the modified order entered December 29, 1915, as here modified and amended, shall be in force and effect for a period of one year beginning March 1, 1916, and until modified or amended by an order of this Commission; provided, that on February 28, 1917, or within ten days thereafter, the respondent shall again appear before the Commission at its hearing room in the city and county of Denver, state of Colorado, and there make a sufficient showing of its operating expenses and earnings for the year ending February 28, 1917, together with such additional evidence as it may desire to introduce, to the end that this Commission may further adjust its schedule of rates and charges for gas and electricity in accordance with the showing then made by the respondent and the witnesses for the Commission, if such adjustment is deemed necessary or advisable."

On the 10th day of April, 1916, the Commission received a petition from The Colorado Springs Light, Heat & Power Company praying for an increase in its rates and charges for gas service alleging that the company is entitled to earn a just, fair and reasonable return upon the fair value of its gas properties as previously established by this Commission; that the return of 1.16 per cent then being earned was unfair, unjust and unreasonable, and praying that the following schedule of rates and charges for gas service be established by order of the Commission:

First 5 M. cu. ft. per month, $1.25 net or $1.35 gross per M. cu. ft.;

Next 15 M. cu. ft. per month, $1.00 net per M. cu. ft.;

Next 30 M. cu. ft. per month, $ .90 net per M. cu. ft.;

Next 50 M. cu. ft. per month, $ .80 net per M. cu. ft.;

All consumption in excess of 100 M. cu. ft. per month, 75c net per M. cu. ft.

The above petition was docketed as Case No. 54, and, after several hearings had been held thereunder and the Commission had received testimony on behalf of the company, and reports from its engineering staff as to the quality of the service being furnished, etc., the Commission entered its order in this case on August 7, 1916, (2 Colo. P. U. C. 204; P. U. R. 1916E, 650), authorizing the following rates and charges for gas service, and the Commission further ordered that these rates be made effective as of August 1, 1916:

First 5 M. cu. ft. per month, $1.10 net or $1.15 gross per M. cu. ft.;
Next 15 M. cu. ft. per month, $1.00 net per M. cu. ft.;
Next 30 M. cu. ft. per month, $ .90 net per M. cu. ft.;
Next 50 M. cu. ft. per month, $ .80 net per M. cu. ft.;
All consumption in excess of 100 M. cu. ft. per month, 75c net per M. cu. ft.

On September 22, 1916, there was filed with the Commission, by the city of Colorado Springs, through its then mayor, Chas. S. McKesson, a petition setting forth that the city of Colorado Springs then obtained from The Colorado Springs Light, Heat & Power Company electric current for lighting the streets and alleys and undercrossings, as well as for an ornamental street lighting system owned and maintained by the city of Colorado Springs, and alleging that certain of the street lighting fixtures then in use were old, obsolete and of little value, that these fixtures required frequent and constant repairing, and that such fixtures should be replaced with a new and modern type of incandescent lighting unit. It was further alleged in this complaint that certain 100-watt street lamps located at what is known as the Pike's Peak undercrossing, and other similar lamps located at

the Costilla Street undercrossing, should be replaced by the defendant with 100 c. p. 7½ amp., type "C" series, incandescent lamps; that each of the rates charged the city of Colorado Springs by The Colorado Springs Light, Heat & Power Company for street lighting, including the rate of 3c per kilowatt hour paid for current for the ornamental street lighting system, is unreasonable and excessive, and that fair and reasonable rates for street lighting purposes should be established by the Commission.

This petition was docketed as Case No. 99, but, by consent of counsel for both the city and the defendant company, was consolidated with Case No. 24.

On the 4th day of April, 1917, the defendant company, in accordance with the Commission's order of February 24, 1916, appeared before the Commission in the council chamber in the city hall in the city of Colorado Springs, and presented to the Commission its operating expenses and revenues for the year ending February 28, 1917, during which time the Commission's order of February 24, 1916, had been in force and effect. At the same time the engineers for the company presented an appraisal of the properties of the company and made claim for a higher valuation for rate-making purposes than previously had been allowed by the Commission. Witnesses for the company presented evidence in support of the company's contention that the schedule of rates and charges for electric and gas service, heretofore established by the Commission, did not provide adequate revenues to enable the company to meet its necessary operating expenses and pay a fair return upon the fair value of its properties. The company's witnesses also testified as to the increased cost of coal, labor, material and supplies, as well as the expected increase in local, state and county taxes.

A representative of the company presented for the Commission's consideration a proposed schedule of rates for gas and electric service, which, it was asserted, if agreed to by the Commission, would produce additional revenue to care for increased operating expenses necessitated by the increased cost of coal, labor, material and supplies.

The hearing in this case was adjourned until the 28th day of June, 1917, at which time the Commission's statistical staff submitted a detailed report on the revenues and expenses of the defendant company for the year ending February 28, 1917, and the Commission's engineering staff submitted for the consideration of the Commission a further appraisal of the electric property of the defendant, which appraisal was based on the original cost of the defendant's used and useful electric property. The Commission did not deem it advisable to require its engineering staff to submit a further appraisal of the defendant's gas property since, when the additions to the gas property are taken into consideration, the valuation claimed by the company is practically the same as that originally submitted by the Commission's engineering staff, and for the further reason that the value of the defendant's gas property is conceded to have very little bearing on the rates and charges for gas service.

At the same hearing witnesses for the defendant company submitted an exhibit showing the combined revenues and expenses of the company's gas, electric and steam heating departments from the years 1900 to 1916, inclusive, together with the average capital upon which, in the opinion of these witnesses, a return of 8 per cent should have been earned. This exhibit also showed revenues and expenses for the company's combined steam heating and electric departments and for its gas property for approximately the same period.

At the close of this hearing the Commission instructed its engineering department to make an investigation of operating conditions generally, and of such operating expenses as could be examined from an engineering standpoint, for the purpose of determining whether such operating expenses were reasonable and had been properly apportioned, or whether changes in equipment and operating methods and conditions could be expected to bring about a reduction in the operating expenses of the company. The Commission further directed at that time that a report on such investigation be made to it in writing and that copies be filed with the city of Colorado Springs and with The Colorado Springs Light, Heat & Power Company. Such a report has been filed with the Commission and is considered as a part of the record in this case.

VALUATION.

General Statement.

At the hearings held April 4th and 5th, 1917, Mr. J. H. Perkins, engineer for the defendant company, submitted an appraisal of the company's gas, electric and steam heating properties, which purported to give the original cost new of these properties as of September 1, 1916. Mr. Perkins claimed that the original cost to the company of existing properties and the amount upon which the company should be entitled to earn a fair return as of September 1, 1916, was as follows:

	Electric Department	Gas Department	Steam Heat Department	Total
Fixed capital	$2,055,248	$837,989	$195,727	$3,088,964
Development cost	285,000	125,000	30,000	440,000
Working capital	90,000	40,000	5,000	135,000
Total entitled to return	$2,430,248	$1,002,989	$230,727	$3,663,964

The foregoing valuation of these properties submitted by the witness Perkins is understood to give his

estimate of the original cost new of these properties without deduction for accrued depreciation. No estimate on behalf of the company was submitted to the Commission giving the original cost new less depreciation of these properties.

During the hearings in this case, Mr. F. J. Rankin, engineer for the Commission, submitted a valuation of the defendant's electric properties based on original cost, and arrived at $1,770,324.00 as the original cost new of the defendant's electric property as of September 1, 1916. This valuation by the Commission's engineer did not include so-called development cost or bond discount, as did the report of the engineer for the company. Mr. Rankin likewise testified that the accrued depreciation on the defendant's electric property as of September 1, 1916, amounted to $336,660.00, making the original cost new less accrued depreciation $1,433,962.00.

Fair Value of Electric Property.

By deducting from the Perkins' report the sum of $285,000.00 allowed for development cost or going value, and $76,482.00 as the estimated discount on bonds, which, in the opinion of Mr. Perkins should be capitalized, the Commission arrives at the sum of $2,068,766.00. It is also necessary, in order to compare the report of the Commission's engineer and the report of the company's engineer on the same basis, to deduct the sum of $42,330.00, which is the difference between the amounts allowed by the two engineers to cover organization expense, and, in addition, the sum of $14,000.00, which is the difference between the amounts allowed by the engineers for working capital for the electric property. In this way the Commission arrives at $2,012,436.00, claimed by Mr. Perkins to cover the property appraised by the Commission's engineer at $1,770,324.00. Aside from the differences in the allowances made by the two engineers for organization expense, working capital, bond discount,

and cost of development, the difference between the two engineers is principally in the allowance made for construction overheads. The Commission is of the opinion that the construction overheads applied by the defendant company's engineer are excessive in that contractor's profit should not have been considered as an overhead charge in an estimate of original cost, and that other allowances made for interest during construction, engineering, and general and miscellaneous expenses during construction, are unduly high. The Commission will, however, in determining the fair value of defendant's property give due consideration to the construction overheads claimed by its witnesses.

In the following tables will be found statements of the construction overheads as applied by witnesses for the company and as developed and applied by the Commission's engineering staff:

ELECTRIC DEPARTMENT.

SUMMARY OF CONSTRUCTION OVERHEADS
AS APPLIED BY THE ENGINEERING STAFF.

Acct. No.	Classification.	Per cent of Field Cost.
105	Land and Right of Way	22.70
106	Buildings and Structures	16.60
107	Steam Power Plant Equipment	22.47
109	Hydraulic Power Works Equipment	22.47
110	Hydraulic Power Plant Equipment	22.47
111	Boiler Plant Equipment	22.47
113	Miscellaneous Power Plant Equipment	22.47
120	Transmission System	18.53
121	Substation and Transformer Station Equipment	18.53
140	Distribution System	18.53
141	Line Transformers	10.86
142	Consumers' Meters	10.86
150	Commercial Lamps and Lamp Equipment	7.12
160	Municipal Contract Lighting System	18.53
162	General Office Equipment	7.12
166	Customers' Installations	10.86
168	Miscellaneous Equipment	10.86
169	Utility Equipment	10.86

ELECTRIC DEPARTMENT.

DEVELOPMENT OF CONSTRUCTION OVERHEADS

ENGINEERING STAFF.

Account 105—Land and Right of Way.

Market Value	100.	per cent
Brokerage, Preliminary Survey, Search of Title, Conveyancing and Recording	5.	per cent
Total Direct Cost	105.	per cent
Interest, 2 years at 6 per cent per annum	12.6	per cent
Taxes, 2 years 1½ per cent of market value	3.	per cent
General and Miscellaneous Expense 2 per cent	2.1	per cent
Total Cost to Utility	122.7	per cent

Account 106—Buildings and Structures.

Cost to Contractor	100.	per cent
Engineering and Architecture 6 per cent	6.	per cent
Total	106.	per cent
Interest During Construction 6 per cent	6.36	per cent
Taxes During Construction 1 per cent	1.06	per cent
General and Miscellaneous Expense 2 per cent	2.12	per cent
Fire and Tornado Insurance 1 per cent	1.06	per cent
Total Cost to Utility	116.60	per cent

Account 107—Steam Power Plant Equipment.
Account 109—Hydraulic Power Works Equipment.
Account 110—Hydraulic Power Plant Equipment.
Account 111—Boiler Plant Equipment.
Account 113—Miscellaneous Power Plant Equipment.

Field Cost	100.	per cent
Errors, Omissions and Contingencies	3.	per cent
Insurance	2.	per cent
Watchman's Service	1.	per cent
Total	106.	per cent
Preliminary Engineering Study 1 per cent	1.06	per cent
Engineer's Plans, Specifications and Supervision, 5 per cent	5.30	per cent
Total	112.36	per cent
Interest During Construction 6 per cent	6.74	per cent
Taxes During Construction 1 per cent	1.12	per cent
General and Miscellaneous Expense 2 per cent	2.25	per cent
Total Cost to Utility	122.47	per cent

ELECTRIC DEPARTMENT

DEVELOPMENT OF CONSTRUCTION OVERHEADS—Continued

ENGINEERING STAFF.

Account 120—Transmission System.

Account 121—Substation and Transformer Station Equipment.

Account 140—Distribution System.

Account 160—Municipal Contract Lighting System.

Field Cost	100.	per cent
Errors, Omissions and Contingencies	5.	per cent
Insurance	2.	per cent
Total Direct Cost	107.	per cent
Engineering and Supervision 5 per cent	5.35	per cent
Total	112.35	per cent
Interest 3 per cent	3.37	per cent
Taxes ½ per cent	.56	per cent
General Miscellaneous Expense 2 per cent	2.25	per cent
Total Cost to Utility	118.53	per cent

Account 141—Line Transformers.

Account 142—Consumers' Meters.

Account 166—Customers' Installations.

Account 168—Miscellaneous Equipment.

Account 169—Utility Equipment.

Field Cost	100.	per cent
Errors, Omissions and Contingencies	1.	per cent
Insurance	2.	per cent
Total Direct Cost	103.	per cent
Engineering 3 per cent	3.09	per cent
Total	106.09	per cent
Interest During Construction 2 per cent	2.12	per cent
Taxes During Construction ½ per cent	.53	per cent
General and Miscellaneous Expense 2 per cent	2.12	per cent
Total Cost to Utility	110.86	per cent

Account 150—Commercial Lamps and Lamp Equipment.

Account 162—General Office Equipment.

Field Cost	100.	per cent
Errors, Omissions and Contingencies	2.	per cent
Insurance and Taxes	1.	per cent
Total Direct Cost	103.	per cent
Interest During Construction	2.06	per cent
General and Miscellaneous Expense 2 per cent	2.06	per cent
Total Cost to Utility	107.12	per cent

ELECTRIC DEPARTMENT.

PERCENTAGES FOR PHYSICAL OVERHEADS ON LABOR AND MATERIAL COSTS—PERKINS.

Physical Accounts.	Contractor's Profit	Omissions	Engineering and Superintendence	Contingencies and Incidentals	Total	Total Physical
Land Devoted to Electric Operation	..	..	2	..	2	2.0
Buildings, Fixtures and Structures	10	1	7	2	10	21.0
Steam Power Plant Equipment.	10	3	5	5	13	24.3
Hydraulic Power Works Equipment	15	4	7	10	21	39.1
Hydraulic Power Plant Equipment	10	3	5	5	13	24.3
Boiler Plant Equipment	10	2	5	5	12	23.2
Transmission System	5	2	5	3	10	15.5
Substation and Transformer Station Equipment	5	2	5	5	12	17.6
Distribution System	5	3	5	5	13	18.7
Transformers	..	1	3	..	4	4.0
Meters	..	2	2	..	4	4.0
Commercial Lamps and Lamp Equipment	..	1	2	..	3	3.0
Municipal Contract Lighting System	5	2	5	3	10	15.5
General Office Equipment	..	1	..	..	1	1.0
Customers' Installations	..	3	3	3	9	9.0
Miscellaneous Equipment	..	2	2	2	6	6.0
Utility Equipment	..	2	2	..	4	4.0

ELECTRICAL DEPARTMENT.

PERCENTAGES FOR NON-PHYSICAL ACCOUNTS OF PLANT INVESTMENT—PERKINS

Physical	Organization	Engineering and Superintendence	Salaries During Construction	Office Supplies and Exp. During Construction	Stationery and Printing	Legal Exp. During Construction	Injuries During Construction	Insurance During Construction	Taxes During Construction	Misc. During Construction	Sub. Total	Discount on Bonds	Sub. Total	Interest During Construction
Land—Electric Operations	5	1	1	.3	.2	..	..	..	1.2	1	9.7	4.1	14.2	12
Buildings, Fixtures and Structures	5	2	1	.3	.2	.4	.4	1	.9	1	12.2	4.1	16.8	9
Steam Power Plant Equipment	5	2	1	.3	.2	.4	.4	1	.6	1	11.9	4.1	16.5	6
Hydraulic Power Works Equipment	5	3	1	.3	.2	.4	.4	..	.9	1	12.2	4.1	16.8	9
Hydraulic Power Plant Equipment	5	2	1	.3	.2	.4	.4	.5	.6	1	11.4	4.1	16.	6
Boiler Plant Equipment	5	2	1	.3	.2	.4	.4	1	.6	1	11.9	4.1	16.5	6
Transmission System	5	2	1	.3	.2	.4	.4	..	.3	1	10.6	4.1	15.1	3
Sub-Sta. and Transformer Sta. Equipt.	5	2	1	.3	.2	.4	.4	1	.4	1	11.7	4.1	16.3	4
Distribution System	5	2	1	.3	.2	.4	.4	..	.3	1	10.6	4.1	15.1	3
Transformers	5	2	1	.3	.2	.4	.4	..	.3	1	10.6	4.1	15.1	3
Meters	5	2	1	.3	.2	.4	.4	..	.3	1	10.6	4.1	15.1	3
Commercial Lamps and Lamp Equipt.	5	2	1	.3	.2	.4	.4	..	.3	1	10.6	4.1	15.1	3
Municipal Contract Lighting System	5	2	1	.3	.2	.4	.4	.2	.3	1	10.8	4.1	15.3	3
General Office Equipment	5	..	1	.3	.2	..	..	1	.3	1	8.8	4.1	13.3	3
Customers' Installations	5	2	1	.3	.2	.4	.4	..	.3	1	10.6	4.1	15.1	3
Miscellaneous Equipment	5	2	1	.3	.2	.4	.4	.5	.3	1	11.1	4.1	15.7	3
Utility Equipment	5	..	1	.3	.2	.4	.4	1	.6	1	9.9	4.1	14.4	6

While it was not claimed at the hearings in this case by witnesses for either the Commission or the defendant company that the records of the company disclosed with any degree of certainty the amounts paid by the company for such items as engineering, interest during construction, taxes, insurance, etc., witnesses for both the Commission and the company claimed emphatically that such construction overheads could be estimated within very narrow limits. (1) With this testimony the Commission is inclined to agree, except that inasmuch as the property was not installed by a contractor, but, instead, was installed by and under the supervision of the employes of the company, no allowance should be made under construction overheads for contractor's profit. If, as is true in this case, certain items or units of plant were installed under contract, the contractor's profit was properly included as a part of the unit cost of such items, and such profit should not appear again as a general overhead allowance.

It is generally conceded that to the labor and material costs of inventoried items of plant, an allowance must be made for omissions, errors and contingencies. The allowance to be made depends upon the property being inventoried and the care and detail with which such inventory is compiled. The allowance to be made in individual cases must be a matter of judgment of the engineers appraising the property; in this case the allowances made for such items by the different engineers are approximately the same.

It would have been advisable for the company, in constructing its property, to have carried fire and tornado insurance upon such items as buildings, power plant equipment, and supplies carried in store rooms, and, in addition, to have carried employes' and public liability insurance. If such insurance was not carried by the company during the construction period such liabil-

ities were assumed, and the payments made on account of accidents and damages and losses from other sources would, in the opinion of the Commission, not have been less than the cost of carrying such insurance at this time. (2) In the absence of specific information as to the amount actually paid by the company to cover insurance during the construction period the Commission is of the opinion that it is fair to include under the heading of insurance the amount which the company would actually be required to pay at this time for employes' and public liability insurance, and for fire and tornado insurance, on such property as it would be advisable to insure.

It was not claimed at the hearings in this case that the records of the company indicated the amounts paid for engineering, plans and specifications, and general supervision of construction work. Such work, however, was done and paid for by the company and the commission finds that the allowances made by its engineer for engineering, plans and specifications and general supervision, ranging from three to six per cent for the different classifications of property, are fair and reasonable.

(3) As in the case of a number of utilities investigated by this Commission, no records are available that disclose the amounts paid by the defendant company for interest during its construction period. Whether or not such payments were in fact made by the company appears to the Commission to be entirely immaterial. The fact cannot be overlooked that money was tied up in construction work for greater or less periods of time, that interest on such money was foregone by the company, and that such loss of interest represents a part of the necessary sacrifices made, and should, therefore, be considered in arriving at the fair value of the property of the company for rate-making purposes. In this case the Commission's engineer, as well as the engineers for

the company, estimated interest during construction at 6 per cent per annum, and applied this interest rate to the different classifications of property for one-half the period required for the construction of such property. The Commission finds that this method gives a reasonable estimate of the cost to the company for interest during construction. While the construction periods for the entire property were not ascertainable, they were known for a large portion of the property, and for the remainder of the property were estimated as nearly as possible from facts underlying this particular case.

(4) The Commission is of the opinion that a certain portion of taxes paid by the company should be charged to its fixed capital accounts, that taxes are in fact assessed on property during its construction, and that the inclusion of taxes as a construction overhead is a proper allowance, provided the operating expenses of the utility are properly credited with such amounts as are charged to its construction accounts. The Commission finds that the allowance made by the engineers for taxes during the construction period should be considered in arriving at the value of this property for rate-making purposes.

(5) Engineers for both the Commission and the Company included under construction overheads approximately 2 per cent for general and miscellaneous expenses during construction. This allowance is made for such items of expense as purchasing, rent, light, heat, accounting, administration, etc., and the Commission is of the opinion that the allowance is a reasonable one.

It is interesting to compare at this time—and the Commission takes the view that it is a matter having considerable bearing on the value of defendant company's electric property—the first appraisal submitted by the Commission's engineering staff, giving the normal reproduction cost of defendant's electric property,

with the last appraisal submitted by the same staff at the recent hearings based on original cost. On August 3, 1915, there was submitted on behalf of the Commission, by its engineering department, an appraisal of the defendant's gas, electric and steam heating properties, and at that time it was reported that the cost of reproduction of the electric property alone was $1,584,374.00. This amount was exclusive of rights-of-way and preliminary organization expense. In addition, certain omitted property was called to the attention of the Commission at that time and allowance duly made therefor over and above the cost of reproduction as reported by the Commission's engineers. To the cost of reproduction new of $1,584,374.00, as first reported by the Commission's engineers, there should be added, therefore, the following:

Omitted property	$18,018.00
Rights of way	10,000.00
Preliminary organization and development expenses	79,125.00

making the reproduction cost new as of that date $1,691,517.00.

Since the first appraisal was based on an inventory as of January 1, 1915, and the last appraisal was based on an inventory as of September 1, 1916, it is necessary, in order to bring the first appraisal up to date, to make the following additions:

Additions to electric property from Jan. 1, 1915, to Sept. 1, 1916	$20,309.00
Overheads on additions not included above	2,031.00
Additions to working capital	6,000.00

In addition, in order to bring the original appraisal up to the date of the last one, it is necessary to make

allowance for certain sub-station equipment, installed on the premises of large consumers, such as reduction mills, railroad shops and the like, which was not included in the first appraisal, it being erroneously considered at that time that such equipment was the property of the consumer and not of the defendant company. By taking into account these corrections the Commission arrives at $1,761,678.00 as the cost of reproduction of defendant's electric property as of September 1, 1916, compared with $1,770,324.00, the estimated original cost of that property as of the same date. Each of these valuations is independent of bond discount and development cost, or going value.

(6) The company has made claim for an allowance, in the original cost of its electric property, of $76,482.00 for discount on bonds during construction, and claims that this sum should be included in arriving at the amount upon which fair and reasonable rates are to be based. The Commission is of the opinion that the rate of return which a public utility is permitted to enjoy upon its investment prudently made should fully compensate such utility for the use of its property. If it chooses to issue bonds to raise funds with which to construct its property, then the interest on the bonds and the expense incident to the issuance of the same should be paid by the utility out of the amount allowed to it as a fair return upon its investment. On the other hand, if a public utility chooses to finance the construction of its property by the subscription of capital stock, no claim can be supported for such discount. It is true that in the accounting classifications promulgated by various state commissions—this Commission included—and by the Interstate Commerce Commission, railways and other public utility companies are required to provide for the amortization of bond discount out of income over the period between the date of the issuance of the

bonds and the date of their maturity, and that in some instances such utilities are permitted to charge to capital accounts that portion of the amortization charges which accrues during the period of construction, but it is by no means clear to the Commission that even this portion of bond discount should be allowed in finding a value for rate-making purposes.

After due consideration the Commission is of the opinion that no allowance whatever should be made for discount on bonds or other financial expenses in determining the fair value of the defendant's property for rate-making purposes.

In the matter of the complaint of the city of Lincoln v. The Lincoln Water and Gas Company, relative to electric rates and water rates in the city of Lincoln, the Illinois Commission disallowed bond discount in the following terms (P. U. R. 1917B, 1):

"(33) It would seem, from the aforesaid citation contained in the respondent's brief, that the customary treatment of bond discount by regulatory bodies is unfamiliar, insofar as applied to the utility properties herein. It has been the rule of this Commission, from the date of its organization to the present time, to permit bonds to be sold at a reasonable discount (the amount of the discount to be determined upon the conditions of the money market at the time of the inquiry); but in no instance has the issuance of bonds for capital purposes, either in the construction of an entirely new plant or for additions and betterments to property, been permitted by this Commission, in which the discount has been allowed to become a part of the permanent capital account. It has been the invariable practice of this Commission to order all bond discounts to be amortized in equal annual installments during the life of the bonds. It will be found, upon investigation, that this treatment of bond discounts is the almost universal practice of

other state public-service commissions—a practice which ordinarily is conceded to be sound, both in theory and in economics. Even the common carriers of the United States take this position respecting their own securities, and, in a brief filed by the carriers' Presidents' conference committee before the Interstate Commerce Commission in the matter of the Federal valuation of all railroads, it is said, to-wit:

"(34) 'The rate-of-return should, of course, cover the element of discount, for discount is simply a method of equalizing interest.' (Carriers' Brief, p. 111.) Bond discounts are merely another way of expressing rate-of-interest. Utilities in issuing bonds customarily are permitted the right to determine what, in their judgment, is the most advantageous interest-rate which the bonds should bear. In other words, the companies have a right to exercise judgment as to what rate-of-interest will net the best results from a financial point of view to the company. For example, a 4-per-cent bond might sell at 25 per cent discount; a 5-per-cent bond might sell at 15 per cent discount; a 6-per-cent bond might sell at 5 per cent discount, and a 6½-per-cent bond might sell at par. Bonds which mature at the end of ten years command a very different discount from comparable issues which may run for 50 years. Inasmuch as the amount of discount varies with the interest rate, the capitalization in any instance, if the principle of capitalizing discounts were recognized, would then be a matter resting entirely with a utility or with the party issuing the bonds. The less the interest rate, the greater the rate of discount. Ordinarily, a bond bearing a low interest rate, when sold at a large discount, creates a greater burden upon the consumer than a bond sold at par at a higher interest rate. A condition of affairs wherein the amount chargeable to capital account, through the medium of bond discounts, is entirely in the

hands of a utility undoubtedly would defeat the purpose of the law, and, therefore, cannot be countenanced under any theory of regulation. Should a study be made of the findings of the various state commissions in rate making proceedings, it will be discovered that the commissions generally, in determining a reasonable rate of return, have taken into consideration the interest rate which it is necessary to allow in order that bonds may be sold to net par to the company, and have considered bond discount as an interest rate in disguise.

"(35) The argument advanced to the effect that the cost of the necessary funds to finance the property is an element of value herein, is not to be reconciled with actual facts, if it is intended to convey by 'cost of necessary funds' a meaning and connotation ordinarily implied by the expression 'bond discount.' For instance, if the original bond issue of $135,000 in 1891 sold at 90, the proceeds amounted to $121,500, and the discount amounted to $13,500. The amount which went into the property was the proceeds, $121,500—not $135,000. The excess cost of plant undoubtedly was contributed by stockholders, as it should be, and it is the contributions of stockholders which reasonably are entitled to the earnings of the plant. The Commission, in no manner, can countenance the claim for rate making resulting from discounting of bonds, inasmuch as the respondent has suffered no proper loss by any reasonable discounting which is to be assessed in the form of rates against the public; but the Commission, in its determination of rate of return hereinafter, will take cognizance of bond discounts and bond fees, and will give due weight thereto."

Whitten, in his work on the Valuation of Public Utilities, says at page 286:

"The state commissions, with the partial exceptions above noted in the Wisconsin and Washington commissions, have not included brokerage or bond discount in

valuations for rate purposes. Moreover, in the various rate cases that have come before the courts there is practically no authority for inclusion of bond discount. The decisions for the most part make no reference to the subject. In such of these as contain details as to the elements of the valuation it seems clear that no allowance for this factor has been included. While certain rate cases indicate that at least some consideration is to be given to the par value of outstanding securities, it is made clear that par value may be considered only to the extent that it may throw light on true value."

The following are some of the recent commission decisions in which the element of bond discount has been disallowed in arriving at the fair value of public utility properties for rate making purposes:

Greensburg v. Westmoreland Water Co., (Pa.), P. U. R. 1917D, 478;

City of Lincoln v. Lincoln W. & G. Co., *supra;*

In re Portland R. Light & P. Co., (Ore.), P. U. R. 1916D, 976;

Lima v. Lima T. & T. Co., (Ohio), P. U. R. 1916E, 670;

In re Dunham, (Mo.), P. U. R. 1916E, 544.

The Commission is of the opinion and finds that the amounts included in the report of the Commission's engineering staff for organization expense and for working capital are reasonable and should not be increased.

Throughout this proceeding counsel for the defendant contended that no deduction on account of depreciation should be made from the original cost new of the defendant's properties in determining their fair value for rate making purposes. Exhibits were submitted by witnesses for the defendant which purported to show that the company had not been able throughout its entire existence to earn a return of 8 per cent upon the investment in its property, and that since it had not been

able to earn any amount from which to accumulate a depreciation reserve no deduction should be made therefor. The exhibit submitted by witnesses for the defendant gives the gross revenues and operating expenses for the combined gas, electric and steam heating departments for the years 1900 to 1916, inclusive. In addition this exhibit sets out for each of the years under consideration the average capital upon which, in the opinions of witnesses for the company, it should have been entitled to earn a return of 8 per cent, and shows that upon this basis the company has fallen short of earning a return of 8 per cent during its existence by approximately $800,000. This deficit below a return of 8 per cent, in all probability, would be entirely wiped out if the average capital entitled to a return were reduced to the amount the Commission believes to be correct in this case. Since this exhibit is based on the combined gas, electric and steam heating departments, and since the Commission heretofore has found that it has no jurisdiction over the steam heating property of the defendant, and that, further, the gas and electric properties should be segregated for the purpose of determining fair and reasonable rates, the exhibit is of little value to the Commission in this case. In fact, a portion of this same exhibit, which covers only the electric and steam heating properties of the defendant, shows that on the total valuation claimed by the company, the defendant has fallen short by only $167,381.00 of earning a return of 8 per cent on such valuation. The Commission is of the opinion that if a reasonable valuation had been used by witnesses for the defendant in connection with this study it would have been shown that the combined electric and steam heating properties have earned, in addition to a return of 8 per cent, an amount sufficient to set aside a reasonable depreciation reserve.

The Commission is further of the opinion that the electric department of the company has during its existence had earnings much in excess of an amount sufficient to pay a return of 8 per cent upon the fair value of its electric property and also to provide for a reasonable depreciation reserve.

According to Mr. Perkins, who submitted the above exhibit for the defendant company, his conclusions were based upon the assumption that the appraisal of the property as submitted by him represented its fair value for rate making purposes. He further testified that the statements of operating expenses used in this exhibit are not in such form as to permit of detailed analysis, and that the total cost to the company of making the inventory and appraisal of its property, and conducting rate hearings, had been included in the later years as operating expenses. It is also entirely possible, according to Mr. Perkins' testimony, that items properly chargeable to construction had been included in the operating expenses of the company in earlier years. (Trans. Rec., p. 446-448.)

On the basis of the record before it the Commission is of the opinion that the earnings of the electric department of the defendant have at all times been sufficient to enable it to earn a return of 8 per cent on the investment in its property, meet its reasonable operating expenses, and provide an adequate reserve for replacements, and that therefore, the argument that no deduction should be made on account of accrued depreciation for the reason that the company has not been able to earn an amount sufficient to provide for depreciation, cannot be applied in this case. The matter of the company's revenues having been sufficient or insufficient to enable it to set aside a reasonable depreciation reserve has more bearing, in the opinion of the Commission, upon the allowance to be made for going value than upon the

question as to whether accrued depreciation should be deducted in arriving at the fair value of defendant's property for rate making purposes. Whether such a deduction should be made depends, in the opinion of the Commission, very largely upon the amount which the company is permitted to set aside as an annual depreciation reserve, and whether such requirement is set aside on the straight line or on the sinking fund basis.

In arriving at the fair value of defendant's electric property for rate making purposes it is proper here to consider the question of the allowance to be made for going value, or development cost, as the term is used by witnesses for the company. It previously has been determined that, insofar as the electric department of the company is concerned, no amount should be added on account of unearned accrued depreciation, or on account of the fact that the defendant company has not been able to earn a fair return upon the investment in its electric property.

In the matter of the application of the San Joaquin Light & Power Corporation for an order ascertaining and establishing just and reasonable rates to be charged for electric energy, the Railroad Commission of California, in an opinion rendered by Chairman Thelen, after quoting from the opinion of Mr. Justice Day in the case of Cedar Rapids Gas Light Company v. Cedar Rapids, 223 U. S. 655, disallowed the company's claim for going value in the following language:

"I desire to draw attention particularly to the sentence reading:

" 'For aught that appears in this record, these expenses may have been already compensated in rates charged and collected under former ordinances.'

"In these words the Supreme Court clearly indicates that if the expenses of organizing and establishing the business have already been made good to the utility out

of later rates, no additional allowance for 'Going concern value' may properly be made in a rate case.

"I construe this decision to mean that if a plant has been valued as 'in successful operation,' as distinguished from a valuation of the scrap value of its component parts, and if the rates have been sufficient to reimburse the utility for the cost of organizing and establishing the business, no additional allowance need be made for 'going concern value.' " (9 Calif. R. R. Com., 584.)

Notwithstanding the facts hereinabove set forth the Commission will, in connection with defendant's electric property, make due allowance for the fact that it is a going concern, with an established business, and in successful operation.

After giving due consideration to the evidence bearing on the original cost, cost of reproduction and cost of reproduction less depreciation of the electric property, and considering that property as a going concern with an established business and in successful operation, the Commission finds that in addition to its reasonable operating expenses as hereinafter determined, and an annual depreciation requirement of $50,000.00, set aside on the straight line basis, The Colorado Springs Light, Heat & Power Company should be entitled to earn on its electric property an amount equal to 8 per cent on $1,650,000.00. The Commission further finds that the company may, at its option, set aside its depreciation reserve on the sinking fund basis, in which event the annual depreciation requirement should be reduced to $30,000.00, and the company should be entitled to earn over and above its reasonable operating expenses, and an annual depreciation requirement of $30,000.00 set aside on the sinking fund basis, an amount equal to 8 per cent on $1,900,000.00.

Fair Value of Gas Property.

At the time of the first valuation of the properties of the defendant company the Commission's engineering staff submitted an appraisal of the gas property of the defendant, giving $768,397.00 as the normal reproduction cost of such property as of January 1, 1915. This amount included working capital, but did not include organization expense, discount on bonds, or the cost of establishing the business of the gas department of the company. The additions to the gas property from January 1st, 1915, to September 1st, 1916, which is the date of the valuation reports now before the Commission, amounted to $26,726.06, which amount, together with construction overheads thereon, and the necessary additions to working capital, would bring the reproduction cost of the gas property to approximately $800,000.00 on September 1st, 1916. This amount would likewise be exclusive of organization expense, bond discount, and going value.

Mr. Perkins, for the company, testified that the original cost of the gas property as of September 1st, 1916, amounted to $1,002,989.00, and itemized this amount as follows:

Fixed capital	$ 837,989.00
Development cost, or going value	125,000.00
Working capital	40,000.00
Total	$1,002,989.00

In order to compare Mr. Perkins' report with the appraisal made by the engineering staff of the Commission and corrected to September 1st, 1916, as above, it is necessary to deduct therefrom items not covered in the report of the engineering staff of the Commission, viz.: development cost, organization expense and bond

discount. These amounts, as taken from Mr. Perkins' report, are as follows:

Development cost	$125,000.00
Organization expense	34,153.00
Bond discount	31,168.00
Total	$190,321.00

By deducting this sum from the amount claimed by Mr. Perkins as representing the value of the gas property, there remains $812,668.00, which is approximately the same as the corrected reproduction estimate submitted by the Commission's engineering staff. No deduction on account of accrued depreciation has been made from either of the amounts submitted above.

As previously stated the Commission cannot allow the amount claimed for bond discount. The allowance made by Mr. Perkins for working capital is in excess of that found by the Commission's statistician, and in addition it is evident from the record that Mr. Perkins' report unintentionally included paving over gas mains and gas services, which was not installed at the expense of the company.

After giving due consideration to the evidence bearing on the original cost of the gas property, cost of reproduction and cost of reproduction less depreciation, and considering the property as a going concern with an established business and in successful operation, the Commission finds that the annual gross earnings of the gas department of The Colorado Springs Light, Heat & Power Company should not in any event exceed its reasonable operating expenses as hereinafter determined, an annual depreciation requirement of $7,500.00 set aside on the sinking fund basis, and 8 per cent on the sum of $850,000.00.

The Commission does not find, however, that under conditions now surrounding the manufacture and sale of gas by The Colorado Springs Light, Heat & Power Company it will be possible or reasonable for the company to earn a return of 8 per cent on the above amount.

Fair Value of Steam Heating Property.

The Commission has heretofore found that it has no jurisdiction over steam heating properties, and, therefore, will not determine the value of the steam heating properties of the defendant company.

REVENUES AND EXPENSES.

The following table gives the consolidated income statement of the properties of The Colorado Springs Light, Heat & Power Company for the year ending February 28th, 1917, as submitted by witnesses for the defendant company and verified by Mr. F. W. Herbert, the Commission's statistician, through a thorough check of the books and accounts of the company:

CONSOLIDATED INCOME STATEMENT—YEAR ENDING FEBRUARY 28, 1917.

	Electric	Gas	Steam	Total
Gross Revenue	$417,914.33	*$120,725.00	$ 26,259.61	$564,898.94
Operating Expenses	185,068.58	86,362.40	27,569.74	299,000.72
Depreciation	50,000.00	20,000.00	870.23	70,870.23
Taxes	42,311.38	11,045.43	3,750.52	57,107.33
Total Operating Exp.	$277,379.96	$117,407.83	$ 32,190.49	$426,978.28
Net Operating Rev.	$140,534.37	$ 3,317.17	†$ 5,930.88	$137,920.66
Non-Operating Rev.	3,372.58	†261.87	98.71	3,209.42
Gross Income and Deficits	$143,906.95	$ 3,055.30	†$ 5,832.17	$141,130.08

*Includes earnings from residuals.

†Indicates deficit.

It is clear from the record in this case that there has been included in the foregoing statement under the head-

ing of operating expenses an item covering rate hearing and inventory expense, which, for the year under consideration, amounted to $19,150.00 for the combined properties. It is also clear from the record that the rate hearing and inventory expense was apportioned to the different departments of the company on the basis of gross revenue.

(7) The Commission is of the opinion that the cost of making inventories and conducting rate hearings, even if allowable as an operating expense, should not be included in the operating expenses for any one year, but that such expense should be apportioned over a period of years, and the Commission is further of the opinion that such expense is not properly apportioned to the combined properties of the company on the basis of gross revenue.

At the direction of the Commission its engineering department has made an analysis of the operating expenses of the company, together with the manner in which such operating expenses have been apportioned to the gas, electric and steam heating departments. The results of this investigation have been submitted to the Commission in the form of a written report and constitute a part of the record in this case. Briefly summarized, this report is as follows:

The company operates two main generating plants: one a water power plant located at Manitou and the other a steam plant located in the coal fields north of Colorado Springs. In addition, about 5 per cent of the defendant company's total output is generated at what is known as Sub-station "A," where approximately 800 kilowatts of generating capacity are installed for operation in connection with the steam heating department. The total cost of operating the company's hydro plant for the year under consideration, including repairs, maintenance, station supplies and labor, amounted to $10,398.85.

It would be possible to reduce the cost of operating this plant by approximately $900.00 per year if arrangements could be made with the city of Colorado Springs to dispense with one of the two caretakers who are now employed at the intake of the hydro pipe line, both of whom are on the pay roll of the company.

Under the conditions now existing at the company's main steam plant, which to some extent is in the nature of a standby plant operated in connection with the hydro plant, the installation of automatic stokers and coal and ash handling equipment would reduce the company's expenditures for coal and labor, but the fixed charges on such additional equipment would be equal to, if not in excess of, the amount saved thereby. Such additional equipment may prove to be desirable in the future on account of the increased cost of coal and labor.

At Sub-station "A," where certain equipment is used jointly by the electric and steam heating departments, the division of operating expenses as between these departments had not, in the opinion of the engineering staff, been properly made. These expenses were reapportioned to the electric and steam heating departments on the basis of coal consumption in some cases and investment in other cases. The result, however, did not materially change the cost of operating this plant as originally apportioned to the electric and steam heating departments.

The commercial expense of the company for the year ending February 28, 1917, should, in the opinion of the Commission's engineering staff, have been apportioned to the gas, electric and steam heating departments on the basis of the number of consumers in these departments, and a reapportionment of this expense on such a basis was submitted to the Commission.

The general expense accounts of the company cover such items as salaries of general officers, general office

clerks, office supplies, stationery and printing, insurance, legal expenses, management, auditing and traveling, rent, taxes, and valuation expense. The Commission's engineering staff reported that as a general proposition such expenses are fairly apportioned to the different departments, such as gas, electric and steam, on the basis of gross revenue. It was found, however, that some of the general expense items had not been so apportioned, and others should, in the opinion of the Commission's engineering staff, have been apportioned on a different basis. Among these items which should have been apportioned on the basis of gross revenue, but which appear to have been apportioned on a purely arbitrary basis, are valuation expense, accidents and damages, legal expense in connection with damages, interest on consumers' deposits, rent, and county and state taxes. The cost of making the inventory and appraisal of the properties of the company was apportioned by the Commission's engineering staff to these different departments on the basis of their appraised values, while the cost of conducting the rate hearings was apportioned to the different properties on the basis of gross revenue.

The Commission's engineering staff further reported that a portion of the company's general and miscellaneous expenses should have been charged to the additions made to the capital accounts during the year under consideration, and that the general operating expenses should have been correspondingly reduced. During the year ending February 28, 1917, the total additions to the defendant's gas, electric and steam heating departments amounted to $36,160.98. According to the report of the engineering staff, there should have been charged to the fixed capital accounts, in addition to the cost of such construction, 3 per cent for general and miscellaneous expenses chargeable to construction, to cover such items as insurance,

taxes, accounting, purchasing, and legal and miscellaneous expense. In the reapportionment of operating expenses the general and miscellaneous expenses of the company for the year under consideration were reduced by 3 per cent on the additions to the fixed capital, this reduction amounting to $1,084.83.

The Commission's engineers further reported that the annual depreciation requirement of $20,000.00 per year for the gas property, as previously established by this Commission, is excessive, inasmuch as the replacements of gas property for the year ending February 28, 1917, amounted to only $126.58, and recommended that this requirement be reduced to $7,500.00 per annum.

Following is a statement of the operating expenses of the defendant, The Colorado Springs Light, Heat & Power Company, for the year ending February 28, 1917, as reapportioned to the gas, electric and steam heating departments of the company, and which the engineering staff of the Commission considered to represent the fair and reasonable operating expenses of the different departments of the company for that period. It should be understood that this statement is based entirely on the operating expenses for the year ending February 28, 1917, as reported by the Commission's statistician, and that it differs therefrom only in the apportionment of those expenses to the gas, electric and steam heating departments and to the fixed capital accounts, and in the annual depreciation requirements.

OPERATING EXPENSES FOR THE YEAR ENDING FEBRUARY 28, 1917, AS REAPPORTIONED BY COMMISSION'S ENGINEERING STAFF.

	Gas Department	Electric Department	Steam Department	Fixed Capital	Total
General Expense	$ 18,202.33	$ 83,866.39	$ 6,272.13	$ 1,084.83	$109,425.68
Promotion Expense	4,774.03	4,155.59	146.50	.....	9,076.12
Commercial Expense	3,156.31	6,034.40	92.84	.....	9,283.55
Utilization Expense	.....	5,982.67	.....	.....	5,982.67
Transmission Expense	.....	3,311.64	.....	.....	3,311.64
Distribution Expense	6,802.18	11,979.18	1,819.94	.....	20,601.30
Net Cost Gas Generation	40,713.01	.....	.....	.....	40,713.01
Generating Expense: Hydro Plant	.....	10,398.85	.....	.....	10,398.85
Generating Expense: Main Plant	.....	74,872.61	.....	.....	74,872.61
Generating Expense: Sub. A	224.11	19,709.85	20,076.22	.....	40,010.18
Generating Expense: Green Mtn. Falls	.....	381,32	.....	.....	381.32
Depreciation	7,500.00	50,000.00	870.23	.....	58,370.23
Total above Items	$ 81,371.97	$270,692.50	$ 29,277.86	$ 1,084.83	$382,427.16
Less Duplicate Charges	507.17	7,064.15	143.62	.....	7,714.94
Total	$ 80,864.80	$263,628.35	$ 29,134.24	$ 1,084.83	$374,712.22
Inventory Expense	$ 2,320.50	$ 5,644.00	$ 535.50	.....	$ 8,500.00
Rate Hearing Expense	$ 2,396.25	8,253.75	.....	.....	10,650.00
Total Valuation Expense	4,716.75	$ 13,897.75	$ 535.50	.....	$ 19,150.00
Total Operating Expense	$ 85,581.55	$277,526.10	$ 29,669.74	$ 1,084.83	$393,862.22
Less 4-5 Valuation Expense	3,773.40	11,118.20	428.40	.....	15,320.00
Total	$ 81,808.15	$266,407.90	$ 29,241.34	$ 1,084.83	$378,542.22

The Commission finds that the operating expenses as set out in the above statement have been properly apportioned and that they represent what should be considered as the company's reasonable operating expenses for the year ending February 28, 1917, for the purpose of determining fair and reasonable rates, and that the apportionments to the different departments of the company as made by its engineering staff are correct and proper.

The Commission further finds that for the year ending February 28, 1917, the gross revenues from all sources for the electric department of the company amounted to $421,286.91, and that after deducting therefrom the reasonable operating expenses for that period as above determined, amounting to $266,407.90, the net revenue available for a return on the defendant's electric property amounted to $154,879.01, and that this amount is $22,879.01 in excess of 8 per cent on $1,650,000.00 previously determined as the amount upon which the company should be entitled to earn a return of 8 per cent, after meeting its reasonable operating expenses and setting aside an annual depreciation requirement of $50,000.00.

The Commission further finds that for the ensuing year there will be an increase in the company's annual operating expenses of approximately $40,000.00 per year on account of recent increases in the cost of material and supplies, labor, and fuel, and that the gross revenues required in its electric department in order that the company may meet its operating expenses and earn a fair return will be as follows:

Operating expenses for the year ending February 28, 1917	$216,407.90
Increase in operating expenses	40,000.00
Depreciation (straight line basis)	50,000.00
8 per cent return on $1,650,000.00	132,000.00
Total gross revenue required	$438,407.90

If the company elects to set aside its depreciation requirement on the sinking fund basis the annual gross revenue required for the coming year will be as follows:

Operating expenses for the year ending February 28, 1917	$216,407.90
Depreciation (sinking fund basis)	30,000.00
Increase in operating expenses	40,000.00
8 per cent return on $1,900,000.00	152,000.00
Total gross revenue required	$438,407.90

Since the gross revenue under the present rates is not expected to exceed the revenue of $421,286.91 for the year ending February 28, 1917, a new schedule of rates for electric service should be established which will provide an annual increase in gross revenue of $17,120.99. Such a schedule will be established in the order in this case.

In determining the amount by which the operating expenses of the electric department of the defendant company will be increased on account of increases in the cost of fuel and labor the Commission has given full consideration to the fact that under any condition the company's operating expenses will vary somewhat with the portion of its output which it is possible to generate by means of water power. The Commission further has considered the fact that the company now has under way additions to its hydro-electric plant, which will increase

the average annual amount of power that can be generated by its hydro-electric system.

STREET LIGHTING.

Series Lighting System.

At present the city of Colorado Springs proper, excluding Colorado City, which recently has been annexed and made a part of the city of Colorado Springs, obtains current from The Colorado Springs Light, Heat & Power Company for the purpose of lighting its streets, alleys and undercrossings. The number and types of lights in use in Colorado Springs proper, exclusive of an ornamental lighting system which was installed at the expense of the property owners and is maintained by the city of Colorado Springs, are as follows:

Number of lamps.	Type.	Rate per lamp per month.
247	7½ ampere carbon arc lamps	$5.50
58	100 c. p. 7½ ampere Type C series incandescent lamps	2.00
29	100 c. p. 7½ ampere Type C series incandescent lamps, used for alley lighting	2.00
2	250 c. p. 7½ ampere Type C series incandescent lamps	3.75
3	100 watt multiple tungsten lamps, used at the Pike's Peak undercrossing	2.00
4	100 watt multiple tungsten lamps, used at the Costilla Street undercrossing	2.00

That part of the complaint of the city of Colorado Springs pertaining to street lighting, which states that certain lights used at undercrossings should be replaced with a different type of light, does not need to be disposed of by the Commission. There will be established herein rates for street lighting of the type desired by

the city, and, in addition, there will be established rates for general and commercial lighting. If the city desires that the lights at these undercrossings be replaced by series incandescent lamps its wish will be granted by the defendant company upon payment of the monthly rate established for such lamps, and, in addition, the company will be required, as in the case of other street lighting, to install and maintain the necessary equipment. On the other hand, if the city of Colorado Springs desires to install and maintain the lighting equipment at these undercrossings, energy will be furnished therefor by the defendant company under any of the lighting rates herein established, except that the company should not be expected to place such service under the schedule for sign and flat rate lighting unless the location of such lamps is reasonably accessible to such patrolmen as are engaged in switching on and off other sign and flat rate lighting.

At the time of the hearings in this case testimony was introduced by witnesses for the city of Colorado Springs to the effect that the present series enclosed arc lamp is obsolete, that the 400 c. p., Type "C," lamp, which is desired by the city, consumes less current, provides a greater amount of light, and is less expensive to maintain; and that the saving per year to the company with the new type lamp would amount to $1,109.43 on 247 lamps, or approximately $4.50 per year per lamp. Witnesses for the defendant company did not deny that such a saving to the company would be effected, but objected to the statements of the witnesses for the city that the present alternating current enclosed arc lamp is obsolete. It was further claimed by witnesses for the city that the net cost to the company of making the proposed change would be approximately $4,000.00, and this testimony was not objected to by the company.

The Commission is of the opinion that the claim of the city of Colorado Springs for a new type of street light is entirely reasonable, and that the rate for such a type of lamp should be lower than the present rate for the enclosed arc lamp, by the amount that can be saved per year by the operation of the new type of lamp, which saving has been shown to be $4.50 per year per lamp. This would make the yearly rate for the 400 c. p. Type C lamp $61.50, or $5.125 per month.

It is also evident from the record in this case that the city desires to install additional street lights and that the defendant company's gross revenue will not be materially reduced on account of the reduction in the rate for this type of lamp. It is also probable that the proposed change will prove to be desirable from the standpoint of the company. In the consideration of previous cases this Commission has found that the prices of series enclosed arc lamps and repairs for such lamps have been recently increased by about 40 per cent and that, on account of the small demand at this time for such equipment, it may become difficult to obtain new lamps, or new lamp parts. In addition, less labor will be required for maintaining the new type of lamp and this is an important item in view of the scarcity and increasing cost of labor.

The Commission does not find that the present enclosed arc lamp is entirely obsolete and inadequate, as a considerable number of these lamps are still being used in the smaller cities and towns in this state, and several are still used in the larger cities of Colorado.

On September 2nd, 1916, the Electrical World published statistics giving the features of present street lighting equipment in more than one hundred cities and towns in the United States. According to these statistics, there were at that time, out of 109 cities having a com-

bined population of approximately 19,000,000 inhabitants, only 22,096 series enclosed arc lamps, while there were in use at that time in the cities referred to 42,710 Magnetite arc lamps, and approximately 167,639 incandescent lamps or incandescent lighting units of all types. The article stated that "practically all types of street illuminants formerly used are giving place to gas filled incandescent lamps and the improved types of arc lamps."

On account of the present tendency in street lighting, the increasing cost of operating the old type of arc lamp, and the probability that such lamps will not be obtainable within the near future, it will no doubt be only a short time until the defendant company will be compelled to replace its present arc lamps with some type of incandescent lamp. The Commission is of the opinion, therefore, that the request of the city of Colorado Springs that this change be made at this time is a reasonable one, and that it will effect economy in operation and improve the street lighting service generally. The Commission does not find, however, that any specific type of reflector or refractor should be required, as set out in the petition of the city, but is of the opinion that the company should be allowed to furnish any reflector or refractor which is the equivalent of that specified.

Ornamental Lighting System.

At present, the business section of the city of Colorado Springs is lighted by an ornamental street lighting system, the fixtures having been installed for the most part at the expense of the property owners, and turned over to the city of Colorado Springs. This lighting equipment is now maintained entirely by the city of Colorado Springs, and current is furnished by the defendant, The Colorado Springs Light, Heat & Power Company,

at 3c per kilowatt hour. The present ornamental street lighting system consists of the following:

233 5-light standards,
111 4-light standards,
16 1-light standards,

making a total of 360 ornamental lighting units, with a total of 1,625 lamps of different sizes. These lamps consist of approximately 345 60-watt lamps and 1,280 40-watt lamps. While a few of the lamps now in use on these standards are 100-watt lamps, it is the intention of the city to ultimately change this installation to that given above, namely, 345 60-watt lamps and 1,280 40-watt lamps. The total connected load of this ornamental street lighting system is as follows:

345 60-watt lamps	20.70	K. W.
1,280 40-watt lamps	51.20	K. W.
Total.....	71.9	K. W.

During the trial year, the total consumption of the above system amounted to 104,759 kilowatt hours, which at 3c per kilowatt hour made the total cost to the city for current for this ornamental lighting system $3,142.77. The present flat rate of 3c per kilowatt hour for energy for this ornamental lighting system is considered to be unfair to both the city of Colorado Springs and the defendant company. Under the present schedule, the city by reducing the size of the lamps and decreasing the hours of burning is able to save 3c on each kilowatt hour by which the consumption is reduced. As a result, a large number of these lamps are burned only for a short time and on special occasions, and some complaint has been made on account of the poor lighting, and the unsightly appearance of the city streets. If the city of Colorado Springs should materially increase the hours of burning of this system, the Commission is of the opinion that under such condition a rate of 3c per kilowatt

hour for the entire consumption would be too high. For these reasons, it is the opinion of the Commission that the present rate of 3c per kilowatt hour for ornamental street lighting should be abolished, and this business placed on other schedules, which will be established in this opinion. The Commission sees no reason why this ornamental street lighting system should not be considered in the same way as any other large lighting consumer, except that on account of the large number of meters required, an additional monthly charge per meter should be made.

The schedule for large light and power service hereinafter provided is as follows:

$4.00 net per month per K. W. for the first 10 kilowatts of demand.

$3.00 net per month per K. W. for the next 15 kilowatts of demand.

$2.00 net per month per K. W. for the next 25 kilowatts of demand.

$1.00 net per month per K. W. for each kilowatt of demand in excess of the first 50.

Plus an energy charge of 1c per kilowatt hour.

Under this schedule as applied to the average commercial consumer, the maximum demand may be determined by demand meters, or in lieu of demand meters, 75 per cent of the total connected load is taken as the maximum demand. In the case of street lighting, however, the maximum demand should be considered as 100 per cent of the connected load as determined by the manufacturers' rating of the lamps installed, for the reason that all of these lamps are connected to the system at one time and during the time of the peak load.

Under this schedule with a connected load of 72 kilowatts, which would be taken as the maximum demand, and an energy consumption of 104,759 kilowatt

hours, the cost to the city for the past year would have been as follows:

Monthly Demand Charge.

First 10 K. W. of demand, at $4.00	$40.00
Next 15 K. W. of demand, at $3.00	45.00
Next 25 K. W. of demand, at $2.00	50.00
Next 22 K. W. of demand, at $1.00	22.00
Total	$ 157.00

or a yearly fixed charge of $1,884.00

Energy Charge.

104,759 kilowatt hours at 1c $1,047.59

Meter Charge.

40 meters at $4.80 per year per meter ..... $ 192.00

making a total cost to the city under such a schedule of $3,123.59 as against $3,142.77 under the old rate of 3c per kilowatt hour.

Under this schedule, if the city increases the number of kilowatt hours consumed without increasing the connected load, or, in other words, if the hours of burning of the present system are increased, the additional cost to the city will be 1c per kilowatt hour as against 3c per kilowatt hour under the old schedule. Likewise, if the present ornamental street lighting system is increased, the yearly fixed charge per kilowatt connected will be decreased on account of the larger demand. The city may, in addition, save a portion of the $192.00 yearly meter charge by rearranging its wiring, so that a smaller number of meters will be required.

Such a schedule as the one above proposed appears to the Commission to be desirable from the standpoint of both the city and the company, and the Commission will order the present rate of 3c per kilowatt hour can-

celled, and provide a schedule of the form described above.

RATES FOR GAS SERVICE.

This Commission previously has determined that the fair value of the defendant company's gas property for rate making purposes is $850,000.00, and that the reasonable operating expenses of the gas department for the period under consideration, including an annual depreciation requirement of $7,500.00, amounted to $81,808.15; that the gross revenues from all sources assignable to the gas department of the company amounted to $99,847.07, so that there was available for a return on the investment in the gas property for the year ending February 28th, 1917, $18,038.92, which is equivalent to a return of approximately 2.1 per cent on the fair value of the gas property of the defendant. This is not a fair return on this property, and, in addition, the Commission finds that the cost of operating the gas plant will increase during the coming year by at least $12,000.00, by reason of increased fuel and labor costs. It is apparent that some increases in the rates and charges for gas service must be made in order to enable the defendant company to meet its bare operating expenses. The Commission is not of the opinion, however, that increases sufficient to enable the company to earn a fair return on the fair value of its gas property should be granted at this time, as such a procedure would result in rates and charges much in excess of the value of the gas service to the consumer. A schedule of rates which will provide an increase in the gross revenue of the company's gas department, and which will not exceed the value of the gas service to the consumer, will therefore be established.

PRESENT RATES.

The following are the Rates and Charges now in effect for Electric Service in the City of Colorado Springs and environments:

Municipal Street Lighting.

Rate, All-Night Schedule.

7.5 ampere series A. C. arcs.....$66.00 per year

80 c. p. series Mazdas..... 24.00 per year

Police alley lamps, 80 c. p..... 24.00 per year

150 watt series Mazdas ..... 45.00 per year

80 c. p. series Mazdas, burning from dusk to midnight during the summer season, $2.00 per month for the season.

Ornamental street lighting, 3 cents net per kilowatt hour.

Commercial Lighting Service.

Rate.

8½ cents net, or 9½ cents gross, per kilowatt hour, for the first 60 hours, average use per month of the maximum demand.

5 cents net, per kilowatt hour, for the next 60 hours' average use per month of the maximum demand.

3 cents net, per kilowatt hour, for all current consumed in excess of 120 hours' average monthly use of the maximum demand.

Guarantee.

The consumer must guarantee a minimum monthly charge of $1.50 net per kilowatt connected, and, in no event, less than $1.50.

Available to all Commercial Lighting Users.

Large Light and Power Service.

Rate.

Demand Charge:

$4.00 net or $4.50 gross per kilowatt, for the first 10 kilowatts of maximum demand each month.

$3.00 net per kilowatt for the next 15 kilowatts of maximum demand each month.

$2.00 net per kilowatt for the next 25 kilowatts of maximum demand each month.

$1.00 net per kilowatt of maximum demand in excess of the first 50 kilowatts of maximum demand each month.

Available to all consumers using the company's standard service for light and power.

Energy Charge:

9-10 cent per kilowatt hour.

Guarantee.

The monthly guarantee shall be equivalent to a minimum monthly demand of not less than 40 per cent of the total connected load, and in no event less than the guaranteed 10 kilowatts of the demand charge as above.

Residence Lighting Service.

Rate.

8½ cents net, or 9½ cents gross, per kilowatt hour, for all current consumed during the month.

Guarantee.

The consumer guarantees a minimum monthly bill of $1.00 net or $1.10 gross.
Available to all Residence Lighting Consumers.

General Power Service—Alternating Current.

Rate.

6.66 cents per kilowatt hour for the first 30 kilowatt hours consumed per month per horsepower of demand.

3 cents per kilowatt hour for the next 60 kilowatt hours used per month per horsepower of demand.

1 cent per kilowatt hour for all current consumed in excess of above amount.

Prompt Payment Discount.

A discount of 10 per cent or 66-100 of 1 cent per kilowatt hour on the consumption billed at the 6.66 cent rate will be allowed on monthly bills if paid within the 10-day discount period as indicated on same.

Guarantee.

The consumer guarantees a minimum monthly charge of 75 cents net, or $1.00 gross, per horsepower or fraction thereof, connected.

Available to all Alternating Current Power Consumers.

Direct Current Power Service.

Rate.

7 cents per kilowatt hour for the first 30 kilowatt hours used per month per horsepower of demand.

3 cents per kilowatt hour for the next 60 kilowatt hours used per month per horsepower of demand.

1 cent per kilowatt hour for all current consumed in excess of the above amount.

A discount of 10 per cent on the consumption billed at the 7-cent rate will be allowed on monthly bills paid within the discount period.

Off-Peak Power Service.

Available to Refrigerating Consumers and to General Power Consumers who will install and maintain a Time Switch approved by the Company, to control the use of the service.

The rates applicable to this class of service shall be the same as the regular power rates except that a discount of 30 per cent shall be allowed on the first 30 kilowatt hours used per month per horsepower of demand.

Sign and Display Lighting.

Rate.

80 cents per month per 100 watts connected, burning from dusk to 11:00 p. m.

$1.30 per month per 100 watts connected, burning all night.

Prompt Payment Discount.

A discount of 10 per cent will be allowed on all bills paid within the 10-day discount period as indicated on same.

Mill Power.

Rate.

$1.25 per month per kilowatt of maximum demand, plus an Energy Charge of:
5-10 cent per kilowatt hour for all energy used.

Minimum Charge.

The consumer must guarantee a minimum "maximum demand" charge of $1,250.00 per month.

Reduction Mills.

Rate.

95-100 cent per kilowatt hour for all current consumed for light and power.

Minimum Charge.

None. Available only to consumer who will guarantee an annual load factor of 80 per cent or higher.

Large Hotels—Light and Power Service.

Rate.

2 1-10 cents per kilowatt hour for the first 4,500 kilowatt hours consumed per month.

1¾ cents per kilowatt hour for all energy consumed in excess of the above amount.

The following are the Rates and Charges now in effect for Gas Service in the City of Colorado Springs and environments:

Rate.

First 5 M. cu. ft. each month, @ $1.10 Net or $1.15 gross.

Next 15 M. cu. ft. each month, @ $1.00 Net per M.

Next 30 M. cu. ft. each month, @ $ .90 Net per M.

Next 50 M. cu. ft. each month, @ $ .80 Net per M.

All in excess of
100 M. cu. ft. each month, @ $ .75 Net per M.

Minimum.

Monthly guarantee 50c net, or 60c gross, per meter installed.

Discount.

Bills to be rendered at the gross rate for the first 5 M. cu. ft. or for the minimum and discounted to net rate if paid within discount period indicated on bill.

NEW RATE SCHEDULES.

The Commission has heretofore found that on account of recent increases in operating expenses, principally due to advances in the cost of fuel and labor, the foregoing schedule of rates for electric service will not

provide adequate revenues in the future, and that some rate adjustments must therefore be made.

The consumers of the company may be divided into two general classes. The first of these classes consists of a large number of small consumers whose consumption comprises only a small portion of the annual kilowatt hour sales. The second of these classes consists of a small number of large consumers whose consumption comprises a large portion of the kilowatt hour sales. The rate paid by the small consumer is based very largely upon fixed charges or upon expenses which are not of a variable nature. Only a very small portion of the rate paid by such consumer is based upon operating expenses, so that as a whole the cost of serving him has not materially increased. The rate paid by the large consumer is based to some extent upon the fixed charges upon the investment in the property assignable to him, but to a much greater extent upon operating expenses. The increase in the cost of coal and labor affects materially the cost of serving such a consumer, and the Commission is of the opinion that the rate schedules hereinafter provided should be such that a large portion of the company's increase in operating expenses will be borne by its large consumers. The increase hereinafter provided will apply to consumers who use in excess of 85 per cent of the total output of the company.

The rate schedules now in effect provide for a minimum of $1.00 per month for all residence consumers and a minimum of $1.50 per month for commercial consumers having a connected load of one kilowatt or less. The Commission can see no reason why the minimum guarantee of a commercial consumer should exceed that of a residence consumer having the same connected load, and will, therefore, provide that the minimum guarantees of both residence and commercial consumers shall be based upon the connected load of such consumers. This will

eliminate a discrimination which has heretofore existed in favor of the large residence consumers.

The Commission is further of the opinion that a rate for heating and cooking service should be established at this time. It is true that gas service is available to a large number of the consumers of the company, but in the outlying portions of the territory served, gas service is not available and cannot be made available except at a prohibitive cost to the company. A rate for heating and cooking will, therefore, be established which will be available to all consumers of the company for heating and cooking purposes.

ORDER.

IT IS THEREFORE ORDERED, That the rates and charges for electric service which are to be hereafter observed and enforced by The Colorado Springs Light, Heat & Power Company shall be as follows:

SCHEDULE A.

Municipal Street Lighting.

Rate, All-Night Schedule.

400 c. p. 7.5 ampere, type C, series incandescent lamps	$61.50 per year
100 c. p. 7.5 ampere, type C, series incandescent lamps	24.00 per year
250 c. p. 7.5 ampere, type C, series incandescent lamps	45.00 per year
60 c. p. 7.5 ampere, type C, series incandescent lamps	21.00 per year
7.5 ampere series alternating current enclosed arc lamps	66.00 per year

Municipal Street Lighting—Continued.

Terms and Conditions.

The company will, except in the case of ornamental street lighting, furnish and install all lamps, wires, poles, fixtures and other equipment required in rendering municipal street lighting service, and will maintain and operate the same.

Bills will be rendered by the company, and paid by the city in equal monthly installments at the end of each month.

SCHEDULE AA.

Ornamental Street Lighting System.

Rate.

Demand Charge:

$4.00 net per kilowatt per month for the first 10 kilowatts of maximum demand.

$3.00 net per kilowatt per month for the next 15 kilowatts of maximum demand.

$2.00 net per kilowatt per month for the next 25 kilowatts of maximum demand.

$1.00 net per kilowatt of demand in excess of the first 50 kilowatts of demand each month.

Energy Charge:

1 cent per kilowatt hour for all energy used.

Meter Charge:

$4.80 per year for each meter required, except one.

Terms and Conditions.

The city will install and maintain all poles, lamps, fixtures and equipment required in connection with the ornamental street lighting system.

Ornamental Street Lighting System—Continued.

Determination of Demand.

The demand to be considered and paid for hereunder shall be taken at 100 per cent of the manufacturers' ratings of all lamps used in the ornamental street lighting system.

SCHEDULE B.

Commercial Lighting Service.

Rate.

8½ cents net, or 9½ cents gross, per kilowatt hour, for the first 60 hours' average use per month of the maximum demand.

5 cents net, per kilowatt hour, for the next 60 hours' average use per month of the maximum demand.

3 cents net, per kilowatt hour, for all current consumed in excess of 120 hours' average monthly use of the maximum demand.

Determination of Maximum Demand.

The maximum demand shall be taken as 90 per cent of the total installation of the consumer, provided that no maximum demand shall be considered as less than 500 watts. Heating devices, fans and small utility motors not exceeding ¼ horsepower in size, shall not be included in determining maximum demand; provided, that in the case of laundries, tailor shops and similar establishments making a large use of these utility devices, the same shall be included in determining the maximum demand.

Availability.

This schedule is available to all Commercial Lighting Consumers.

Commercial Lighting Service—Continued.

Prompt Payment Discount.

Bills will be rendered at the gross rate for the first 60 hours' use of maximum demand, and discounted to the net rate if paid within the 10-day discount period, as indicated on the bill.

Minimum Guarantee.

The consumer must guarantee a minimum monthly bill of 10 cents net per 100 watts connected, and in any event a minimum monthly bill of not less than $1.00. In determining the connected load for the purpose of calculating minimum monthly bills, heating devices, fans and small utility motors not exceeding ¼ horsepower in size, shall not be considered as forming a part of the consumers' connected load, except that in the case of laundries, tailor shops and similar establishments making a large use of these utility devices, the same shall be considered as a part of the consumers' connected load.

SCHEDULE C.

Large Light and Power Service.

Rate.

Demand Charge:

$4.00 net, or $4.50 gross, per kilowatt, for the first 10 kilowatts of maximum demand each month.

$3.00 net per kilowatt for the next 15 kilowatts of maximum demand each month.

$2.00 net per kilowatt for the next 25 kilowatts of maximum demand each month.

$1.00 net per kilowatt of maximum demand in excess of the first 50 kilowatts of maximum demand each month.

Large Light and Power Service—Continued.

Energy Charge:

1 cent per kilowatt hour for all energy used.

Determination of Maximum Demand.

The demand to be considered and paid for hereunder shall be the highest 15 minute peak previously recorded by demand meter, or as indicated by a suitable indicating instrument; but, in no event, less than the guaranteed demand of 10 kilowatts. The company may, at its option, in lieu of a demand meter or a tested demand, base the demand hereunder on 75 per cent of the total installation in motors and lighting equipment. In the case of extraordinary or abnormal demands, the company may, at its option, not consider such abnormal demands.

Power Factor.

The consumer shall at all times takes and use power in such a manner that the power factor shall be as near 100 per cent as possible, but when the actual power factor is 80 per cent, or less, the demand to be charged and paid for shall be obtained by multiplying the demand at the time of measurement by 80, and dividing this product by the actual power factor.

Prompt Payment Discount.

Bills will be rendered at the gross rate for the first 10 kilowatts of maximum demand, and discounted to the net rate if paid within the 10-day discount period, as indicated on the bill.

Guarantee.

The monthly guarantee shall be equivalent to a minimum monthly demand of not less than 40 per

Large Light and Power Service—Continued.

cent of the total connected load, and in no event less than the guaranteed 10 kilowatts of the demand charge as above.

Direct Current:

If direct current is furnished hereunder, the energy charge shall be 1 2-10 cents per kilowatt hour net.

Availability.

Available to all consumers using the company's standard service for light and power.

SCHEDULE D.

Residence Lighting Service.

Rate.

8½ cents net, or 9½ cents gross, per kilowatt hour, for all current consumed during the month.

Prompt Payment Discount.

Bills will be rendered at the gross rate, and discounted to the net rate if paid within the 10-day discount period, as indicated on the bill.

Minimum Guarantee.

The consumer must guarantee a minimum monthly bill of 10 cents net per 100 watts connected, and in any event a minimum monthly bill of not less than $1.00 net. In determining the connected load for the purpose of calculating the minimum monthly charge, heating devices, fans, small utility motors and domestic appliances shall not be considered as forming a part of the consumers' connected load.

Availability.

This schedule shall be available to all consumers using the company's standard lighting service.

SCHEDULE E.

General Power Service—Alternating Current.

Rate.

6.66 cents per kilowatt hour for the first 30 kilowatt hours consumed per month per horsepower of demand.

3 cents per kilowatt hour for the next 60 kilowatt hours used per month per horsepower of demand.

1 cent per kilowatt hour for all current consumed in excess of the above amount.

Determination of Maximum Demand.

The horsepower demand will be considered as the manufacturers' rating of the motors as indicated in horsepower on the name plate of each motor. For installations consisting of more than two motors, the horsepower demand shall be considered as 75 per cent of the horsepower installed; provided, that no demand shall be considered as being less than 2 horsepower.

Prompt Payment Discount.

A discount of 10 per cent or 66-100 of 1 cent per kilowatt hour on the consumption billed at the 6.66 cent rate will be allowed on monthly bills if paid within the 10-day discount period, as indicated on same.

Minimum Guarantee.

The consumer shall guarantee a minimum monthly charge of 75 cents net, or $1.00 gross, per horsepower or fraction thereof, connected. In no event shall an installation be considered as less than 2 horsepower. The minimum bill shall be rendered in gross, and discounted to the net amount if paid within the discount period. For installations con-

General Power Service—Alternating Current—Cont'd

sisting of more than 2 motors, the minimum bill shall be based on 75 per cent of the connected horsepower.

Availability.

Available to all Alternating Current Power Consumers.

SCHEDULE E-1.

Direct Current Power Service.

Rate.

7 cents per kilowatt hour for the first 30 kilowatt hours used per month per horsepower of demand.

3 cents per kilowatt hour for the next 60 kilowatt hours used per month per horsepower of demand.

1 cent per kilowatt hour for all current consumed in excess of the above amount.

Determination of Maximum Demand.

The horsepower demand shall be determined in the same manner as for General Power Service.

Prompt Payment Discount.

A discount of 10 per cent on the consumption billed at the 7-cent rate will be allowed on monthly bills paid within the discount period.

Minimum Guarantee.

The minimum charge for this class of service shall be determined in the same manner as for General Power Service.

The company reserves the right to discontinue direct current service at any time upon the approval and consent of the Public Utilities Commission of the State of Colorado.

SCHEDULE E-2.

Off-Peak Power Service.

The rates applicable to this class of service shall be the same as the regular power rates, except that a discount of 30 per cent shall be allowed on the first 30 kilowatt hours used per month per horsepower of demand.

The other charges, minimum bill, and all other terms and conditions shall be the same for this class of service as for General Power Service.

Available to Refrigerating Consumers and to General Power Consumers, who shall install and maintain a Time Switch approved by the Company, to control the use of the service.

SCHEDULE F.

Sign and Display Lighting.

Rate.

$1.00 per month per 100 watts connected, burning from dusk to 11:00 p. m.

$1.50 per month per 100 watts connected, burning all night.

Prompt Payment Discount.

A discount of 10 per cent will be allowed on all bills if paid within the 10-day discount period, as indicated on same.

Minimum Guarantee.

The minimum monthly bill under this schedule shall be $1.00 per month net.

Lamp Renewals.

The company will furnish free renewals of all carbon lamps, and tungsten lamps in 25-watt sizes and above.

SCHEDULE G.

Mill Power.

Rate.

Demand Charge:

$1.25 per month per kilowatt of maximum demand

Energy Charge:

6-10 cent per kilowatt hour for all energy used.

Minimum Charge.

The consumer must guarantee a minimum "maximum demand" charge of $1,250.00 per month.

Term of Contract.

Five years, and thereafter until 30 days after the receipt by the company of a written notice from the consumer to discontinue the service.

SCHEDULE H.

Reduction Mills.

Rate.

1 cent per kilowatt hour for all current consumed for light and power.

Minimum Guarantee.

None.

Availability.

Available only to consumers who will guarantee an annual load factor of 80 per cent or higher.

Term of Contract.

Five years, and thereafter until 30 days after receipt by the company of written notice from the consumer to discontinue the service.

SCHEDULE I.

Large Hotels—Light and Power.

Rate.

2 6-10 cents per kilowatt hour for the first 4,500 kilowatt hours consumed per month.

2 cents per kilowatt hour for all energy consumed in excess of the above amount.

Prompt Payment Discount.

The high rate portion of the bill is subject to a discount of 1-10 cent per kilowatt hour for payment within the 10-day discount period, indicated on the bill.

Availability.

Available to all hotels having a monthly consumption in excess of 4,500 kilowatt hours.

SCHEDULE K.

Electric Heating and Cooking.

Rate.

4 cents per kilowatt hour for all energy used.

Prompt Payment Discount.

½ cent per kilowatt hour.

Minimum Guarantee.

Minimum monthly bill under this schedule shall be $2.50 net per month per consumer.

IT IS FURTHER ORDERED, That the rates and charges for gas service which are to be hereafter observed and enforced by The Colorado Springs Light, Heat & Power Company shall be as follows:

Commercial and Residence Service.

Rate.

First 5 M. cu. ft. consumption per month $1.25 net or $1.35 gross per M. cu. ft.

Rates For Gas Service—Continued.

Next 15 M. cu. ft. consumption per month $1.00 net per M. cu. ft.

Next 30 M. cu. ft. consumption per month $ .90 net per M. cu. ft.

Next 50 M. cu. ft. consumption per month $ .80 net per M. cu. ft.

For all consumption in excess of 100 M. cu. ft. $ .75 net per M. cu. ft.

Minimum Guarantee.

The consumer shall guarantee a minimum monthly bill of 50 cents net, or 54 cents gross, per meter installed.

Prompt Payment Discount.

Bills will be rendered at the gross rate of $1.35 per M. cubic feet for the first 5 M. cubic feet or for the minimum, and discounted to the net rate if paid within the discount period, indicated on the bill.

IT IS FURTHER ORDERED, That the company may require a minimum net revenue of $5.00 for each gas or electric consumer connected.

IT IS FURTHER ORDERED, That the foregoing rates and charges and changes in rules and regulations for gas and electric service shall be effective on and after August 1, 1917, and shall apply to all service rendered on and after that date.

Geo. T. Bradley,
(Seal) M. H. Aylesworth,
A. P. Anderson,
Commissioners.

Dated at Denver, Colorado, this 31st day of July, 1917.

INVESTIGATION AND SUSPENSION DOCKET No. 8.

In re D. & S. L. R. R. SWITCHING ABSORPTION ON COAL AT DENVER.

(August 3, 1917.)

INVESTIGATION on Commission's own motion as to reasonableness of changes in absorption rules on switching coal at Denver; permanent suspension made to C., B. & Q. R. R. tracks.

APPEARANCES: Tyson S. Dines, Tyson S. Dines, Jr., W. E. Morse and W. H. Paul, for the respondent; Caldwell Yeaman and Kenaz Huffman for the protestants.

STATEMENT.

By the Commission:

By the tariff under suspension in this proceeding the respondent proposes a decrease in the amount of the absorption of switching charges on coal destined to industries or tracks on the terminals at Denver of carriers other than the respondent, when originating at mines in the Oak Hills district. The tariff was filed to become effective March 6, 1917.

Prior to the filing of the schedule the tariffs of the respondent provided that on coal originating at mines in the Oak Hills district the switching charges of the immediate connecting lines would be absorbed, but not in excess of 20 cents per ton. The only carriers having direct connection with the respondent are the Chicago, Burlington & Quincy Railroad, the Colorado & Southern Railway and the Northwestern Terminal Rail-

way. The tariffs also provided that when the shipments were destined to industries or tracks on the Union Pacific Railroad the intermediate switching charges of the Northwestern Terminal Railway Company would be absorbed in addition to the charges of the Union Pacific Railroad Company.

Reciprocal switching charges in Denver, prior to February 1, 1917, were upon a basis of 20 cents per ton between the interchange tracks and industries or tracks located on the carrier's terminals within a prescribed territory, and 25 cents per ton between the interchange tracks and industries or tracks located on the terminals outside of the 20 cents per ton area and within the switching limits. Under the respondent's absorption rule these charges would be absorbed but not in excess of 20 cents per ton.

On December 18th, 1916, the Commission issued an order in Missouri Lumber & Supply Company v. A. T. & S. F. Ry. Co., 3 Colo. P. U. C. 73, in which switching charges were prescribed for switching within the city of Denver. Separate bases of charges were established for industrial and reciprocal switching. Switching limits were established and, for the application of reciprocal switching, divided into inner and outer zones. The charge for switching between the interchange tracks and industries or tracks located within the inner zone was fixed at 15 cents per ton, and between the interchange tracks and points in the outer zone 20 cents per ton. Under the provisions of the order the prescribed charges became effective February 1, 1917.

The schedule under review in this case proposes that, on coal from the Oak Hills district to Denver, switching charges of connecting lines at Denver will be absorbed by the respondent not to exceed 15 cents per ton. After the filing of the schedule protests were received against the proposed rule from the Colorado &

Utah Coal Company, the Victor-American Fuel Company, the Moffat Coal Company and the Bear River Coal Company, and subsequently the tariff was suspended by the Commission until August 4, 1917.

The interchange tracks of the respondent with those of the Colorado & Southern Railway are located within the inner zone and under the proposed rule of the respondent no increase would result in the through rates to the shippers when destined to industries or tracks on the Colorado & Southern Railway.

The interchange with the Union Pacific Railroad is reached through the Northwestern Terminal Railway and under the proposed rule the rates to the shippers will remain as at present in effect under the tariffs.

The interchange with the Chicago, Burlington & Quincy Railroad is at Utah Junction, a point outside of the Denver switching limits. The switching charge between Utah Junction and points on the Chicago, Burlington & Quincy Railroad in Denver is, and for many years has been, 20 cents per ton, and this charge is at present absorbed by the respondent upon coal from the Oak Hills district. An increase of 5 cents per ton will result in the through rates if the proposed rule is allowed to become effective when the transportation is to points upon this road's terminals. In establishing the Denver switching rates in Missouri Lumber & Supply Company v. A., T. & S. F. Ry. Co., *supra,* no rates were considered by the Commission from Utah Junction.

The change in the amount of the absorption when shipments are destined to industries on the Chicago, Burlington & Quincy Railroad is predicated by the respondent upon the amount found by the Commission to be reasonable for switching transportation between points within the inner zone of the Denver switching limits.

The Commission finds that the proposed rule has not been justified by the respondent as applicable to industries or tracks on the terminals of the Chicago, Burlington & Quincy Railroad Company and will therefore enter an order requiring the cancellation of the schedule in question insofar as it applies to such transportation.

ORDER.

IT APPEARING, That by orders dated March 2nd, 1917, and July 3rd, 1917, the Commission entered upon a hearing concerning the propriety of the increases and the lawfulness of the rates, charges, rules and regulalations stated in the schedule enumerated and described as Item 360-G, Supplement 14, Denver & Salt Lake Railroad, Colo. P. U. C. No. 25, and ordered that the operation of the said schedule be suspended until August 4, 1917, and

IT FURTHER APPEARING, That a full investigation of the matters and things involved has been had, and the Commission on the date hereof has made and filed a report containing its findings of fact and conclusions thereon;

IT IS ORDERED, That the carrier respondent herein be, and it is hereby, notified and required to cancel, on or before August 4, 1917, the rates, charges, rules and regulations stated in the schedule enumerated and described above, insofar as said schedule applies to coal destined to points on the terminals of the Chicago, Burlington & Quincy Railroad Company in Denver.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 3rd day of August, 1917.

CITIZENS OF SILVERTON, CHARLES SCHEER, AGENT,

v.

THE DENVER & RIO GRANDE RAILROAD COMPANY,

(Case No. 120.)

(August 11, 1917.)

COMPLAINT against the rates on coal from Durango to Silverton; rates found reasonable.

APPEARANCES: Mr. W. M. Lampton, for the Defendant.

STATEMENT.

By the Commission:

On the 9th day of February, 1917, a complaint was filed with the Commission by Charles Scheer, et al., residing in the City of Silverton.

It is alleged by complainants that the defendant, The Denver & Rio Grande Railroad Company, is charging an excessive freight rate on the transportation of coal to the City of Silverton, thereby causing a hardship on the residents of said city; that a fair and nominal charge would allow coal dealers to reduce the price, and the people of Silverton would be benefited thereby.

On February 19, 1917, answer was filed by the defendant herein, denying charging excessive rates on the transportation of coal to the City of Silverton and thereby causing hardship on the residents of Silverton, and praying that the complaint be dismissed.

This cause came on for hearing before the Commission, pursuant to notice duly given to all parties in in-

terest, at Ouray, Colorado, on the 30th day of July, 1917; no one appearing for the petitioners, Mr. W. M. Lampton appearing for the defendant.

The bulk of the coal used at Silverton comes from the mines at Hesperus, located on the Rio Grande Southern Railroad. The Commission introduced exhibits showing a comparison of rates as to distances, and, insofar as possible, similar in haul and operating conditions.

Mr. Lampton testifying on behalf of the defendant stated that he is the General Freight Agent of The Denver & Rio Grande Railroad Company. He also testified in part as follows:

"The operating conditions of the Silverton branch of The Denver & Rio Grande Railroad have no equal in the State of Colorado, contending with deep snows in the winter, and troubles experienced on account of floods therefrom in the spring. Interruptions from operation on these accounts vary from sixty-two (62) days lost in the year 1911, to thirty-nine and one-quarter (39¼) days lost in 1916. Average cost of removing the snow over a period of years (1907-1916) is $46,730.56."

Mr. Lampton further testified that:

"It has been the policy of The Denver & Rio Grande Railroad to make the ore rates so low that the ore, which is the main support of the community can be shipped to the smelters. The coal rates are low compared with the rates in other sections of the state. I call attention to the rates from the northern fields to Denver (these rates being made by the Commission), also rates on coal from Denver (which originates on the Denver & Salt Lake Railroad) to Georgetown, Silver Plume, Idaho Springs and Central City, naming a higher charge per ton per mile over practically the same distance as from Hesperus to Silverton. The rate to Silver Plume, a distance of 54 miles, is 4.2 cents, as against 3.6 cents per ton per

mile to Silverton, a distance of 62 miles; also from Hesperus involves a two-line haul, consideration being generally given by rate-making powers to that condition. There are no towns of any importance located on this branch (45 miles in length) except Silverton, which city has a population of approximately two thousand (2,000) people.''

The testimony of Mr. Lampton was uncontradicted.

It is the opinion of the Commission, after a careful comparison of rates in the mountainous sections of the State, that the coal rates to Silverton are reasonable and should continue in effect.

ORDER.

IT IS HEREBY ORDERED, That this cause be, and the same is hereby, dismissed.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 11th day of August, 1917.

THE TOWN OF MANITOU, COLORADO,

v.

THE COLORADO SPRINGS LIGHT, HEAT & POWER COMPANY,

(Case No. 135.)

Rates—Reasonableness of—In general.

(1) The finding and prescribing of reasonable rates of utilities by the Commission does not of itself constitute a finding or conclusion that the former rates were unjust or unreasonable.

Rates—Electric—Schedules available.

(2) Any and all schedules of a utility should be made available to any of its consumers, who will comply with the terms and conditions of such schedules and pay the charges provided therein, and it is the duty of the utility to advise its consumers under what schedules they may be most advantageously served, and the duty of the Commission to determine whether or not the consumer has been correctly billed and charged under the schedules.

(August 11, 1917.)

COMPLAINT against the schedule charged by The Colorado Springs Light, Heat & Power Company for lighting of the Town of Manitou on property of Manitou Mineral Water Company; and petition for reparation; municipality held to be entitled to commercial lighting rate for such service and award of reparation in amount of $102 ordered.

APPEARANCES: For the Complainant, John B. Paulson, Mayor; for the Defendant, R. L. Holland, Esq., J. F. Dostal and J. H. Perkins.

STATEMENT.

By the Commission:

On the 9th day of July, 1917, there was filed with the Commission a petition signed by John B. Paulson,

mayor of the town of Manitou, in which it was set forth that on the 22nd day of February, 1914, the Manitou Mineral Water Company, a corporation doing business in the town of Manitou, installed 45 electric lamps on poles and standards located on and around its property in the town of Manitou; that said Manitou Mineral Water Company furnished the poles, wires and equipment for such lighting system, and had maintained all lamps in service from the time of installation up to the present time; that by an agreement between the town of Manitou and the Manitou Mineral Water Company, the town of Manitou agreed to pay for the current used by the lamps installed around and on the property of the Manitou Mineral Water Company, which is located in the central portion of the town of Manitou; that The Colorado Springs, Light, Heat & Power Company began to furnish electric current for such lamps on the 22nd day of February, 1914, and has continued to furnish electric current therefor at all times since said date, and is now furnishing current therefor; that on the 24th day of February, 1916, the Public Utilities Commission of the State of Colorado entered an order establishing rates for electric service to be furnished by The Colorado Springs Light, Heat & Power Company, and that schedule "F" established in that order for sign and display lighting fixed a rate of $1.30 per month for 100-watt lights burning all night, the wires and other equipment being furnished by the consumer; that the lamps used by the Manitou Mineral Water Company are 100-watt lamps; and that the town of Manitou has been paying $2.00 per lamp per month for the electric service furnished such lamps during a portion of the time, and $2.50 per lamp per month for a portion of the time.

The petition further states that on May 31st, 1917, the town of Manitou, through its attorney, made a demand upon The Colorado Springs Light, Heat & Power

Company for a refund of $740.40 to cover the payments made for service for such installation over and above $1.30 per month per 100-watt lamp connected, and that the company, through its manager, J. F. Dostal replied to this demand, that under the interpretation of the company of the above schedule "F," established by the Public Utilities Commission, the lighting on the grounds of the Manitou Mineral Water Company could not properly be classified as sign and display lighting, but suggested that the matter be called to the attention of the Public Utilities Commission for a ruling in regard to same.

The hearing in this cause was held in the Antlers Hotel in the city of Colorado Springs on July 11, 1917, and Mayor Paulson for the town of Manitou, as well as witnesses for the company, were examined. Mr. Paulson testified that the complaint of the town of Manitou was based upon the fact that The Colorado Springs Light, Heat & Power Company had no investment in, and did not maintain the system of lights placed around the property of the Manitou Mineral Water Company, and that therefore the rate for this lighting should not be as high as in the case of street lighting, for which the electric company furnishes and maintains all necessary utilization equipment.

Witnesses for the company contended that the installation could not properly be considered as sign and display lighting, and that therefore the rate established by the Commission for such lighting could not be applied. Counsel for the defendant claimed that under the statutes of the State of Colorado a municipality can legally expend money for lighting (a) streets, (b) alleys, and (c) public grounds; that the testimony offered shows that the lighting under dispute is used for the purpose of lighting the grounds of a private corporation, that it is therefore neither street lighting, alley lighting

nor lighting of public grounds, and that the town of Manitou has no legal right to supply this lighting at all; and that further, if the members of the town board have been guilty of an ultra vires act, the members of the town board are liable for the amount paid.

The petitioner herein prays that the Commission enter an order granting to the town of Manitou reparation for payments made for electric light furnished for lighting the grounds of the Manitou Mineral Water Company in the sum of $740.40. $275.60 of the above amount is to cover the alleged excess charges for this lighting from February 24, 1916, to June 1, 1917, and $464.80 is to cover the alleged excess charges made for this lighting from February 22, 1914, to February 24, 1916. Since the order of the Commission referred to in this petition establishing just and reasonable rates for the different classes of consumers of The Colorado Springs Light, Heat & Power Company did not become effective until March 1, 1916, such reparation as will be granted in this case will be based entirely upon the difference between the amount actually paid by the town of Manitou for the period beginning March 1, 1916, and ending August 1, 1917, and the amount that the town of Manitou would have paid for this service had the proper rate been applied thereto. (1) The changing of a rate by the Commission because the same is found to be unjust and unreasonable does not render such rate unjust and unreasonable ab initio. . All schedules of rates printed and filed as required by the Public Utilities Act were legal and binding upon both the consumer and the utility until changed by order of the Commission, and any change made by the Commission in any rates contained in such schedules, because the same were found to be unreasonable, only operates to make such rates unjust and unreasonable from the time of the taking effect of the new or substituted rates.

It is plain from the record in this case that since March 1, 1916, the town of Manitou has paid to The Colorado Springs Light, Heat & Power Company $2.00 per month for such of the 100-watt lamps as it has seen fit to burn. The petition in this case does not set out the amount actually paid by the town of Manitou during the above period, neither can this be found directly from the records of the company, for the reason that the town of Manitou has not been rendered a separate monthly bill covering the lighting on the grounds of the Manitou Mineral Water Company. However, the Commission has been able to ascertain that from March 1, 1916, to August 1, 1917, the town of Manitou has paid to The Colorado Springs Light, Heat & Power Company the sum of $808.00 for lighting the above premises.

Just why The Colorado Springs Light, Heat & Power Company should have billed the town of Manitou for these lights at the street lighting rate is not entirely clear, but it was probably done on the theory that this lighting constitutes a part of the street lighting system of the town of Manitou. Witnesses for the company testified that at the time this lighting was placed in service, certain street lights in Manitou were discontinued. Under cross-examination, the witness for the company was not positive that any street lights had been abandoned, and Mr. Paulson testified that none of the city street lights were discontinued at the time the above lights were placed in service.

Whether or not the lighting on the grounds of the Manitou Mineral Water Company should be classified as street lighting, sign and display lighting or as commercial lighting does not necessarily need to be determined by the Commission. The point to be determined at this time is whether the charges of The Colorado Springs Light, Heat & Power Company for the service furnished have been in excess of those provided in its

rates on file with the Commission. The Commission is of the opinion that the character of the service furnished by the utility, and not necessarily the nature of the installation of the consumer, should determine the rate schedule to which the consumer is properly entitled. In this case, the Commission finds that the character of the service furnished is not the same as that furnished for street lighting, but that it is the same in all respects as that furnished to the average commercial lighting user, and that, therefore, the company's charges for furnishing service to this installation of lights should have been based upon the regular schedule provided for commercial lighting.

The street lighting rates established by the Commission provide a charge of $2.00 per month for lamps which are approximately equivalent to those in use on the premises of the Manitou Mineral Water Company, but in consideration of this payment of $2.00 per month per lamp, the lighting company is required to install and maintain all poles, wires, globes, lamps and fixtures. Had the company installed the street lighting equipment on the premises of the Manitou Mineral Water Company and maintained the same, the charge of $2.00 per month per lamp would have been proper. The company has, however, neither installed nor maintained the lighting equipment above referred to, and the Commission, therefore, finds that the charges made by the company have been in excess of the proper charges for the service rendered.

(2) Any and all schedules of a public utility should be available to any of its consumers, who will comply with the terms and conditions of such schedules and pay the charges provided therein. On the other hand, it is the duty of the utility to advise its consumers under what schedule or schedules they may be most advantageously served. Had the record in this case shown that the town

of Manitou selected the street lighting schedule after being advised to the contrary by the lighting company, the case would have been dismissed.

While as before stated, the complainant herein may elect to take service under any of the lighting schedules filed by the utility, it would not have been to the advantage of the town of Manitou in this case to make use of the schedule of rates established for sign lighting. The schedule for sign lighting which was in effect prior to August 1, 1917, provided a rate of $1.30 per month for each 100-watt lamp connected, and under such a schedule the town of Manitou would have been required to make this payment for each lamp connected, whether such lamps were burned or not, with the result that the town of Manitou would not have been able to reduce its bill for this lighting by taking advantage of the schedule established for sign and display lighting.

The Commission has previously determined that the amount paid by the town of Manitou for the lighting on the premises of the Manitou Mineral Water Company from March 1, 1916, to August 1, 1917, amounted to $808.00, and that this installation should have been placed on the regular commercial lighting schedule on file with the Commission. The Commission further finds that had such service been furnished and billed on the basis of the commercial lighting schedule in effect for the above period, the town of Manitou would have been required to pay the sum of $706.00 for the service received; that the charges made by The Colorado Springs Light, Heat & Power Company to the town of Manitou for lighting the grounds of the Manitou Mineral Water Company for the period from March 1, 1916, to August 1, 1917, were excessive in the sum of $102.00, and that in the future the bills rendered to the town of Manitou for the above lighting installation should be based on the schedule for commercial lighting.

The contention of counsel for The Colorado Springs Light, Heat & Power Company that a municipality has the right to expend money for lighting of streets, alleys and public grounds only, and that, therefore, the town of Manitou has no right to contract for lighting for other purposes has no bearing on this case. It is the function of the Commission to determine whether or not the charges made are proper for the service rendered, and the question of whether or not the consumer had the legal right to contract and pay for such service is of no concern to the Commission in this case. In fact, the Commission is not to be construed as finding that the lighting furnished in this case is not street lighting. The point to be borne in mind is that the nature of the service rendered by The Colorado Springs Light, Heat & Power Company is such that the complainant is entitled to the commercial lighting rate. To hold otherwise would result in discrimination.

ORDER.

IT IS THEREFORE ORDERED, That The Colorado Springs Light, Heat & Power Company make reparation to the town of Manitou in the sum of $102.00, and that on and after August 1, 1917, the bills rendered for this lighting shall be based on schedule "B" as provided in the order of the Commission, effective August 1, 1917.

Geo. T. Bradley,
(SEAL) M. H. Aylesworth,
A. P. Anderson,
Commissioners.

Dated at Denver, Colorado, this 11th day of August, 1917.

THE EAST DENVER BUSINESS AND PROPERTY ASSOCIATION, a Corporation,

Complainant,

v.

THE DENVER TRAMWAY COMPANY, a Corporation,

Defendant.

THE DENVER TRAMWAY COMPANY, a Corporation,

Cross Complainant,

v.

THE DENVER UNION TERMINAL RAILWAY COMPANY, a Corporation,

Defendant in Cross Complaint.

THE CENTRAL DENVER PROPERTY OWNERS' ASSOCIATION,

Intervenor.

THE 14TH STREET REALTY ASSOCIATION,

Intervenor.

(Case No. 116.)

Service—Extension of tracks—Jurisdiction of Commission.

(1) The public utilities act expressly gives the Commission power to order extensions of street railway systems, and it has been the practice of the Commission, in ordering such extensions, to order the railway company to apply to the municipality for a revocable permit.

Utilities subject—Jurisdiction of Commission—Terminal railways.

(2) The Commission decided that The Denver Union Terminal Railway Company was a public utility, and, as such, subject to the jurisdiction of the Commission.

Service—Street railways—Effect on real estate values.

(3) The Commission has no power to order extensions of street railway lines, construction of loops, or rerouting of cars solely on the

ground that such order will enhance or depreciate the value of property.

Contracts—Abrogation of—Jurisdiction of Commission.

(4) The Commission and the State Supreme Court, have previously held that a contract pertaining to rates or service of public utilities is not binding upon the Commission and may be abrogated by the Commission.

(August 22, 1917.)

COMPLAINT against present routing of street cars in downtown district of Denver, petition for additional tracks and loop at Union Station; loop prescribed by Commission at Union Station, additional tracks ordered and changes in routing of cars ordered.

APPEARANCES: Messrs. Whitehead & Vogl for The East Denver Business & Property Association; H. S. Robertson, Esq., for The Denver Tramway Company; C. C. Dorsey, Esq., for The Denver Union Terminal Railway Company; Messrs. Symes & Farrar and J. B. Grant for The Central Denver Property Owners' Association; Messrs. Murray & Ingersoll, for The 14th Street Realty Association.

STATEMENT.

By the Commission:

On the 2nd day of January, 1917, The East Denver Business and Property Association filed with the Commission a complaint in writing alleging that the complainant is a corporation organized to promote and encourage the development of all lawful business located in that portion of the city of Denver northeast and north and east of the center line of 17th Street, and to encourage and induce the location of new industries of all kinds in that section of the city of Denver, and to obtain for

the district adequate and modern transportation facilities. The complaint further alleges that The Denver Tramway Company, the defendant, is a public utility engaged in the operation of an electric street railway in and about the City and County of Denver, and more particularly upon 15th, 16th, 17th and 18th Streets in the City and County of Denver. The complaint alleges that the defendant has not furnished and does not maintain adequate and efficient service on 17th and 18th Streets for its patrons and the public, but, on the contrary, maintains service upon these streets which is entirely inadequate to properly provide for the comfort and convenience of the public which has to travel to places upon said streets; that many thousands of people, who are every day transported on the lines of the defendant corporation bound for the Federal Building, Denham Theatre, Shirley Hotel, Albany Hotel, Brown Hotel, Savoy Hotel, and to office buildings and banks on 17th Street or to the Union Station or to the theatres on Curtis Street, are compelled to walk cross-town from 15th Street to their various destinations because of inadequate service maintained by the defendant on 17th and 18th Streets, that the defendant has established and maintains an unreasonable difference in service as between 15th Street and 17th and 18th Streets, in that the lines of cars to and from all parts of the city are regularly operated on 15th Street; whereas 17th and 18th Streets have each only one line of cars which operate to and from any residence portion of the City of Denver; that the cars operated on 18th Street are ancient, small in capacity, and insufficient for the needs of the public. It is further alleged that in order to adequately and efficiently provide for the health, safety, comfort and convenience of the patrons of the defendant Tramway Company and the public needing service on 17th and 18th Streets, it is necessary that the

defendant construct and operate tracks on Broadway from Colfax Avenue to the intersection of Cleveland Place and Broadway, so as to connect the Colfax Avenue tracks and the tracks on Broadway south of Colfax Avenue with the tracks running north on Broadway from the intersection of Cleveland Place and Broadway, and to divert from Broadway some of the lines serving East and South Denver; that the defendant be ordered to construct additional looping system at the Union Station on Wynkoop Street from 17th and 18th Streets in order to efficiently handle the necessary cars which are required on 17th and 18th Streets, and properly provide for the wants of the traveling public in that section. The complaint closes with the prayer that the Commission order the defendant company to furnish adequate transportation service on 17th and 18th Streets: First, by increasing the number of cars on 17th and 18th Streets, all of said cars to be of full size, modern and sanitary construction; second, by providing direct service between these streets and all the principal localities in the City of Denver; third, by the construction of tracks along Broadway which will connect the Colfax Avenue tracks and the tracks along Broadway south of Colfax Avenue with the tracks on Broadway from Cleveland Place north; fourth, by constructing an adequate looping system between 17th and 18th Streets at the Union Station on Wynkoop Street; fifth, that the defendant be required to cease and desist from discriminating against 17th and 18th Streets, or either of them, and unjustly favoring 15th Street; sixth, for such other and further relief as to the Commission may seem just and proper in the premises.

On the 11th day of January, 1917, The Denver Tramway Company filed a motion and answer to the complainants' complaint, alleging that the Commission

is without jurisdiction over the person of the defendant, The Denver Tramway Company, and without power or authority to grant the relief sought in the complaint; that the complainant is without legal capacity to maintain the action, and that the complaint does not state facts sufficient to constitute a cause of action. By the way of answer, the defendant alleges that the complainant seeks exclusively to invoke the jurisdiction of the Commission to divert traffic to 17th and 18th Streets on the supposition that such change will result in benefit to the property owners and business interests along and on 17th and 18th Streets, and, in this respect, through the Commission, seeks to compel the defendant to divert certain of its cars or lines for the benefit of owners of businesses on and along said streets without regard to the convenience and welfare of the traveling public generally; that the complainant seeks to prescribe the manner and means to be adopted by the defendant in the conduct of its lawful business, prescribe the facilities which shall be employed in connection therewith, and the course to be pursued by it in the transportation of its cars; that it seeks to compel the defendant to operate cars of a different type of construction and also to maintain direct service between certain streets and all of the principal localities in the City of Denver; that in demanding construction of tracks along Broadway, which will connect the Colfax Avenue tracks and the tracks on Broadway south of Colfax Avenue with the tracks on Broadway from Cleveland Place north, and to construct a looping system at the Union Station on Wynkoop Street, the complainant is seeking through the Commission to have regulated and controlled matters and things relating wholly and exclusively to the management of the defendant's business, and, therefore, entirely and exclusively subject

to the control of the proper officers of said defendant company.

It is then alleged that the complaint does not state facts showing that inadequate service is maintained by the defendant company on 17th and 18th Streets, and does not show discrimination between 17th and 18th Streets and other streets in the City and County of Denver; that the matters contained in the complaint of the complainant, if under the regulation of anyone, are under the regulation solely of the City and County of Denver. Further, in answering the complaint, it alleges that it maintains adequate and efficient service within the City and County of Denver, and does not discriminate between 17th and 18th Streets and other streets within the City and County of Denver. The defendant alleges, however, that proper looping facilities at the Union Station require that a portion of the loop extend over and upon a part of the property of The Denver Union Terminal Railway Company, the owner of the depot premises, and prays an order of the Commission notifying the Terminal Company of the pendency of this action, and requiring the Terminal Company to be and appear before the Commission as a party at interest.

On the 3rd day of February, 1917, the Commission entered an order in this cause reported in 3 Colo. P. U. C. 333, holding that it was unnecessary for the complainant to show special or direct damage to the complainant in this case, and that the Commission had sole and exclusive jurisdiction over the regulation of the service of the defendant's lines of street railway, citing as authority for this conclusion the case of The Denver & South Platte Railway Co. v. The City of Englewood, decided by the Supreme Court of Colorado on the 3rd day of July, 1916, found in P. U. R. 1916E, p. 134, as well as certain cases heretofore decided by the Commission:

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The Castle Rock Mountain Railway & Park v. Denver Tramway Company, 1 Colo. P. U. C. 126; Thormann v. The Denver & Interurban Railroad Co., 2 Colo. P. U. C. 171; Citizens of the City of Colorado Springs v. Colorado Springs & Interurban Railway Company, Case 131, 4 Colo. P. U. C., 146; Frank M. Streamer, et al., v. The Denver & Interurban Railroad Co., Case 130, 4 Colo. P. U. C. 122; John Leeson, et al., v. Colorado Springs & Interurban Railway Co., Case 72, 4 Colo. P. U. C. 99; City of Colorado Springs v. The Colorado Springs & Interurban Railway Co., Case 105, 3 Colo. P. U. C., p. 1.

On the proposition of the defendant carrier's objection to the jurisdiction of this Commission on the theory that the regulation of its railway service and the routing of its cars is exclusively within the judgment and discretion of its officers—but that if the defendant's railway service and the routing of its cars are under any regulatory authority, then such regulatory authority is the City and County of Denver, popularly known as a "Home Rule" city by reason of constitutional authority to make a charter which shall be the organic law of the city or town and extend over local or municipal matters—the Commission held that the Public Utilities Commission of the State of Colorado has sole and exclusive jurisdiction over the service of the defendant carrier in the City and County of Denver, and cited the following cases in support of that position: Portland Railway, Light & Power Co. v. City of Portland, 210 Fed., p. 667; City of Woodburn v. Public Service Commission of Oregon, 161 Pac. 39. See also Public Service Commission of Montana v. City of Helena, 159 Pac. 24; Seibold v. People, 86 Ill. 33; City of Chicago v. William L. O'Connell, et al., decision of the Supreme Court of

Illinois, April 19, 1917; Chicago Southern Traction Co. v. I. C. R. R. Co., 246 Ill. 146.

The Commission further ordered that The Denver Union Terminal Railway Company should be made a party to the cause and plead to the answer of the defendant company within a period of twenty days.

On the 23rd day of February, 1917, The Denver Union Terminal Railway Company filed with the Commission its motion to dismiss the answer of The Denver Tramway Company for the following reasons: First, that the Public Utilities Commission has no control or jurisdiction over the defendant, The Denver Union Terminal Railway Company, in that it is not a public utility; second, that it is operated in the City and County of Denver, a "Home Rule" city, and, therefore, the Commission has no jurisdiction over the defendant, The Denver Union Terminal Railway Company, or its property, business or operation in respect to any of the matters herein involved or presented. It is further alleged that the prayer of the cross complaint of The Denver Tramway Company, for an order of the Commission requiring the construction of a portion of a loop upon the property of The Denver Union Terminal Railway Company, if granted by the Commission, would result in the taking of private property without due process of law, and that the Commission has no power or authority to consider or determine any of the matters raised by the cross complaint of the defendant, The Denver Tramway Company.

By way of answer to the cross complaint of the defendant, The Denver Tramway Company, The Denver Union Terminal Railway Company denies that proper looping facilities require the construction or maintenance of a loop at the foot of 17th Street in front or in the immediate vicinity of the Union Station or upon the

property of the Terminal Company, to the end that cars of the Tramway Company may proceed to the depot via 17th Street, and looping, return via 17th Street. The Terminal Company also denies that public necessity and convenience require the taking of its property for looping purposes, and asserts that the taking or occupation or use of its premises or any part thereof, would be and is wholly impracticable from any point of view, and would result in great embarrassment and loss and injury not only to the Terminal Company, but also to the public, which necessarily and constantly in great numbers patronizes and makes use of the Union Station premises and the Union Station facilities. The Terminal Company further alleges that a great number of pieces of baggage daily pass through the terminal in numerous conveyances other than those of the Tramway Company, and an exceedingly large amount of express and mail matter daily passes through the terminal, and is conveyed to and from the station in conveyances other than those of the Tramway Company; that by reason of the great number of foot passengers constantly proceeding to and from the Union Station, and the very heavy vehicular traffic to and from the Union Station occasioned and neecssitated by travel, it is impossible to permit the Tramway Company to maintain a loop on the premises of the Terminal Company. It is further alleged that the property so desired to be taken and used by the Tramway Company is the defendant's private property used for private purposes.

On the 15th day of March, 1917, there was filed with the Commission a petition in intervention of the Central Denver Property Owners' Association. This intervenor asked for permission to intervene in the above cause, the purpose of its organization, among other things, is which was granted by the Commission. It alleges that

to see that the traveling public coming to and from that part of the business district of the City and County of Denver located on or near 14th, 15th and 16th Streets shall receive adequate, just, efficient and proper street car service and transportation facilities. It further alleges that the Tramway Company now gives adequate and efficient street car service to 17th and 18th Streets within the City and County of Denver, and that to grant the relief prayed for would not promote the health, safety, convenience and comfort of the patrons of the Tramway Company and the traveling public, but, on the contrary, would directly tend to enhance, unreasonably, and without regard to the public welfare and interest, the values of property located in that part of the city north and east of 17th Street. The intervenor alleges that the transportation facilities and the routing of the cars of the Tramway Company, as now exists, are the result of the natural growth of the city and the legitimate needs of the public using the cars, having regard for the location of the principal public buildings, places of amusement, department stores, markets, places of employment, etc. The intervenor further alleges that in order to make the transportation service of the Tramway Company adequate, efficient, just and reasonable the Tramway Company should be required to construct a loop or terminal at the Union Station within the grounds of The Denver Union Terminal Railway Company, rather than from 17th to 18th Streets on Wynkoop Street, as prayed for in the complaint of the complainant.

Pursuant to notice duly given to all parties in interest the hearing of this cause convened at 10:00 o'clock a. m. April 13, 1917, before the Commission *en banc*.

Due to the wide public interest in this hearing, the matters at issue having been discussed for some time in the newspapers of Denver, as well as by committees ap-

pointed by the various organizations of the City of Denver, it became necessary for the Commission to announce at the hearing that all parties restrict themselves in the number of witnesses testifying, to the end that a multiplicity of witnesses testifying to the same or similar state of facts, thus unduly burdening the record, would be eliminated.

The following witnesses testified for the complainants: Thomas B. Doan, Secretary, The East Denver Business and Property Association; James Lawrence, Assistant Engineer, City and County of Denver; John B. Hunter, City Engineer, City and County of Denver; William S. Tillotson, Harry W. Humphreys, Director, East Denver Business and Property Association; John S. Flower, Conrado A. Hecker, R. G. Rippeteau and Patrick Gallagher. For the Denver Tramway Company: F. W. Hild, General Manager; Harry C. Kendall, Traffic Engineer; Edward A. West, Chief Engineer. For the Denver Union Terminal Railway Company: P. R. Morris, Auditor, The Denver Union Terminal Railway Company; James G. Gwyn, Chief Engineer, The Denver & Rio Grande Railroad Company; C. C. Post, Assistant Engineer, Union Pacific Railroad Company, and John Keating, Superintendent, The Denver Union Terminal Railway Company. For the Intervenor, The Central Denver Property Owners' Association: C. W. Butterworth, Oscar D. Cass, George E. Collison, Herbert S. De Sollar, S. B. Northrupp and William G. Evans.

All parties in interest had evidently taken every means to prepare thoroughly on the various issues in this cause. The complainants by witnesses and many exhibits endeavored to prove to the satisfaction of the Commission that 17th and 18th Streets and the Union Station are inadequately served by the defendant, The

Denver Tramway Company; that additional cars with a higher grade of service should be furnished to 18th and 17th Streets, and that there should be constructed looping facilities on Wazee Street from 17th to 18th Street, on 18th Street to Wynkoop Street, and on Wynkoop Street to 17th Street, to the end that the cars operating on 18th Street could traverse 18th Street to Wynkoop Sreet, thence on Wynkoop Street to 17th Street, thence on 17th Street to Wazee Street, thence on Wazee Street to 18th Street, returning on 18th Street.

The Central Denver Property Owners' Association by witnesses and exhibits offered testimony in support of the contention that 17th and 18th Streets are adequately served; that in no event should cars be removed from 15th and 16th Streets to 17th and 18th Streets, and that looping facilities should be constructed in accordance with the ideas of the Denver Tramway Company expressed in its cross complaint directed against The Denver Union Terminal Railway Company, partly on the property of The Denver Union Terminal Railway Company at the foot of 17th Street, rather than as suggested by the East Denver Business and Property Association.

The 14th Street Realty Association introduced testimony tending to show the importance of 14th Street as a business center.

Witnesses for The Denver Tramway Company testified and introduced many exhibits, tending to show that the downtown district of the City of Denver, the main arteries of which are 14th, 15th, 16th, 17th and 18th Streets, is adequately served, but admitted that a looping system should be constructed, preferably on the property of The Denver Union Terminal Railway Company at the foot of 17th Street; that additional

service should be given to the Union Station and that certain extensions of lines could reasonably be made.

Witnesses for The Denver Union Terminal Railway Company introduced testimony and exhibits tending to show that the premises of the Denver Union Terminal Railway Company at 17th and Wynkoop Streets are now congested and would be considerably more congested with traffic in the event the Commission ordered the construction of a street car loop partially or entirely upon the property of The Denver Union Terminal Railway Company.

Traffic census of various descriptions were offered by witnesses showing the direction in which passengers walk to destinations from the various street car lines; showing by a system of cards, which were delivered to its passengers by The Denver Tramway Company, the preference of passengers as to the routing of cars, and the destinations of these passengers; the number of employers and employes in the principal buildings in the City of Denver, together with the trend of traffic to and from these buildings; the location of the principal hotels, theatres, banks, business blocks, merchandise establishments and markets; the history of the building of the tramway line; the growth of the city; traffic conditions at the Union Station; operating conditions on the tramway lines and at depots in other cities throughout the United States, together with exhibits consisting of photographs of all of the prinicpal streets of the City of Denver, showing traffic and buildings thereon, as well as a large number of maps depicting loops and extensions proposed by the various parties at interest.

It may readily be seen, therefore, that the Commission has at hand sufficient information upon which to base an order in this cause.

At the conclusion of the hearing in this case all parties were notified that the Commission in all probability would require a report from certain of its engineers and inspectors with reference to the present operating conditions of the Tramway Company and suggestions for improvements, reports on various looping propositions, etc., copies of which reports later would be forwarded to parties in interest. These engineers and inspectors have submitted certain data to the Commission in addition to the evidence offered in the hearing of this cause, but the data so submitted bring out no new questions for determination, and, therefore, it is deemed advisable to make an order in the premises without further delay.

The Commission will first dispose of the additional legal propositions not decided in its order of February 3, 1917.

The defendant, The Denver Tramway Company, claims that the operation of its cars and railway system in the City and County of Denver is exclusively within the control of its officers, and, that if this contention be not sound, then regulation of the operation of its cars and railway system in the City and County of Denver is vested solely in the officials of the City and County of Denver by reason of provisions of Article XX of the Constitution of the State of Colorado granting to the City and County of Denver exclusive control of its local and municipal affairs. The Commission overruled these contentions in its order of February 3, 1917. The defendant Tramway Company also contends that this Commission cannot order extensions of street railway lines within the City of Denver. (1) The Colorado law pertaining to public utilities gives to this Commission express authority to order extensions of street railway systems. The proposition has not been raised in this case as to

whether an order by the Commission for an extension of lines of the railway would, in effect, be an attempt to grant to the Tramway Company a franchise, whereas the people of Denver are, by the Constitution of the State of Colorado, permitted to vote on all questions pertaining to franchises.

The Constitution of the State of Colorado provides, in Art. 15, Sec. 11, that "No street railroad shall be constructed within any city, town or incorporated village, without the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad." Whether this provision refers to the original occupancy of the streets of the town or village by street railways, and, when construed with the law pertaining to public utilities, permits the Commission to order an extension of existing lines, it is not necessary to determine.

The Commission has heretofore, when ordering extensions of street railways, ordered the railway company to apply to the municipality for a revocable permit to operate on the streets designated by the Commission. In all cases so far decided the municipalities have co-operated with the Commission in its endeavor to bring about better service to the traveling public, and in each case have granted the necessary permits for extension purposes. The Castle Rock Mountain Railway & Park v. The Denver Tramway Co., 1 Colo. P. U. C. 126; Thormann v. The Denver & Interurban R. R. Co., 2 Colo. P. U. C. 171; Citizens of Colorado Springs v. The Colorado Springs & Interurban Ry. Co., Case 131, 4 Colo. P. U. C. —; Frank M. Streamer, et al., v. The Denver & Interurban R. R. Co., Case 130, 4 Colo. P. U. C. —; John Leeson, et al., v. Colorado Springs & Interurban Ry. Co., Case 72, 4 Colo. P. U. C. —; City of Colorado Springs v. The Colorado Springs & Interurban Ry. Co., 3 Colo.

P. U. C. 1. Any extensions of street railway tracks deemed advisable by the Commission in this cause will be ordered in the above manner.

(2) The defendant, The Denver Union Terminal Railway Company, raises the interesting legal proposition that this Commission has no jurisdiction or authority to order the construction of a loop, partly or entirely upon the property of The Denver Union Terminal Railway Company, arguing that this would be taking private property without due process of law. Whether this proposition is correct or whether the terms of the Public Utility Act permit the Commission to require a joint use of the facilities of public utilities by providing for the proper compensation, need not be determined at this time. The question has been raised, however, as to whether the Denver Union Terminal Railway Company is a public utility, and without a prolonged discussion of the propositions in support of and against the contentions of The Denver Union Terminal Railway Company, the Commission decides that it is a public utility within the meaning of the laws of Colorado pertaining to public utilities.

(3) At the opening of the hearing in this cause the complainants and the intervening property owners' associations endeavored to present testimony to the Commission pertaining to the depreciation and enhancement of values of property interests in event the Commission should order the construction of loops, extensions of tracks or different routing of cars. The Commission refused to receive this testimony for the reasons stated in the case of Thormann, et al., v. The Denver & Interurban R. R. Co., 2 Colo. P. U. C. 171, P. U. R. 1916E, 421; Streamer v. The Denver & Interurban R. R. Co., Case 130, 4 Colo. P. U. C. 122; Citizens of Colorado Springs v. Colorado Springs & Interurban Ry. Co., Case 131, 4

Colo. P. U. C. 146. This Commission is not an instrument to aid and increase real estate values or to lend assistance to property owners to maintain the present values of their property.

The City of Denver is provided with street car service by the defendant, The Denver Tramway Company, operating under a franchise within the City and County of Denver. The main business thoroughfares of the City and County of Denver are 14th, 15th, 16th, 17th and 18th Streets and Broadway. The defendant company has at present 204 miles of single track within the City and County of Denver, and, as a whole, the system furnishes its patrons with adequate and efficient service. Its officers and employes are courteous, and remarkably few complaints have been brought to the Commission on the general service of the company.

The street railway lines of the defendant serving the business district of the city from East Denver, enter the business district at Broadway and Colfax Avenue, 17th Avenue and Broadway, 19th Avenue and Broadway and 18th and Welton. The 19th Avenue line runs in a southerly direction on Broadway to Tremont Place, thence southwest to 16th Street, thence northwest on 16th Street, over the 16th Street Viaduct to North Denver.

The Park Hill, Madison Street and 17th Street car lines serve the business district from 17th Avenue. On its 17th Street line the Tramway Company operates small cars with an entrance and exit on either side of the cars (due to the fact that these cars are compelled to use a cross-over at the Union Station, rather than turning by loop), running from the terminus at Wynkoop and 17th Streets in a southeasterly direction on 17th Street to 17th Avenue and Broadway, thence east on 17th Avenue to Pearl Street. The cars there use a cross-over and return over the same course to the Union Station.

The Park Hill line runs in a southwesterly direction from Wazee and 17th Streets on Wazee to 16th Street, thence on 16th Street in a southeasterly direction to Lawrence Street, thence northeast on Lawrence to 17th Street, thence on 17th Street to Broadway, thence east on 17th Avenue to the Park Hill district, located about three miles from the business district of the city.

The Madison Street line operates on 16th Street in a southeasterly direction to Court Place, thence northeasterly on Court Place to 17th Street and Broadway, thence east on 17th Avenue, serving the Capitol Hill District.

The 17th Avenue line operates on 16th Street following the route of the Park Hill and Madison Street lines to York Street and 17th Avenue.

The business district is also served from Colfax Avenue by Colfax cars which operate from Capitol Hill on Colfax Avenue in a westerly direction to Broadway, thence northwest on 15th Street to Wazee, thence northeast on Wazee to 16th Street and over the 16th Street Viaduct (located in the vicinity of the Union Station), thence in a northwesterly direction to that part of the City and County of Denver known as North Denver, returning over the same route.

Aurora cars operating from Aurora, a suburb of Denver located east of the eastern boundary line of the City and County of Denver, also serve the business district, by operating on Colfax Avenue to Broadway, thence northwest on 15th Street to the central tramway loop, returning over the same route.

Fairmount cars operate on Colfax Avenue from Fairmount Cemetery to the business district, by running on Colfax to Broadway, thence northwest on 15th Street to the central tramway loop, returning over the same route.

Cars operating from the eastern and southern parts of Denver traverse 11th, 7th, 1st and Alameda Avenues in a westerly direction to Broadway, thence in a northerly direction to Broadway and Colfax Avenue, thence northwest on 15th Street to the central tramway loop, returning over the same route.

The 18th Street line turns on Cleveland Place to Broadway, thence north to 18th Street, thence northwest on 18th Street to Wazee, thence southwest on Wazee to 17th Street, thence northwest on 17th Street to the Union Station. In addition to this line are two lines which serve the business district from South Broadway.

The downtown district is served as well by cars operating in a southwesterly direction over Stout, Curtis, Arapahoe, Lawrence and Larimer Streets, to the center of the business district.

The business district is served from West Denver by street cars operating in a northeasterly direction on Larimer, Lawrence and Curtis Streets.

The Commission will not in this case consider service from North Denver to the Union Station or the business district, as no testimony appears in the record to justify changes in these routes.

The testimony developed the fact that a majority of the cars serving the business district of Denver operate on 15th Street, looping at the central tramway loop located on 15th Street between Lawrence and Arapahoe Streets. (4) Witnesses testified that the defendant, The Denver Tramway Company, was a party to a contract entered into some years ago with the owners of property located in the vicinity of the central tramway loop, free rights-of-way at this point being granted in return for the consideration agreed to by The Tramway Company to loop a certain number of cars, serving the business district, at this loop.

It is unnecessary for the Commission to re-state the proposition heretofore decided by the Supreme Court of Colorado and this Commission, that a contract made by a public utility, individual or municipality, pertaining to the service or rates of a public utility, is not binding upon this Commission. The harmful results of a binding contract of this nature can readily be seen, as it was not made in the interest of good service, but rather in the interest of property values.

Some testimony was introduced to the effect that the small cars now operating on 18th and 17th Streets are inadequate and obsolete. It is not necessary for the Commission to deal with this question at this time as the Tramway Company has notified the Commission of its intention to furnish a better type of car for these streets at the earliest opportunity.

The Commission is of the opinion that the Union Station is inadequately served, and that proper looping facilities should be provided by the Tramway Company at this time, and that the street railway service as it now exists on certain routes and streets is inadequate.

The Commission is also of the opinion that in the interests of public needs and convenience the defendant, The Denver Tramway Company, should extend its tracks from Colfax Avenue and Broadway north on Broadway to connect with the tracks turning into Broadway from Cleveland Place; and from 16th Street and Broadway northwest on 16th Street to Court Place, connecting with the track on 16th Street at that point, and that proper connections and curves should be installed by the Tramway Company at 17th Street and Broadway, Colfax Avenue and Broadway, and 16th Street and Broadway, to the end that cars operating on Broadway and Colfax Avenue can be operated on Broadway connecting directly with 16th and 17th Streets, and the Commission will,

therefore, order the Denver Tramway Company to apply to the City Council of the City and County of Denver for permits to make these extensions, which will herein be more definitely described. Extension of tracks should also be made by the defendant, The Denver Tramway Company, on Emerson Street between 13th Avenue and Colfax Avenue, and on 13th Avenue between Ogden Street and Emerson Street. This extension will also be more definitely described herein.

It becomes necessary for the Commission to first determine at what point, if any, looping facilities should be constructed in the vicinity of the Union Station before the Commission can intelligently order a re-routing of certain cars within the City and County of Denver, as well as the construction and extension of track facilities for a more uniform and reasonable service to the patrons of The Denver Tramway Company and to the general public.

UNION STATION LOOP.

As has heretofore been stated, the Union Station is served by The Denver Tramway Company in two ways: 1. By the operation of a number of car lines over the 16th Street viaduct at 16th Street and Wynkoop Street, and about one block from the entrance to the Union Station, which cars are entered by steps leading from the sidewalk on western boundary of the Union Station grounds and 16th Street to the viaduct. 2. The Union Station is served by cars operating down 17th Street to Wynkoop Street and turning back at this point over the same route; and by cars operating on 18th Street to Wazee thence on Wazee to 17th Street, where they turn back and return over the same route; and also by cars operating on 17th and 16th Streets looping in both directions via 17th and Wazee Streets, at which point the Union Station passengers board and alight.

The principal complaint against the present street car facilities at the Union Station as expressed by the complainant, the intervenors, and the Tramway Company for that matter, is that at present all cars destined to the Union Station on 17th and 18th Streets are compelled to turn back at 17th and Wynkoop Streets, necessitating the use of a type of car having an entrance and exit on either side, which results in a congested condition due to the location of the cross-over at the terminus of the 17th and 18th Street lines on 17th Street, while cars operated on 16th Street, with the exception of those traversing the viaduct, have their terminus at Wazee and 17th Streets, and thus do not serve the Union Station properly.

As a remedy for this unsatisfactory condition the Tramway Company suggested a looping plan which provided that cars operate on 17th Street across Wynkoop Street, through the "Welcome Arch," and onto the driveway of the Denver Union Terminal Railway Company, turning to the left on the driveway and taking the form of a loop on the premises of the Terminal Company, returning to 17th Street on Wynkoop Street.

A great deal of testimony was offered by the Tramway Company in support of this proposition, which was indorsed by the Central Denver Property Owners' Association.

The Denver Union Terminal Railway Company, by witnesses and exhibits, proved to the satisfaction of the Commission that the proposed tramway loop would be unsatisfactory, resulting in a greatly congested condition at the Union Station, and would be, perhaps, more unsatisfactory than under the present operating conditions. The Terminal Company took the position in regard to this loop that, the exit from the Union Station being on the north side of 17th Street, passengers bound for street cars in front of the station entrance would nec-

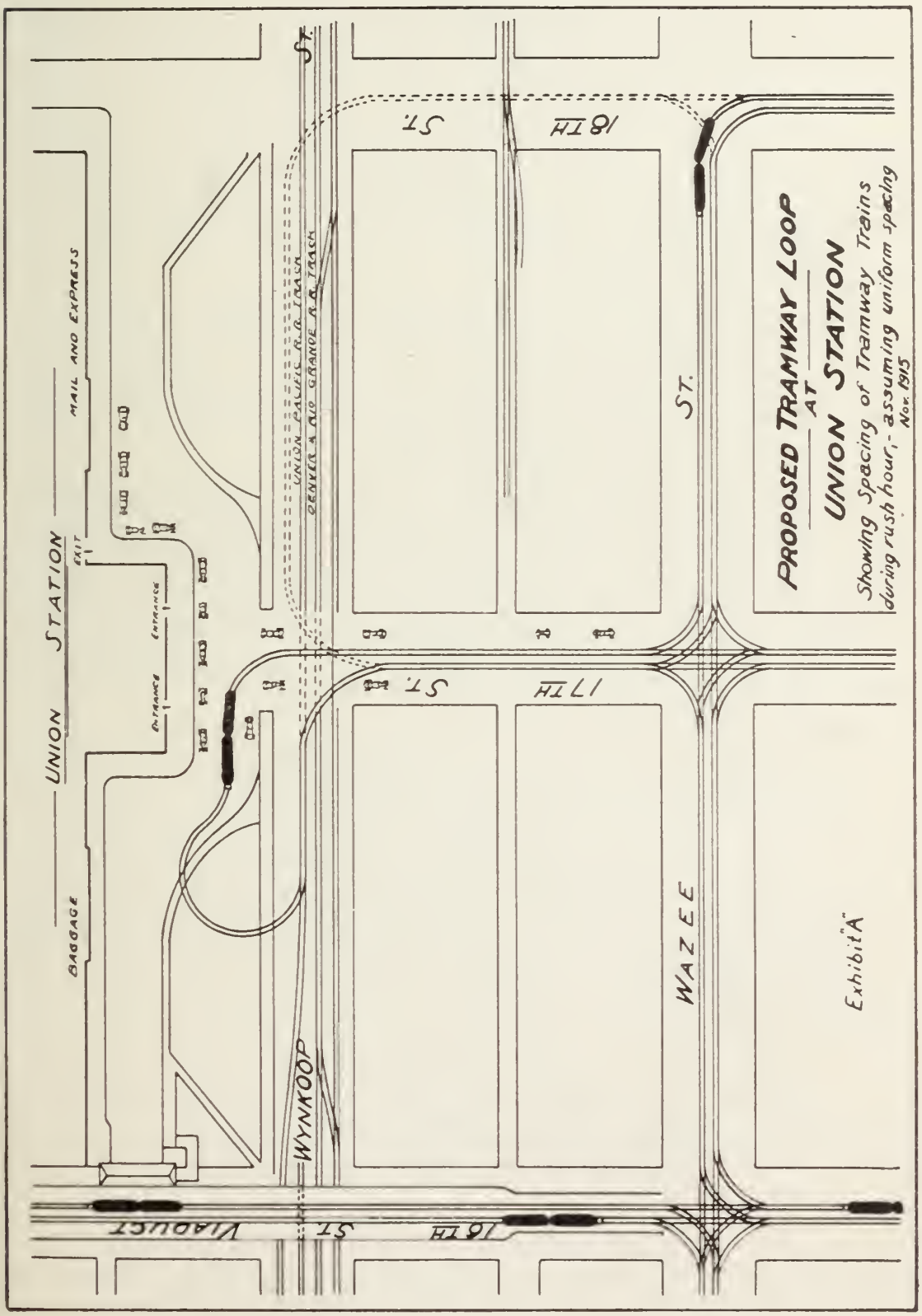
essarily spread across the roadway on the premises of the Union Station, and, this fact, together with the already congested condition of vehicular traffic at this point, would result in an unsafe condition in the operation of street cars, and be detrimental to the Denver Union Terminal Railway Company in the control of its premises for the use of the traveling public.

The complainant, The East Denver Business and Property Association, endeavored to prove to the Commission the feasibility of a loop turning to the left on Wazee Street at 18th Street, thence to 17th Street, thence to Wynkoop on 17th Street, thence to 18th Street on Wynkoop, and returning on 18th Street to Wazee Street. It was contended by the complainant that this loop would afford an opportunity for patrons to enter the cars of the defendant Tramway Company at the Union Station within a short distance of the exit of the station. The Tramway Company objected to this proposed loop for the reason that passengers would be compelled to alight from the left-hand side of the cars and against traffic at the Union Station, unless the Tramway should loop its cars operating on 17th Street at Wazee and 17th Street, on Wazee to 18th Street, thence on 18th Street to Wynkoop, and on Wynkoop to 17th Street. This would result in passengers riding three blocks from a point one block from the station entrance, and it was the contention of the Tramway Company that passengers would alight at the intersection of 17th Street and Wazee while the cars were in motion, thus bringing about an unsafe operating condition, and, in addition, resulting in an unfeasible loop, which would be entirely unsatisfactory to the Tramway Company and the traveling public.

The following diagram shows the proposed loop recommended by the Tramway Company, as well as the proposed loop recommended by the East Denver Busi-

ness and Property Association, and the location of the Viaduct on 16th Street from which the Tramway Company also serves the Union Station.

LOOP PROPOSED BY TRAMWAY COMPANY AT UNION STATION.



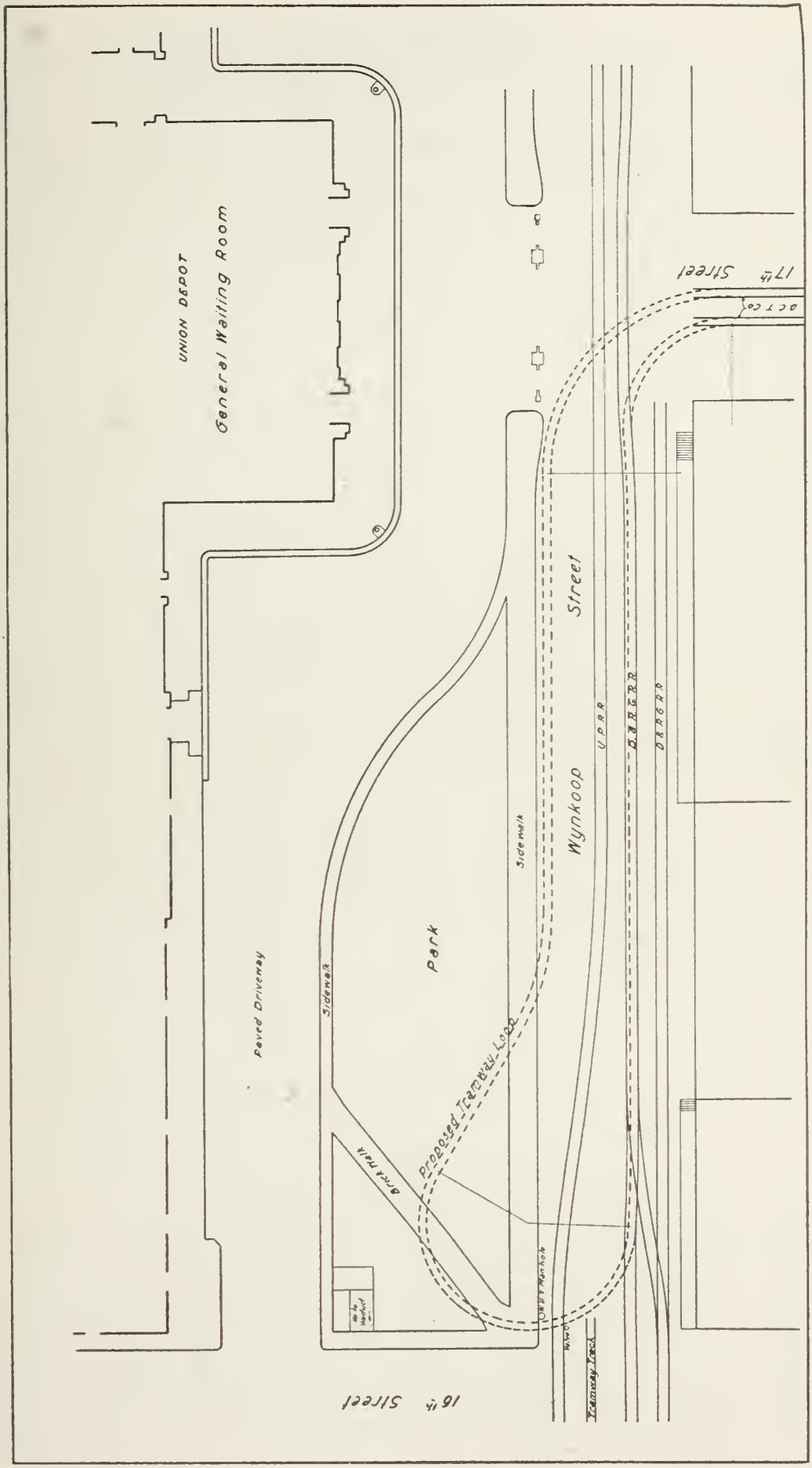
The Commission is of the opinion that the loops proposed by the complainant, The East Denver Business and Property Association, and by the defendant, The Denver Tramway Company, are not feasible. The loops proposed by the Tramway Company called for the occupation of a part of the premises of The Denver Union Terminal Railway Company directly in front of the Union Station entrance, and the Commission is of the opinion that the interests of the public would be injured by the occupancy of the premises of The Denver Union Terminal Railway Company by the loops suggested by the Tramway Company.

The objections raised by the Tramway Company, from an operating viewpoint, to the loop proposed by the complainant, have convinced the Commission that such proposed loop is not feasible.

A series of conferences was held by the Commission with officials of The Denver Tramway Company and The Denver Union Terminal Railway Company, as a result of which the representatives of the Tramway and Terminal companies agreed to accept the loop recommended by the Commission.

The following diagram illustrates a loop, which, in the opinion of the Commission after careful consideration of the testimony and plans pertaining to the proposed loops at the Union Station, is the desirable loop from the standpoint of the public and of the various parties at interest:

LOOP TO THE UNION STATION PRESCRIBED BY COMMISSION.



By the use of this loop all cars operating on 17th Street will turn to the left on Wynkoop at 17th and Wynkoop Streets, permitting passengers to load and alight at the sidewalk in front of the Union Station, thence traversing Wynkoop Street toward 16th Street, as shown by the diagram, thence looping on a 45-foot radius on the premises of the Denver Union Terminal Railway Company and Wynkoop Street, returning on Wynkoop to 17th Street.

Cars operating on 16th and 18th Streets, which will be routed by the Commission to the Union Station, will hereafter turn on Wazee Street to 17th Street and operate over the loop proposed by the Commission. By the use of this loop much additional direct service will be given to the public to and from the Union Station. All passengers will alight from the right exit of the cars onto the sidewalk in front of the Union Station, and all passengers entering the cars at the Union Station will enter from this sidewalk.

The loop will be of such length that no undue congestion will result in the operation of street cars from the various routes destined to the Union Station, and this loop will in no way interfere with the present plans of the Denver Union Terminal Railway Company, nor with traffic at 16th and Wynkoop Streets.

Prior to the construction of this loop The Denver Union Terminal Railway Company will issue to the defendant, The Denver Tramway Company, a revocable permit permitting the Tramway Company to construct looping tracks on that portion of the premises of the Terminal Company shown in the diagram, and made a part of this order. Such permit may be revoked by a written notice from the Terminal Company to the Tramway Company, granting to the Tramway Company a period of six months from the date of the receipt of the

written notice, in which to remove its tracks from the premises of The Denver Union Terminal Railway Company.

The defendant, The Denver Tramway Company, will pay to The Denver Union Terminal Railway Company, a fair rental for the use of its premises.

While it is true that certain switching tracks of steam railroads are now located on Wynkoop Street, only two such switching tracks cross 17th Street. No trains are operated upon these tracks, with the exception of the Denver & Rio Grande loading track, upon which cars are set during the night when the street cars of the Tramway Company are not operating. The Commission is of the opinion that to properly regulate the use of these steam tracks on Wynkoop Street an order should be entered restricting their use to a period between the hours of 1:30 a. m. and 4:30 a. m.

While it would appear from the testimony submitted that the City and County of Denver has heretofore granted the Tramway Company a revocable permit to construct tracks on Wynkoop Street between 17th and 16th Streets, which permit has not been revoked, it shall be the duty of this defendant, The Denver Tramway Company, to apply to the officials of the City and County of Denver for a revocable permit permitting the construction of the loop proposed by the Commission, in the event it becomes necessary to obtain such a permit prior to the construction of the loop.

THE WELCOME ARCH.

At the hearing of this cause all of the parties at interest vigorously protested against the presence of the structure popularly known as "The Welcome Arch," now located at the intersection of 17th and Wynkoop Streets and directly in front of the entrance to the Union Station.

Denver is a large and growing city and in the opinion of this Commission the "Welcome Arch" should not occupy its present location. The Commission is well aware that it has no jurisdiction pertaining to the removal of this arch, and that such matter rests entirely with the city officials of Denver. This Commission is, however, at all times ready to co-operate with the city officials of the City and County of Denver pertaining to all matters over which the Commission has jurisdiction, and for this reason suggests to the officials of the City and County of Denver that they cause to be removed the Welcome Arch located at the intersection of Wynkoop and 17th Streets.

The Commission is convinced from the testimony that the arch as now located is a menace to public safety. Much vehicular and pedestrian traffic is confined to a space within the confinements of the arch, and representatives of the Denver Union Terminal Railway Company, testifying at the hearing in this cause, offered to make improvements on the Union Station premises in the event the arch is removed by the city authorities, which improvement will result in less congestion and will be very beneficial to the traveling public.

It would seem that there are many desirable locations for the arch within the City of Denver, and, therefore, the Commission respectfully suggests to the Mayor and City Council of the City and County of Denver that the arch be removed from the present location in the interests of safety of the general public.

RE-ROUTING OF CARS.

The complainant, The East Denver Business and Property Association, prays for better service on 18th Street with a greater number of cars destined to the Union Depot via 18th Street. At present 18th Street

is served by small cars operating from the Union Station at 17th and Wynkoop Streets, on 17th Street to Wazee Street, on Wazee Street to 18th Street, on 18th Street to 18th and Broadway, on Broadway to Cleveland Place, on Cleveland Place to 15th Street, on 15th Street to Broadway, on Broadway to 1st Avenue, on 1st Avenue to Pearl Street, on Pearl Street to Alameda Avenue and on Alameda Avenue to Downing Street. These cars operate on a 12-minute headway, and the Tramway Company has thus given to a small portion of the residents of East Denver a direct route to destinations on 18th Street and the Union Depot.

In the opinion of the Commission this service is inadequate and unreasonable because of its infrequency. This line serves only a relatively small residence district, which is also served by other lines entering the business district via 15th Street.

While the Commission cannot agree with the contention of certain of the witnesses for the complainants, —that through cars now operated from East, West and South Denver residence sections to the downtown district, and operated on 15th Street and looping at the central tramway loop on 15th Street, should be re-routed and operated on 18th Street because of the fact that the Commission is interested only in bringing about conditions of service satisfactory to the greatest number of patrons of the Tramway Company—the Commission, nevertheless, is of the opinion that a much improved service can be given to 18th Street, which should be very satisfactory to the patrons of the Tramway Company and to the complainants, and which will herein be ordered.

The Commission is of the opinion that from the effective date of this order, the present routing of the 18th Street cars, with an operating schedule of six cars

per hour, should be discontinued, and that cars should be operated on 18th Street which will have as their terminus the new Union Station loop, and operate from that point on 17th Street to Wazee, thence on Wazee to 18th Street, thence on 18th Street to Broadway, thence on Broadway to Cleveland Place and loop via Cleveland Place, 15th Street and Broadway. This routing of cars will result in a direct local service via Broadway and 18th Street to the Union Station, and will permit the cars to loop, thus making it possible to use standard single end cars. At Colfax and Broadway transfers to and from the 18th Street line will be issued from all other lines entering the business district at this point. This will result in any passenger having a destination on 18th Street and coming from the residence district of East, South and West Denver, to step from cars at Colfax and Broadway and enter 18th Street cars at that point, and have direct routing from Broadway and Colfax to any point on Broadway north of Colfax Avenue and to any point on 18th Street and to the Union Station. To make this service practical and adequate, the Commission is of the opinion the Tramway Company should operate on 18th Street, from the effective date of this order, twelve cars per hour rather than the present service of six cars per hour.

The Commission is of the opinion that 17th Street is not adequately served by the Denver Tramway Company at this time, and is also of the opinion that all 17th Street cars which have their terminus in the vicinity of Wynkoop Street, and are operated on 17th Street to Broadway, thence east on 17th Avenue to Pearl Street, should be routed, from the effective date of this order, from the new loop at the Union Station on 17th Street to 17th and Broadway, thence on Broadway to Colfax Avenue

and Broadway, and thence on Colfax Avenue to Emerson Street.

The Commission is of the opinion that the Madison Street and 17th Avenue lines, which now operate on 16th Street looping via 17th Street and Wazee, should be operated on 17th Street, looping at the Union Station. The Park Hill cars now operating on 17th and looping via Wazee, 16th and Lawrence Streets, should operate on 17th Street Street, looping at the Union Station.

This will result in an increase in cars on 17th Street from 21 cars per hour to 27 cars per hour each way during normal service of the day, and during the rush hours service period from 27 cars per hour each way, as now operated, to 39 cars per hour each way.

The Commission is of the opinion that all 13th Avenue cars should be routed from the new Union Station loop at a point on 17th Street and Wynkoop, on 17th Street to Wazee, on Wazee to 16th Street, on 16th Street to Broadway and Colfax Avenue, thence east on Colfax Avenue to Emerson Street, thence south on Emerson to 13th Avenue, thence east over the present route, returning by the same rout.

The Commission is of the opinion that to offset the decrease of service on 16th Street due to the proposed routing of additional cars on 17th Street, all 11th Avenue cars should be routed from the new Union Station loop on 17th Street to Lawrence Street, thence on Lawrence to 16th Street, thence on 16th Street to 16th and Broadway, thence on Broadway to 11th Avenue, thence over the present route, and that the Tramway Company should add such additional service on the 11th Avenue car line as shall reasonably meet the service demands of patrons residing in the vicinity of 11th Avenue.

These proposed routings will give additional and more direct service to 16th Street, and, in the opinion of

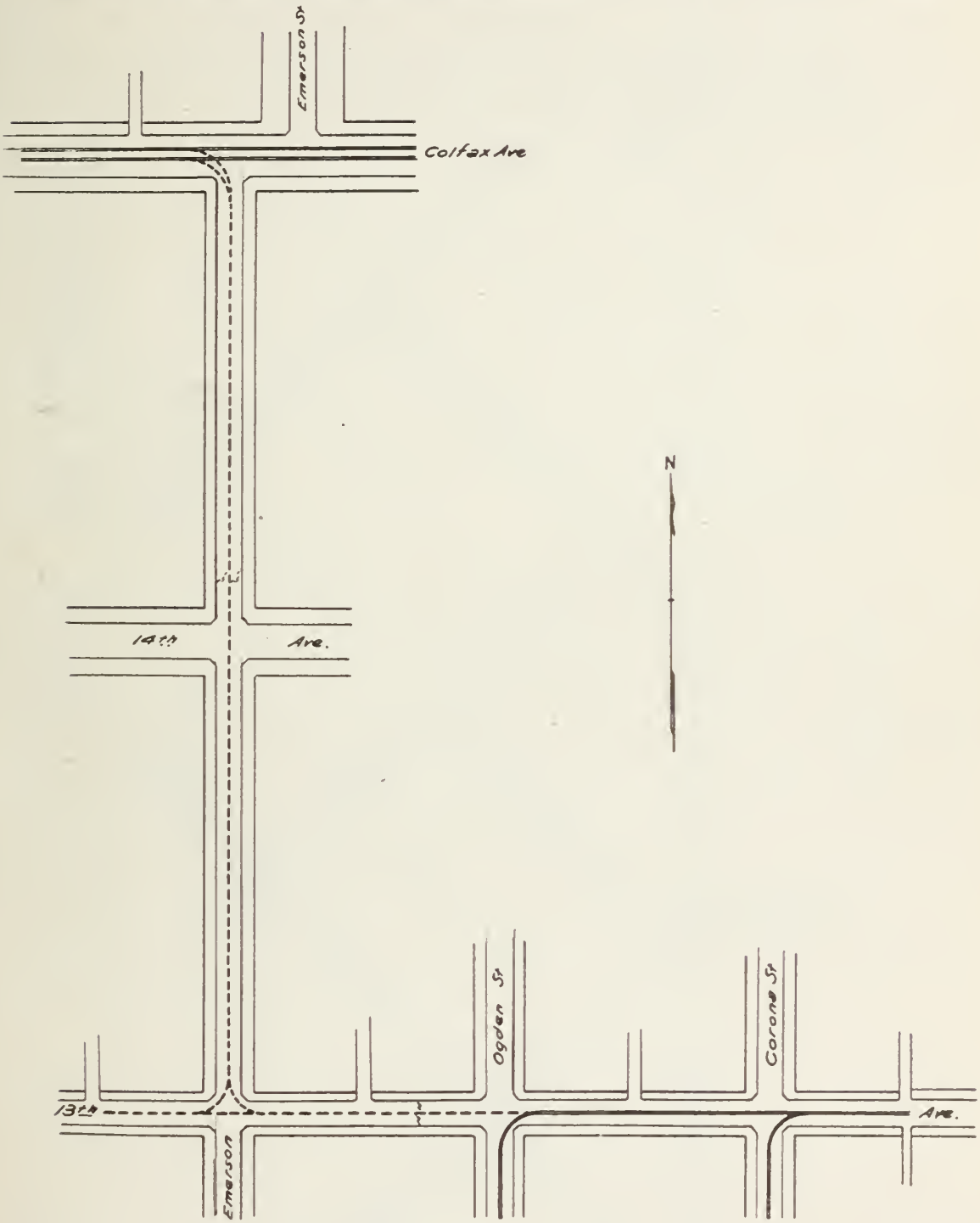
the Commission, will greatly benefit the Tramway Company's patrons and the general public.

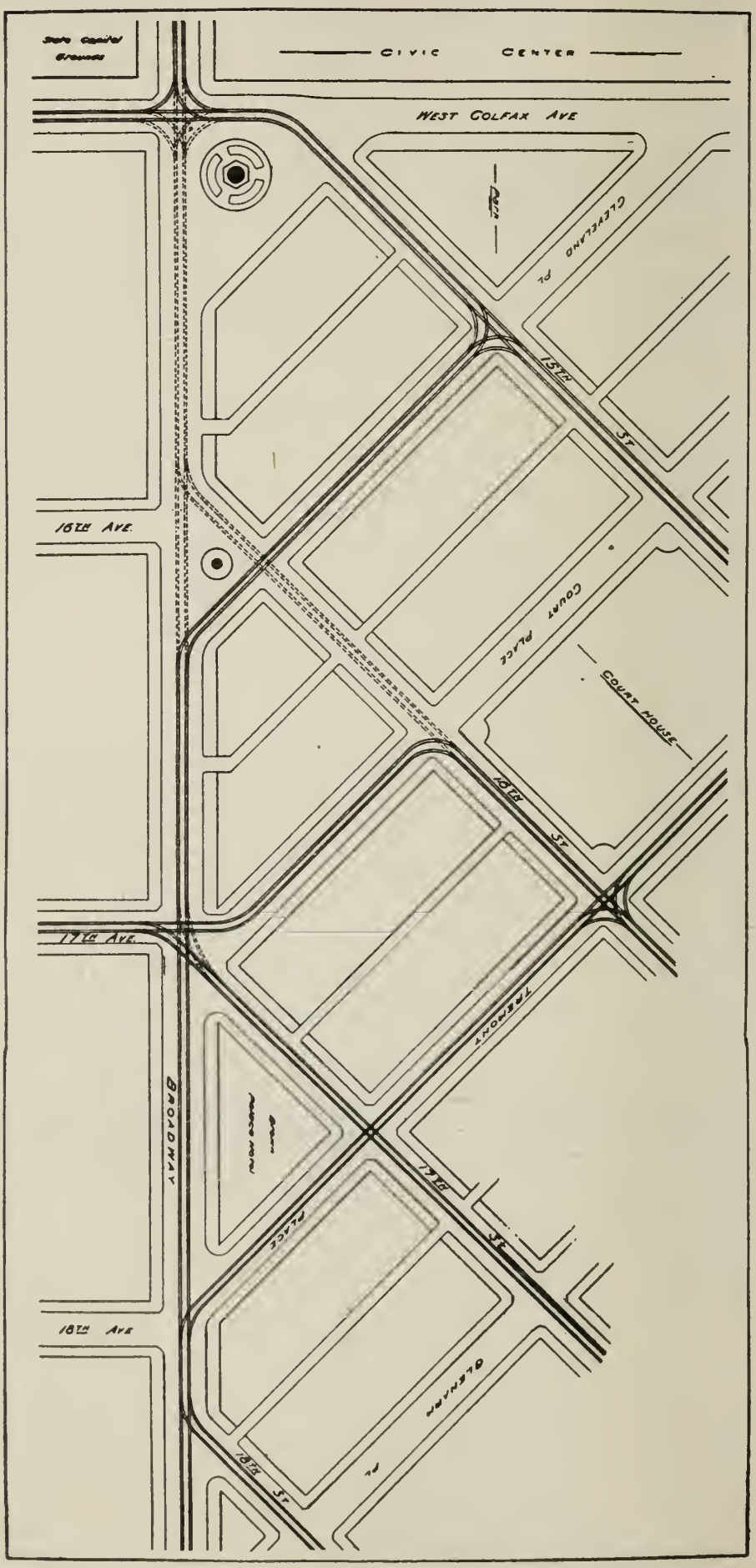
The Commission is of the opinion that the Lawrence Street line should be operated on 18th Street between Curtis and Lawrence Streets, rather than on 20th Street, for the reason that this will permit the bringing of passengers to 18th and Curtis Streets and making it unnecessary for passengers to transfer at the intersection of Lawrence and 16th and 17th Streets in order to reach their business destinations.

The Commission is also of the opinion that the Berkeley-Colfax cars should be operated, from the effective date of this order, from a point at the viaduct, located at 16th and Wazee Streets, to Larimer Street, thence on Larimer Street to 15th Street, and up 15th Street as now operated. This change will avoid the dangerous turn at the foot of the 16th Street Viaduct at Wazee Street, and also avoid the heavy team traffic on lower 15th Street and Wazee Street.

As the City Council of the City and County of Denver has already granted to the defendant, The Denver Tramway Company, a permit to operate cars on Emerson Street between 13th Avenue and Colfax Avenue, and on 13th Avenue between Ogden and Emerson Streets, it will be unnecessary for the Commission to order the Tramway Company to apply to the City Council for such permit; and it is the opinion of the Commission that the action of the City Council in granting the permit requested was wise and judicious, and, as a result, the Commission will order the Denver Tramway Company to immediately make these extensions.

DIAGRAM OF EMERSON STREET EXTENSION.





EXTENSIONS AND CONNECTNG TRACKS ON BROADWAY.

The foregoing diagram shows an unnatural, and, in the opinion of the Commission, an unreasonable operating condition which should have been remedied heretofore by the defendant Tramway Company, although it might reasonably be assumed that because of the existing contract providing for the routing of cars on 15th Street, to be looped at the central tramway loop at 15th and Arapahoe Streets as a part of the consideration for granting of rights-of-way to the Tramway Company for the central tramway loop, the officials of the defendant company have been unable to exercise their best judgment in later years.

In the opinion of the Commission the absence of connecting tracks on Broadway between Colfax and 16th Avenue, and between 16th Avenue and Court Place on 16th Street, cannot be justified. On examination, Mr. Hild, General Manager of the defendant company, stated the extensions, as proposed in the above diagram, are practicable from an operating standpoint, and for these reasons the Commission will order the defendant company to apply to the City Council of the City and County of Denver for a revocable permit to make the extensions contemplated in this order.

Some testimony was presented to show that these extensions would result in depreciation of property along these streets, and would result in some congestion at Colfax Avenue and Broadway, but the Commission has given careful consideration to the propositions advanced by the objectors, and while the Commission has no authority to consider the depreciation of property values when the general public is in need of street railway service, yet, in the opinion of the Commission, the question of depreciation and appreciation in this case is a matter of speculation, inasmuch as what one prop-

erty owner might consider an injury to property, another might consider a benefit.

Denver is a large and growing city and at its busy centers congestion is bound to arise, but after the complete program of the Commission in this case has been carried out, there will be less congestion in connection with the operation of the cars of the defendant Tramway Company and vehicular traffic than now exists.

The Commission is firmly of the belief that the officials of the City and County of Denver will co-operate with the Commission and the Denver Tramway Company and the Denver Union Terminal Railway Company to bring about a more satisfactory and reasonable operating condition than now exists, and when the entire order of the Commission is put into force and effect, a satisfactory and permanent service will be rendered to the patrons of the Denver Tramway Company and to the public at large.

ORDER.

IT IS THEREFORE ORDERED: First, that the defendant, The Denver Tramway Company, within a period of ninety (90) days from the date of this order shall begin the construction of the looping facilities in accordance with the recommendations of the Commission set forth in the diagram contained in this order and on file in the office of the Commission; second, that the defendant, The Denver Tramway Company, shall apply to the City Council of the City and County of Denver for permission to construct connecting double tracks from the intersection of Colfax Avenue and Broadway, north on Broadway to the tracks coming into Broadway from Cleveland Place, and from the intersection of 16th Street and Broadway along 16th Street to Court Place, with such necessary double curves and cross tracks as will permit cars operating on Colfax

Avenue in a westerly direction to turn north on Broadway as will permit cars operating north on Broadway to continue directly across Colfax Avenue, and as will permit cars operating north on Broadway to turn northwest on 16th and 17th Streets, respectively; third, that the application for these permits shall be made to the City Council of the City and County of Denver within a period of twenty (20) days after the date of this order, and if acted upon favorably by the City Council, that the construction of these extensions, curves and crossing-tracks, shall be commenced by the defendant, The Denver Tramway Company, within a period of ninety (90) days from the effective date of this order and under such terms and conditions as the City Council may reasonably require; fourth, that the defendant, The Denver Tramway Company, shall construct and extend a track of railway on Emerson Street between Colfax Avenue and 13th Avenue, and on 13th Avenue between Ogden and Emerson Streets, with a wye at the intersection of 13th Avenue and Emerson Street; fifth, that upon the completion of the Union Station loop and the extensions of tracks as above ordered, the Denver Tramway Company shall operate and route the cars and car lines hereinafter set forth upon the designated routes; sixth, that all schedules and routing of cars not herein expressly changed or modified, shall remain as shown in the schedules of The Denver Tramway Company now on file in the office of The Public Utilities Commission of the State of Colorado.

IT IS FURTHER ORDERED: That The Denver Tramway Company shall operate its cars as follows: First, on 18th Street from the Union Station loop via 17th Street to Wazee Street, Wazee to 18th Street, 18th Street to Broadway, Broadway to Cleveland Place, thence around loop via Cleveland Place, 15th Street and

Broadway, on a headway of not less than 12 cars per hour, during a period of not less than 13 hours during each business day, and upon a schedule to be filed with the Commission and approved by it; second, on 17th Street the lines known as the Park Hill, Madison Street and 17th Avenue lines, from the new Union Station loop via 17th Street to 17th Avenue, and thence over their present routes; the line known as the 17th Street line from the new Union Station loop on 17th Street to Broadway, thence south on Broadway to Colfax Avenue, thence east on Colfax Avenue to Emerson Street, returning over the same route; third, on 16th Street, in addition to the present service, the 13th Avenue line shall be operated from the new Union Station loop on 17th Street to Larimer Street, thence on Larimer Street to 16th Street, thence on 16th Street to Broadway, thence on Broadway to Colfax Avenue, thence east on Colfax Avenue to Emerson Street, thence south on Emerson Street to 13th Avenue, thence east on 13th Avenue, as now operated, to Madison Street, returning over the same route; fourth, 11th Avenue cars shall be operated from the new Union Station loop on 17th Street to Lawrence Street, thence on Lawrence Street to 16th Street, thence on 16th Street to Broadway, thence on Broadway to 11th Avenue, and over the present route; fifth, The Denver Tramway Company shall add sufficient capacity and service on the 11th Avenue line to adequately carry all additional traffic due to the diversion of 13th Avenue cars from 11th Avenue; sixth, the Berkeley-Colfax line shall be routed from the east approach of the 16th Street viaduct on 16th Street to Larimer Street, thence on Larimer Street to 15th Street, thence on the present route, returning over the same route; seventh, the Lawrence Street line shall be routed from 20th and Curtis Streets on Curtis Street to 18th Street, thence on 18th Street to Lawrence Street, thence south-

west on Lawrence Street over the present route, returning by the same route.

IT IS FURTHER ORDERED, That the defendant, The Denver Tramway Company, may remove its tracks on Ogden Street between 11th and 13th Avenues, on 12th Avenue between Ogden and Corona Streets, and on Corona between 12th and 13th Avenues; but shall place the portions of the streets above named, heretofore occupied by its railway tracks, in a condition of good repair and in accordance with any reasonable orders pertaining thereto made by the City Council of the City and County of Denver.

IT IS FURTHER ORDERED, That copies of this order be served on the parties at interest and upon the Union Pacific Railroad Company and The Denver & Rio Grande Railroad Company. It is the recommendation of the Commission to the Union Pacific Railroad Company and The Denver & Rio Grande Railroad Company that all switching or setting of cars on the steam railroad tracks located on Wynkoop Street between 16th and 17th Streets shall be performed between the hours of 1:30 a. m. and 4:30 a. m., and that the Union Pacific Railroad Company and The Denver & Rio Grande Railroad Company shall file with the Commission, within a period of ten days from the receipt of this order, a written communication agreeing to the suggestion herein contained, and in the event these communications are not received by the Commission within the time stated, the Commission will issue an order after a hearing, regulating the use of the steam tracks located on Wynkoop Street between 16th and 17th Streets.

George T. Bradley,
(Seal) M. H. Aylesworth,
A. P. Anderson,
Commissioners.

Dated at Denver, Colorado, this 22d day of August, 1917.

IN RE APPLICATION OF THE DENVER, LARAMIE & NORTHERN RAILROAD COMPANY, BY M. S. RADETSKY, PRESIDENT, AND M. S. RADETSKY, TO DISCONTINUE SERVICE AND REMOVE TRACKS.

(Case No. 141.)

Public utilities—Duty to furnish facilities—Charters.

(1) A public utility, while exercising and enjoying charter privileges and franchises, must furnish adequate facilities to the public upon its entire system, and not simply a part, and cannot be excused from performing its whole duty merely because by ceasing to operate a part of its system the net returns will be increased.

Service—Abandonment—Consent of State—Public needs.

(2) A public utility may not withdraw from public service without the consent of the State, and in the event a common carrier is unable to earn its legitimate operating expenses, then the public demands do not require the operation of the utility and the State should give its consent to the withdrawal from public service, providing a showing is made that an increase in rates commensurate with the value of the service would not increase the revenues sufficiently to pay operating expenses.

Franchises—Common carrier obligations—Individual owners.

(3) In the sale of the property of a railroad company to an individual, the franchises to be a corporation are not transferred to the buyer, but he acquires the ownership of the road, the property incident to it, and the franchise of maintaining and operating it as such, the corporate existence not being essential to its use and enjoyment.

Service—Abandonment—Function of Commission.

(4) While it is primarily the duty to the Commission to regulate the rates and service of public utilities, it is also the duty of the Commission to determine when a utility shall be permitted to withdraw from public service, and a public utility may not withdraw from public service except after showing made to the Commission that the public demands do not require the continued operation of such utility.

(September 1, 1917.)

APPLICATION of The Denver, Laramie & Northern Railroad Company and M. S. Radetsky, to discontinue service and remove tracks; permission given to The Great Western Railway Company to purchase and operate that portion of the line from Elm to Boulder Valley Junction, and public demands found not to require the operation of the balance.

APPEARANCES: For The Denver, Laramie & Northern Railroad Company and M. S. Radetsky, Wm. V. Hodges, D. Edgar Wilson and Charles Ginsberg; for the Protestants, Messrs. Whitehead & Vogl and Chester E. Smedley; for The Haarman Pickling Company, Robt. E. Winbourne.

STATEMENT.

By the Commission:

On the 2nd day of August, 1917, there was filed with the Commission a notice of abandonment by The Denver, Laramie & Northern Railroad Company, M. S. Radetsky, president, stating that on the 2nd day of September, 1917, it would permanently discontinue service. At the same time there was filed with the Commission a notice by M. S. Radetsky that on the 2nd day of September, 1917, upon the abandonment of service by the operating company, The Denver, Laramie & Northern Railroad Company, he, M. S. Radetsky, as owner of the physical assets of the property heretofore known as The Denver, Laramie & Northwestern Railroad, would cause to be removed all the tracks and other physical assets of the property.

On the 15th day of August, 1917, a petition was filed with the Commission signed by a number of shippers located on the line of railway owned by M. S. Radetsky and operated by The Denver, Laramie & Northern Railroad

Company, protesting against the application made by The Denver, Laramie & Northern Railroad Company and M. S. Radetsky, for permission to abandon and discontinue service and dismantle the railroad heretofore known as The Denver, Laramie & Northwestern Railroad Company, alleging that the abandonment and discontinuance of service would wholly deprive shippers along the line of the road of transportation facilities and alleging that, if the railroad was efficiently operated, it could be made profitable. The petition prayed for an order of this Commission requiring the railroad to continue operation and furnish proper transportation facilities to all persons along its line until such time as the Commission might determine, upon hearing, the merits of the petition of the petitioners.

Other written petitions were filed with the Commission by shippers along the same line of railway protesting against the dismantling of the road. On the 16th day of August, 1917, the Commission issued an order directed against The Denver, Laramie & Northern Railroad Company and M. S. Radetsky to appear before the Commission at its hearing room in the State Capitol Building in the City and County of Denver, State of Colorado, on Monday, the 20th day of August, 1917, at 10:00 o'clock a. m., to show cause why they or either of them should not continue the operation of the line of railroad known as The Denver, Laramie & Northern Railroad Company and heretofore known as The Denver, Laramie & Northwestern Railroad Company; and requiring the protesting petitioners to appear before the Commission at that time to make such showing before the Commission as their interests might seem to require.

The hearing of this cause convened on the 20th day of August, 1917, at 10:00 o'clock a. m., and witnesses for the protestants and the railroad company presented tes-

timony pertaining to the operation of the railroad and its proposed abandonment. The Denver, Laramie & Northern Railroad Company and M. S. Radetsky, through their attorneys, denied the jurisdiction of this Commission in the premises, but their objections were temporarily overruled by the Commission.

Witnesses testifying in behalf of The Denver, Laramie & Northern Railroad Company and M. S. Radetsky presented evidence in support of the view taken by The Denver, Laramie & Northern Railroad Company and M. S. Radetsky that the railroad should be dismantled and its business discontinued. Witnesses testifying in behalf of the protestants, and residing along the line of railroad, attempted to prove to the satisfaction of the Commission that the public demands require the continued operation of the railroad in its entirety.

The Denver, Laramie & Northwestern Railroad Company was incorporated under the laws of the State of Wyoming and received a charter from the State of Colorado "to acquire by purchase or otherwise, and to locate, construct, maintain and operate a line or lines of standard gauge railroad, with one or more tracks, with all necessary side tracks, turn-out switches and the like, and such telegraph and telephone lines as may be useful or necessary in the construction or operation thereof, through the City of Denver, State of Colorado, in a generally northerly direction by the most practicable route through the City and County of Denver and through some or all of the following additional counties in the State of Colorado, to-wit, Adams, Weld, Boulder and Larimer, to the northern boundary line of the state. * * *"

The railroad was thence to proceed in a generally northwesterly direction through the states of Wyoming, Idaho, Oregon, Washington, to a point in or near the city of Seattle. There were named in its articles of incorporation certain towns and cities through which the road

should operate, and it was therein stated that the railroad should enjoy and exercise all of the rights, privileges and franchises of railroad corporations in the State of Colorado.

A line of railroad was subsequently constructed by this corporation operating between Utah Junction and Greeley, Colorado, and having on its line of railroad the following stations, viz.: Welby, Clem, Poor Farm, Celeryvale, Wattenburg, Ady, Traceyville, Vollmar, Moore, Hodgson, Fort St. Vrain, Milliken, Adna, Elm, Blandin and Greeley. The railroad entered the City and County of Denver over the line of The Denver & Salt Lake Railroad Company from Utah Junction, and entered the depot of The Denver & Salt Lake Railroad Company in Denver through a leasing agreement with The Denver & Salt Lake Railroad Company. The railroad entered the city of Greeley on the terminals of The Greeley Terminal Railway Company. It had imposed upon it certain obligations requiring the payment of the sum of $1,500.00 per month to The Denver & Salt Lake Railroad Company for the use of that company's depot in Denver and its line from Utah Junction to the depot, and the sum of approximately $7,000.00 per year for the use of the Greeley terminals, the property of The Greeley Terminal Railway Company.

The contemplated construction of this railróad beyond Greeley into Wyoming has never been carried out. The line of The Denver, Laramie & Northern Railroad Company is paralleled on its right between Denver and Greeley by the Denver-Cheyenne line of the Union Pacific Railroad, while the branch line of the Union Pacific, operating between Denver and Fort Collins, serves a portion of the territory served by this railroad, as does a branch of the Union Pacific operated between Boulder and Brighton, and the Great Western Railway and the Colorado & Southern Railway.

After several years of unprofitable operation, The Continental Trust Company and Marshall B. Smith were appointed by the District Court of the Second Judicial District of the State of Colorado as receivers for the railroad, and operated the railroad under order of that court until the 3rd day of June, 1917. The properties of The Denver, Laramie & Northwestern Railroad Company, including its franchises and privileges, were sold to one M. S. Radetsky on the 16th day of May, 1917, under a decree of foreclosure and sale of the properties entered by the court on the 24th day of April, 1915. This sale was confirmed by the court on the 30th day of May, 1917.

On the 7th day of June, 1917, M. S. Radetsky, E. H. Radetsky, Charles Ginsberg, Marshall B. Smith and Clinton B. Smith organized themselves together as a corporation under the name and style of The Denver, Laramie & Northern Railroad Company for the purpose of becoming a body corporate and political under and by virtue of the laws of the State of Colorado, with the "object of purchasing, maintaining, operating, extending and completing the railroad, telegraph lines, properties and franchises of The Denver, Laramie & Northwestern Railroad Company heretofore sold pursuant to the judgment and decree of the District Court in and for the Second Judicial District of the State of Colorado, and to acquire and purchase the properties and franchises so sold and conveyed, and to take, hold, enjoy and exercise all of the franchises, rights, powers, privileges, claim or demand in law or equity of The Denver, Laramie & Northwestern Railroad Company," in accordance with the laws of the State of Colorado which provide that where the property and franchises of any railroad organized and existing under the laws of this state shall be sold and conveyed under a decree of foreclosure or pursuant to the judgment or decree of any court of competent jurisdiction, it shall be lawful to organize a rail-

road company under the laws of this state for the purpose of purchasing, maintaining and operating the property so sold and conveyed, and providing as well that the railroad company so organized shall have the property and franchises sold and conveyed as contemplated, and to enjoy all of the estate, rights, franchises and privileges in law or equity of the corporation whose properties and franchises have been so sold.

On the 2nd day of August, 1917, the Commission received notices from The Denver, Laramie & Northern Railroad Company and from M. S. Radetsky, which are as follows:

"August 2, 1917.

Public Utilities Commission of
the State of Colorado:

NOTICE OF ABANDONMENT.

Filed in Compliance with General
Order No. 15 of the Public Utilities
Commission Orders.

The undersigned, The Denver, Laramie & Northern Railroad Company, hereby gives notice that on the 2nd day of September, A. D. 1917, it will permanently discontinue service.

The Denver, Laramie & Northern Railroad Co.,
By M. S. Radetsky, Pres.
By Chas. Ginsberg, Atty.

"Denver, Colorado, August 2, 1917.

Public Utilities Commission of
the State of Colorado.

NOTICE OF REMOVAL OF TRACKS.

The undersigned, M. S. Radetsky, hereby gives notice that on the 2nd day of September, A. D. 1917, upon

the abandonment of service by the operating company, The Denver, Laramie & Northern Railroad Company, said M. S. Radetsky, as owner of the physical assets of the property heretofore known as The Denver, Laramie & Northwestern Railroad, will cause to be removed all of the tracks and other physical assets of said property.

M. S. Radetsky,
By Chas. Ginsberg, Atty."

It was the position of The Denver, Laramie & Northern Railroad Company and M. S. Radetsky at the hearing of this cause that the notices forwarded to the Commission were sufficient to permit the dismantling of the properties of the railroad; that the Commission was without jurisdiction to act upon the petitions of the protestants, and that the contemplated discontinuance of service and the dismantling and abandonment of the railroad property was not a matter subject to the jurisdiction of this Commission, the State, or any court within the State for that matter, and that no showing was required on behalf of the public utility prior to the discontinuance and dismantling of its properties, with the exception of the thirty days' notice required by the Commission. The Commission temporarily overruled the objections of The Denver, Laramie & Northern Railroad Company and M. S. Radetsky and ordered the railroad company and M. S. Radetsky to present testimony to the Commission pertaining to:

1st. The history of the operation of the railroad, to ascertain whether The Denver, Laramie & Northern Railroad Company, or its predecessor, The Denver, Laramie & Northwestern Railroad Company, had been able to pay legitimate operating expenses, and whether the railroad property had received in the past a fair test as to its ability to earn legitimate operating expenses;

2nd. Whether there was a public demand for the continued operation of this railroad property, and whether the laws of Colorado had been complied with in the attempt by The Denver, Laramie & Northern Railroad Company and M. S. Radetsky to discontinue service and dismantle the properties.

The protestant petitioners, who reside along the line of railroad, were permitted to present testimony as to the public needs surrounding the discontinuance of operation of the railroad. Subsequent to the introduction of testimony by the parties interested the Commission set aside one day for counsel to present argument and authorities surrounding the legal propositions involved. The Commission requested counsel for The Denver, Laramie & Northern Railroad Company, M. S. Radetsky and the protesting petitioners to direct their arguments and supporting authorities to the following propositions:

1. Whether a public utility operating in the State of Colorado must first obtain the consent of the Public Utilities Commission prior to the discontinuance of all of its service and the dismantling of its entire property;

2. Whether a public utility can withdraw from the public service and dismantle its entire property when there is a public demand for the continued operation of such public utility;

3. As to what constitutes a public demand.

During the course of the hearing M. S. Radetsky and representatives of The Denver, Laramie & Northern Railroad Company, together with representatives of The Great Western Railway Company, which is owned by The Great Western Sugar Company and operates a line of railway between Eaton, Loveland, Windsor, Longmont and Johnstown, Colorado, appeared before the Commission and presented for its consideration an agreement, drawn subject to the consent of the Commis-

sion, whereby The Great Western Railway Company agreed to purchase from M. S. Radetsky and The Denver, Laramie & Northern Railroad and to operate that part of the Denver, Laramie & Northern Railroad between Elm, a station located about five miles north of Milliken, to a point known as Boulder Valley Junction, where the Denver, Laramie & Northern Railroad crosses the tracks of the Boulder Valley branch of the Union Pacific Railroad.

There are two distinct lines of court rulings on the proposition of the right of a public utility to withdraw from the public service and dismantle its property. One line of cases follows the doctrine that a railway company or other public utility may withdraw from the public service by dismantling the entire property, while others hold that the consent of the state must first be had.

(1) There appears to be no question but that a public utility, while in the exercise and enjoyment of its charter privileges and franchises, must furnish adequate facilities to the public upon its entire system, not a part; and it cannot be excused from performing its whole duty merely because by ceasing to operate a part of its system the net returns will be increased. In Colorado & Southery Ry. Co. v. State Railroad Commission, 54 Colo. 64, (129 Pac. 506), at page 94, Mr. Justice Gabbert, delivering the opinion of the Colorado Supreme Court, said:

"In brief, under the facts of the case at bar, an order requiring a railroad company in the possession and enjoyment of its charter powers and privileges, to furnish a necessary service does not, even though a compliance with the order entails a loss, deprive it of its property without due process of law, or compel it to devote its property and revenues to a public use without just compensation, for the obvious reason that such an order

merely requires it to discharge its legal obligations. Of course, that a service ordered will entail a loss is a circumstance to consider in determining the reasonableness of the order; but a common carrier cannot successfully complain that a loss will thus be occasioned when it appears that the ordered service requires nothing more than necessary transportation facilities."

In Missouri Pacific Railway v. Kansas ex rel. Taylor, 216 U. S. 266, (54 L. Ed. 472), at page 279, the United States Supreme Court, speaking through Mr. Justice White, said:

"But where a duty which a corporation is obliged to render is a necessary consequence of the acceptance and continued enjoyment of its corporate rights, those rights not having been surrendered by the corporation, other considerations are, in the nature of things, paramount, since it cannot be said that the order compelling the performance of such duty at a pecuniary loss is unreasonable. To conclude to the contrary would be but to declare that a corporate charter was purely unilateral, that it was binding in favor of the corporation as to all rights conferred upon it, and was devoid of obligation as to duties imposed, even although such duties were the absolute correlative of the rights conferred."

It may therefore be conceded with absolute certainty that the State of Colorado, and, for that matter, a majority of the other states, require a railroad company while in the possession and enjoyment of its charter powers to furnish adequate facilities to the public on its entire system, and not upon a part.

State ex rel. Caster v. Postal T. & T. Co., 96 Kans. 298, 150 Pac. 554, P. U. R. 1915E, 222.

U. S. v. Trans-Missouri Freight Ass'n, 166 U. S. 290, at p. 332, 41 L. Ed. 1007.

Blythe ex rel. v. C. & A. Ry., 130 Ill. 175.

Missouri Pacific Ry. v. Kansas ex rel. Taylor, *supra.*

State ex rel. Grinsfelder v. Spokane St. Ry. Co., 19 Wash. 518, 53 Pac. 719.

In re Lake Erie, B. G. & N. Ry. Co., (Ohio), P. U. R. 1916F, 553 (558).

In several of the states the statutes expressly prohibit the withdrawal from the public service by a common carrier without the consent of the state, where state grants of land or donations have been made, or where taxes have been voted and paid to the company. In the case at issue there were no donations, state grants of land, etc.

The case before the Commission is one of attempted withdrawal by a common carrier of its entire property from the public service. The Commission will first consider the line of authorities adopting the view that a public utility may withdraw entirely from the public service without the consent of the state.

In the case of People, etc., of N. Y. v. A. & V. Ry. Co., 37 Barbour's Sup. Ct. Rep., 216, at page 220, the court said:

"The question of *abandonment* is somewhat different from the question of *construction*. The right to abandon does not inevitably result from the right not to build. It may be that the company, having accepted the charter, obtained subscriptions to the stock, acquired the right of eminent domain, procured an assessment of damages upon the faith of completing their road, finished their road, put it in operation, exacted tolls and fares, effected to some extent a diversion of travel to their particular road, and assumed to become common carriers of passengers and merchandise, have also incurred some obligations to the public which they are bound to fulfill. The public must have some rights. They grant peculiar and exclusive favors and privileges. Have they not a right to use the road, and to require it to be kept open for public use?

"And yet it does not by any means seem to me clear that the railroad company have not the right to abandon their whole road, if they elect to do so. They use their own cars—they furnish their own motive power. Ordinary vehicles cannot use their road, and in that aspect there is not the same obligation resting upon them as upon turnpike companies. Suppose the road unprofitable and the running of it attended with constant and serious loss; must the company be compelled to sink money forever? If this be so, who would ever invest capital in railroad enterprises? Is not the remedy—the sole remedy—of the public to forfeit the charter for non-user, or to appeal to the legislature for a repeal of the charter. If an injunction will issue to prevent an abandonment of the road, then a mandamus will issue to compel the running of the road. The case is not precisely like that of *turnpikes*. There the public use their own vehicles, and must have the road in order. They have perhaps no other route; and ordinarily there is a special and express obligation in their charter to keep the road open and in good repair, for the use of the public."

In San Antonio St. Ry. Co. v. State ex rel. Elmendorf, Texas Supreme Court, 1897, 35 L. R. A. 662, at 665, it was stated:

"We are of opinion, also, that the fact that the road has been constructed and operated, and that a part is now operated, makes no difference. Under the grant of a privilege to construct and maintain, if after acceptance it is permissive only to construct, it is not obligatory to maintain. But we do not hold that the company can, against the will of the city, operate a part of its line, and not the whole. A privilege to establish an entire line of street railway may be granted when the privilege of constructing and operating a part only would not be; and for a failure to operate a part it would seem that the whole might be forfeited."

Wyman in his work on Public Service Corporations takes the view that a railroad company, even though it has accepted extraordinary privileges, may, if it is ready to give up its charter, withdraw its entire undertaking (1911 Ed., Vol. I., section 296), and says:

"It will have been noted that in the case of the businesses thus far discussed, there has been no question of special obligations by reason of the acceptance from the state of special privileges. In most modern cases it will usually be found that the company in question has some charter obligations to reckon with. It is conceded that so long as any public franchises are exercised public service must be rendered. But even in the case of a railroad company which has accepted extraordinary privileges it would seem that if it is ready to give up its charter it may withdraw from its entire undertaking. In all the cases on this point mandamus to compel the company to resume operations has been refused. It is true that in the actual cases of the railroad thus totally abandoned has almost invariably been operated at a heavy loss. But then, as several cases point out, their owners do not as a practical matter abandon a profitable railroad; even if those who are conducting it tire of operating it they can sell a profitable railroad to those who will maintain it."

In Coe v. Columbus, P. & I. R. R. Co., 10 Ohio State Reports, 372, the court stated:

"If we are at liberty to suggest, on what the legislature very probably relied for the continued operation of a railroad once constructed, we should say, it was the interest of its owners. If it can be operated profitably, the interest of those concerned will rarely, if ever, fail to keep it in operation, so as to subserve the public use. If it cannot, we know of no mode by which the state can compel those by whom it was constructed, to operate it at a loss, and, certainly, there is no mode provided by

which it can be operated at the expense and risk of the state."

And in the case of *Jack v. Williams, 113 Fed. 823 (829), Judge Simonton (in summing up the decision in Commonwealth v. Fitchburg R. R. Co., 12 Gray 180), stated:

"The question is not as to the existence of the duty but as to the extent and qualifications. The duty of a railroad company is no more than to meet the public wants. If trains are run regularly and at moderate fares and cannot be supported, it is because they are not needed."

In the case of Fellows v. City of Los Angeles, 151 Cal. 52, 90 Pac. 137, at page 141, the Supreme Court of California stated:

"We do not mean to say that a corporation engaged in the distribution of water to public uses may not abandon its property and quit the business, without being subject to mandatory proceedings to compel it to continue to carry it on. It may find it impossible to go on. Its supply may become exhausted or be insufficient for paramount needs; the rates fixed by law may be too small to enable it to operate at a profit, or without substantial loss; or, it may conclude, without reason which the law would consider sufficient, that it will not continue. In case of a natural person it might become physically impossible. We do not intend to declare that in any such case mandatory process would be issued to compel the personal performance of the duty."

And again, in Wyman on Public Service Corporations, Vol. 1, section 297, page 258:

"There are sufficient dicta in the books to the effect that a chartered company, even if possessing special

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*Evidently erroneously attributed in above case to N. P. Ry. Co. v. Dustin, 142 U. S. 492, 35 L. Ed. 1092.

privileges, may withdraw from its enterprise altogether."

Then there is the opposite line of cases, in which the courts hold that a public utility or a common carrier may not withdraw from the service to the public without the consent of the state. In the case of Gates v. B. & N. Y. A. L. Ry., 53 Conn. 333, 5 Atl. 695, at page 699, the court stated:

"It is true that the charter is permissive in its terms, and probably no obligation rests upon the corporation to construct the railroad. The option to exercise the right of eminent domain and other public rights is granted. And when that option has been made, and the corporation has located and constructed its line of track, exercising the power of the state in taking property of others; and, in so locating and constructing its road, has invited and obtained subscriptions upon the implied promise to construct and operate its road, has commenced to operate the road under the granted powers, thereby inducing the public to rely, in their personal business relations, upon that state of affairs—by so accepting and acting upon the chartered powers a contract exists to carry into full effect the objects of the charter, and the capital stock, franchises, and property of the corporation stand charged primarily with this trust. The large sovereign powers given by the state to railroad corporations are granted and exercised only upon the theory that these public rights are to be used to promote the general welfare. Having exercised those powers, the corporation has no right, against the will of the state, to abandon the enterprise, tear up its track, and sell its rolling stock and other property, and divide the proceeds among the stockholders.

"The possible effects of the exercise of such a claimed power are utter disaster to the great interests of the state, certain destruction of private property, in

which whole communities, created and existing upon the faith of the continuous use of the chartered powers, are interested, and, indeed, the life of the citizen, as well as his property rights, are thus jeopardized. Upon principle it would seem plain that railroad property, once devoted and essential to public use, must remain pledged to that use, so as to carry to full completion the purpose of its creation; and that this public right, existing by reason of the public exigency, demanded by the occasion, and created by the exercise by a private person of the powers of a state, is superior to the property rights of corporations, stockholders, and bondholders."

In the case of State ex rel. Naylor v. Dodge City M. & T. R. Co., 36 Pac. 747, Mr. Justice Allen, delivering the opinion of the Kansas Supreme Court, states:

"The railway corporation takes its franchise subject to the burden of a duty to the public to carry out the purposes of the charter. The road, when constructed, becomes a public instrumentality, and the roadbed, superstructure, and other permanent property of the corporation are devoted to the public use. From this use neither the corporation itself, nor any person, company or corporation deriving its title by purchase, either at voluntary or judicial sale, can divert it without the assent of the state. It matters not whether the enterprise, as an invesment, be profitable or unprofitable. The property cannot be destroyed without the sanction of that authority which brought it into existence. Without legislative sanction, railroads could not be constructed. When once constructed they may only be destroyed with the sanction of the state."

And again, in the case of State ex rel. Little v. Dodge City M. & T. R. Co., 36 Pac. 755, the court held:

"Where a railway company, owning a short line of railroad of 26 miles only, is wholly insolvent, and such company has no cars or engines with which to operate it,

and no funds or property to be applied for the payment of the expenses of the company or the road, and the use of the road has been abandoned for several months, and the road cannot be operated except at a great loss, by any corporation or person, not taking into account the repairs of the road and the taxes thereon, the Supreme Court, having some discretion in the granting of a writ of mandamus, will not compel, by a pre-emptory writ, the railway company to replace or put into repair its track, a part of which has been torn up, as such an order would be useless or futile, and of no public benefit.''

In the case of State ex rel. Grinsfelder v. Spokane Street Ry. Co., *supra,* the Supreme Court of Washington stated, at page 723:

''We conclude that a corporation of the nature of appellant, receiving its franchises from the state and entering upon the enjoyment of them, cannot cease to perform the functions which were the consideration for the grant of such franchises without the consent of the granting power.''

And in the case of Day v. Tacoma Ry. & P. Co., 141 Pac. 347, at page 349, the court states:

''Under the rule announced in the Grinsfelder Case, neither the grantee nor its successor in interest, having exercised the privileges conferred under a permissive franchise, can, against the will of the state, abandon the enterprise if the abandonment works a prejudice to the public interest. This rule has abundant support in other jurisdictions. (Citing cases.) And this duty survives a transfer of the property to other companies. (Citing cases.) The rule has its basis in the principle that the sovereign powers are granted and exercised only upon the theory that these public rights are to be used to promote the general welfare. Gates v. Boston, etc., R. Co., *supra.*''

Section 4 of Article XV. of the Constitution of the State of Colorado provides that—

"All railroads shall be public highways and all railroad companies shall be common carriers."

In the case of Re Tidewater & Western Railroad Company, reported in P. U. R. 1917E, 798, Commissioner J. R. Wingfield, of the Virginia State Corporation Commission, concurring in the opinion of the Commission, stated at page 827:

"Upon the faith of the declaration of purpose to construct and operate the railroad as a state highway for an unlimited period, the state agrees to allow the railroad company to avail itself of the power of eminent domain. Upon the faith of unlimited duration and operation, the bonds of the railroad company are sold. Upon this undertaking of unlimited operation, farms near the railroad are bought and improved; industries, such as dairies, mill operations, and others, are established, and cities and towns built up, along the line of the railroad. The undertaking of the private parties who apply for the charter is to operate a state highway and to conduct a business affected with the public use for unlimited time and without any right to dissolve at will claimed or accorded prior to the Act of Assembly of 1906. Some such ventures have proved highly profitable. Some have been wrecked by mismanagement. Some have proved unprofitable. Where they become practically insolvent the mortgage holders could have them sold by proceedings in court. In such proceedings the court might appoint a receiver, who, under the orders of the court, could, and generally did, run the road, preserving it as a going concern until there be a sale and reorganization by parties willing to keep the road in operation. In a word, except where the corporation expired by limitation, the whole business was managed according to the principles estab-

lished by experience and exercised by the courts under their common-law power."

In Colorado & Southern R. Co. v. State Railroad Commission, *supra,* involving the right of the Railroad Commission of the State of Colorado, the predecessor of this Commission, to prohibit the Colorado & Southern Railway Company from abandoning a part of a branch line, the Supreme Court of Colorado cited State ex rel. Grinsfelder v. Spokane Street Railway Co., *supra,* Gates v. Boston R. R. Co., *supra.* These cases cited hold that the public utility may not withdraw from the public service without the consent of the state.

At page 95 the court states:

"Counsel for the plaintiff in error cite many authorities in support of their contention that the charter of the company is permissive, that the order of the Commission impairs the obligation of contract and deprives the company of property without due process of law, which we do not deem it necessary to review, as, in our judgment, the cases cited, in connection with those cited from 116, 206 and 216 U. S., sustain our conclusion, that neither of these propositions is tenable."

It would seem from a survey of the cases holding that a common carrier must first obtain the consent of the state before retiring from public service, that with the exception of State ex rel. Naylor v. Dodge City M. & T. R. Co., *supra,* there is no ruling requiring the public utility to operate its property when, after a fair trial, it is unable to earn its operating expenses.

In the case of State v. Central Iowa Ry. Co., et al., 71 Ia. 410, at page 417 (32 N. W. 409), report stated:

"It would seem from some of these authorities, and others cited by counsel, that a corporation may abandon its line, and cease to operate it for good and sufficient cause; and, in the case where the business of a railroad will not pay operating expenses, it would be a most un-

just rule to require it to be operated by proceedings in mandamus."

In the case of Ohio & M. R. Co. v. People, 120 Ill. 200, 11 Northeastern 347, 350, the court states:

"If the line of a road is not capable under any management of being self-sustaining, it simply shows there is no demand or necessity for the road and the sooner therefore the state revokes the franchises the better. A business that will not pay ought not to be followed, as it adds nothing to the wealth of those pursuing it or of the state."

(2) This Commission is of the opinion that a public utility operating within the State of Colorado may not withdraw from public service without the consent of the state, and that, in the event a common carrier is able to show that after a fair trial it is unable to earn its legitimate operating expenses, then the public demands do not require the operation of the common carrier and the state should give its consent to the withdrawal from public service, the dismantling of the property and the sale thereof. This position is, of course, taken subject to the proposition that the utility must first make a showing that an increase of rates commensurate with the value of the service, if permitted by the Commission, would not increase its revenues to the extent of paying its operating expenses and thus creating a public demand.

In the case before the Commission, M. S. Radetsky purchased the property of The Denver, Laramie & Northwestern Railroad Company, including its franchises and privileges, and in company with others organized The Denver, Laramie & Northern Railroad Company, in accordance with the statutes of this state, to operate and to purchase the property sold at the foreclosure sale. It is contended by counsel that M. S. Radetsky could not purchase the franchise of The Denver, Laramie & Northwestern Railroad Company and therefore could not exer-

cise the privileges and assume the obligations to the state, if any there be. It would appear that there is some confusion in the minds of counsel as to the franchises which passed to Mr. Radetsky. (3) The Denver, Laramie & Northwestern Railroad Company did not transfer its franchises to be a corporation to M. S. Radetsky, but the Commission is of the opinion that under the foreclosure sale M. S. Radetsky acquired the ownership of the railroad, the property incident to it, and the franchise of maintaining and operating it as such, and therefore the corporate existence is not essential to its use and enjoyment. In Ruling Case Law, Vol. 7, section 70, page 93, is found the following:

"The franchise of becoming and being a corporation, in its nature, is incommunicable by the acts of the parties and incapable of passing by assignment. The franchise to be a corporation clearly cannot be transferred by any corporate body of its own will. Such a franchise is not in its nature transmissible. The franchise to be a corporation is, therefore, not a subject of sale and transfer, unless the law, by some positive provision, has made it so and pointed out the modes in which such sale and transfer may be effected. The right to be a corporation, or a corporate right of life, is inseparable from the corporation itself. It is a part of it, and cannot be sold or assigned. That franchise is general and dies with the corporation, for it cannot survive dissolution or repeal. Thus, where the statute creating a railroad company authorized it to mortgage its 'charter' and works, it has been held that the corporation had no power to mortgage the franchise to be a corporation so as to pass such right under a foreclosure of the mortgage; the franchise of being a corporation is not impliedly necessary to secure to the mortgage bondholders or the purchasers at the foreclosure sale, the substantial rights intended to be secured, as they acquire the ownership of the railroad,

and the property incident to it and the franchise of maintaining and operating it as such, and the corporate existence is not essential to its use and enjoyment."

In the case of Memphis, etc., R. R. Co. v. Berry, 112 U. S. 609, 28 L. Ed. 837-841, it is stated:

"The franchise of being a corporation need not be implied as necessary to secure to the mortgage bondholders, or the purchasers at a foreclosure sale, the substantial rights intended to be secured. They acquire the ownership of the railroad and the property incident to it, and the franchise of maintaining and operating it as such; and the corporate existence is not essential to its use and enjoyment. All the franchises necessary or important to the beneficial use of the railroad could as well be exercised by natural persons. The essential properties of corporate existence are quite distinct from the franchises of the corporation. The franchise of being a corporation belongs to the corporators; while the powers and privileges, vested in and to be exercised by the corporate body as such, are the franchises of the corporation."

In Pennison v. C., M. & St. P. R. Co., 93 Wis. 344, at page 347, it is stated:

"The Milwaukee & Northern Railroad Company could not, by any act of its own will, transfer its franchise to be a corporation. Such a franchise is not the subject of sale and transfer, unless by virtue of some positive statutory provision. It is entirely distinct from the franchises of the corporation to construct, operate, and manage its road."

The Commission is aware of no Colorado law that prohibits an individual from purchasing a railroad and operating the same and assuming all of the privileges as well as the obligations to the state.

In the case before the Commission, however, M. S. Radetsky, the purchaser of the properties of The Den-

ver, Laramie & Northwestern Railroad Company, together with others, organized The Denver, Laramie & Northern Railroad Company in accordance with Sections 5428 and 5429 of the Revised Statutes of 1908 of the State of Colorado, which are as follows:

"5428. Reorganization of railroad companies.

"Sec. 19. Whenever the railroad, telegraph lines, property and franchises of any railroad company, organized and existing under the laws of this state, shall be sold and conveyed under or by virtue of any power contained in any trust deed or mortgage, or pursuant to the judgment or decree of any court of competent jurisdiction, it shall be lawful to organize a railroad company under the laws of this state, for the purpose of purchasing, maintaining, operating, extending or completing the railroad and telegraph lines so sold and conveyed."

"5429. Power of company so organized.

"Sec. 20. The railroad company so organized shall have power and authority to acquire and purchase the property and franchises so sold and conveyed, and to take, hold, exercise and enjoy all the estate, franchises, rights, powers and privileges, claim or demand in law or equity of the corporation whose property and franchises have been so sold and conveyed, and in payment of the price therefor, such railroad company may issue its capital stock and bonds, and may mortgage its property and franchises with such classification of capital stock and bonds as may be agreed upon by and between such railroad company and the parties beneficially interested, or who may have the ownership and control of such property and franchises."

It was contended by counsel that the purchaser of this railroad property at the foreclosure sale took the property free and clear from the debts and contracts of The Denver, Laramie & Northwestern Railroad Company, as well as from any duty to operate the property

as a railroad. The Commission cannot agree with this contention and is of the opinion that the rule laid down by the Iowa Supreme Court in the case of State v. Central Iowa Railway, *supra,* a part of which decision is quoted with approval by the Iowa Railroad Commission in the case of Smith v. Atlantic S. R. Co., 1915F, P. U. R., 125, is the correct view. The Iowa Railroad Commission in the Smith v. Atlantic case states:

"As to the rights of the purchaser at the foreclosure sale, the defendant company strenuously insisted that it took the property free and clear from any obligation to operate that portion of the line to Northwood. In the present case the defendant, Atlantic Southern Company, likewise claims that it has purchased the property under the foreclosure sale free and clear from any obligations growing out of the contributions made to the original company. Upon this issue the court in the Central Railroad case, 71 Iowa 410, 60 Am. Rep. 806, 32 N. W. 409, stated:

" 'It is to be remembered that when the decree of foreclosure was entered, and the road sold, and the sale approved, and the property conveyed, the old company was, for all practical purposes, wiped out of existence. With the sale of its road, right of way, depot buildings, side tracks, and all appliances necessary to operate the road, the franchise, or right to operate the road, passed with the sale.'

"Further the court stated:

" 'It is true, the purchaser took the road unencumbered by the debts of the old company. But the obligation to operate the road to Northwood was more than a debt. It inhered in the franchise, so to speak, and pertained to the right to operate the road. It did not pass by an assignment proper; it passed to the grantee as a burden or limitation upon the right to operate the road.' "

Counsel for The Denver, Laramie & Northern Railroad Company and M. S. Radetsky strenuously objected to the jurisdiction of the Commission in this case, arguing that if the consent of the state must be had prior to the withdrawal from service by a common carrier this Commission had no authority to determine the facts surrounding the withdrawal. There is a direct conflict in the decisions of the public utilities commissions of the various states regarding this proposition. In the case of Lake Erie, Bowling Green & Napoleon Railway Company, *supra,* the Ohio Public Utilities Commission held that it could not require the continuation of operation of a railroad in possession of a purchaser at foreclosure sale, who, not having paid the purchase price, was reselling the property piecemeal and carrying the proceeds into court under orders which probably gave him the right to dismantle the property, or, if not giving such right, expressly retained jurisdiction in the court to determine all undisposed of questions.

The Ohio Commission, referring to the order of the court in disposing of the property, quoted the language of the court as follows:

"The purchaser to have the privilege of removing said materials, discontinuing the use of said railroad or any portion so purchased." And "further ordered and decreed that any purchaser taking the materials of any portion of the railroad, or any purchaser of any portion of the railroad, with intent to dismantle the same and to abandon its use as a railroad, shall be required, wherever any such materials are on the public streets or highways, to allow the same to remain, or, if removed, to place said streets and highways in as good a condition as they were before removal."

At page 558 the Ohio Commission stated:

"Numerous cases have been cited to us wherein Commissions have made orders requiring railroads to

put on additional trains, to provide further equipment, and afford more adequate service, all of which is regulatory, and is based upon the fact that the carrier is still in operation; and so long as it continues to operate and serve the public, this Commission has ample power to say to what extent its operations shall be, and to determine what is and what is not adequate service to the public; but if the carrier chooses to withdraw entirely from the service of the public it presents an entirely different question. We have no implied jurisdiction, and we find nothing in the statutes which confers this authority upon this Commission."

In the case of Lima-Honeoye E. L. & R. R. Co., P. U. R. 1915C, 871, the New York Commission, discussing the question as to whether a railroad, which was doing an unprofitable business, may properly be abandoned, said:

"While this is doubtless true as a general statement of an abstract right, it does not follow that a railroad corporation may discontinue its entire service at will and itself be the sole judge of the propriety and necessity of such a discontinuance. It would seem that consent of the state is a prerequisite to the absolute abandonment of the enterprise. We are not called upon to determine how such consent may be obtained; sufficient to say that there is nothing in the Public Service Commission law which clothes this Commission with authority either to ascertain and decide whether the facts upon which such a right is predicated actually exist in a given case, or to determine the terms and conditions under which, in a proper case, the abandonment of such an enterprise may be permitted."

The Illinois Public Utilities Commission has in several cases decided that a public utility must first obtain the consent of the Commission before withdrawing from the public service and dismantling its properties. In Pana v. Central Illinois Public Service Co., P. U. R.

1916B, 177, it was held by the Illinois Commission that a steam heating utility could not discontinue service, although operated at a loss, where it had not applied for authority to increase its rates or for permission to discontinue service, and had not given a reasonable notice to the public. In discussing this case, Shaw, Commissioner, at page 179, used the following language:

"The Commission has power and authority to permit a public utility to discontinue serving the public where the conditions justify and demand it, and whether the conditions justify and demand it is a question that should receive full consideration upon a hearing by the Commission in proceedings instituted for that purpose. The consumers should have sufficient notice of the proceedings having been instituted and pending before the Commission, and the public in general which will be affected by the decision should be given sufficient information of such proceedings. The reasons for this are obvious.

"If the public utility is operated at a substantial loss, it no doubt is in a position to know this; and if it cannot serve the public without loss at the rates being charged, it should apply to the Commission for an increase of rates, if it desires such increase; and if it desires to discontinue serving the public, then it is incumbent upon it to apply to the Commission for permission to discontinue such service, and reasonable notice be given by it to the public that it will discontinue service if permitted to do so by the Commission, and that application has been or will be made to the Commission for such permission. The service should be continued until a hearing is had and the question determined in a proceeding instituted for that purpose.

"It is evident that the law does not intend that public utilities may abandon serving the public at any time

they may wish to do so without any regard to the rights or interests of the public.

"In the case under consideration we find that the spirit of the law has not been complied with by the respondent in discontinuing heating service in the city of Pana, and that therefore it should resume the performance of its duty and furnish heat as it has previously been doing until the further order of the Commission."

See also sequel to this case in Ex parte Central Illinois P. S. Co., P. U. R. 1916B, 920.

In the case of Smith v. Atlantic, *supra,* the Iowa Board of Railroad Commissioners held that its consent must be obtained prior to the withdrawal from the public service by a railroad company.

The Virginia State Corporation Commission, in the case of Re Tidewater & Western Railroad Company, *supra,* in an elaborate opinion, held that a railroad corporation cannot abandon its service without the consent of the Commission.

The laws of the State of Colorado pertaining to public utilities require this Commission to enforce the provisions of the Constitution, the statutes, and the laws of Colorado pertaining to public utilities, and in sweeping terms direct the Commission to "generally supervise and regulate every public utility in this state and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power."

(4) While it is no doubt true that it is primarily the duty of this Commission to regulate the rates and service of public utilities, yet this Commission is of the opinion that it is not only the duty of the Commission to determine when a public utility shall withdraw from the public service, but that the laws of Colorado do not permit a public utility to withdraw from the public service without first making a showing to this Commission that the

public demands do not require the continued operation of such utility. It is, therefore, the opinion of the Commission that a public utility operating within the State of Colorado must first obtain the consent of this Commission, representing the State of Colorado, before withdrawal from the public service will be permitted.

In the case of State ex rel. Caster v. Kansas Postal Tel. & Cable Co., *supra,* the Kansas Supreme Court, discussing the question as to whether the laws of Kansas required the defendant to obtain the consent of the Public Utilities Commission before discontinuing its service, and citing sections of the Public Utilities Law of Kansas which are similar to certain provisions in the laws of Colorado pertaining to public utilities, states:

"In view of all this can there be any doubt of the duty of the defendant before dismantling its station at Syracuse and abandoning its business there, to secure the approval of the Commission for such a change in its mode of service? How is the Public Utilities Commission to discharge its important duties if the public service companies may quit business here, there or anywhere in the state without an opportunity to the Commission to determine the propriety of such a course. It is clear that if the defendant may forego its business in Syracuse without the sanction of the Commission, it can close its office in Topeka, Wichita, or Kansas City, without the consent of the Commission. If this public utility, a telegraph company, can close one of its offices and quit business without the consent of the Commission, any other public utility, like the Santa Fe Railway, for example, could close its depot at Dodge City, Hutchinson, or Emporia without the consent of the Commission. Where would this end? If these utility corporations may abandon this particular service without the consent of the Commission, may they not take off their passenger trains, take up and abandon unprofitable branch lines,

change the fares and rates of transportation for passengers and freight, or raise the charge for telegraph messages without the consent of the Commission? These questions answer themselves. To yield approval to the contention of the defendant is to concede that the state's program for the regulation and control of public service corporations is ineffective; that the Public Utilities Act has been enacted in vain."

While it is true that this case refers to the regulation of a public utility enjoying the privileges of operaing as a public utility, it would appear that the reasoning applies to the casé at hand when considered in connection with the broad powers delegated to this Commission by the legislature of the State of Colorado.

The utility must first show that after a fair trial its property is unable to earn its legitimate operating expenses, and that an increase in rates commensurate with the value of the service, if permitted by the Commission will not increase the revenues of the public utility to the end that the legitimate operating expenses may be met.

In the event the public utility desiring to withdraw its entire property from the public service has been unable to earn its legitimate operating expenses after a fair trial of operation, and it appearing that an increase in rates—if granted by the Commission—not exceeding the value of the service, will not produce sufficient revenues to earn the legitimate operating expenses of the utility, the Commission will, upon thirty days notice in writing being given to it by the public utility desiring to withdraw from the public service, permit the public utility to withdraw its entire property from the public service, and will hold that there is no public demand for the continued operation of the utility. It must be understood, however, that the Commission does not hold that a public utility desiring to abandon a branch of its property may do so by showing a pecuniary loss upon the branch

to be abandoned. So long as a public utility continues in the enjoyment of its corporate rights and franchises the law imposes upon it the duty of furnishing adequate facilities to the public upon its entire system, not a part, and it cannot be excused from performing its full duty merely because, by ceasing to operate a part of its system, the net returns would be increased. Colo. & Sou. Ry. Co. v. State Railroad Commission, *supra*.

Whether the railroad involved herein can be so operated as to earn its legitimate operating expenses is a difficult question to determine. After several years of operation by receivers appointed by the district court the property was ordered sold to pay its debts. Several attempts had been made by the court at public sale to dispose of the property, prior to the sale to M. S. Radetsky, and the receivers appointed by the court made many unsuccessful attempts to dispose of the property during the term of receivership. The railroad does not own its terminals in Denver or Greeley, the terminii of the railroad, and it appears to be surrounded on all sides by competing railroads.

After the hearing had begun in this case M. S. Radetsky and The Denver, Laramie & Northern Railroad Company requested the consent of the Commission to sell to the Great Western Railway Company all of the railroad properties now owned and operated by them between a station about five miles north of Milliken, known as Elm, on the line of this railroad, and a point known as Boulder Valley Junction, where the Denver, Laramie & Northern Railroad crosses the Boulder Valley Branch of the Union Pacific Railroad, about 16 miles north of Utah Junction.

Officials of The Great Western Railway Company have agreed to purchase this property and to operate it in connection with and as a part of the system of The Great Western Railway Company, and an agreement

has been entered into between M. S. Radetsky and The Grat Western Railway Company for the sale and purchase of that part of the railroad above described, subject to the consent of the Commission.

The Commission has given careful consideration to the testimony presented by the shippers located along the line of The Denver, Laramie & Northern Railroad, objecting to the abandonment of the entire property, and is of the opinion that there is no public demand for the operation of that part of the Denver, Laramie & Northern Railroad located between Boulder Valley Junction and Utah Junction, from which point the railroad operates over the terminals of The Denver & Salt Lake Railroad Company into Denver, and between Elm, a station located on the line of the Denver, Laramie & Northern Railroad, to a point at the city limits of Greeley, from which point the Denver, Laramie & Northern Railroad operates over the terminals of The Greeley Terminal Railway Company. Every objecting shipper will be given better service by the Great Western Railway Company in the event the Commission permits The Great Western Railway Company to purchase that part of The Denver, Laramie & Northern Railroad located between Boulder Valley Junction and Elm, (between which points there seems to be a public demand for railroad service), than is now given by The Denver, Laramie & Northern Railroad.

ORDER.

IT IS THEREFORE ORDERED: 1. That that part of the railroad property formerly owned by The Denver, Laramie & Northwestern Railroad Company, and now owned by M. S. Radetsky and operated by The Denver, Laramie & Northern Railroad Company, located between Elm, a station located on the line of the Denver,

Laramie & Northern Railroad about five miles north of Milliken, and Boulder Valley Junction, a point where the Denver, Laramie & Northern Railroad crosses the tracks of the Boulder Valley Branch of the Union Pacific Railroad, shall not be dismantled.

2. That the consent of the Public Utilities Commission of the State of Colorado be hereby given, permitting M. S. Radetsky and The Denver, Laramie & Northern Railroad Company to sell to The Great Western Railway Company, under an agreement entered into on the 27th day of August, 1917, that portion of the railroad owned by M. S. Radetsky and operated by The Denver, Laramie & Northern Railroad Company, between Elm, a station located on the line of the Denver, Laramie & Northern Railroad about five miles north of Milliken, and Boulder Valley Junction, a point where the Denver, Laramie & Northern Railroad crosses the tracks of the Boulder Valley Branch of the Union Pacific Railroad, and that The Great Western Railway Company from and after the 7th day of September, 1917, shall operate that part of the railroad so sold as a part of its railway system, subject to the laws of the State of Colorado pertaining to public utilities.

Geo. T. Bradley,
(SEAL) M. H. Aylesworth,
A. P. Anderson,
Commissioners.

Dated at Denver, Colorado, this 1st day of September, 1917.

BROTHERHOOD OF RAILWAY CARMEN
v.
THE ARGENTINE & GRAY'S PEAK RAILWAY CO., ET AL.

(Case No. 121.)

(September 6, 1917.)

COMPLAINT against the common carriers of the State with reference to conditions surrounding the working of railway carmen and petition for car-sheds; held, that Commission should not require construction of car-sheds at present time and complaint dismissed.

APPEARANCES: W. F. Hynes, Esq., for the Brotherhood of Railway Carmen; E. N. Clark, Esq., for The Denver & Rio Grande Railroad Co., and The Rio Grande Southern Railroad Co.; Messrs. C. C. Dorsey and J. Q. Dier, for The Union Pacific Railroad Co., and The Denver Union Terminal Railway Co.; W. W. Garwood, Esq., for The Denver, Laramie & Northwestern Railroad Co., Marshall B. Smith, Receiver; Messrs. Tyson S. Dines and Tyson S. Dines, Jr., for The Denver & Salt Lake Railroad Co., The Northwestern Terminal Railway Co., and The San Luis Southern Railway Co.; James H. Rothrock, Esq., for The Beaver, Penrose & Northern Railway Co., The CrippleCreek & Colorado Springs Railroad Co., The Midland Terminal Railway Co.; T. H. Devine, Esq., for The Missouri Pacific Railway Co., B. F. Bush, Receiver; Messrs. T. R. Woodrow and E. E. Whitted for The Colorado & Southern Railway Co., The Chicago, Burlington & Quincy Railway Co., and The Denver, Boulder & Western Railroad Co.; Messrs. Henry T. Rogers and George A. H. Fraser, for The

Atchison, Topeka & Santa Fe Railway Co., and The Colorado Midland Railway Co., George W. Vallery, Receiver; Messrs. Wm. V. Hodges and D. Edgar Wilson, for The Chicago, Rock Island & Pacific Railway Co., Jacob M. Dickinson, Receiver, The San Luis Central Railroad Co., and The Colorado & Wyoming Railway Co.

STATEMENT.

By the Commission:

On the 16th day of February, 1917, the Brotherhood of Railway Carmen filed with the Commission a complaint in writing alleging, (1) that the members of the Brotherhood of Railway Carmen are employes of the defendant railroad companies and are engaged in the repairing of railroad cars at various points within the State of Colorado; (2) that certain new structures, to be known and designated as "car sheds" and to be located upon the repair tracks of the railroad companies, should be erected by the defendants within the State of Colorado; (3) that at present few, if any, such buildings exist; that employes engaged in repairing cars are generally compelled to do all such work unprotected by any building or shelter; that during inclement weather this unprotected condition causes great inconvenience and loss of time, while during cold and inclement weather the steel tools and instruments used by employes in car repair work become difficult and dangerous to handle and threaten the safety of the bodies and lives of the employes; that the erection of such sheds upon the repair tracks of the railroad companies would greatly promote the security and convenience of employes, facilitate their labor and protect their health.

The complainants ask that the Commission enter an order directing the defendant carriers to erect car sheds on all tracks owned by them within the State of Colorado, where, in the opinion of the Commission, such car sheds will promote the security and convenience of the employes and facilitate their labor.

The Colorado & Wyoming Railway Company filed its answer alleging in effect that it has a coach house at Jansen in which car repairing is done in bad weather. The Great Western Railway Company in its answer denies that its employes are compelled to work in the open, stating that it has a shed in which cars can be repaired. The San Luis Central Railroad Company answered that it does not operate repair tracks and does no car repairing. The Colorado, Wyoming & Eastern Railway Company answered that it employs no car repairers in the State of Colorado, all of its repair work being done in the State of Wyoming. The Crystal River & San Juan Railroad Company, The Argentine & Grays Peak Railway Company and The San Luis Southern Railway Company answered that they employ no men to do car repair work, while The Beaver, Penrose & Northern Railway Company and The Midland Terminal Railway Company answered that they do not own, maintain or operate repair tracks. The Crystal River Railroad Company answered that no car repairers are in the employ of the company at this time. The Pueblo Union Depot & Railroad Company answered that its employs no car repairers, and The Denver Union Terminal Railway Company answered that it has no repair tracks and employs no car repairers.

The Denver & Rio Grande Railroad Company, The Rio Grande Southern Railroad Company, The Chicago, Burlington & Quincy Railway Company, The Colorado & Southern Railway Company, The Denver, Boulder & Western Railway Company, The Colorado & Southwest-

ern Railroad Company, The Denver, Laramie & Northwestern Railroad Company, Marshall B. Smith, Receiver; The Atchison, Topeka & Santa Fe Railway Company, The Colorado Midland Railway Company, George W. Vallery, Receiver; The Cripple Creek & Colorado Springs Railroad Company, The Chicago, Rock Island & Pacific Railway Company, Jacob M. Dickinson, Receiver; The Missouri Pacific Railway Company, B. F. Bush, Receiver; the Union Pacific Railroad Company, The Denver & Salt Lake Railroad Company, all filed answers herein in which they enter a general denial to the allegations in the complaint, alleging that car repair sheds are unnecessary and inconvenient, and would require an outlay of large sums of money in the construction thereof. They also allege that the Public Utilities Commission of the State of Colorado has no jurisdiction over such matters.

Pursuant to notice duly given to all parties in interest, the hearing of this cause convened before the Commission in its hearing room in the State Capitol building in the City and County of Denver, State of Colorado, on the 9th day of May, 1917, at 10:00 o'clock a. m.

The issue presented in this case is whether, on account of the danger to the health, safety and comfort of persons engaged in car repairing in the State of Colorado, due to inclement weather, as alleged by the complainants, the Commission should order the common carriers, defendants herein, to erect and maintain car sheds on their lines of railroad for the protection of their employes, taking into consideration the urgency or neecssity for such protection, together with the outlay or expense in the maintenance and erection of said structures.

The record shows the evidence to be conflicting as to the urgency or necessity for the order prayed for by the complainants, witnesses for both the complainants

and the defendants being very positive in their testimony in support of their respective positions.

J. A. Bodine, who filed the complaint as the representative of the complainants, testified that he is employed by The Denver & Rio Grande Railroad Company in the capacity of car repairer. He further testified that, in his opinion, the time lost by each employe engaged in car repair work on account of inclement weather, amounts to about three days each month; that The Denver & Rio Grande Railroad Company now maintains car sheds at Durango, Leadville and Gunnison; that because of weather conditions at these points car repairers would be unable to work without the protection afforded by sheds; that serious injuries resulting from the breaking of tools on account of cold weather are rare, although minor injuries are of frequent occurrence.

A. C. Stewart, a witness for the complainants, stated that he is employed as a car repairer by The Denver & Salt Lake Railroad Company at Utah Junction. He testified that tools become brittle and therefore are liable to break in cold weather, resulting in injury to workmen; "that in inclement weather if a man is working under a shed he can get more work done than he could out in a storm;" that car repairers are allowed to discontinue work during inclement weather except when engaged in the repair of cars containing perishable freight, but that when they discontinue work because of weather conditions they are not paid for the time so lost.

In answer to questions, Witness Stewart testified that of his own knowledge he could not cite instances of serious injury resulting from inclement weather conditions, slippery tools, etc., although he had knowledge of minor injuries resulting from such causes; that he was unable to state positively the proportion of injuries to car repairers due to weather conditions; that to his knowledge Texas is the only state in which car sheds are

used, but that he had never worked under such sheds.

C. H. Bristol, general superintendent of The Atchison, Topeka & Santa Fe Railway Company at La Junta, Colorado, who appeared as a witness for the defendant, The Atchison, Topeka & Santa Fe Railway Company, testified that his company maintains repair points in Colorado at La Junta, Colorado Springs and Pueblo; that principally, heavy repairing is done at La Junta where the company employs an average of 95 men, who repair about 3,000 cars per month. Witness testified that, in response to his inquiry, his foreman and general car foreman stated that they had had no complaint whatever from the men. Witness further said that The Atchison, Topeka & Santa Fe Railway Company had operated in Colorado for 30 years without car sheds; that at La Junta the car foreman took a vote to determine how their men stood on the question of car sheds, the vote showing 30 men for car sheds and 60 against car sheds. According to witness, it was determined that the 30 men who voted for car sheds were either less experienced or had been with the company for a shorter time than the men who voted against the proposition. Mr. Bristol testified that he had received no complaints as to trouble with tools on account of cold and had no record of injuries resulting from the use of wet or cold tools; that during bad weather car repairers build fires to keep tools warm, while during these periods, also, as many of the men as possible are given work inside of cars, such as flooring and ceiling, and refrigerators. Witness further testified that the cost of constructing car repair sheds at La Junta alone would range from $60,000 to $120,000, according to the area covered and the materials used; that the cost for car repair sheds at Trinidad would exceed $6,000; that he had made no estimate for sheds at Colorado Springs, while at Pueblo it would be impos-

sible to cover the tracks with car repair sheds on account of peculiar conditions there.

Mr. McPartland, master mechanic, The Chicago, Rock Island & Pacific Railway Company, testified that he had received from car repairers in his employ no complaints on account of having to work in the open.

H. W. Ridgway, superintendent of motive power, The Colorado & Southern Railway Company, testified that he has charge of repair work; that he employes 90 to 100 men in Denver and that they prefer to work in the open rather than in car sheds.

H. O. Wagner, chief draftsman for The Colorado & Southern Railway Company, testified that in Denver to erect car sheds for repairing freight cars alone would necessitate a building covering three and one-half acres; that construction of such a building would be governed, to some extent, by the fact that the company's repair tracks are within the fire limits of the city. He estimated that the expense of erecting car sheds would be $1.50 per square foot for 232,000 square feet.

Joseph M. Rosechlaub, assistant engineer, The Denver & Salt Lake Railroad Company, testified that car repair sheds at Utah Junction would cost $24,000 for the building, with an additional cost of $12,500 for heating and other items.

J. A. Tuttle, master mechanic, Colorado division, Union Pacific Railroad Company, testified that the erection by the Union Pacific Railroad Company of car repair sheds in Denver alone would cost $125,000.

Clifton S. Thompson, superintendent of bridges and buildings, The Denver & Rio Grande Railroad Company, testified that the erection by his company of car repair sheds in Denver would cost $7,350.00; at Burnham, $43,836.00; Pueblo, $24,300.00; Alamosa, $22,750.00; Salida, $17,013.00; Grand Junction, $11,400.00. He further stated that the cost to the railroad company of all build-

ings upon which he had made estimates amounted to $171,238.00.

B. F. Frye, general car foreman, The Denver & Rio Grande Railroad Company, testified that he considered car repair sheds unnecessary; that car repairers do just as good work outdoors as they do when protected by sheds.

C. C. McKeroon, a car inspector for the Union Pacific Railroad Company, testified that he had worked for the Union Pacific Railroad Company both as a car repairer and as a car inspector. He expressed the opinion that car repair sheds would obstruct the light and cause the accumulation of much dust and rubbish, thereby subjecting the car repairers to unhealthy working conditions. Witness testified that he had discussed the subject with his men and that they were of the same opinion as he.

G. Johnson, a car repairer in the employ of the Union Pacific Railroad Company, testified that he is employed as a car repairer; that in his opinion car repair sheds would cause the loss of much time and would also be unsanitary; that they would be beneficial for a few days in particularly cold weather, but, considered from the standpoint of all seasons of the year, they would be a menace to the men's health. Asked if he had discussed the desirability of car sheds with other car repairers employed by the Union Pacific Railroad Company, witness answered:

"I have talked with a few of them, but we have not concluded the matter, so we could not say. We think that it is all right, but at the same time in nice weather they want to be on the outside in the open, but in bad weather they would like the shed."

P. McNamara, called as a witness for the defendant, the Union Pacific Railroad Company, testified that he has been car foreman of the Colorado division of the Union

Pacific Railroad Company for 14 years; that there are an average of 95 men employed in Denver by the Union Pacific Railroad Company in car repairing; that about 100 cars are repaired per day; that to erect car repair sheds would require reconstruction of the repair tracks and would necessitate the laying out of an entire new repair track; that it would be of more advantage to the men employed the year around to work in the open than in a shed; that in his opinion the comfort afforded by sheds during a few stormy days would be far exceeded by the discomfort of the hot weather under a shed; that the stench from stock cars and cars in which fertilizer had been loaded would be bad; that the accumulation in cars in which coal had been hauled would cause dirt and dust in the sheds, while the gas from switch engines and forges would add to the conditions detrimental to health.

From the record before it the Commission finds the testimony to be very much at variance as to the desire of the men engaged in car repair work for the erection of car sheds, although virtually all agree that in extremely inclement weather car sheds would be desirable. Colorado, however, does not experience the extreme climatic conditions of many northern states. The defendant, The Denver & Rio Grande Railroad Company, operates the principal mountain lines in Colorado, and the testimony shows that this defendant maintains car sheds at Durango, Leadville and Gunnison, which points, on account of altitude, sometimes experience extreme climatic conditions.

Considering the testimony as a whole, the Commission is of the opinion that there are days during the winter months when it would be more conducive to the health and comfort of the men employed, and when it probably would effect a saving of time and money for the railroads, if the railroads maintained car repair sheds

at different points where car repairing is done. On the other hand, with the exception of the days referred to, the men seem to prefer to work in the open. The Commission, however, must consider the benefit to be derived from the construction and maintenance of car repair sheds along with the cost of building and maintaining such structures, inasmuch as there can be no question that, were the Commission at this time to order the erection of car repair sheds by the various defendants herein, such order would entail upon the defendant carriers an expense running into the hundreds of thousands of dollars.

In a proclamation issued on April 16, 1917, the President of the United States said:

"To the men who run the railways of the country, whether they be managers or operative employes, let me say that the railways are the arteries of the nation's life and that upon them rests the immense responsibility of seeing to it that those arteries suffer no obstruction of any kind, no inefficiency or slackened power."

The railroads' committee on national defense, in response to the above, on July 31, 1917, issued the following circular addressed to public service commissions and to all state, county and municipal authorities:

"The American Railway Association's Special Committee on National Defense now co-operating with the government to further the successful prosecution of the war respectfully invites your consideration of the following suggestions as means to facilitate the efforts of the committee:

"The present emergency has imposed upon the railroads a very unusual strain in transporting men, food, coal, munitions and materials in augmented quantity. This burden, while cheerfully undertaken, requires every ounce of energy, every unit of rolling stock, every dollar

of capital, every bit of supplies and coal which the railroads can command.

"It is the opinion of this committee that all efforts not designed to help directly in winning the war should be suspended during the period of war. * * *

"Therefore this committee earnestly recommends that during the war the railroads be required by the public authorities to make improvements and carry out projects involving the expenditures of money and labor only when they are absolutely essential for war purposes and public safety. The prevailing high interest rate on money, the difficulty of raising money in competition with the tax-free issues of the government, the excessive cost of supplies and labor, the delay in obtaining material, the possible blockade of traffic and the diversion of labor all contribute to make non-essential construction undesirable during the war.

"The committee considers that the erection of new stations and the elimination of grade crossings are among the non-essential improvements which should be deferred at this time. We respectfully suggest that the basis for consideration of new projects at this time should be the increase in the capacity of the carriers for national defense. * * *"

While it realizes there are days during the winter months when car repair sheds would be a convenience and a benefit to the men employed—even though such days may be relatively few—yet, after careful consideration of the evidence presented in this case, together with the reasons why no unnecessary requirements should be placed upon the transportation lines during the period of the war emergency, as cogently set forth by the President of the United States in his proclamation and discussed at greater length in the circular of the committee on national defense, the Commission is of the opinion

that the urgency is not so great that an order for the erection of car sheds should be issued at this time.

The present is a time of abnormal conditions. At few periods in the history of this country have prices reached such high levels. The price of steel and other materials that would enter into the construction of car repair sheds, as well as the price of labor, is higher now than at any other time in recent years.

Even though the evidence before it proved conclusively that car sheds are actually necessary, all things considered, the Commission would not deem this the proper time to order the construction and maintenance of such sheds. In view of these facts the Commission is of the opinion that it would be an injustice at this time to order the construction of car repair sheds by the common carriers named defendants herein.

ORDER.

IT IS THEREFORE ORDERED, That the complaint of the complainant in this cause be, and the same hereby is, dismissed.

(SEAL)

GEORGE T. BRADLEY,
M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 6th day of September, 1917.

THE EAST DENVER BUSINESS AND PROPERTY ASSOCIATION, a Corporation,

v.

THE DENVER TRAMWAY COMPANY, a Corporation,

(Case No. 116.)

(September 10, 1917.)

ORDER UPON THE APPLICATION OF THE EAST DENVER BUSINESS AND PROPERTY ASSOCIATION FOR A REHEARING.

STATEMENT.

By the Commission:

On the 1st day of September, 1917, there was filed with the Commission by The East Denver Business and Property Association, complainant in the above entitled cause, a motion petitioning for a rehearing as to that part of the opinion and order of the Commission, entered in this cause on the 22nd day of August, 1917, which proposes to change the routing of the Lawrence Street car line between Curtis and Lawrence Streets and requiring said line to be operated on 18th Street between Curtis and Lawrence Streets instead of on 20th Street between Curtis and Lawrence Streets.

It is alleged by the petitioner that the "matter of tracks and service upon 20th Street was not involved in the pleadings in this cause," and that "there has been no hearing by this Commission as to the propriety of changing the routing of said cars and removing them from 20th Street."

It is further alleged that "that part of the order of the Commission should not stand because an important section of the city of Denver is served solely by that portion of the Lawrence Street line now operated on 20th

Street between Curtis and Lawrence Streets, which includes factories and stores employing a large number of persons whose only transportation to and from work is the Lawrence Street line, and in the event the order of the Commission should stand the territory tributary to the Lawrence Street line on 20th Street will be deprived of sufficient and adequate transportation facilities reasonably necessary to accommodate the traffic of that section."

The complaint of the Complainant in this cause alleged that The Denver Tramway Company was not at the time of the hearing furnishing or maintaining adequate or sufficient service on 17th or 18th Streets for the patrons of the defendant and the public, and while it is true that the complaint particularly calls the attention of the Commission to the fact that street car patrons bound for certain buildings and theatres in the city of Denver were compelled to walk across town from 15th Street, it was also generally alleged that 17th and 18th Streets were discriminated against in favor of 15th Street. At the hearing of this cause the Commission considered very carefully testimony pertaining to street car service in the downtown district of the city of Denver. It became necessary for the Commission to order the re-routing of cars, extensions of track, and the construction of a depot loop, to give better street car service to street car patrons bound for or coming from 16th, 17th and 18th Streets and the Union Station.

The petition of the complainant objects to no part of the Commission's order except where the Commission has ordered the Lawrence Street line to be operated on Curtis Street between 20th and 18th Streets and on 18th Street between Curtis and Lawrence, thence in a westerly direction on Lawrence Street. This change of routing will necessarily bring patrons of the Denver Tramway two blocks nearer the center of the business district and will in many cases obviate the necessity of transfer-

ring at 17th, 16th or 15th Streets, and the change will result in far better street car service to a majority of the street car patrons with very little inconvenience to a small number. The Bayly-Underhill Manufacturing Company and The Solis Cigar Company, wholesale establishments, appear to be the only large business houses located along the tracks to be abandoned under the order of the Commission. The change ordered by the Commission gives the employes of these factories a street car service within a walk of one block, and by operating west on Curtis Street from 20th Street to 18th Street the street car patrons are brought much nearer to important centers of business, such as the Post Office, the Denham theatre, the Club building, Cooper building, Quincy building, Ernest & Cranmer building, moving picture theatres located on Curtis Street, Railway Exchange building, Colorado National Bank building, Boston building, Century building, Colorado building, First National Bank building, Ideal building, Albany Hotel, Equitable building, and the California building. The proposed change certainly gives a far better service to those bound to or from 18th Street, and, in the opinion of the Commission, works no injury on any street car patron, and, as has been said by the Commission in this case and many others, the appreciation or depreciation of property values is not at issue in a case of this nature, but rather the service to the traveling public.

ORDER.

IT IS THEREFORE ORDERED, That the motion of the Complainant for a rehearing be, and it is hereby, overruled.

Geo. T. Bradley,
(SEAL) M. H. Aylesworth,
A. P. Anderson,
Commissioners.

Dated at Denver, Colorado, this 10th day of September, 1917.

F. N. COCHEMS
v.
THE DENVER & RIO GRANDE RAILROAD COMPANY.

(Case No. 57.)

(September 11, 1917.)

COMPLAINT against alleged discrimination practiced by The Denver & Rio Grande Railroad Company in furnishing free transportation to company physicians and surgeons; held that carrier was entitled to give such free transportation under the act and no discrimination resulted thereby.

APPEARANCES: G. K. Hartenstein, Esq., for F. N. Cochems, Complainant; E. N. Clark, Esq., for The Denver & Rio Grande Railroad Company, Defendant.

STATEMENT.

By the Commission:

On the 9th day of May, 1916, F. N. Cochems filed with the Commission a complaint in writing alleging that the defendant railroad company had been and is granting to certain physicians and surgeons on its line of railroad, free or reduced transportation, and that said physicians and surgeons, whose names are set forth in the complaint, are not entitled to such free or reduced transportation within the meaning of the Public Utilities Act.

On May 24, 1916, the defendant, The Denver & Rio Grande Railroad Company, filed its answer, admitting that the physicians and surgeons named in the complaint are engaged in the practice of their profession in the counties in which they reside, and that free transportation is furnished to the said named physicians and sur-

geons, but alleging that such physicians and surgeons are entitled to free transportation within the meaning of Section 17 of the Public Utilities Act. In its answer, the defendant also alleges that these physicians and surgeons are regularly retained by written contract with defendant. The defendant railroad company, on the same date, filed with the Commission its motion to dismiss the complaint herein.

The Commission is of the opinion that the only issue before it is the construction of Section 17 of the Public Utilities Act, as to whether physicians and surgeons, who are admittedly retained as the physicians and surgeons of the defendant company, are prohibited from receiving free transportation under said Section 17 of the Public Utilities Act.

It seems to be the contention of the complainant herein that the physicians and surgeons named in the complaint are not constantly in the employ of the defendant, and for that reason they are not entitled to free transportation, except when actually performing services for the defendant railroad company.

It is the contention of the defendant that physicians and surgeons do not come within the meaning of the word "employes," but that under the statute they are permitted transportation as a distinct class by themselves, they being retained by the defendant company, under written contract, to hold themselves in readiness to give to the defendant their services at any and all times, and are, therefore, actually in the service of the defendant at all times.

That part of Section 17 of the Colorado Public Utilities Act of 1913 which must be construed in deciding the instant case reads as follows:

"Section 17. (a) No public utility subject to the provisions of this act shall, directly or indirectly, issue, give or tender any free service, ticket, frank, free pass,

or other gratuity, or free or reduced-rate transportation for passengers between points within this State, except to the members of the commission and their agents and employes while in the discharge of their public duties, and except to its employes and their families, its officers, agents, surgeons, physicians, and attorneys at law; * * *"

It will be noted that the Act in the first instance excepts the employes of the defendant company and their families. Further in the same paragraph, it also excepts physicians and surgeons, but does not except the families of physicians and surgeons. It would seem, therefore, that physicians and surgeons are excepted as a different class from that of others.

While it may be considered that physicians and surgeons are in a sense in the employ of the defendant company, yet it is evident that the legislature did not intend to exempt them from the prohibition for the same reasons that other employes are exempted. This is evident from the wording of the Section, and the fact, as has been said, that members of families of physicians and surgeons are not permitted free transportation.

In Slater v. Northern Pacific Railway Company, 2 I. C. C. R. 359, 2 I. C. R. 243, it was held that a person not in the regular and stated service of the carrier and not receiving any wages or salary under a contract of employment, is not entitled to free transportation. The section of the Interstate Commerce Commission Act prohibiting free transportation is similar to Section 17 of the Public Utilities Act of Colorado.

The Commission is of the opinion that the decision in the Slater case is sound. It is also of the opinion that it was the intention of the legislature in framing the Colorado law to permit persons actually and steadily employed by a common carrier to receive free transportation for themselves and their families, and to forbid the issuance of free or reduced-rate transportation to

persons only occasionally employed by a common carrier. It seems, however, that physicians and surgeons are classed differently from the ordinary employe, as are also the officers of the carrier. The families of physicians and surgeons who are not regularly employed by carriers, for example, are not allowed free interstate transportation, as was held by the Interstate Commerce Commission in Conference Ruling No. 95. Under Section 17 of the Public Utilities Act of Colorado, it was evidently the intention of the legislature that physicians and surgeons should be allowed free transportation, while the Act makes no provision for the issuance of such transportation to the families of physicians and surgeons employed by a common carrier.

It appears to the Commission that there is a good reason why physicians and surgeons are classified separately from the ordinary employe. While physicians and surgeons may not be actually performing services for the carrier at all times, they must necessarily be in the service of the carrier at all times; they hold themselves in readiness at any and all times in order to render their best services to the carrier in times of accident or distress; they must be ready at a moment's notice to go to the scene of an accident to relieve distress and thereby render the service for which their employment is intended. There may be good reasons why physicians and surgeons in the employ of a railroad company should have free transportation in their possession, when it is not necessary that the ordinary employe should continuously have free transportation.

It is alleged by the complainant that, notwithstanding the fact that physicians and surgeons are retained by the defendant carrier under a contract, they are also practicing their profession outside of the service they render to the defendant, and that a very small part of their time is taken up in the services actually performed

for the defendant. This may be true. It is also true that directors and other officers of the defendant carrier are frequently engaged in other lines of business, yet this does not alter the situation. Directors and officers of a common carrier are permitted under ruling of the Interstate Commerce Commission to receive free transportation, although their duties in connection with the common carrier may constitute only a small part of their business activities.

In Cochems v. D. & R. G. R. R. Co., 1 Colo. P. U. C. 149, decided November 15, 1915, this Commission held that common carriers, under the Public Utilities law, are prohibited from granting free or reduced transportation to physicians and surgeons, in the employ of a *carrier's Relief Association,* who do not devote their entire time to the work of the association, and that the Commission is without power to prohibit the granting by carriers of free, or reduced, transportation to the carrier's physicians and surgeons when within the meaning of the law.

The Commission is of the opinion that the decision in the above case does not conflict with the reasoning in this case. The law provides that physicians and surgeons in the employ of common carriers may receive free transportation, but it does not provide that physicians and surgeons of a relief association under the supervision of a common carrier may receive free transportation, as will be seen by reading the extract from the law above quoted. The decision in Cochems v. D. & R. G. R. R. Co., *supra,* particularly states that the Commission is without power "to prohibit the granting by carriers of free or reduced-rate transportation to carrier's physicians and surgeons, when within the meaning of the law."

Section 17 of the Public Utilities Act contains a provision that "the granting or issuing of any free service, ticket, frank, free pass, or other gratuity, or free or re-

duced-rate transportation shall be subject to such reasonable restrictions as the commission may impose."

Therefore, it appears that at any time the Commission is convinced that this privilege is being violated, restrictions can be imposed to safeguard and prevent abuse of such privilege.

It is the opinion of the Commission that it was the intention of the legislature to permit carriers to give free transportation to their physicians and surgeons, subject at all times to such reasonable restrictions as the Commission may impose.

ORDER.

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

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 11th day of September, 1917.

IN THE MATTER OF THE APPLICATION OF THE DENVER & RIO GRANDE RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS FIFTH STREET, IN THE CITY OF DELTA, COLORADO.

(Application No. 1.)

September 22, 1917.)

STATEMENT.

By the Commission:

This application was filed by The Denver & Rio Grande Railroad Company on behalf of the Colorado Milling & Elevator Company. It is desired to construct a spur track from the main line of the applicant to the property of the Colorado Milling & Elevator Company at Delta, Colorado, the construction of which will necessitate the crossing of Fifth Street at grade.

From an inspection made by the Commission it appears that the location in which it is desired to construct this track is in the outer part of the city; that practically the only traffic over such crossing is vehicular, and that little or no danger will result from the construction of said crossing. The City Council of Delta has passed a resolution recommending that the applicant be allowed to construct this spur track, provided the track be constructed on grade with the main track, and that the ground between the tracks be left and maintained on a level with the crossings the full width of the street.

As no reason exists as to why the application should not be granted, the Commission will issue an order permitting the construction of the crossing at grade on Fifth Street, at Delta, Colorado.

ORDER.

IT IS HEREBY ORDERED, That permission be hereby granted The Denver & Rio Grande Railroad Company to construct a spur track at grade across Fifth Street, in the city of Delta, Colorado, which shall be constructed in accordance with the plans filed with the Commission in this cause, and in accordance with the plans and specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P. U. C. 128, Case No. 56.

The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 22nd day of September, 1917.

IN RE APPLICATION OF THE DENVER & SALT LAKE RAILROAD COMPANY TO INCREASE PASSENGER RATES.

(Case No. 126.)

Apportionment—Expenses—Passenger and freight services.

(1) It is well recognized that approximately two-thirds of a carrier's operating expenses may be definitely assigned to the service in which they are incurred.

Apportionment—Fixed charges—Train-mile basis.

(2) The Commission could not approve an apportionment of the fixed charges of a carrier between freight and passenger services on a train-mile basis.

Rates—Reasonableness—Value of service.

(3) Reasonable compensation for the service actually rendered is all that a common carrier is entitled to ask from the public.

(September 25, 1917.)

APPLICATION of The Denver & Salt Lake Railroad Company to increase passenger fares from 4½ cents to 5 cents per mile; increase granted but no change allowed in mileage fare of 4 cents per mile.

APPEARANCES: Tyson S. Dines and Tyson S. Dines, Jr., for the applicant.

STATEMENT.

By the Commission:

On the 16th day of April, 1917, there was filed with the Commission by The Denver & Salt Lake Railroad Company, through W. E. Morse, its vice-president and general manager, a written application alleging in substance that on the 8th day of May, 1915, the Commission had ordered the applicant in this cause to establish and make effective on or before the 1st day of July, 1915, rates for passengers between points on its line at 4½

cents per mile as its standard one-way passenger fare, and to sell round-trip tickets limited to not less than fifteen days from date of purchase at the sum of double the one-way fare less 10 per cent, and to sell a mileage book on its line of railroad for the sum of $30.00, having attached therein one thousand coupons and entitling the holder and any member of his immediate family to travel at a rate not to exceed 4 cents for every mile actually traveled; the mileage books to be on sale in the State of Colorado at points where The Denver & Salt Lake Railroad Company has employed a ticket agent, such mileage books to be good for passage for a period of one year from the date of sale.

The applicant further alleged that it complied with the order of the Commission and that, notwithstanding the earnest and continued efforts to increase the volume of its passenger traffic, the reductions in said passenger fares established by the Commission have involved and, unless the prayer of this application be granted, will continue to involve a serious and irreparable loss and injury to the applicant; that the passenger train service revenue of the applicant for the calendar year 1916 amounted to $39,281.89 less than the passenger expenses including taxes and bond interest, apportioned on a train mile basis, and that the total deficit from all operations, both freight and passenger, including taxes, amounted to $184,897.08.

The applicant further alleges that the rates established by the Commission's order of May 8, 1915, effective July 1, 1915, are wholly unremunerative and inadequate and do not yield a fair, just and reasonable return for the service rendered.

The applicant prays for authority to increase its passenger rates to 5 cents per mile for its standard one-way fare and double the one-way fare less 5 per cent for its round trip fare between points on its line.

On the 9th day of August, 1917, the Commission issued a notice to the applicant permitting it to appear before the Commission on Tuesday, the 11th day of September, 1917, at 10:00 o'clock a. m., and to present to the Commission such testimony as the interests of the applicant seemed to require. The Commission also gave notice to the public of the matters and things contained in the application, and through the public press announced the date of the hearing in ample time for all those living alone the line of the petitioning railroad to appear before the Commission and offer such testimony as their interests seemed to require.

The original corporation operating this line of railroad was The Denver, Northwestern & Pacific Railway Company, which was placed in the hands of receivers on May 2, 1912. The road was then operated by the receivers until May 9, 1913, on which date it was sold at foreclosure sale and reorganized under the name of The Denver & Salt Lake Railroad Company. On August 17, 1917, since the filing of this complaint, the road was again placed in receivership, and at present is being operated by W. R. Freeman and C. Boettcher, receivers.

The hearing of this cause convened before the Commission at its hearing room in the State Capitol building in the city and county of Denver on Tuesday, September 11th, at the hour of 10:00 o'clock a. m., and witnesses for the railroad company testified and presented exhibits in support of its application. While no objectors appeared before the Commission, the issues involved have received the serious consideration of this Commission from the viewpoint of the public.

On the 8th day of May, 1915, the Commission, after a hearing, issued an order, in Case No. 11, In Re Passenger Rates and Rules, 1 Colo. P. U. C. 35, directed against all railroads operating within the State of Colorado engaged in the transportation of passengers, pro-

viding reasonable rates and charges for passenger transportation on each railroad. After a discussion of the issues involved in Case No. 11, the Commission directed the following order against the Denver & Salt Lake Railroad:

"The Denver & Salt Lake Railroad Company shall have a rate not to exceed 4½ cents a mile on its entire system within the State of Colorado, the above rate being adjudged reasonable in consideration of the said defendant offering for sale a mileage book with the following regulations:

"1. The mileage book on the Denver & Salt Lake Railroad shall be sold for the sum of $30.00, having attached therein one thousand coupons, and shall entitle the holder and any member of his immediate family to travel at a rate not to exceed four cents for every mile actually traveled.

"2. The mileage books shall be on sale at every station in the State of Colorado where the defendant has employed a ticket agent.

"3. This defendant shall sell round-trip tickets, limited to not less than fifteen days from the date of purchase, between all stations on its lines in Colorado, for the sum of double the one-way fare less ten per cent.

"4. This order shall become effective at a date not later than July 1, 1915.

* * * * *

"All mileage books covered by this order shall be good for transportation within the State of Colorado for a period of one year from the date of sale."

The exhibits of the applicant purported to show the passenger revenues and expenses of the petitioners for a period of months, comparative cost prices of various materials, a comparative statement of income account for the twelve months ended June 30, 1917, and a comparative statement of income account for the seven

months ended July 31, 1917, together with an exhibit showing detailed passenger statistics by months for the year ended December 31, 1916.

The Denver & Salt Lake Railroad operates between Denver and Craig, Colorado, crossing the Continental Divide at an altitude of 11,660 feet with 44 miles of 4 per cent grade, 27 miles ascending from the west and 17 miles descending. On the other portions of the road the grades reach 2 per cent, and the Commission has become thoroughly acquainted with the many difficulties of operation confronting this railroad. It is doubtless true that no other standard gauge railroad in the United States encounters the difficulties of operation which this railroad contends with throughout the operating year.

On December 9, 1916, the Commission, in Citizens of Grand Lake v. Denver & Salt Lake Railroad Company, 3 Colo. P. U. C. 33, issued an order permitting the defendant company to change its daily passenger train service to tri-weekly service during certain winter months, and while it is true that the order of the Commission saved to The Denver & Salt Lake Railroad Company approximately $10,000.00 per month in operating expenses, the real basis of the order was the operating conditions which this railroad was compelled to meet during the season of heavy snows, and in that case the testimony developed the fact that trains were continuously delayed and stalled because of unusual snowfall and blizzards in the mountains. Occasions were cited wherein passenger trains were held in snow drifts for periods of days, and where engines continually froze to the rails, so that operation became impossible. This railroad was constructed for the purpose of opening and developing the vast territory to the west of Denver, piercing the Rocky Mountains by a tunnel, and completing a direct line of railroad to Salt Lake City, Utah. The railroad is only partially constructed, operating to Craig, Colorado, and

although surrounded by the most productive coal fields in the State of Colorado and a vast agricultural region, the towns and counties through which it operates are still in the course of development.

The figures relating to passenger revenues, expenses and other statistics, in the exhibits of the applicant, cover the period from January, 1916, to and including July, 1917, only, and the Commission has therefore compiled from the annual reports of the applicant on file with the Commission a tabulation of passenger earnings and statistics for the years from 1911 to 1917. Where the reports were separated by periods during such years owing to the operations by the carrier itself and by receivers, the Commission has combined the basic figures and arrived at the averages from such combinations.

STATISTICS OF PASSENGER OPERATIONS OF DENVER & SALT LAKE RAILROAD.

YEAR ENDED JUNE 30TH.

	1911	1912	1913	1914	1915	1916	1917
Average mileage operated (miles)	214.58	214.58	214.58	238.21	255.46	255.46	255.46
Passenger revenue	$311.734	$290.945	$296,092	$338,110	$321,469	$325,115	$330,406
Proportion of total operating revenue, per cent	29.85	24.29	25.82	27.83	19.62	17.15	16.57
Number of passengers	138.987	163,183	154.856	174,147	177,891	163,572	125,275
Passengers one-mile	9,571,294	8,387,069	8,324.036	10.002,131	8,482,015	8,812,973	8,719,446
Passengers one-mile per mile of road	44.605	38.619	38.792	41,989	33,203	34,498	34,130
Average distance per passenger (miles)	68.86	51.39	53.75	57.43	47.68	53.82	69.60
Average revenue per passenger	$2.43	$1.78	$1.91	$1.94	$1.81	$1.96	$2.64
Revenue per passenger-mile	$.0326	$.0346	$.0355	$.0338	$.0379	$.0369	$.0379
Passenger service train revenue	$348,395	$317,692	$333,504	$381,283	$386,622	$392,264	$389,429
Per mile of road	$1,624	$1,480	$1,555	$1,601	$1,513	$1,535	$1,524
Per train-mile	$1.94	$1.75	$1.91	$2.13	$1.95	$1.99	$2.34
Passenger train-miles	179,566	181,700	174,787	167,379	190,448	196,860	166,536

It will be seen from this table that the applicant handled fewer passengers during the fiscal year 1917 than in any previous year since 1911, although the number of passenger-miles has remained as great as during the two preceding years. This, of course, is accounted for by the fact that the average trip of each passenger has increased from 47.68 miles in 1915 to 69.60 miles in 1917. The applicant accounts for the increase in the average journey, and for the constancy of the average revenue per passenger-mile, by a large increase in the movement of home-seekers to points located at the western extremity of its line, and a large falling off of the intermediate travel. The home-seekers' rates are in effect on each Monday and are evidently utilized to a large extent. The applicant has included, within its exhibits of monthly passenger statistics, the expenses of its passenger train service. These expenses have been apportioned between freight and passenger service in accordance with the formula of the Interstate Commerce Commission promulgated after the opinion of that Commission In Re Separation of Operating Expenses, 30 I. C. C. 676. The Rules prescribed governing the separation of operating expenses between freight service and passenger service became effective July 1, 1915, and applied only to carriers having operat-revenues of over $1,000,000.00 per annum. The first reports filed by the large carriers with this Commission showing the separation of operating expenses were for the calendar year 1916. None of these reports, however, segregates such apportionments as between intrastate and interstate traffic, nor has this Commission called for such information. Inasmuch as the applicant's entire line is within the State of Colorado it will not be necessary to require any such segregation to determine the expense within the state. The passenger traffic of the applicant is entirely local, and no interline tickets are sold to or from points on other carriers. A consideration

of the ratios of passenger earnings and expenses for the calendar year 1916 will be as well representative of the conditions on the applicant's road as any period that might be selected.

The passenger and freight operating earnings and expenses for the year 1916, together with the percentages of the total amounts, as submitted by the applicant, are as follows:

	Revenues	Per Cent.	Expenses.	Per Cent.
Total	$1,913,078	100.	$1,436,069	100.
Freight	1,495,832	78.19	1,203,092	83.78
Passenger train service	400,226	20.92	232,977	16.22

In ascertaining the cost of operations of freight or passenger traffic consideration must be given, in addition to the actual operating expenses, to the fixed charges. To the amount of $232,976.94, the figure claimed by the applicant to be the proportion of operating expenses assignable to passenger train service, the applicant has added the sum of $206,530.75, making the total passenger expenses $439,507.09, and a claimed deficit in passenger train operations of $39,281.99. The applicant arrives at the figure $206,530.75 by apportioning the fixed charges on a train-mile basis, deduced from the following figures:

Taxes	$105,098.98
Interest on funded debt	467,088.42
Rent for leased road	108,126.96
	$680,314.36
Less Income from leased road	12,500.00
	$667,814.36
Apportioned to passenger train service on train-mileage basis	$206,530.75

The question of separation of operating expenses between freight and passenger services has been considered in many cases, both before commissions and courts.

From 1888 to 1893 reports that were filed with the Interstate Commerce Commission separated the expenses between freight and passenger services. The separation during these years was on the basis of dividing expenses which were "naturally chargeable" to one or the other service. In 1894 the Interstate Commerce Commission relieved the carriers of such statistics, and it was not until 1914 that consideration was again given to the necessity of requiring these statistics. The Interstate Commerce Commission, In Re Separation of Operating Expenses, *supra,* stated that the methods of railway accounting and accounting generally had advanced sufficiently in the preceding twenty years to warrant the keeping of such separation statistics. At page 679 the Commission stated:

"The assumption that railway cost accounting cannot be made sufficiently accurate for useful consideration in dealing with rates does not seem warranted. Although not possible twenty years ago, it would appear that at the present time approximately two-thirds of the operating expenses of a railroad can be separated in a reasonably satisfactory manner. The separation of the remaining one-third is useful if a basis is selected which equitably measures the use which either service makes of common facilities. This indicates the extent to which freight expenses can be subdivided among the various branches of freight traffic. Just as fuel, wages, and other direct expenses can be ascertained as between freight and passenger trains, so can they be distinguished as between individual trains."

The Interstate Commerce Commission therefore, on June 15, 1915, issued "Rules governing the Separation of Operating Expenses Between Freight Service and Passenger Service on Large Steam Railways," effective July 1, 1915. Many of the carriers had previously kept their accounts in such manner as to show a separation

of freight and passenger expenses, the separations being made according to the carriers' own formulae. The courts had also considered many cases in which was involved the question of proper apportionment of freight and passenger expenses, the most important being the Minnesota Rate Cases, Simpson v. Shepard, 230 U. S. 350, 57 L. Ed. 1511. Other court and commission cases in which the same question has been considered are those of:

Norfolk & Western Ry. Co. v. Conley, 236 U. S. 605, 59 L. Ed. 745;

Louisville & Nashville R. Co. v. R. R. Com., 208 Fed. 35;

Missouri, K. & T. Co. v. Love, 177 Fed. 493;

Chicago, M. & St. P. R. Co. v. Tompkins, 176 U. S. 167, 20 Sup. Ct. 336, 44 L. Ed. 417;

St. Louis & S. F. Co. v. Hadley, 168 Fed. 317;

Ames v. Union P. R. Co., 64 Fed. 165;

Smyth v. Ames, 169 U. S. 466, 18 Sup. Ct. 418, 42 L. Ed. 819;

Shepard v. Northern P. R. Co., 184 Fed. 765;

In Re Arkansas Rate Cases, 187 Fed. 290;

Boyle v. St. L. & S. F. R. Co., 222 Fed. 539, P. U. R. 1916A, 49;

Tucker v. M. P. R. Co., 82 Kan. 222, 108 Pac. 89;

Pennsylvania R. Co. v. Phila. County, 220 Pa. St. 100, 68 Atl. 676, 15 L. R. A. (N. S.) 108;

Buell v. C., M. & St. P. Ry. Co., 1 Wis. R. C. R. 324;

In Re Passenger Rates of M., St. P. & S. S. M. R. Co., 1 Wis. R. C. R. 540;

Western Passenger Fares, 37 I. C. C. 1;

New England Milk Case, 40 I. C. C. 699 (712);

In Re Arizona Passenger Rates, Ariz. Corp. Com., May 27, 1916;

Dunsmore v. C., M. & St. P. R. Co., Iowa, P. U. R. 1916A, 289;

In Re Atchison, T. & S. F. Ry. Co., 3 Mo. P. S. C. 75 (112);

Proposed New Passenger Fares, N. Y. C. R. R. Co., 5 N. Y. P. S. C., 2nd Dist., 230.

(1) It seems to be the recognized opinion that approximately two-thirds of a carrier's operating expenses may be definitely assigned to the service in which they are incurred. In Western Passenger Fares, *supra,* at page 19, the Interstate Commerce Commission found that practically all of the maintenance of equipment, transportation, traffic, and general expenses were either directly allocated or no material difference existed concerning their proper division. In the operating expenses of the applicant for the year 1916, these four classes approximate 82 per cent of the total expenses, the items of expense being as follows:

	Amount	Per cent.
Maintenance of way and structures	$253,242	18
Maintenance of equipment	412,041	29
Traffic	28,430	2
Transportation	680,594	47
General	62,944	4

The apportionment made by the applicant in dividing the various expenses between freight and passenger service was in the following percentages:

	Main. of Way and Structures.	Main. of Equip.	Traffic.	Transportation.	General.	Total.
Expenses related solely to freight service	0	38	3	73	9	46
Expenses related solely to passenger and allied services	0	3	54	12	3	8
Common expenses apportioned to freight service	5	48	2	12	0	20
Common expenses apportioned to passenger and allied services	1	9	41	3	0	5
Not apportioned	94	2	0	0	88	21

The foregoing table illustrates the division as made by the applicant in its annual report for the calendar year 1916, the apportionment being made in accordance with the Interstate Commission requirements, which provide that certain accounts shall be left undivided. The applicant has made a division of the common expenses for the purposes of this case which are shown as unapportioned in the annual report. The apportionment of these items has been made upon the basis considered by the applicant to be most applicable to the separate items, and it is unnecessary to analyze the bases used for such items as they represent but a small part of the total operating expenses.

Beale & Wyman, in Railroad Rate Regulation, 2nd Ed., section 394, refer to the allocation of joint costs of operation:

"When the separable costs of operation have thus been distributed to the different kinds of service rendered, it will be found that from forty to sixty per cent of the total expenditures for which the company should be recouped have thus been accounted for, the percentage depending upon the kind of business in general and the accounting of the company in particular. This determination of half of the average cost for particular services with sufficient accuracy gives to the further computation greater reliability, as it greatly diminishes the percentage of error in the total, due to the comparative inaccuracy of the other half. This other half consists of the part allocated to the particular business in question of the joint costs of operation, which consist principally of the general expenses and capital charges. Even here some distribution can be made."

In the matter of Proposed New Passenger Fares, N. Y. C. R. R. Co., *supra*, the New York Public Service Commission, 2nd District, found that a separation of operating expenses of the railroad made in accordance with the

method prescribed by the Interstate Commerce Commission was sufficient for the purposes of the case, which involved an increase in the passenger rates of the New York Central Railroad in the state of New York. In Western Passenger Fares, *supra,* the Interstate Commerce Commission commented at considerable length upon the proper methods of separating operating expenses, and the bases used by the carriers in that case in apportioning their expenses. In Buell v. C., M. & St. P. R. Co., *supra,* the Wisconsin Railroad Commission found that while it may not be possible to make an absolutely correct separation of the expense of conducting passenger business from that of conducting freight, a separation can be made that is substantially correct for all purposes.

The Commission is of the opinion that the apportionment by the applicant of the expenses of conducting its passenger business is not in excess of the actual expenses of such traffic. There is no doubt as to the accuracy of the computations, and the fact that the apportionment of passenger expenses amounts to only 16.22 per cent of the total expenses, whereas the passenger earnings amount to 20.92 per cent, would indicate that the apportionment of passenger expenses cannot be greatly in excess of the actual expenses.

(2) The apportionment of the fixed charges on a train-mile basis, may, however, give rise to serious doubts as to the correctness of such method of division. Charges, such as taxes, interest on bonds, etc., are common charges and must necessarily be arbitrarily apportioned. Such charges are sometimes apportioned on the basis of the direct earnings which can be actually separated, or apportioned on the basis of the direct expenses, or in proportion to all that part of the expenses which can be actually separated between the two classes of traffic. They have also been apportioned on any of the well

known bases of apportionment used in the separating of operating expenses, such as engine ton-miles, revenue train-miles, etc. Any of the foregoing methods, as applied to fixed charges, would be arbitrary and would not result in actual apportionment. For instance, the train-mile apportionment made by the applicant of the charge of $108,126.96, representing rent for leased road, would not correctly reflect the passenger expense incurred in such operations, as the terminals included under such lease are much more extensively used in freight service than passenger service.

It is noticeable that there has been quite an increase in the fixed charges during the past few years. This is due to increases in equipment obligations, mortgage bonds and collateral trust bonds, thereby increasing the interest on the funded debt. It is apparent to the Commission, without exhaustive investigation into the finances of this railroad, that ultimately a reorganization of the corporation must be brought about, as increases in rates and charges, whether reasonable or unreasonable, cannot sustain the burden of paying the interest on the funded indebtedness and other fixed charges. The Commission certainly is not in the position to approve the methods of financing heretofore practiced by the carrier.

The Commission in calling attention to the operating disabilities of this railroad, In Re Lumber Rates on the Denver & Salt Lake Railroad, 3 Colo. P. U. C. 299, at page 307, quoted a statement of the United States Supreme Court in the case of Minneapolis & St. Louis Ry. Co. v. Minnesota, 186 U. S. 257, 46 L. Ed. 1151, 22 Sup. Ct. 900, where the Court stated:

"It sometimes happens that, for purposes of ultimate profit and of building up a future trade, railways carry both freight and passengers at a positive loss; and while it may not be within the power of the Commission

to compel such a tariff, it would not upon the other hand be claimed that the railroads could in all cases be allowed to charge grossly exorbitant rates as compared with rates paid upon other roads, in order to pay dividends to stockholders. Each case must be determined by its own considerations, and while the rule stated in Smyth v. Ames is undoubtedly sound as a general proposition that the railways are entitled to earn a fair return upon the capital invested, it might not justify them in charging an exorbitant mileage in order to pay operating expenses, if the conditions of the country did not permit it."

(3) While the Commission desires to lend every aid to the applicant in so far as such assistance is consonant with the requirements of the act, yet, as was stated in Tift v. Southern Ry. Co., 158 Fed. 753, "Reasonable compensation for a service actually rendered is all that the common carrier is permitted to ask."

The Commission is not to be interpreted as giving its approval to either the method of apportionment of operating expenses or of fixed charges used by the applicant in preparing the exhibits in this case, nor to the methods prescribed by the Interstate Commerce Commission. Indeed, that Commission has never given its final approval of the accuracy of such methods, which may well be considered as being in a tentative and trial state; nor have any of the courts laid down the opinion that a certain method should govern in all cases and on all roads. This Commission is of the opinion, however, that the figures resulting from the application of the methods followed by the carrier, which methods are in large part those prescribed by the Interstate Commerce Commission, are sufficiently correct to indicate the approximate cost of conducting passenger train service on the Denver & Salt Lake Railroad, and furnish a basis of comparison as between the earnings and expenses of the passenger traffic.

An estimate has been furnished by the applicant, and made a part of the evidence in this case, to the effect that an increase in the local passenger fare on its line from 4½ cents to 5 cents per mile will increase passenger revenue in the amount of $25,000.00 per annum.

It is apparent from the inspections of the operating conditions on the Denver & Salt Lake Railroad, conducted by the Commission's engineers and inspectors, that this carrier must immediately, in the interest of public safety, make repairs to its track and roadbed, which repairs the representatives of the carrier have contended have heretofore been impossible due to lack of revenues. While lack of revenue is not a legitimate excuse for the present condition of the track and roadbed of the applicant the Commission has considered this element, together with the testimony pertaining to its operating expenses and fixed charges, as well as the value of the service, and has concluded—without approving, however, the methods of calculation which have been adopted by the carrier, but recognizing the peculiar situation of this road and the undoubted effect of the 4½-cent rate upon its revenues—that a rate of 5 cents per mile should be allowed to become effective, and will so order.

The applicant asks that the basis of round-trip fares be changed from double the one-way fare less ten per cent, to double the one-way fare less five per cent. The general basis of round trip fares throughout the state, as prescribed by the Commission In Re Passenger Rates and Rules, *supra,* is double the one-way fare less ten per cent, and the Commission is of the opinion that no exception to this rule should be made applicable to the line of the applicant.

The Commission is also of the opinion that the present mileage fare of 4 cents per mile, applicable in connection with family mileage books, is reasonable and that no change should be made therein.

ORDER.

IT IS THEREFORE ORDERED, That The Denver & Salt Lake Railroad Company, W. R. Freeman and C. Boettcher, Receivers, be, and they are hereby, allowed and permitted to establish, effective on October 1st, 1917, rates and charges for the transportation of passengers between points on the line of The Denver & Salt Lake Railroad which shall not exceed five cents per mile for one-way fares, and double the one-way fare less ten per cent for round-trip fares.

IT IS FURTHER ORDERED, That The Denver & Salt Lake Railroad Company, W. R. Freeman and C. Boettcher, Receivers, be, and they are hereby, notified and required to continue to sell mileage books for the sum of $30.00, having attached therein 750 coupons entitling the holder and any member of his immediate family to transportation at a rate not to exceed four cents for each mile actually traveled, and which shall be good for one year from the date of sale.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 25th day of September, 1917.

THE CITY OF LAMAR, COLORADO
v.
THE INTERMOUNTAIN RAILWAY, LIGHT & POWER COMPANY.

(Case No. 100.)

Valuation—Discount on securities.

(1) In a valuation proceeding the Commission held that no allowance should be made for discount on securities in determining the fair value of public utility property.

Valuation—Allowance for engineering and supervision.

(2) The Commission held, in a valuation proceeding, that an allowance of 20 per cent for engineering and supervision on additions to property was excessive and should not be allowed.

Depreciation—Allowance for.

(3) The Commission held, in arriving at the fair value of public utilities properties for rate making purposes, that deduction on account of depreciation should not be made for the reason that property is old, obsolete, inadequate or otherwise incapable of giving good service, that if only such items as are in use or useful are included, the element of depreciation, insofar as wear and tear, obsolescence and inadequacy affect the fair value of the property for rate making purposes, will have been sufficiently taken into account.

Depreciation—Methods of computing.

(4) Fair value for rate making may be different in amount when the depreciation reserve is set aside on the sinking fund basis than when it is set aside on the straight line basis.

Depreciation—Methods of computing—Actual inspection.

(5) The Commission held that the amount of depreciation as determined by actual inspection has no bearing on the fair value of property of a public utility for rate making purposes.

Fair value—Depreciation as factor.

(6) The treatment of depreciation, as well as the method of determining or measuring it, should not be the same in a purchase case as in a rate case, depreciation in a purchase case being similar to a mortgage, each being a liability assumed by the purchaser.

Jurisdiction of Commission—Utilities subject—Steam plants.

(7) The Commission has no jurisdiction over the supervision or regulation of the rates and service of steam heating utilities.

Auxiliary operations—Apportionment of expenses and revenues—Steam plants.

(8) The Commission found, in a valuation proceeding to determine the fair value for rate making purposes of an electric utility that furnished steam from the same plant, that the steam was in

every sense a by-product of the electric plant and that the revenues and expenses directly assignable to the steam operations should be classed as non-operating.

Auxiliary operations—Reasonableness of rates—Steam plants.

(9) The Commission found that in a town where the demand for steam heating was limited an electric utility utilizing exhaust steam might with propriety supply such steam heating service at any rate it may choose so long as its total net revenues are not actually reduced thereby, and that under such conditions the value, rather than the cost, of service must govern in the establishing rates for steam heating service.

Rates—Reasonableness—Fluctuating and normal expenses.

(10) The Commission found, in valuing an electric utility for rate making purposes, that it would be impossible to actually arrive at the normal operating expenses of the utility, which should be considered in determining reasonable rates, due to the increases in prices of fuel, materials, labor and other fluctuating expenses.

Minimum charge—Electric service.

(11) The Commission held, in a proceeding to determine the reasonableness of the rates of an electric utility, that a minimum charge to commercial lighting consumers should not exceed the minimum charge for domestic service, merely for the reason that the consumer is classed as a commercial user, and prescribed a minimum monthly guarantee based upon the consumer's connected load to apply to all consumers alike.

(October 8, 1917.)

COMPLAINT against the rates and service of The Intermountain Railway, Light & Power Company for electricity in the city of Lamar; fair value of property for rate making purposes found to be $139,000; economies in operation recommended and suggested; special rates eliminated; schedule revised to eliminate discriminatory rates.

APPEARANCES: W. E. Fee, Esq., for petitioner and complainant; R. L. Holland, Esq., and W. B. Gordon, Esq., for defendant.

STATEMENT.

By the Commission:

The petitioner herein, the city of Lamar, a municipal corporation in the county of Prowers, on the 25th day of September, 1916, filed with the Commission a complaint in writing alleging that the rates and charges of The Intermountain Railway, Light & Power Company, engaged in the business of supplying the city of Lamar with electric current for municipal purposes, and the inhabitants of the said city with electric current for lighting, power, domestic and other purposes, are unreasonable and excessive, and that the rates charged by the corporation for steam heating are unreasonable and excessive.

On the 6th day of October, 1916, the defendant, The Intermountain Railway, Light & Power Company, filed with the Commission its answer alleging that its rates and charges for electric current are on file with the Commission in accordance with the laws of the State of Colorado, and that the said rates and charges are reasonable.

It was further alleged by the defendant that its rates and charges for municipal lighting are in accordance with a contract entered into between the municipality and the corporation, which expires on the 1st day of October, 1923.

It was further alleged that the Commission is without jurisdiction as to the regulation of steam heating plants.

The defendant also alleged that at the time the complaint of the municipality was filed with the Commission the public utility was engaged in making certain improvements within the city of Lamar with the view to increasing its business so as to yield a fair return upon its investment, and that a reduction in its rates and charges at the present time would result in the abandonment of the contemplated improvements.

Pursuant to notice duly given to the parties interested this cause came on for hearing in the council chamber in the city of Lamar on the 20th day of March, 1917. Considerable testimony was introduced at this hearing bearing upon the inventory and appraisal of the defendant's electric property, used and useful, in rendering electric service in the city of Lamar; upon the necessary operating expenses which are incurred in connection with the production and delivery of such service, and upon divers other matters pertaining to the ultimate question of the fair and reasonable value of the defendant's electric property, and fair, reasonable and non-discriminatory rates to be charged the consumers of the defendant's electric service.

In the regular course of procedure representatives of the Commission's engineering and statistical staffs at various times visited the property of the defendant in the city of Lamar, as well as the general offices of the company in the city of Colorado Springs, prepared an inventory and appraisal of the electric property of the defendant, examined the books and records, secured statements of revenues and expenses, compiled data which relate to the question of rates involved herein, and, at the above hearing, submitted exhibits and gave testimony in support of their investigations. Subsequent to the hearings in this matter, counsel for the complainant and counsel for the defendant filed briefs.

In addition to numerous consumers of the company and citizens of Lamar, who testified as to the general character of service being furnished and in a few instances as to the value of buildings and present market value of certain real estate, the following witnesses submitted reports and exhibits and testified as to the matters at issue in this case:

Anderson, A. E., engineer for the defendant, appeared in behalf of the company and testified in support

of a valuation which he had prepared of the Lamar property of The Intermountain Railway, Light & Power Company.

Herbert, Fred W., statistician of the Public Utilities Commission of Colorado, examined the books and accounts of the defendant and appeared in behalf of the Commission's statistical staff, and testified in support of an audit which he had prepared.

Rankin, F. J., electrical engineer of the Public Utilities Commission of Colorado, appeared in behalf of the Commission's engineering staff, and testified in support of a valuation which he had prepared of the Lamar property of The Intermountain Railway, Light & Power Company.

Corson, Wm., superintendent of the Lamar property of The Intermountain Railway, Light & Power Company, appeared in behalf of the defendant, and testified as to certain portions of the inventory of the physical property, and as to matters having to do with the local management and operation of the Lamar plant.

History of the Property.

Following is a brief statement of the ownership and operation of the electric property at Lamar, Colorado, by the several companies appearing therein:

The Lamar Electric Company was organized in July, 1906, by Alfred E. Bent and Morton Strain, and was the first company to supply electric service in the city of Lamar.

The Lamar Light, Heat & Power Company was incorporated March 30, 1908, by Alfred E. Bent, John W. Bent and Wesley P. Bell, with a capital stock of $50,000. and on that date purchased the property and rights of The Lamar Electric Company.

On April 9, 1909, The Associated Engineers Company was incorporated by Robert M. F. Doble, Edmond

C. van Diest and Thomas L. Wilkinson, with a capital stock of $50,000.00. This company acquired by purchase the property, rights and franchises of The Lamar Light, Heat & Power Company on or about October 1, 1911.

The Lamar Electric & Heating Company was incorporated October 2, 1911, by Francis C. Bowman, Thomas L. Wilkinson and E. C. van Diest, with a capital stock of $100,000.00, and purchased on that date the property of The Lamar Light, Heat & Power Company, which had been recently acquired by The Associated Engineers Company.

On July 30, 1912, A. R. Crane, representative of The Intermountain Railway, Light & Power Company, purchased the property of The Lamar Electric & Heating Company. The Intermountain Railway, Light & Power Company, of which Mr. Crane was representative, was incorporated on July 20th, 1912, by E. C. van Diest, T. L. Wilkinson, R. L. Holland, R. W. Chisholm, W. M. Wilson, B. M. Weinscheim and C. B. Lansing, with a capital stock of $2,000,000.00. This company purchased on June 30, 1912, from A. R. Crane all of the property, rights and franchises of The Lamar Electric & Heating Company held by him on option to purchase. The electric plant at Lamar has been operated by The Intermountain Railway, Light & Power Company since the above date.

No records are available that disclose with any degree of certainty the purchase price paid by The Lamar Light, Heat & Power Company for The Lamar Electric Company. The transfers of The Lamar Light, Heat & Power Company to The Associated Engineers Company, and in turn by them to The Lamar Electric & Heating Company are so closely interwoven that the record of the transfer by The Associated Engineers Company to The Lamar Electric & Heating Company reflects the terms of the purchase, which were as follows: The As-

sociated Engineers Company agreed to sell, transfer, set over and assign to The Lamar Electric & Heating Company all of the property, rights, franchises and contracts acquired and held by them on the property acquired from The Lamar Light, Heat & Power Company, and to accept in full payment therefor $99,500.00 par value of the capital stock of The Lamar Electric & Heating Company and $20,000.00 par value of the first mortgage bonds of The Lamar Electric & Heating Company, as a part consideration for said property, rights, franchises and contracts. The Lamar Electric & Heating Company agreed further to give two promissory notes under date of October 2, 1911, each in the sum of $10,000.00 and bearing interest at the rate of 6 per cent per annum, and payable to the order of Alfred E. Bent, the same to fall due on or before four and five years after date respectively; and in addition to assume and pay three promissory notes dated October 2, 1911, each in the sum of $10,000.00, falling due on or before one, two and three years respectively after their dates. The above five notes were secured collaterally by depositing with A. E. Bent $65,000.00 par value of The Lamar Electric & Heating Company's first mortgage 6 per cent bonds.

Thus, The Lamar Electric & Heating Company paid either in securities or in obligations assumed, the sum of $169,500.00 for the property purchased from The Associated Engineers Company, on October 2, 1911.

The property of The Lamar Electric & Heating Company was purchased by A. R. Crane and turned over to The Intermountain Railway, Light & Power Company on the following terms: The Lamar Electric & Heating Company received $19,600.00 par value of the preferred stock and $55,900.00 par value of the common stock of The Intermountain Railway, Light & Power Company, and in addition The Intermountain Railway, Light & Power Company assumed the bonded indebtedness,

which at that time was $21,500.00, and the promissory notes outstanding amounting to $50,000.00. At the time of this transfer of the property to The Intermountain Railway, Light & Power Company there was an excess of assets over liabilities in the sum of $4,196.14, so that the net amount actually paid by The Intermountain Railway, Light & Power Company for the property on July 1, 1912, in securities and obligations assumed, amounted to $142,803.86.

Description of Property.

Prior to 1912, the electric plant at Lamar furnished direct current service to the city of Lamar only, and exhaust steam was used for heating the business section of the city. At about that time the property came into the hands of the present owners and the direct current generating equipment was abandoned and a modern three-phaze, 60-cycle, alternating current system was installed in its stead. Direct current service is still supplied, however, to a small number of consumers in Lamar, a small motor-generator set being operated for that purpose. Recently there has been installed between Lamar and the town of Wiley a three-phaze, 22,000-volt transmission line, about fifteen and one-half miles in length, together with the necessary transformer sub-stations, and service is now furnished to the town of Wiley, and in addition power is supplied to alfalfa mills located at Kornman and Big Bend. The old power plant building has been recently replaced with a modern, reinforced concrete structure, additional boiler capacity has been added, and the generating equipment increased in capacity by the addition of a 400 K. V. A. turbo generator, equipped with a jet condenser, air and water pumps, cooling tower and other auxiliary equipment. The present boiler plant consists of two 306 h. p. Heine safety boilers and two high pressure horizontal return tubular boilers having a nominal rating of 150 h. p. each. Ample

space for coal storage is provided in the boiler room. The present generating equipment consists of two alternating current generators, one of 75 K. V. A. capacity and one of 130 K. V. A. capacity, both driven by reciprocating engines, which, with the 400 K. V. A. turbo generator recently installed, bring the present capacity of the generating plant up to 605 K. V. A. With the exception of the distribution system in Lamar, and a portion of the generating equipment, all of the physical property of the defendant is in a new condition, it having been installed in the latter part of 1916.

Inventories.

Separate inventories were made by the defendant and by the engineering staff of the Commission of the physical property of the defendant company. These inventories were in agreement in all important respects. In the hearings in this case Rankin, for the Commission, testified that certain items, unintentionally omitted, had been discovered too late for inclusion in the report of the engineering staff, and that the original cost of such items amounts to $1,424.00, (record, p. 83). Anderson, in a statement filed with the Commission, called attention to certain items that had not been included in the inventory by the Commission's engineers. Included among these items were those testified to by Rankin as having been omitted from his report.

Valuations.

Two separate valuations of the property of the defendant were submitted in this case, one on behalf of the company by Anderson, and one on behalf of the Commission's engineering staff by Rankin. No complete valuation of the property in behalf of the petitioners was submitted to the Commission. The valuations submitted covered only the electric property of the defendant, the steam heating property being excluded for the reason

that the Commission does not at this time exercise jurisdiction over steam heating utilities.

Each of the valuations submitted was based on "original cost." Original cost was adopted as the basis of valuation for the reason that, as testified to by the Commission's engineers, a large portion of the property had recently been installed, and on account of this fact the original cost and cost of reproduction under normal conditions would have been practically identical. On account of the abnormal market conditions prevailing at the time of this investigation, no valuation based strictly on cost of reproduction as of that date was submitted to the Commission.

TABLE NO. 1.

VALUATION OF LAMAR PROPERTIES AS OF JANUARY 31, 1916.
ANDERSON.

Acct. No.	Classification.	Original Cost.	Depreciation Annuity.
	Intangible Capital—		
101	Organization	$ 23,719.00	$.....
102	Franchises	830.00	.....
	Going Value	18,731.00	.....
	Development Cost	6,500.00	.....
	Tangible Capital—		
105	Land	3,330.00	.....
106	Buildings	10,895.00	52.30
107	Steam Power Plant Equipment	30,823.00	582.56
111	Boiler Plant Equipment	23,127.00	629.62
113	Miscellaneous Power Plant Equip't	3,606.00	.....
120	Transmission System	16,479.00	526.50
121	Sub-station Equipment	7,615.00	143.23
140	Distribution System	17,123.00	331.02
141	Line Transformers	2,433.00	45.77
142	Consumers' Meters	7,479.00	214.93
160	Municipal Street Lighting	2,561.00	87.62
162	General Office Equipment	1,135.00	47.32
166	Consumers' Installations	655.00	.....
168	Miscellaneous Equipment	574.00	.....
169	Utility Equipment	375.00	71.10
	Working Capital	8,700.00	.....
	Total	$186,690.00	$2,731.97

TABLE NO. 2.

THE INTERMOUNTAIN RAILWAY, LIGHT & POWER COMPANY.
VALUATION AS OF JANUARY 31, 1917.
COMMISSION'S ENGINEERING STAFF.

Acct. No.	Classification.	Original Cost.	Depreciation Annuity.
	Intangible Capital—		
101	Organization	$ 2,077.00	$.....
102	Franchises	400.00	.....
	Tangible Capital—		
105	Land and Right of Way	3,180.00	.....
106	Buildings	9,735.00	46.73
107	Steam Power Plant Equipment	27,491.00	519.58
111	Boiler Plant Equipment	23,327.00	634.02
113	Miscellaneous Power Plant Equip't	290.00	.....
120	Transmission System	16,208.00	517.84
121	Sub-station Equipment	7,417.00	140.18
140	Distribution System	16,116.00	311.03
141	Line Transformers	2,319.00	43.83
142	Consumers' Meters	6,933.00	198.90
160	Municipal Street Lighting	2,370.00	81.28
162	General Office Equipment	873.00	36.39
166	Customers' Installations	590.00	.....
168	Miscellaneous Equipment	534.00	.....
169	Utility Equipment	357.00	67.88
	Merchandise and Plant Supplies	4,964.00	.....
	Coal on Hand	350.00	.....
	Working Cash Capital	3,383.00	.....
	Total	$128,914.00	$2,597.66

TABLE NO. 3.

THE INTERMOUNTAIN RAILWAY, LIGHT & POWER COMPANY.
COMPARISON OF VALUES.

Acct. No.	Classification.	Original Cost. Anderson.	Rankin.
	Intangible Capital—		
101	Organization	$ 23,719	$ 2,077
102	Franchises	830	400
	Going Value	18,731	.....
	Development Cost	6,500	.....
	Total Intangible Capital	$ 49,780	$ 2,477
	Tangible Capital—		
105	Land and Right of Way	3,330	3,180
106	Buildings	10,895	9,735
107	Steam Power Plant Equipment	30,823	27,491
111	Boiler Plant Equipment	23,127	23,327
113	Miscellaneous Power Plant Equipment	3,606	290
120	Transmission Systems	16,479	16,208
121	Sub-station Equipment	7,615	7,417
140	Distribution System	17,123	16,116
141	Line Transformers	2,433	2,319
142	Consumers' Meters	7,479	6,933
160	Municipal Street Lighting	2,561	2,370
162	General Office Equipment	1,135	873
166	Customers' Installations	655	590
168	Miscellaneous Equipment	574	534
169	Utility Equipment	375	357
	Total Tangible Capital	$128,210	$117,740
	Working Capital	8,700	8,697
	GRAND TOTAL	$186,690	$128,914

Table No. 3 has been prepared and is produced herewith for the purpose of giving a comparison by accounts of the two valuations submitted.

TABLE NO. 4.

STATEMENT OF CONSTRUCTION OVERHEADS.
ANDERSON.

	Items Included in Overhead Charges.	Contingencies and Omissions. Per cent.	Engineering and Supervision. Per cent.	Legal and Insurance. Per cent.	Interest During Construction. Per cent.	Taxes During Construction. Per cent.	TOTAL. Per cent.
105	Land	0	5	2	3	1	11
106	Buildings	3	7	2	3	1	16
107	Steam Power Plant Equip't	5	7	3	3	1	19
111	Boiler Plant Equipment	12	7	3	3	1	26
113	Misc. Power Plant Equipment	5	7	1	3	1	17
120	Transmission System	8	7	3	3	1	22
121	Sub-station Equipment	2	7	2	3	1	15
140	Distribution System	5	7	3	3	1	19
141	Line Transformers	1	5	1	3	1	11
142	Meters	1	5	1	3	1	11
160	Municipal Street Lighting	5	7	3	3	1	21
162	General Office Equipment	2	5	1	0	0	8
166	Customers' Installations	3	5	4	0	0	12
168	Miscellaneous Equipment	2	5	0	0	0	7
169	Utility Equipment	0	5	2	0	0	7

TABLE NO. 5.

STATEMENT OF CONSTRUCTION OVERHEADS.
ENGINEERING STAFF.

Acct. No.	Classification.	Contingencies and Omissions. Per cent.	Engineering and Supervision. Per cent.	Legal and Insurance. Per cent.	Interest During Construction. Per cent.	Taxes During Construction. Per cent.	TOTAL. Per cent.
105	Land	0	0	0	5	1	6
106	Buildings	3	5	0	2	1	11
107	Steam Power Plant Equip't	2	7	3	2	1	15
111	Boiler Plant Power Equip't	2	7	3	2	1	15
113	Misc. Power Plant Equipment	2	0	0	0	0	2
120	Transmission System	8	6	3	2	1	20
121	Sub-station Equipment	2	5	2	2	1	12
140	Distribution System	2	5	3	2	0	12
141	Line Transformers	1	4	1	1	0	7
142	Consumers' Meters	1	3	1	1	0	6
160	Municipal Street Lighting	2	5	3	2	0	12
162	General Office Equipment	2	0	1	0	0	3
166	Customers' Installations	1	0	4	0	0	5
168	Miscellaneous Equipment	2	0	0	0	0	2
169	Utility Equipment	0	0	2	0	0	2

TABLE NO. 6.

COMPARISON OF CONSTRUCTION OVERHEADS.

Acct. No.	Classification.	Anderson. Percent	Rankin. Percent
105	Land	11	6
106	Buildings	16	11
107	Steam Power Plant Equipment	19	15
111	Boiler Plant Equipment	26	15
113	Miscellaneous Power Plant Equipment	17	2
120	Transmission System	22	20
121	Sub-station Equipment	15	12
140	Distribution System	19	12
141	Line Transformers	11	7
142	Consumers' Meters	11	6
160	Municipal Street Lighting	21	12
162	General Office Equipment	8	3
166	Customers' Installations	12	5
168	Miscellaneous Equipment	7	2
169	Utility Equipment	7	2

Tables Nos. 1 and 2 are summaries of the valuations submitted by the company and by the Commission's engineering staff, respectively. The valuation submitted by the engineering staff did not include any allowances for bond discount, going value, cost of development and other like items. The valuation submitted by Anderson, which is set out in Table No. 1, includes allowances for going value, discount on securities and cost of development.

From an analysis of the valuation submitted by Anderson it is apparent that he included in his inventory of miscellaneous equipment and of general office equipment numerous items of small value per item having a life of less than one year. Such items are properly charged to the operating expense accounts at the time of purchase, and should therefore not be included in the inventory of the physical property embraced under the fixed capital accounts. Aside from intangible values, however, the differences in the valuations submitted are larger in the allowances made for construction overheads. Rankin testified that the sum of $1,424.00 should be added to his valuation, making the original cost of the property, including working capital, organization expense and cost of securing franchises, $130,338.00.

In Tables Nos. 4 and 5 will be found statements of the construction overheads applied in the valuations submitted, and in Table No. 6 a comparison of the construction overheads applied by the two engineers is given. The Commission is of the opinion that the construction overheads applied by its engineering staff, amounting to over 13 per cent of the field cost of the inventoried property, are reasonable and liberal, and that the allowances claimed by Anderson are excessive for a property of the character and magnitude of the one under investigation. Anderson has also included in his valuation certain items unintentionally omitted by the Commission's

engineering staff, and due consideration will be given to the value of such omitted property in determining the fair value of the property for rate-making purposes.

Under the caption of "organization" Rankin made an allowance of $2,077.00, while Anderson's valuation includes $23,719.00 for the same item. Rankin testified that his allowance covered only the cost of incorporating the company and other necessary expenditures incident to its organization and putting it in readiness to do business. On page 4 of Anderson's exhibit No. 1, he bases his claim for organization on 18½ per cent of the original cost of the property and itemizes this amount as follows:

Investigation	1½ per cent
Legal expenses	1 per cent
Discount on securities	15 per cent
General Office Expense and Contingencies	1 per cent
Total	18½ per cent

(1) The Commission has previously disallowed the element of discount on securities in determining the fair value of public utility properties for rate-making purposes, so it will not be necessary to discuss this matter further in connection with this investigation. However, from an examination of the allowances made for construction overheads, and the items included therein, the Commission is of the opinion that the allowance made by its engineering staff for organization expenses is too conservative, and finds the proper allowance in this case to be $3,000.00.

Anderson testified that an allowance of $18,731.00 should be made for going value and based this estimate upon one and one-half times the net earnings of the company for the year 1916. The net earnings, so used by Anderson (approximately $12,500.00) in this estimate, do not agree with the net earnings reported by Herbert,

statistician for the Commission, ($9,736.21). It is probable that Anderson used the combined earnings of the electric and steam heating departments of the company for the year 1916, although this is not clear from Anderson's exhibit or from the record in this case. Further, it is apparent that in arriving at the net earnings for the year 1916, Anderson did not include in operating expenses any allowance for depreciation. This statement is also true of the amount reported by the Commission's statistician, for the reason that no amount was shown on the books of the defendant for that purpose.

Under the caption "development" Anderson included $6,500.00 as a part of the value of the electric property. It is not clear from either the record or his exhibit what is included in this amount, but it is in all probability intended as a part of the going concern value of the property, or the cost of establishing the business.

The amounts included in the reports of the two engineers for working capital are approximately the same. These amounts are made up of the average differences between "receivables" and "payables," materials and supplies on hand, and a reasonable allowance for working cash capital. Apparently Anderson adopted the amount developed by the Commission's statistician as a fair allowance and included the same in his report.

Book Value.

As has been heretofore set out in this opinion, The Intermountain Railway, Light & Power Company purchased this property on July 1, 1912, and paid therefor either in securities or in obligations assumed, the sum of $142,803.86. Herbert testified that the additions to "plant" from July 1, 1912, to December 31, 1916, amounted to $95,475.96, making the book value of the property as of December 31, 1916, $238,279.82. Of the additions made to this property from July 1, 1912, to

December 31, 1916, $95,399.37 represents additions to the electric plant and $76.59 represents additions to the steam heating plant. It is further shown in Herbert's exhibit "A," page 16, that the expenditures for additions to plant from October 1, 1911, to June 30, 1912, amounted to $563.45, while during that same period the book value of the property increased by $96,413.87. While it cannot be determined either from the record or from Herbert's report, it is entirely probable that the above amount of $563.45 covers the additions to both the electric and heating properties during that period. It is further shown on page 15 of Herbert's exhibit "A" that of the additions to the electric property from June 30, 1912, to December 31, 1916, amounting to $95,399.37, engineering and supervision constituted $16,299.09 of that amount or more than 20 per cent of the construction during that period. (2) It is hardly necessary for the Commission to point out that 20 per cent for engineering and supervision is entirely excessive and unreasonable for a property of this kind. While the charge for engineering and supervision is carried as part of the book value of this property, there is nothing before the Commission to show that such an amount has ever been paid by the company. Under such conditions, the Commission should not be expected to include under book value anything more than the reasonable value of such services. The so-called book value of this property as above set out covers both the steam heating and electric property of the company. Likewise, no deductions therefrom appear to have ever been made on account of abandoned property.

The Herbert exhibit, taken from the books of the company, discloses total construction expenditures on this property from its inception up to December 31, 1916, in the sum of $142,429.40. This amount is compiled from Herbert's exhibit "A" as follows:

Construction account, October 1, 1911	$ 46,389.99
Additions to electric property, October 1, 1911, to December 1, 1916	79,733.73
Engineering and supervision, October 1, 1911, to December 1, 1916	16,229.09
Additions to steam heating property, October 1, 1911, to December 31, 1916	76.59
Total	$142,429.40

The above amount includes the cost of property that has been abandoned or replaced on account of depreciation and obsolescence.

The Commission finds that the book value of the defendant's property bears practically no relation to its actual cost to the company, and that the amount so determined is of little or no value to the Commission for the purpose of determining the fair and reasonable value of the defendant's electric property for rate-making purposes.

Depreciation.

It is now generally conceded by all rate-making authorities that, in addition to current operating expenses and a fair return on the capital invested in its property and business, a public utility is entitled to earn an amount sufficient to replace its depreciable property when it must be abandoned or superseded for whatever cause. This statement is believed to be fundamental, and, while there are some early decisions of the courts which refuse to allow anything for depreciation over and above current operating expenses, the later decisions of both courts and commissions unanimously recognize the justification of such depreciation allowance. It follows, therefore, that if the rates of a public utility are so adjusted as to provide an annual gross revenue sufficient to meet operating expenses, pay a fair return on the investment in its property and business, and provide an annual depreciation annuity which, with the in-

terest accruals thereto, will replace the depreciable property at the end of its useful life, the capital invested in the property of the utility will in no wise have been confiscated.

The question of whether or not a deduction on account of accrued depreciation should be made in arriving at the fair value of a public utility property for rate-making purposes has been the subject of more or less controversy in rate-making proceedings before public service commissions. The early decisions of both courts and commissions appear to have almost universally held that some deduction on account of accrued depreciation should be made, although the majority of the earlier court decisions are cases involving the fair value of the property for purchase or transfer, rather than for rate making. Whether or not such deductions as were made were based on so-called theoretical depreciation or on the depreciation determined by actual inspection is by no means clear from a reading of these earlier decisions, and as a result the question of whether or not theoretical depreciation or actual depreciation as determined by inspection, should be deducted from the original cost or reproduction cost, as the case may be, has been presented many times to regulatory bodies.

It is therefore necessary for a regulatory body, in dealing with the question of depreciation, to determine, first, the proper annual amount to be set aside as a depreciation requirement, as well as whether or not such requirement shall be set aside on the straight line or sinking fund basis; second, whether or not deduction on account of accrued depreciation shall be made in arriving at the fair value for rate-making purposes; and, third, by what means or method such depreciation as is to be deducted shall be measured or determined.

It must be remembered at the outset, however, that the Commission is attempting to determine the fair value

of the property of the utility, nor for the purpose of purchase or sale, but for the purpose of determining fair and reasonable rates. In other words, that value for rate making which is fair to both the investor and the consumer alike.

Two general methods of setting aside reserves for the replacement of depreciable property are in general use; one of these is known as the "straight-line" method and the other as the "sinking-fund" method. Under the straight line method amounts are set aside annually which, without the interest accruals thereto or unaided by the earnings of the unexpended balances in such fund, will replace the depreciable property at the end of its useful life. Under the sinking-fund method only such amounts are set aside annually as, with the interest accruals thereto, will replace the depreciable property at the end of its useful life. The sinking-fund method, since it relies upon the accumulation of interest to make up the amount required to replace depreciable property, demands a much smaller annual depreciation requirement than the straight-line method, especially when the property is of a comparatively long life. Both of these methods are fundamentally correct, and when properly applied are fair to the consumer and to the utility alike. The Commission is of the opinion that either method may properly be employed.

It seems to the Commission to be self evident that if the interest earnings on the amounts set aside annually for depreciation are to be credited to the depreciation reserve the investor in the property of the public utility should receive a fair return upon the investment in the property during its useful life regardless of its physical condition, or, in other words, if the annual depreciation requirement is estimated and set aside on the sinking fund basis, a deduction on account of depreciation cannot properly be made in arriving at the amount upon

which the investors in that property are entitled to earn a fair return.

Conversely it is true that if the annual depreciation requirement is to be set aside on the straight line basis —that is, if a sum is to be set aside annually which, without interest accruals, will replace the depreciable property at the end of its life, and, in addition, the consumer is required to pay a fair return on the investment in the property throughout its useful life,—the consumer will have paid to the utility a sum which will be in excess of a fair return by the combined earnings of the depreciation reserve. Since, therefore, when the sinking fund method of providing for depreciation is followed, no deduction on account of depreciation may fairly be made, it follows that if the reserve is set aside on the straight line basis a sum equal to the amount in the depreciation reserve, or such an amount as the reserve might reasonably have been, had it not been disbursed in the form of dividends, should be deducted in arriving at the fair value of the property for rate-making purposes, otherwise the consumer would be required to pay somewhat higher rates under the straight line than under the sinking fund method.

Conceding, therefore, that fundamentally deduction on account of depreciation should be made for the reason that the consumer is entitled to such amounts as can be earned by the unexpended balance in the depreciation reserve, it follows that deduction for depreciation should be made to give the consumer the benefit of such earnings, rather than on the theory that an old property is not as valuable for rate-making purposes as a new one. Also, since by the very nature of a sinking fund reserve the consumer is automatically given the benefit of the earnings of the unexpended balance in the depreciation reserve, it follows that no deduction on account of depre-

ciation may be made when the sinking fund method is employed.

(3) The Commission is therefore of the opinion that, in arriving at the fair value of the property of a public utility for rate-making purposes, deduction on account of depreciation should not be made for the reason that that property is old, obsolete, inadequate or otherwise incapable of giving good service. Obviously, if the property were found in such a condition that reasonably good service could not be had, it would be the duty of the Comimssion to require that property to be put into condition to give good service before entering upon a determination of fair and reasonable rates. If, in the inventory of physical property, only such items as are in use and useful, in reasonably good service condition, and necessary to the proper operation of that property, are included, the element of depreciation—at least in so far as wear and tear, obsolescence and inadequacy affect the fair value of the property for rate-making purposes—will have been sufficiently taken into account.

In some cases before this Commission, in which the annual depreciation requirement has been determined and allowance made therefor on the straight line basis, the Commission has made deduction for depreciation, but such deduction has been based on the amount in the depreciation reserve or on such an amount as the reserve might reasonably have been, had it not been disbursed in the form of dividends. It should, however, be distinctly understood that such deduction was not made by this Commission on the theory that the value of an old property for rate-making purposes is necessarily less than the value of one in a higher state of newness. On the other hand, such deductions were made for the express purpose of giving to the consumer the benefit of the earnings from the unexpended balance in the depreciation reserve. This procedure is believed to be entirely

in conformity with the Public Utilities Act creating this Commission, Section 34 thereof providing that:

> "The Commission shall have power, after hearing to require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of accounts as the Commission may prescribe. The Commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciatio nof the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the money so provided for out of the earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the Commission may prescribe. *The income from investments of moneys in such fund shall likewise be carried in such fund.*"

It is apparent that the framers of the Public Utilities Act have provided in no uncertain terms that the consumer, and not the utility, is to receive the benefit from the income from investment of moneys in the depreciation reserve. The consumer of the service of the utility may be accorded such benefit either by setting aside as an annual depreciation requirement only such an amount as, with the interest accruals thereto, will replace the depreciable property at the end of its usful life, this being an obligation of the consumer, or, in the event the annual depreciation requirement is determined and set aside on the straight line basis, the consumer may be given the benefit of the earnings of the unexpended balance in the depreciation reserve by deducting from the investment of the utility in its property and business such an amount as has been contributed to the depreciation

reserve by the consumer, and which has not yet been expended in replacing abandoned property.

Thus, it is obvious that under certain conditions the full investment of the utility in its property, without deduction on account of depreciation, may be taken as a measure of its fair value for rate-making purposes, and that with equal propriety, under other conditions, deductions on account of so-called depreciation may be made. In either case the fundamental principle that the investor in the property of the utility is in general entitled to earnings sufficient to meet current operating expenses, pay a fair return on the capital invested in the property and business, and, in addition, to set aside annually an amount which, with the interest accruals thereto, will replace the depreciable property at the end of its useful life, should not be violated.

The Commission concludes, therefore, that if, in inventorying the property of a public utility, only such property as is in use and useful and in good service condition is included, the fair value of that property for rate-making purposes may be arrived at without any determination of or deduction for accrued depreciation, provided the annual depreciation requirement is determined and set aside on the so-called sinking fund basis. (4) It is also apparent from the foregoing that fair value for rate-making may be different in amount when the depreciation reserve is set aside on the sinking fund basis than when it is set aside on the straight line basis. The Commission is, after all, attempting to determine the total annual amount which the utility should be fairly entitled to earn for the service rendered, and so-called fair value is, in fact, of secondary importance. This annual amount should be approximately the same, regardless of whether the annual depreciation requirement is set aside on the straight line or sinking fund basis, or

regardless of whether or not deduction on account of accrued depreciation is or is not made.

The public utilities have quite generally contended that if any deduction on account of depreciation is to be made, it must be made on the basis of actual, rather than theoretical, depreciation. Notwithstanding the contention of the representatives of the public utilities as to the method of determining depreciation, and the *decision of the Supreme Court of the State of Idaho upholding the view that only observed or actual depreciation may be properly deducted, many very high authorities have condemned in no uncertain terms the actual inspection method as a measure of accrued depreciation. Since, in accordance with the views herein expressed, deduction on account of depreciation may be made only when the reserve is set aside on the straight line basis, and then for the purpose of giving the consumer the benefit of the earnings from the unexpended balance in the depreciation reserve, it follows that such deduction as is made must be based upon either the unexpended balance in this reserve or on what this balance might have been had it not been disbursed in the form of dividends. Obviously, this amount bears no relation to the depreciation determined by actual inspection, and (5) the Commission must therefore hold, as heretofore, that the amount of depreciation as determined by actual inspection has no bearing on the fair value for rate-making purposes of a public utility property. In the case of In Re Mountain States Telephone & Telegraph Company, 3 Colo. P. U. C. 122, at page 270, P. U. R. 1917B, 198, this Commission, for the reasons therein stated, rejected the actual inspection method as a means of determining accrued depreciation.

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*Murray v. Public Utilities Comm., 150 Pac. 47.

(6) Much of the present confusion attending the general subject of depreciation has apparently come about through the erroneous assumption that *fair value* for rate making and the *fair price* for exchange (transfer of title) are or should be identical. The principles underlying the determination of the price for exchange are the same, whether the property involved is private or quasi-public, and, simply stated, are the cost or estimated cost of that property as of the present time, plus any other factors of value, from which is deducted any outstanding liabilities, such as a mortgage, and, in addition, the cost to put the property in good condition, which is usually termed depreciation. Depreciation in a purchase case is similar to a mortgage, each being a liability assumed by the purchaser.

Obviously, the treatment of depreciation, as well as the method of determining or measuring it, should not be the same in a purchase case as in a case involving fair and reasonable rates.

Fair Value of Electric Property.

After giving due consideration to the evidence bearing on the value of defendant's electric property, and considering that property as a going concern with an established business and in successful operation, the Commission finds the fair value of this property for rate-making purposes to be $139,500.00. In arriving at this amount the Commission has considered that the annual depreciation requirement will be determined and set aside on the sinking fund basis, and has therefore, in accordance with the principles hereinbefore announced, made no deduction on account of accrued depreciation.

Revenues and Expenses.

Following are the gross earnings from electric operations of the Lamar property of The Intermountain Railway, Light & Power Company for the year ended December 31, 1916, as reported by Herbert:

Commercial Lighting—Business	$ 12,083.54
Commercial Lighting—Domestic	8,070.89
Municipal Street Lighting	2,149.10
Municipal Building Lighting	133.23
Commercial Power	3,888.53
Municipal Power	708.43
Merchandise and Jobbing	2,321.37
Miscellaneous Revenues	15.50
Total	$ 29,370.59

The above statement includes the earnings of the territory adjacent to Lamar, including Wiley, for the period from July 1, 1916, to December 31, 1916, only. It cannot be said therefore that the above amount is representative of the average annual earnings from the present consumers and development of the property. Since the entire additional property has been included in the valuation, one year's revenues and expenses for such property must likewise be taken into consideration in testing the reasonableness of the present rates.

The Commission is futher of the opinion that the business of the defendant is reasonably well developed. There is produced herewith in Table No. 7 the earnings of a number of utilities operating in communities in Colorado similar to and of approximately the same size as Lamar. From this table it is apparent that the earnings per capita of the Lamar property of The Intermountain Railway, Light & Power Company compare favorably with those of utilities operating in similar localities and under similar conditions. While the total earnings per capita at Lamar appear to be above the average, the per capita earnings from street lighting are much below the average of cities of about the same size. The Commission is of the opinion that a schedule of rates for street lighting should be provided, which will be conducive to more and better street lighting in the city of Lamar.

TABLE NO. 7.

COMPARATIVE EARNINGS OF ELECTRIC UTILITIES IN COLORADO SERVING COMMUNITIES SIMILAR TO LAMAR—1916.

Town.	1916 Population, Est.	Operating Revenues. Commercial Lighting.	Commercial Power.	Municipal Street Lighting.	Total Operating Revenues.	Per Capita Revenues Total Per Capita.	Commercial Light Per Capita.	Commercial Power Per Capita.	Street Light Per Capita.
Greeley	8,800	$52,545.70	$6,282.00	$10,466.60	$69,294.30	7.88	5.97	.72	1.19
Montrose	3,500	24,697.07	3,755.18*	3,128.48	31,580.73	9.02	7.06	1.07	.89
†Sterling	4,500	9,676.77	3,641.38	1,382.33	14,700.48	3.26	2.15	.81	.30
Delta	2,000	13,903.89	1,330.16*	2,213.05	17,447.10	8.70	6.93	.67	1.10
Las Animas	2,500	10,343.80	727.35	1,974.55	13,045.70	5.22	4.14	.29	.79
‡La Junta	5,100	28,666.25	6,367.85	5,200.20	40,234.30	7.90	5.63	1.25	1.02
Englewood-Littleton	4,500	29,786.96	4,572.26	7,290.77	41,649.99	9.25	6.63	1.01	1.61
Golden	2,500	12,691.40	5,582.79	1,676.85	19,951.04	7.97	5.07	2.23	.67
Florence	3,500	12,312.17	314.42	3,665.20	16,291.79	4.65	3.51	.09	1.05
Millikin-Fort Lupton	2,500	8,876.55	4,191.93	2,234.55	15,303.03	6.12	3.55	1.68	.89
Lamar	3,500	20,287.66	4,596.96	2,149.10	27,033.72	7.72	5.80	1.31	.61
Total	42,900	$223,788.22	$41,362.28	$41,381.68	$306,532.18	7.14	5.22	.96	.96

*Includes commercial street lighting.

†January 1, 1916, to April 30, 1916, only.

‡For the year ended June 30, 1915.

Operating Expenses.

The Commission has before it statements and exhibits of the operating expenses of the electric and steam heating departments for the year ended December 31, 1916. An attempt has been made by the company, in connection with the operating expenses of the electric department to apportion these between the Lamar and Wiley territories. These apportionments appear to have been made on a purely arbitrary basis and are of no value to the Commission in this case. It is not clear that such expenses as have been assigned to the steam heating department have been properly determined, or that in the accounting scheme adopted by the company, the electric department has been properly credited for service rendered to the steam heating department.

(7) This Commission has heretofore found that it has no jurisdiction over the rates and service of steam heating utilities, and will not at this time attempt to regulate the rates and charges paid by steam heating consumers in Lamar. On the other hand, in order to determine the reasonableness of the present rates for electric service, it is necessary in some manner to properly apportion the operating expenses of the Lamar plant as between the electric and steam heating departments thereof. When separate plants are operated for the purpose of furnishing steam heating and electric service, the division of the entire operating expenses of the utility is comparatively simple. In the case of utilities similar to the one now under investigation utilizing exhaust steam for heating purposes, the division of operating expenses is practically impossible. While theoretically such expenses may be fairly apportioned, in practice sufficient data are seldom available for the purpose. At certain seasons or periods, the supply of exhaust steam may be more than sufficient to meet the demands of the steam heating consumers, while at other periods live

steam must be used directly from the boilers. The problem is further complicated for the reason that the maximum demands of the electric and steam heating consumers are by no means coincident. For these reasons, the Commission finds it impracticable to determine what portion of the coal consumed, or of the labor employed, as well as many other joint items of expense, are properly assignable to the supply of steam heat. Further, it may be that a portion of the investment of the company in land, buildings and boiler plant equipment should be considered as a part of the investment in the steam heating property. But what portion should this be? The buildings are no larger and no more or larger boilers are in service than would have been installed for the electric property alone.

(8) After giving due consideration to the conditions surrounding the operation of the electric and steam heating properties, the Commission has reached the conclusion that in this case at least exhaust steam is in every sense a by-product of the electric plant; that the revenue derived from the sale of steam heat may properly be considered as a non-operating revenue of the electric property, and that the operating expenses directly assignable to the steam heating property may properly be considered as non-operating expenses assignable to the electric property. In fact, this conclusion is in conformity with the classification of accounts established by the Commission for electric light and power utilities. Account No. 784 of such classification considers revenues from the sale of exhaust or live steam as a non-operating revenue and the expenses assignable to the operation of steam heating property as a non-operating expense.

The only expenses that are directly assignable to the steam heating property of the defendant are interest and depreciation on the investment in mains and meters and such maintenance expenses as may be, and are,

charged directly to the steam heating department. The Commission finds that the sum of $750.00 is a fair allowance to be made in this case for interest and depreciation on the investment of the defendant in its steam heating distribution system, and that a fair allowance for maintenance and other expenses directly chargeable to the steam heating property is $432.80 per year, making the total cost of supplying steam heating service that can be directly assigned thereto $1,182.80. The Commission further finds that the operating revenues of the steam heating department of the defendant amounted to $3,343.00 for the year ended December 31, 1916. The income statement of the defendant for the year ended December 31, 1916, should, therefore, be modified to the extent that the revenue from the sale of steam heat should appear as a non-operating revenue, and that the operating expenses of the steam heating department amounting to $1,182.80 should appear as a non-operating expense. No attempt whatever has been made, or need be made, to apportion such expense as labor, fuel, commercial expense, general expense and taxes between the steam heating and electric departments.

While such treatment of a utility supplying both electric and steam heating service appears to the Commission to be fair to all parties interested, it might not be proper if a utility placed its rates for steam heating service at so low a point that the revenues therefrom would not meet the fixed charges on the investment in the steam heating property. (9) While the steam heating business of itself could not be operated at a profit in a town the size of Lamar under the rates and charges now in effect for steam heating service, an electric utility utilizing exhaust steam may with propriety supply such steam heating service at any rate it may choose so long as its total net revenues are not actually reduced thereby. Obviously, the value, rather than the cost of service,

must govern in the matter of establishing rates for steam heating service under the conditions now existing at Lamar. Fortunately on account of the very limited extent of the steam heating property of the defendant, this service can be sold at a profit, and such profit accrues to the benefit of every electric and steam heating consumer served by the company.

Except that insofar as replacements of property have been charged to the maintenance accounts, no allowance for depreciation was included in the operating expenses, as reported by the Commission's statistician. Rankin estimated the annual depreciation annuity at $2,598.00 and Anderson at $2,732.00. The Commission is of the opinion that at the present time an annual depreciation allowance of $2,000.00 to be set aside on the sinking fund basis is adequate.

From the exhibits submitted in this case, the Commission has compiled the following income statement for the Lamar property of The Intermountain Railway, Light & Power Company, for the year ended December 31, 1916:

INCOME STATEMENT.

Operating Revenues—		
Commercial Lighting—Business	$12,083.54	
Commercial Lighting	8,070.89	
Municipal Street Lighting	2,149.10	
Commercial Power	3,888.53	
Municipal Building Lighting	133.23	
Municipal Power	708.43	
Merchandise and Jobbing	2,321.37	
Miscellaneous Electric Revenues	15.50	
Total Operating Revenues		$29,370.59

Operating Expenses—		
Steam Power Generation	$10,996.36	
Transmission Expense	10.75	
Distribution Expense	1,504.98	
Utilization Expense	1,515.55	
Commercial Expense	2,066.26	
New Business Expense	270.93	
General Expense	1,831.86	
Taxes	2,456.02	
Annual Depreciation Annuity	2,000.00	
Total Operating Expenses		$22,652.71
Net Revenue		$ 6,717.88
Non-operating Revenues (Exhaust Steam)	$ 3,343.06	
Non-operating Expenses (Steam Heat'g System)	1,182.80	
Net Non-operating Revenues		$ 2,160.26
Total Net Revenue Available for Dividends and Surplus		$ 8,878.14

The Commission has previously called attention to the fact, however, that the electric revenues for the year ended December 31, 1916, included the revenues from Wiley for a period of six months, whereas the revenues and expenses of this division of the property should be considered for a period of one year for the purpose of determining the reasonableness of the present rates. When this territory is fully developed, there will no doubt be a material increase in the annual net revenue of the defendant over that of 1916.

It is also the opinion of the Commission that the present plant of the defendant may be more economically operated in the future. The coal consumption at this plant, for example, was in excess of 15 pounds per kilowatt-hour generated for the year 1916. This high consumption of coal is accounted for by the fact that during a large portion of that year construction work was in progress, and the new generation equipment, when it was operated at all, was operating non-condensing,

whereas such equipment is designed for condensing operation. This property now has a fairly good load factor on account of the power business recently acquired, and no doubt the coal consumption of 15 pounds per kilowatt-hour will be materially reduced in the future.

While the Commission is of the opinion that the revenues of the defendant will be greater in the future than for the year 1916, and that the economies in operation above pointed out will tend to increase the net revenues, it is by no means apparent at this time that such increases will offset the increasing cost of coal, labor and material and supplies.

In all cases pending before the Commission pertaining to the operation of electrical public utilities material increases in the cost of labor, materials and supplies are apparent. Statements of operating expenses and revenues in cases presented to the Commission within a period of one year last past, which would have at the time of the presentation of the facts pertaining to the valuations and rates of the public utilities under consideration resulted in decreases in rates and charges, have so changed within a period of the last twelve months, due principally to the increases in prices of coal, that the Commission is confronted in these cases with present facts which justify no decrease in rates and charges, but in certain classes of service call for increases. After all is said, the important factor in a rate case is the net revenue of the corporation. The Commission must carefully consider the reasonableness of the operating expenses of the public utility and endeavor to determine the normal operating expenses upon which to base a decision. The Commission is unable to determine at this time whether the operating expenses of this public utility are normal or abnormal. Certainly the cost of coal has increased beyond expectations of the managers of the public utility, and,

when considered in connection with the increased cost of labor and supplies, a very complicated proposition is placed before the Commission for solution. It is entirely possible that under the conditions of operation surrounding this utility, as presented at the hearing of this cause on the 20th day of March, 1917, it would have been possible for the Commission to order substantial reductions in rates and charges pertaining to certain classes of service furnished by this public utility. However, this Commission is unable, fairly and intelligently, to ascertain the normal operating expenses for this public utility at this time.

Rates.

The present principal rates for electric service now in force and effect in the city of Lamar, as filed with the Commission, are as follows:

Commercial Lighting—Residence Service.

Rate.

Base Rate, 15 cents per kilowatt hour.

Prompt Payment Discount.

Discount of 1 cent per kilowatt hour is allowed on all bills paid on or before the 10th day of the month next succeeding that in which service is rendered. Added quantity discounts are allowed according to the following table:

Bills amounting to $10.00 and not exceeding $20.00 per month, 10 per cent discount.

Bills amounting to $20.00 and not exceeding $30.00 per month, 15 per cent discount.

Bills amounting to $30.00 and not exceeding $40.00 per month, 20 per cent discount.

Bills in excess of $40.00 per month, 25 per cent discount.

Minimum Guarantee.

The minimum guarantee for domestic service is $1.50 per month gross, upon which a discount of 10 cents is allowed if paid on or before the 10th day of the month next succeeding that in which service is rendered.

Commercial Lighting—Business Service.

Rate.

Up to 200 kilowatt hours consumption per month, the rate for business service is the same as for domestic service.

For monthly consumptions in excess of 200 kilowatt hours per month, and not exceeding 400 kilowatt hours per month, a discount of 30 per cent is allowed.

For consumptions of 400 kilowatt hours, or more, per month, 33 1-3 per cent discount is allowed.

Minimum Guarantee.

The minimum for business service is $3.00 per month gross, upon which a discount of 20 cents is allowed for payment on or before the 10th day of the month next succeeding that in which service is rendered.

Commercial Power.

Rate.

8 c per K. W. H. for the first 200 K. W. H.
7½c per K. W. H. for each K. W. H. over 200 up to 250 K. W. H.
7 c per K. W. H. for each K. W. H. over 250 up to 300 K. W. H.
6½c per K. W. H. for each K. W. H. over 300 up to 400 K. W. H.
6 c per K. W. H. for each K. W. H. over 400 up to 500 K. W. H.
5½c per K. W. H. for each K. W. H. over 500 up to 700 K. W. H.
5 c per K. W. H. for each K. W. H. over 700 up to 1200 K. W. H.
4½c per K. W. H. for each K. W. H. over 1200 up to 1500 K. W. H.
4 c per K. W. H. for each K. W. H. over 1500 up to 2000 K. W. H.
3½c per K. W. H. for each K. W. H. over 2000 up to 3000 K. W. H.
3 c per K. W. H. for each K. W. H. over 3000 up to 4000 K. W. H.
2½c per K. W. H. for each K. W. H. over 4000 up to 6000 K. W. H.
2¼c per K. W. H. for each K. W. H. over 6000 K. W. H.

Prompt Payment Discount.

A discount of 10 per cent is allowed on all bills paid on or before the 10th day of the month next succeeding that in which service is rendered.

Minimum Guarantee.

Minimum $1.00 per h. p. of motors connected up to 14 h. p. and 50c per h. p. of connected load over 14 h. p.

Street Lighting.

400 watt tungstens, per month	$10.00 net
32 c. p. tungstens, per month	2.75 net
16 c. p. tungstens, per month	1.50 net

The above rates for street lighting are for all-night service. The company installs and maintains all street lighting equipment.

Irrigation Pumping Service.

Rate.

$1.00 per month per h. p. of motor or motors connected.

Energy Charge.

3c per kilowatt hour for all energy consumed.

Prompt Payment Discount.

A discount of 5 per cent is allowed on all bills paid on or before the 10th day of the month next succeeding that in which service is rendered.

The present schedule of rates for domestic and commercial lighting now in effect in the city of Lamar has no doubt been inherited from former companies and embodied in various franchises. The schedule is very poorly constructed, and it is doubtful whether any consumer of the company could determine whether or not he had been billed in accordance with its terms. Further, discriminatory "step" discounts are provided

whereby under certain conditions a consumer by increasing his monthly consumption may materially reduce his bill.

The Commission is of the opinion that the minimum guarantees now in effect in the city of Lamar are excessive, and further that the minimum bill for commercial service should not exceed the minimum guarantee for domestic service, merely for the reason that the consumer is classified as a commercial user. The Commission can see no good reason why the commercial lighting consumer with perhaps five or six lamps connected should guarantee a minimum monthly bill of $3.00, while a residence consumer with perhaps forty or fifty lamps connected is required to guarantee a minimum of $1.50. While a higher minimum may properly be required from the larger consumers than from the smaller ones, this minimum should apply to all lighting consumers alike without regard to the manner in which the installation of the consumers happens to be classified. The defendant will be required to file with the Commission a new schedule of rates, providing a minimum monthly guarantee based upon the consumer's connected load, and which guarantee shall apply to all lighting consumers alike. In the opinion of the Commission a minimum guarantee of 12½ cents per month per 100 watts connected, and in any event not less than $1.25 per month net, is reasonable in this case.

The street lighting rates now in effect in Lamar are in some respects higher than they should be. The city, however, is very poorly lighted, as is indicated by the small payment per capita for street lighting even under rates somewhat higher than the average. On account of the small amount of street lighting now being used by the city, the Commission is of the opinion that the present rates should not be disturbed, but that a new schedule of rates should be provided which will enable

the city to materially increase its present street lighting without a corresponding increase in the price paid per lamp.

While the Commission is convinced that the cost of operating this particular property for the year 1916 is by no means representative of the cost of operating it under more favorable market and operating conditions, it is entirely possible that at best the cost of operation will temporarily increase rather than decrease. With the exceptions above noted the Commission is, therefore, not inclined to order any material reductions in the present rates at this time, but will require the defendant to file a new schedule in accordance with the findings herein. The following schedule of rates for electric service will remove the discriminations and objections hereinbefore pointed out. The Commission is of the opinion that these rates are reasonable under the conditions prevailing at this time.

Rates for Electric Service.

Rate.

Commercial Lighting.

For the first 40 kilowatt hours consumption per month, $0.14 per K. W. H.

For the next 60 kilowatt hours consumption per month $0.13 per K. W. H.

For the next 200 kilowatt hours consumption per month, $0.11 per K. W. H.

For the next 200 kilowatt hours consumption per month, $0.09 per K. W. H.

For all consumption in excess of 500 kilowatt hours per month, $0.07 per K. W. H.

Prompt Payment Discount.

A discount of 5 per cent will be allowed on all bills paid on or before the 10th day of the month next succeeding that in which service is rendered.

Minimum Guarantee.

The consumer must guarantee a minimum monthly bill of 12½ cents net per 100 watts connected, and in any event a minimum monthly bill of not less than $1.25 net. In determining the connected load for the purpose of calculating minimum monthly bills, heating devices, fans and small utility motors not exceeding ¼ horsepower in size, shall not be considered as forming a part of the consumers' connected load, provided that in the case of laundries, tailor shops and simliar establishemnts making a large use of such utility devices, the same shall be included as a part of the consumer's connected load.

Availability.

This schedule shall be available to all consumers using the company's standard lighting service.

Commercial Power.

Rate.

For the first 100 K. W. H. consumption per month, $0.08 per K. W. H.

For the next 300 K. W. H. consumption per month, $0.07 per K. W. H.

For the next 400 K. W. H. consumption per month, $0.06 per K. W. H.

For the next 500 K. W. H. consumption per month, $0.05 per K. W. H.

For the next 700 K. W. H. consumption per month, $0.04 per K. W. H.

For the next 2000 K. W. H. consumption per month, $0.03 per K. W. H.

For the next 2000 K. W. H. consumption per month, $0.02½ per K. W. H.

For all consumption in excess of 6000 K. W. H. per month, $0.02 per K. W. H.

Prompt Payment Discount.

A discount of 10 per cent will be allowed on all bills paid on or before the 10th day of the month next succeeding that in which service is rendered.

Minimum Guarantee.

The consumer must guarantee a minimum monthly bill of $1.00 net per rated horsepower of motors connected, up to and including 10 horsepower, and a minimum monthly bill of 50 cents net per rated horsepower for all connected load in excess of 10 horsepower.

Availability.

This schedule shall be available to all consumers using the company's standard power service.

Irrigation Pumping.

Rate.

Fixed Charge.

$1.00 per month per horsepower of connected load.

Energy Charge.

3 cents per kilowatt hour for all energy consumed.

Prompt Payment Discount.

A discount of 5 per cent will be allowed on all bills paid on or before the 10th day of the month next succeeding that in which service is rendered.

Availability.

Available for irrigation pumping service only.

Municipal Street Lighting.

Rate, All-Night Schedule.

For the first 4000 watts of connected load, 4 cents net per watt per month.

For each additional watt of connected load not exceeding 3000 watts, 5-10 cent net per watt per month. For a connected load in excess of 7000 watts, 2½ cents net per watt per month for the entire connected load.

Terms and Conditions.

The company will, except in the case of ornamental street lighting, furnish and install all lamps, wires, poles, fixtures and other equipment required in rendering municipal street lighting service, and will maintain and operate the same.

Bills will be rendered by the company and paid by the city in equal monthly installments at the end of each month.

Heating and Cooking.

Rate.

For the first 30 K. W. H. consumption per month, $0.06 per K. W. H.

For the next 70 K. W. H. consumption per month, $0.05 per K. W. H.

For all consumption in excess of 100 K. W. H. per month, $0.04 per K. W. H.

Prompt Payment Discount.

A discount of 5 per cent will be allowed on all bills paid on or before the 10th day of the month next succeeding that in which service is rendered.

Minimum Guarantee.

50 cents per month per outlet or heating element installed.

Availability.

This schedule shall be available for heating and cooking purposes only.

Special Rates.

All special rates and schedules now in effect in the town of Lamar are to be discontinued, and the consumers now enjoying such special rates are to be placed on the above schedules.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, The Intermountain Railway, Light & Power Company, file with this Commission a new schedule of rates for electric service in accordance with the findings herein, and that in all other respects the complaint be, and hereby is, dismissed without prejudice to the rights of the petitioner to bring the issues herein contained before the Commission at a later date.

IT IS FURTHER ORDERED, That such new schedule of rates and charges for electric service shall become effective on November 1, 1917, and shall apply to all service rendered on and after that date.

(SEAL)

GEO. T. BRADLEY,
M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 8th day of October, 1917.

WILLIAM C. GETSCHOW
v.
THE COMMONWEALTH LAND COMPANY, a Corporation, and SYDNEY C. OSMER.
(Case No. 128.)

(October 13, 1917.)

COMPLAINT against the rates and service of water furnished by The Commonwealth Land Company at Stark Brothers' Woodlawn Addition, Arapahoe County; revision of rates prescribed.

APPEARANCES: For the Complainants, Messrs. Flor Ashbaugh and J. Ernest Mitchell. For the Defendants, B. M. Webster, Esq.

STATEMENT.

By the Commission:

On May 19, 1917, William C. Getschow and others filed with the Commission their complaint against the defendants alleging, in substance, as follows: That William C. Getschow, one of the complainants herein, is engaged in the occupation of mail carrier, Route No. 1, Littleton, Colorado; that his postoffice address is Littleton, Colorado; that the residence of all complainants herein is Stark Brothers' Woodlawn Addition, Arapahoe County, Colorado; that their postoffice address is Littleton, Colorado; that Sydney C. Osmer, one of the defendants, resides in Denver, Colorado, and is the manager of The Commonwealth Land Company; that the defendants have been and are now conducting, managing and operating the certain water supply system commonly called the Woodlawn Water System, supplying to the complainants herein and to others residing in Stark Brothers' Woodlawn Addition, and have been collecting money for such service from the said consumers, by virtue of which serv-

ice the defendants are a public utility under the provisions of the Colorado Public Utilities Act of 1913; that under the provisions of Section 15 of the Public Utilities Act, the defendant public utility is required, in compliance with such rules and regulations as the Public Utilities Commission may prescribe, to file with the Commission schedules showing all rates, tolls, rentals, charges and classifications collected or enforced or to be collected and enforced, together with all rules and regulations, contracts and facilities, which in any manner affect the rates, tolls, charges, rentals or service, provided that the rates, tolls, rentals and charges as shown in these schedules shall not exceed the rates, tolls, rentals and charges in effect on the 10th day of October, 1912. The complaint alleges that instead of filing schedules as provided by the Public Utilities Act, the defendants on or about May 7, 1917, filed in the office of The Public Utilities Commission of the State of Colorado, a schedule of water rates only, which schedule purported to be the first and initial schedule of rates under which the defendants had operated since the creation of the Public Utilities Commission, but which, in fact, is a schedule materially changing or attempting to change, and materially increasing, the rates charged and collected by the defendants prior to April 1, 1917; that no notice was served upon the complainants or other consumers of water under the system, prior to said April 1, 1917, as provided by the Public Utilities Act; that no order has been made by the Public Utilities Commission allowing any changes in rates without the regular thirty days' notice as provided by the Public Utilities Act; that no rule of the defendant utility, for the violation of which the water service of any consumer would be discontinued, has ever been published or filed as required by law. It is further charged that the defendants, though tendered the former prevailing minimum rate, have wholly refused

to accept same and have verbally notified the complainants that service would be discontinued in all cases where consumers refuse to pay water bills. The complainants assert that should water be shut off as threatened the users of water under the Woodlawn System would suffer irreparable injury, and that material damage would result to the health and property of the complainants. The complainants pray an order from this Commission directing the defendants to immediately file contracts, rates, schedules, rules and regulations as required by law, and in the event any change is proposed or sought to be enforced by the defendants that they forthwith be ordered to comply with the law, and with the rules and regulations of this Commission; and also that the defendants be restrained from discontinuing water service or any part thereof until they have fully complied with the law and the rules prescribed by the Commission for such action.

To this complaint the defendants filed an answer alleging that they have complied with the law governing public utilities; that on March 31, 1917, the defendants filed with the Commission statements of income and expenses and afterward a schedule of rates, this being the first schedule of rates filed with the Commission; that the defendants have operated for many years at a loss and that the revenue from their water system for the month of April, 1917, amounted to $99.65—sufficient only to pay operating expenses, leaving nothing for depreciation or interest.

After the filing of the above mentioned complaint and answer, the Commission ordered the suspension of the rates filed by the defendants pending a hearing into their reasonableness, and at the same time ordered the defendants not to discontinue the supply of water to the various complainants and other consumers until the questions at issue had been finally determined by the Com-

mission, which order was complied with by the defendants, and service was continued and has been continued up to this date.

Upon instructions, the Commission's hydraulic engineer, Mr. C. D. Vail, made an examination of the property of The Commonwealth Land Company in use and useful and submitted a report to the Commission. A report was also filed with the Commission by its statistician, Mr. F. W. Herbert, in compliance with instructions to make an investigation of the receipts and disbursements of the defendant company, together with an investigation to determine the net return, if any, the rates proposed in the schedule filed with the Commission by the defendant would yield upon the capital invested in the properties of the defendant utility.

Hearing in the above entitled cause convened in the hearing room of the Commission in the State Capitol building, Denver, on the 2nd day of June, 1917, at 10 o'clock a. m. When the hearing convened the complainants offered an amended complaint, including a motion to dismiss the case, which motion was afterwards withdrawn by them. The Commission allowed the amended complaint to be filed and at the same time allowed the defendants to read into the record their answer, which they desired, to new matters set up by the complainants. The amended complaint sets out what purported to be a certain contract, which the complainants contend runs with the land on which they live and states an agreed price for the supplying of water to the various patrons and consumers residing in Stark Brothers' Woodlawn Addition. On account of this contract the complainants allege they paid a larger price for lots in Stark Brothers' Woodlawn Addition than they otherwise would have paid. Complainants asked the Commission to enforce the provisions of this purported contract, and to order the defendants to supply water to the complainants on

the terms designated in such contract. On this point the Commission ruled that it is without jurisdiction and would not attempt to construe private contracts between individuals or corporations, but that inasmuch as complainants had brought their action alleging that the defendant, The Commonwealth Land Company, is a public utility, and that no objections to the jurisdiction of the Commission had been raised by the defendant company, the Commission would assume jurisdiction in this cause for the purpose of determining the reasonableness of the rates proposed or charged by the defendant, The Commonwealth Land Company, and the adequacy of service thereof.

The original complaint in this action raised no question as to the adequacy of service rendered by the defendant utility and the Commission's engineer was not directed to make an investigation in connection therewith. At the hearing the complainants sought to introduce testimony as to the inadequacy of the service, and as the Commission's engineer had not been ordered to investigate this subject, the Commission heard the reports of its engineer and statistician upon the subjects they were ordered to investigate, and also heard the testimony of other witnesses present as to the reasonableness of rates sought to be charged, and then continued the hearing at the request of all concerned to allow further investigation by the Commission's representatives as to the adequacy of service.

The case was continued from June 2, 1917, to August 14, 1917, the date of the last hearing of this case.

The report of the Commission's engineer, Mr. Vail, is, in effect, as follows:

That The Commonwealth Land Company owns and operates a small water plant known as the Woodlawn Water Works. The plant had its origin from a flowing

artesian well located on Lot 7, Block 7, Stark Brothers' Woodlawn Addition to Littleton.

For a number of years water was pumped by a windmill into a small tank near the well and with little care and expense the water was supplied to purchasers of small tracts in this locality; that pipe lines were gradually extended and more territory was covered. At the present time it supplies not only Stark Brothers' Woodlawn Addition but also the Windermere Addition lying south of Littleton Broadway. This fact of extended territory and also the fact of the lowering of the water level of the artesian water supply caused a material change in the manner and cost of supplying water to the consumers. The present supply of water is from the well heretofore mentioned, which is 720 feet deep with a water level about 280 feet from the surface.

At the present time there are 45 families in the lower system and 15 in the upper system receiving their water supply from the Woodlawn Water Works.. The lower system is supplied from a tank of about 13,500 gallons capacity, located near the well on a timber trestle 15 feet high; the upper system is supplied from a tank of about 6,000 gallons capacity on a steel trestle 25 feet in height, and located 150 feet west of Gallup Avenue and about 4,000 feet south of Littleton Broadway. The water to supply both systems is first pumped into the 13,500 gallon tank and from there a sufficient quantity, to supply the consumers in the upper system, is repumped into the tank near Gallup Avenue.

The puming plant consists of a 7½ horsepower electric motor, a Deming deep well pump and a small triplex pump. The distributing mains consist chiefly of 2-inch galvanized pipe laid in the alleys, and a 3-inch supply line from the lower to the upper tank. A conservative valuation of $10,000.00 has been placed on this plant.

The system has a limited supply of very good artesian water. In nearly all cases in irrigation companies, such as this, irrigation is more or less restricted in the hours of use and the amount of water used. Mr. Osmer's plant is not of sufficient size to handle a very large irrigation project; in other words, there might be sufficient water taken out for irrigation purposes to exhaust the supply. As to fire protection, the plant was not designed for or meant to furnish fire protection. Woodlawn Addition is not incorporated. While every consumer has a service hydrant, there is, strictly speaking, no fire protection other than what they might get from an ordinary sprinkling hose. The charter of the company provides that the objects of the company are to furnish water for irrigation and domestic purposes in connection with the lands owned and sold by the company. The water pressure is fair for sprinkling purposes; the service is metered service. The plant is limited to supply a certain amount of water, which is not sufficient to do a large amount of irrigation outside of what is necessary in connection with lawn and gardens; with large gardens and large areas to be irrigated there would not be sufficient water; if the town of Woodlawn should be trebled in population, or if the people adopt this war garden propaganda, the plant would not be able to furnish the water; that with the small plant he has out there Mr. Osmer is in position to furnish some water for irrigation purposes —for lawn sprinkling.

The report of the Commission's statistician, Mr. Herbert, contains the following facts:

That the records of the operations of the water plant of this company are tied into the accounts of the Commonwealth Land Company and there are no separate books of the water department, except the consumers' record, so that it is practically impossible to make an accurate study of the revenues and operating expenses of

the water plant, or develop any statement of the plant investment of the company; that from the consumers' record was developed the revenue from the sale of water to the consumers as shown by the book record; for the period March 31, 1916, to March 31, 1917, collections were made in quarterly payments for three months ending June 30, 1916, September 30, 1916, December 31, 1916, and March 31, 1917. This record shows the following revenues for the above designated period:

Total Revenue March 31, 1916, to March 31, 1917		$ 694.74
The following items reflect the operating expenses for the year:		
Electric Current for Pump	$ 295.70	
Labor	1,100.00	
Repairs and Maintenance	500.00	
Total		1,895.70
Deficit in operating expenses		$1,200.96

The company filed a new schedule of rates for consumers under day of May 7, 1917, effective June 7, 1917. Assuming that the company has the same number of consumers using the same amount of water for a like period, and that the same number of consumers will be billed under the minimum rate, I have endeavored to develop the amount of revenue which would be available provided the proposed schedule of rates is made effective. Applying the proposed new schedule of rates to the present consumers on the basis of the past year's consumption, would produce a revenue of $1,326.90. With this increase in revenue and applying the same estimated operating expense as the previous year would show a deficit in the year's operation of $568.80.

In the operation of the plant there has been no allowance made for depreciation and no charges to operating expense for the depreciation reserve.

From this report it is very clearly shown that the company is not earning its operating expenses, and would not earn its operating expenses with the increase in rates. No allowance has been made for interest on the investment.

While the witnesses for the complainants testified as to the alleged inadequacy of the supply and service, one witness called on behalf of the defendants testified that he lived in Woodlawn Addition and had lived there five or six years; that he was on the best terms with both the complainants and the defendants; that his lawn requires no irrigation, but to offset this he has about forty fruit truees to irrigate; that he has a lot 180x160 feet (equivalent in area to eight or ten Denver lots); that he has seven rooms in his house above the basement; that he had bath and toilet; that his water bill averaged about $2.25 per quarter; that during June, July and August it averaged about $9.00 for the three months' irrigation; that he believes the rate increase proposed by defendants is perhaps necessary; that the water is good and he was willing to pay for good water; that he had no complaint on the service or as to the pressure or amount of water furnished.

Mr. G. H. Pflaeging, pumpman for the Woodlawn system, testified that the water is pumped into the large tank and from there re-pumped into a tank near Gallup Avenue; that there are two steel tanks, one of 18,000 gallons capacity and the other of 10,000 gallons capacity; that it requires about 14 to 15 hours to fill both tanks; that there are 61 users under the whole system; that during the period of warm weather immediately preceding the hearing of this cause daily consumption was about 10,000 gallons; that if necessary the present supply could be trebled; that the pressure is good; that under the Woodlawn tank the pressure is about twenty pounds.

From the record in this case it appears that the

defendant, The Commonwealth Land Company, originally commenced the operation of supplying the water to its consumers from a large flowing artesian well 720 feet deep, which water was distributed to the consumers through water mains and laterals. Originally, also, no attempt was made to furnish water for any extensive irrigation, the supply being confined chiefly to domestic uses, including the irrigation of lawns and gardens of consumers. Later, the well ceased to flow and it became necessary to install a pump and two steel tanks, one of 13,500 gallons and the other of 6,000 gallons capacity, from which the water is now distributed. The present water level in the well is about 280 feet from the surface. The water is of fine quality. No surface water appears to be used either for household or irrigation purposes.

It appears that the Stark Brothers' Woodlawn Addition is not an incorporated town, but it is a closely built community of homes, containing a population of about forty-five prosperous and substantial families. The total number of consumers supplied with water seems to be sixty-one. There has never been a fire department there; no arrangement has ever been made for fire protection, excepting from the garden hose of each consumer.

From the testimony of the defendants, as well as that of the Commission's engineer, which is uncontroverted by testimony, the defendant company has a plant with a reasonable value of not less than $10,000.00. From the report of the Commission's statistician the total revenues collected by the defendant water company and the total income of said water company for the year commencing March 31, 1916, and ending March 31, 1917,, are shown to have been $694.74, and the operating expenses $1,895.70, leaving a deficit of $1,200.96 for operating expenses. This was for collections under the old schedule of rates. Applying the defendant's new schedule of

rates to the present consumers on the basis of the past year's consumption, would produce a revenue of $1,326.90. With this increased revenue and applying the same estimated operating expense as the previous year, there would still be a deficit in the year's operations of $568.80, this without making any allowance for interest on the investment or depreciation.

It is evident, after a careful investigation, that the defendant, The Commonwealth Land Company, is not earning a fair return on the money invested in this plant, and should the proposed schedule of rates filed with the Commission by the defendant be put into effect, the defendant company would still not earn a fair return on its investment.

While the Commission did not undertake to determine the rights of parties under the contracts, which it was contended went with the land when sold to the different consumers, it did allow the complainants to introduce evidence tending to show this water system was used in connection with and for the benefit of the land department as an inducement for the sale of lots, thereby stimulating the price and sale of the lots.

In Re American Irrigating Company, 9 Calif. R. C. R. 366, in which case the fact and circumstances developed were very similar to the present case before this Commission, that Commission says:

"The Fair Oaks Water Takers' Association, through its counsel, urges that the owners of this plant have received just compensation therefor, either through an additional price for the sale of land owned and sold by them, or in the benefit derived through the increase in the value of land owned by them.

"Evidence was introduced purporting to show that this water system was, in effect, used for the benefit of its owners in their land schemes, and insisted that no earning should be allowed upon the investment. * * *

The evidence is not clear or convincing as to just what relations the land and the price obtained therefor bear to this irrigation system. It is impossible to determine, even approximately, what benefit inured to the owners of this system through their land operations. * * *

"However, as it is conceded by the water taker's association that some increase is necessary in order that the operation of this system may continue, and, furthermore, such a sum must be provided as will insure repair of this system to such an extent as to make the service reasonably good. I shall recommend a rate, therefore, which will provide operating expenses, taxes, and such an amount for depreciation as will permit of the repair and rehabilitation of the plant so as to provide not only a continuance of the service given, but for bettering that service. * * *"

In the above mentioned case no interest was allowed on the investment. The evidence in the present case is also idefinite as to just what benefits have been derived by the land department. It is impossible to determine, even approximately, what benefit inured to the land department through the sale of lots.. However, the fact that this water system was used and is probably now being used as an inducement for the sale of the lots impresses this Commission with the view that they should not be allowed to so increase their rates sufficient to produce a return on the money invested in the water plant. In fact, the rates proposed by the defendant are not sufficient to do this.

It may also seem that as the income is still insufficient to meet the operating expenses of the Company that a further increase should be allowed for this purpose. However, as the rates herein ordered are practically the rates proposed by the company it is fair to presume that the company may be able, by a readjustment of its

operations, to reduce its expenses and the cost of operation of the plant.

As to the adequacy of the service, it is apparent to the Commission that the water department was originally intended for supplying fresh artesian water to its consumers, together with a reasonable supply of water for irrigation of lawns and garden purposes. It appears from the record that the company is able to supply to the consumers thereunder not less than 19,500 gallons per day, with the possibility that if the water would be pumped for a longer period during each 24 hours, that this supply could be increased. At the present time the company is supplying about 10,000 gallons per day. It appears, therefore, that there is plenty of water that can be supplied to the consumers for reasonable and necessary use.

It also appears in the record that the company has been in the habit of charging a meter rental, and in the first schedule filed with the Commission a meter rental was provided for therein. This is contrary to the rules and regulations of this Commission, and the defendant company will not be allowed hereafter to make any charge for meters.

It also appears from the record that the defendant company has not kept its accounts in accordance with the rules prescribed by the Commission. The defendant company will be required to install a new system of accounting in accordance with the Uniform Classification of Accounts as prescribed by the Commission, and the services of the Commission's statistician will be available for this purpose.

While the Commission is of the opinion that the schedule proposed by the defendant company, generally speaking, is not unreasonable, yet, after due consideration, the Commission has determined to fix for the defendant company a schedule of rates, which will not be

in excess of the schedule proposed by the defendant company and yet will be fair to the consumer.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, The Commonwealth Land Company, be permitted to file and charge the following schedule of rates:

Rate:

For the first 1500 gallons consumption per month per consumer, 10 cents per 100 gallons.

For all consumption in excess of the first 1500 gallons per month per consumer, 5 cents per 100 gallons.

Minimum Guarantee:

The consumer must guarantee a minimum monthly bill of $1.50.

Prompt Payment Discount:

A discount of 10 per cent will be allowed on all bills paid within the usual discount period.

IT IS FURTHER ORDERED, That the said defendant company be, and it is hereby, permitted to charge its consumers and patrons according to the above schedule of rates, beginning the 1st day of June, 1917.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 13th day of October, 1917.

IN RE APPLICATION OF THE DENVER, BOULDER & WESTERN RAILROAD COMPANY TO INCREASE FREIGHT RATES.

(Case No. 140.)

Rates—Reasonableness—Value of service.

(1) Reasonable compensation for the service actually rendered is all that a common carrier is entitled to ask from the public.

(October 13, 1917.)

APPLICATION of The Denver, Boulder & Western Railroad Company to increase freight rates; increased rates prescribed by Commission in order.

APPEARANCES: E. E. Whitted, Attorney, and L. R. Ford, General Manager, for the applicant.

STATEMENT.

By the Commission:

This proceeding arises upon application of The Denver, Boulder & Western Railroad Company to increase freight rates between points on the line of its railroad and between such stations and points on the Colorado & Southern Railway and the Denver & Salt Lake Railroad. The applications were filed with the Commission on August 3, 1917, and set forth specifically the rates desired and in addition contained the several reasons claimed by the applicant as justifying the advances.

A public hearing was held at Denver, Colorado, on the 13th day of September, 1917, at which time and place evidence was submitted by the applicant. Prior to the hearing the Commission caused the fullest publicity of the pending hearing through notices in the press throughout the local territory of the applicant's line.

In justification of the proposed increases the principal arguments advanced by the applicant are: That during the twenty years of operation of the line only $31,500.00 has been paid as interest on its bonds; that no dividends have ever been declared or paid on its capital stock; that in recent years its operating expenses and taxes have exceeded the operating revenues; that wages of the employes have greatly increased and are continually advancing; that the cost of fuel and material has constantly advanced; that the annual revenues from mail service have greatly decreased owing to the change in the class of service from "Apartment Service" to "Closed Pouch Service"; and that unless immediate relief is granted through the medium of increases in freight rates the applicant will be unable to sustain its operations.

At the hearing in the cause only two shippers, one of whom was a representative of the Boulder Commercial Association, appeared and gave testimony with reference to the proposed increases. One of these shippers, who ships more freight than any other single shipper on the line, testified that his company was agreeable to the proposed increases if such rate advances will result in the continued operation of the road, and that rather than see the road discontinued his company is willing to stand even greater increases than those asked for in the application. He testified further that if, on the other hand, the granting of the proposed increases would simply result in increased charges for a temporary period, with the ultimate discontinuance of service, then his company objected strenuously to the proposed increases. The testimony of the other shipper, the representative of the Boulder Commercial Association, was substantially to the same effect.

The territory through which this line was built and operates is exclusively mining, and the applicant is al-

most entirely dependent upon this industry for its freight revenues. The districts have, however, never fulfilled the promises indicated in the early operations and, while there are a few mines which still ship considerable tonnage, the railroad has never received the freight traffic expected at the time of construction. The population along the applicant's line is extremely sparse and the amount of tonnage to be derived from shipments other than those to and from the ore mines is undependable. The financial situation of the applicant is well known to the inhabitants located along the line, including all its shippers, and it is realized that relief must come or the road will attempt to discontinue operations entirely.

The operated mileage of the applicant at present is 46.79 miles. The road extends west from Boulder to Sunset, a distance of 13.3 miles, from which point it diverges north to Ward, 26.1 miles distant from Boulder, and south to Eldora, 33.4 miles distant from Boulder.

Originally organized under the name of The Colorado & Northwestern Railway Company, operations were commenced during the year 1898. On July 1, 1904, a reorganization took place, the new company taking the name of The Colorado & Northwestern Railroad Company. Operations were continued by this company until June 12, 1907, when a receiver was appointed. It was then operated by Mr. W. B. Hayes, receiver, until March 29, 1909, when, under reorganization plans, the present corporation, The Denver, Boulder & Western Railroad Company, took over the line and since that date has operated the property.

The entire line of the applicant is a 3-foot, narrow-gauge, with 56-pound rails. Practically the entire distance consists of tortuous curves, some as high at 40 degrees, and heavy grades reaching six per cent. The winter operation of the line is extremely difficult due to heavy snows, being followed by wind storms, which cause

the snow to drift over the tracks at certain points thirty and forty feet in depth. The removal of the snow is accompanied by great hazard owing to the many slides encountered. In fact, engines and snow plows have been overturned at different times by the slides and swept down the hillsides, causing considerable damage to the equipment. The service and facilities of this road have been twice made the subject of formal complaints before the Railroad Commission of Colorado, the predecessor of this Commission, and testimony relating to the difficulties of operation exhaustively introduced into the evidence. These were the cases of Big Five Tunnel, O. R. & T. Co. v. D., B. & W. R. R. Co., Case No. 30, Biennial Report 1911-1912, page 48, and Ewing and Davis v. D., B. & W. R. R. Co. Biennial Report, 1913-1914, page 135.

The equipment of the applicant consists of six steam locomotives, 23 box cars, 35 coal cars, 8 other freight cars, and 15 passenger cars. The average annual freight tonnage, computed on an average of the six years ended June 30, 1917, amounts to approximately 17,548 tons, with 375,304 ton-miles. This average yearly tonnage consists of the following classifications: Products of agriculture, 447 tons, or 3 per cent of the total; products of mines, 11,397 tons, 65 per cent of the total; products of forests, 1,982 tons, 11 per cent; manufactures, 923 tons, 5 per cent; merchandise, 2,680 tons, 15 per cent; and miscellaneous, 114 tons, 1 per cent. The average number of passengers carried yearly, computed for the same six-year period, amounted to 40,562 persons, consisting mainly of tourist traffic, with 791,694 passenger-miles. The average revenue per ton-mile for the same period amounted to 10.38 cents and per passenger-mile 3.08 cents.

The largest movement of any single commodity is that of ore. The reports of the applicant for the fiscal years 1916 and 1917 do not show the percentage of the

ore tonnage, but for the fiscal year 1915 this tonnage amounted to 47 per cent of the total freight handled. A large percentage of this ore moved is tungsten ore originating in the Nederland district.

The largest portion of the passenger traffic of the applicant consists of the summer excursion business to the mountain parks and resorts on its line, such as Glacier Lake, Eldora, etc. The winter passenger service schedule provides for one train a week on the Ward line and daily service on the Eldora line. It many times becomes impossible to maintain this schedule owing to the difficulties of removing the snow and ice from the tracks. During the winter of 1913 excessive snow falls blocked the line for weeks at a time, and from December 9, 1913, to January 1, 1914, one train was stalled in the drifted snow at a point nine miles west of Boulder.

The Commission has compiled a table showing the earnings, expenses and condensed balance sheet of the applicant for the fiscal years ended June 30, 1910 to 1917, both inclusive, the statistics being taken from the annual reports on file with the Commission.

	FISCAL YEAR ENDED JUNE 30.							
	1910	1911	1912	1913	1914	1915	1916	1917
Freight Revenue	$ 93,158	$52,079	$34,908	$29,719	$25,330	$35,129	$65,305	$47,691
Passenger Revenue	32,048	33,099	25,194	24,694	24,424	21,799	24,354	21,494
Other Operating Revenue	7,594	4,766	4,265	3,652	3,846	5,267	4,324	4,481
Total Operating Revenue	132,800	89,945	64,369	58,065	53,601	61,196	93,984	73,668
Total Operating Expenses	102,651	79,107	65,237	61,237	69,138	63,520	80,268	72,251
Net Operating Revenue	30,148	10,837	**868**	**2,171**	**15,536**	**2,323**	13,716	1,416
Auxiliary Operations—Net	**207**	**127**	**101**	**160**	**80**	**102**	.....	**83**
Railway Tax Accruals	4,158	3,666	2,666	3,333	3,199	1,466	1,755	2,411
Railway Operating Income (or Loss)	25,783	7,043	**3,636**	**6,665**	**18,816**	**3,790**	11,960	**1,077**
Total Other Income	320	664	1,437	1,144	695	630	136	566
Gross Income (or Loss)	26,103	7,707	**2,199**	**5,520**	**18,121**	**3,262**	12,097	**511**
Interest Deduction Funded Debt	.....	21,000	10,500	.....	.....	.....	.....	.....
Total Deductions	1,660	21,400	10,980	480	190	196	592	294
Net Income (or Loss)	24,443	**13,772**	**13,179**	**6,000**	**18,311**	**3,458**	11,505	**805**
Balance (Credit or Debit)	23,743	**13,547**	**13,293**	**6.000**	**18,311**	**3,458**	11,505	**805**
Balance Carried Forward	31,708	18,238	4,990	**1,010**	**19,322**	**20,178**	**9,685**	**10,491**
Operating Ratio	77.30*	88.12*	101.35*	105.46*	128.98*	103.96*	85.40*	98.08*
Expenses:								
Maintenance of Way and Structures	23,622	14,824	12,033	12,219	13,412	14,217	18,674	18,068
Maintenance of Equipment	16,436	12,030	10,600	9,533	10,921	11,702	16,652	14,090
Traffic	3,477	3,301	2,630	2,762	3,024	2,637	2,872	2,446
Transportation	47,609	37,526	29,328	26,332	31,981	27,313	36,555	31,333
General	11,505	11,425	10,637	10,389	9,798	7,650	5,454	6,311
Miscellaneous	.....	.....	.....	.....	.....	102	59	83
Total Freight Tonnage	53,462	26,847	19,699	14,009	12,701	17,165	23,402	18,113

Blackface figures represent deficit, debit or loss. *Per cent.

In four of the eight years included in this compilation the operating expenses of the applicant have exceeded the operating revenues; five years have shown deficits in the railway operating income; five years have shows deficits in the net income, and six years have shown the balance to be on the debit side. On June 30, 1917, the company was carrying a debit balance of $10,491.00.

It is evident that this company cannot continue operations indefinitely with yearly operating deficits, and also that it undoubtedly will become necessary to discontinue operations unless some relief is granted through increases in the operating revenues. The Commission recently held, In re Denver, Laramie & Northern Railroad Company, 4 Colo. P. U. C. 316, that a railroad may not discontinue operations and withdraw from public service, unless it is shown that, after a fair trial, it is unable to earn its legitimate operating expenses, and that the carrier must first make a showing that an increase of rates commensurate with the value of the service, if permitted by the Commission, will not increase its revenues to the extent of paying its operating expenses and thus creating a public demand for the road.

Clearly, any increases granted in revenues must come principally from freight traffic, inasmuch as approximately two-thirds of the applicant's revenues are derived through freight service. Increases were made by the applicant in both freight and passenger rates during the year 1915. The Commission has never prescribed passenger rates on the line of this carrier and at present passenger rates are computed on a basis of six cents per mile. When the increase in freight rates was proposed early in the year 1915 the Commission suspended the tariffs containing the increases and held a hearing concerning the propriety of the same. A decision was rendered permitting the tariffs to become effective May 1, 1915, since which time the rates have remained at prac-

tically the same figures. The opinion of the Commission will be found at 1 Colo. P. U. C. 33, In re Advances in Freight Rates of The Denver, Boulder & Western Railroad Company.

In making the application herein the applicant stated that it would be impossible to increase all of the rates upon a plane, since to do so would result in the establishment of many rates which would restrict or eliminate certain low grade traffic, and result in the loss of such business to the carrier, and that this traffic constitutes a considerable portion of the total traffic of the road. In the tentative schedule of rates asked for the applicant set forth increases on commodities which, it believed, were not bearing their share of the carrier's revenues or which might still move as freely under the proposed rates as under the present rates. It was admitted that there was no general basis used in the computing of the proposed rates.

During the taking of testimony it developed, and was made a matter of record in the issues, that in event the Commission granted the applicant any increases in joint through rates, the applicant's connections would accept no more than their present divisions of the present through rates and would allow the entire amount of the increase to accrue to the applicant.

The Commission is convinced that there is urgent need for an increase in the revenues of this carrier and that some relief must be granted in order to insure the continued operations of the road. To supervise and revise practically an entire freight schedule of a carrier is not without difficulties, however, and while in so doing full consideration may be given to the immediate financial difficulties of the company, consideration must also be given to all of the surrounding conditions, such as competition, restricting movement of traffic by high rates, relationship of rates within the schedule, through rates

exceeding the combinations of the intermediate, and all the other complex details entering into the question of rate making. (1) And attention must at all times be given to the principle heretofore followed by the Commission—that laid down by the United States Supreme Court in Smyth v. Ames, 169 U. S. 466, 18 Sup. Ct. 418, 42 L. Ed. 819:

> "On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered are reasonably worth."

The Commission, being convinced of the necessity of additional revenues on the line of the applicant, will therefore allow the applicant to make certain increases in its rates and charges for the transportation of freight which shall not be in excess of the rates specifically set forth in the Commission's order in this cause. Inasmuch as traffic movements alter appreciably with changes and variations in rates, the reasonableness of a schedule of rates such as is prescribed by the Commission in this cause can only be determined definitely after such rates have been in effect for a considerable period. It is impossible to determine at this time that each and every rate prescribed in the schedule may not be in excess of the service rendered, or that such rates will in each and every case be reasonable. It may be that some of the rates will render the transportation of certain commodities prohibitive, although the Commission is of the opinion that few, if any, of such cases will arise. A trial alone can determine this question with certainty. The Commission, will, therefore, reserve the right to modify or change the order or opinion in this case upon a proper showing that the rates prescribed are unreasonable or unjust to the applicant or to the public.

The applicant asks that all of the rates in its local freight tariff No. 3-B, Colo. P. U. C. No. 11, be increased

by 16 2-3 per cent; that specific changes, as set forth therein, be made in its local freight tariff No. 6, Colo. P. U. C. No. 9, Colorado & Southern Railway joint freight tariff GFO No. 201-I, Colo. P. U. C. No. 288, and Denver & Salt Lake Railroad joint freight tariff No. 248, Colo. P. U. C. No. 35.

In discussing the specific changes asked for by the applicant the Commission will state, at the outset, that no changes may be granted at this time in the joint through coal rates to points on applicant's line as shown in the last two mentioned tariffs inasmuch as supplements have been filed to these tariffs proposing an increase of fifteen cents per ton in such rates. These supplements have been suspended by the Commission in Investigation and Suspension Docket No. 11 and the cause will be heard at an early date, after which the determination of the coal rates may be made.

The applicant's tariff No. 3-B, Colo. P. U. C. No. 11, is a schedule containing distance class rates and certain commodity rates applicable between stations on its line other than Boulder. It is proposed to increase all the rates in this tariff by 16 2-3 per cent. But a small amount of the applicant's tonnage moves under this tariff and the Commission is of the opinion that this increase should be permitted.

Class Rates.

The applicant proposes increases in the class rates between Boulder and points on its line ranging from 1 cent per 100 pounds in the first-class rate at Orodell to 11 cents at Eldora, and between Denver and points on the applicant's line from 1 cent at Orodell to 15.2 cents at Eldora. There is no fixed basis of relationship as between the proposed rates to the different stations, nor between the first class and the lower classes. But, on the other hand, neither is there any established ratio between the present rates, and it would be practically an

impossibility to prescribe rates at this time which would result in absolute ratios between the various stations and between the classes.

The applicant meets with keen competition to points in the vicinity of the Nederland tungsten district, both in the passenger and the freight traffic. Many automobile companies operate routes between Boulder and points in this district as well as to certain points located directly on the applicant's line. The town of Nederland is reached by the railroad in connection with an automobile line from Cardinal, a station on the line of railroad. The Commission is without jurisdiction to regulate the rates of the automobile lines to stations not situated immediately on the line of railroad, as the act provides that automobile lines are common carriers only when operating in competition with railroads or street railways. The applicant is compelled to meet the rates of the automobile companies in order to obtain any share of the business, and the establishment of these competitive rates to inland towns in connection with the automobile line from the station on the line of railroad in practically all instances forces the establishment of rates not exceeding the rates to the inland town. In fact some of these rates are reflected to points located considerable distance back from the point of connection between the railroad and its connecting automobile line. The applicant carries through class rates to two of the inland towns only, Nederland and Stevens Camp, the division of the through rates accruing to the transfer line being set forth in the tariffs.

The Commission is of the opinion that a scale of class rates asked by the applicant may be permitted and that none of these rates will retard or restrict the movement of such traffic as at present moves under the class rates.

Commodity Rates.

The tariffs of the applicant, both local and joint, are unencumbered by numerous rates on special commodities and contain only rates on such commodities as move in appreciable quantities at present or have so moved in the past. There are certain commodities included in the commodity sections at present which the applicant desires to eliminate from the tariff. These include building material, railway equipment, oil, potatoes, household goods, scrap iron and certain special rates on ore and concentrates, as described in items 34, 41, 42a, 53, 60 and 63 of the applicant's local tariff No. 6, Colo. P. U. C. No. 9 and items 198a, 210, 245a, 250a and 251 of Colorado & Southern Railway Co., tariff 201-I, Colo. P. U. C. No. 288.

The Commission has considered the effect of permitting the cancellation of these items and has arrived at the conclusion that each may well be cancelled, allowing the return of such commodities to the class scale of rates rather than continuing under a special basis of commodity rates. Of the rates mentioned a rate on scrap iron of 21 cents per 100 pounds is maintained at present from Eldora to Denver, whereas the class rate on this commodity is only 20 cents. By the cancellation of the special rates on scrap iron this commodity will receive the application of the class rate under the new scale, as it has heretofore, inasmuch as the alternative clauses of the tariff permit of the use of the class rates when lower than the special commodity rates.

Application is made to increase the rate on brick and fire clay from Boulder to Nederland from 20 cents per 100 pounds to 25 cents, and to Stevens Camp from 22½ cents to 28 cents. These increases are in proportion to the increases in class rates and should be permitted.

It is proposed by the applicant to make certain increases in its grain and hay rates, both of which commodities are on the same basis to most destinations. The increases will apply principally from Boulder, with the exception of the rates to the most distant points on the line. In the applicant's tariffs points of destination are grouped, both in the class and the commodity rates, so that several stations have the same rates. This is caused by the circuitous route traversed by the applicant's line, which thus places a number of stations in close proximity although located at some distance apart by rail. It is necessary that all of the stations included in one of these circles have the same rate in order to place them on a parity, otherwise all traffic would be forced to the station in the group having the lowest rate, the shippers being able to place or receive their shipments at any one point equally as well as at the others. The Commission is of the opinion that the proposed rates on grain and hay are excessive in some instances and that the applicant has not properly considered a relationship of the rates as between Boulder and Denver. Rates have been requested from Boulder which are in excess of those applicable from Denver, which clearly cannot be permitted. A revised scale of grain and hay rates will be prescribed by the Commission which, in some instances, will allow the rates asked, and which will retain the grouping of stations as at present constituted.

Increases are proposed in the rates on high explosives from Denver and Boulder to stations on the applicant's line and the Commission believes such rates should be permitted. The Commission is also of the opinion that the proposed increases in the rates on cement, cement plaster and lime from Boulder to Nederland and Stevens Camp should be allowed to become effective.

The only change proposed in the rates on ice is that from Glacier Lake to Boulder, which at present is 4½ cents per hundred pounds, the proposed rate being 5 cents. The proposed rate is not unduly high and should be allowed.

The applicant is carrying in the current local tariff No. 6, Colo. P. U. C. No. 9, two sets of rates on lumber from stations on its line to Boulder. This conflict should be eliminated, and in prescribing new rates on lumber the Commission will properly revise these rates.

While the joint through rates on coal to the applicant's line are under suspension the Commission may properly determine the proposed increases in the local rates on coal. The rates are applicable from Boulder only and are used in connection with rates of the lines into Boulder from mines from which there are no through rates, since no mines are located directly at Boulder. It may be possible that coal is hauled from a few of the mines in the Northern Colorado district to Boulder by wagon and there transported to destinations on the applicant's line. In view of the basis of through rates in effect from this district, however, this is not probable, and it is unlikely that any considerable traffic moves under the local coal rates. If the increases are not permitted at this time these rates will be unduly low in proportion to the rates prescribed on the other commodities. They are not at issue in I. & S. No. 11, referred to herein, and the Commission is of the opinion that the increase should be granted to preserve the relationship with the other rates, and will so find.

The applicant has proposed many increases in the rates on ores and concentrates, which form the largest traffic of any commodity moved. There are many inequalities, however, and the Commission is reluctant to give its approval to the basis requested. A schedule of ore and concentrates rates has been drawn by the Com-

mission to take the place of that submitted by the applicant and will be prescribed in the Commission's order.

An order will be entered in accordance with these findings and, as hereinbefore stated, the rates prescribed will be subject to further revisions or modification on the part of the Commission upon showing made that the same are unjust or unreasonable to the public or to the applicant.

ORDER.

IT IS THEREFORE ORDERED, That The Denver, Boulder & Western Railroad Company be, and it is hereby, allowed and permitted to establish, effective on not less than three days' notice to the Commission and to the public by filing and posting in the manner provided in section 16 of the Act, rates and charges for the transportation of freight between stations on its line of railroad which shall not exceed the rates hereinafter set forth:

Class and Commodity Rates as shown in Denver, Boulder & Western Railroad Tariff No. 3-B, Colo. P. U. C. No. 11, plus 16 2-3 per cent of such rates.

CLASS RATES.

Beween BOULDER and	CLASS RATES IN CENTS PER 100 LBS.									
	1	2	3	4	5	A	B	C	D	E
Langdell	23	18	15	14	13	9	8	7	7	7
Salina	26	22	18	16	15	12	11	9	8	8
Copper Rock	30	25	22	20	18	15	13	12	11	11
Sunset	30	27	24	22	20	16	15	14	13	12
Gold Hill	44	36	31	30	29	25	23	22	21	18
Puzzler	46	39	35	33	33	29	26	25	23	22
Ward	51	44	39	38	38	33	31	30	29	29
Tungsten	30	27	25	23	20	20	20	20	15	15
Cardinal	40	40	40	40	33	33	29	25	23	22
Eldora	53	48	43	40	33	33	29	25	23	22
Nederland	40	40	40	40						
Stevens Camp	40	40	40	40						

COMMODITY RATES.

Commodity.	FROM	TO	Rate in Cents per 100 lbs.
Bran, chopped feed, flour or grain, in sacks, or hay or straw, in bales, straight or mixed C. L.	Boulder	Langdell	7
		Salina	10
		Copper Rock	14
		Sunset	16
		Brainerd	22
		Ward	26
		Tungsten	18
		Eldora	26
		Nederland	35
		Stevens Camp	35
	FROM	TO	
Brick or fire clay, in straight or mixed C. L.	Boulder	Nederland	25
		Stevens Camp	28
	FROM	TO	
Cement, cement plaster and lime, straight or mixed C. L.	Boulder	Nederland	25
		Stevens Camp	27
	FROM	TO	
Coal, all kinds, carload.	Boulder	Langdell	4
		Salina	7
		Copper Rock	8
		Gold Hill	11¼
		Ward	17½
		Tungsten	11¼
		Eldora	17½
		Nederland	18
		Stevens Camp	18
	BETWEEN	AND	
High explosives, as described in tariff.	Boulder	Salina	25
		Copper Rock	36
		Sunset	38
		Puzzler	46
		Ward	55
		Tungsten	35
		Cardinal	40
		Eldora	55
		Nederland	40
		Stevens Camp	40

COMMODITY RATES—Continued.

Commodity.	FROM	TO	Rate in Cents Per 100 lbs.
Ice, carloads.	Glacier Lake	Boulder	5
	FROM	TO	
Lumber and articles taking lumber rates as described in tariff, carloads.	Boulder	Langdell	7
		Salina	8
		Copper Rock	11
		Sunset	13
		Gold Hill	21
		Puzzler	23
		Ward	29
		Tungsten	15
		Eldora	23
		Nederland	25
		Stevens Camp	28

RATES IN CENTS PER TON OF 2,000 POUNDS.

Between BOULDER and	Tungsten ore and concentrates tungstic acid of			Other ore and concentrates Actual value per ton				
	Not over 5 Per cent.	From 5 to 10 Per cent.	Over 10 Per cent.	Not over $20	$30	$50	$100	Over $100.
Wall Street	125	150	200	120	175	200	250	300
Sunset	150	175	225	150	200	250	300	375
Frances	175	200	275	150	250	300	375	450
Ward	200	225	300	150	250	300	375	450
Tungsten	150	175	225	120	200	250	300	375
Eldora	200	225	300	150	250	300	375	450

IT IS FURTHER ORDERED, That The Denver, Boulder & Western Railroad Company be, and it is hereby, allowed and permitted to cancel, effective on not less than three days' notice to the Commission and to the public, the rates on building material, railway equipment, fuel oil and potatoes as set forth in items 34, 41, 42a, 53, 60 and 63 of D., B. & W. R. R. tariff No. 6, Colo. P. U. C. No. 9.

IT IS FURTHER ORDERED, That The Denver, Boulder & Western Railroad Company and The Colorado & Southern Railway Company be, and they are hereby, allowed and permitted to establish, effective on not less than three days' notice to the Commission and to the public, by filing and posting in the manner provided in section 16 of the Act, rates and charges for the transportation of freight between stations on their respective lines which shall not exceed the rates hereinafter set forth:

CLASS RATES

Between DENVER and	CLASS RATES IN CENTS PER 100 POUNDS.									
	1	2	3	4	5	A	B	C	D	E
Langdell	52	42	35	29	25	21	18	15	14	13
Crisman	52	46	38	31	26	21	18	15	14	13
Salina	55	46	38	31	27	24	21	18	16	15
Wall Street	56	49	42	34	30	26	21	19	17	15.2
Copper Rock	56	49	42	35	30	27	23	21	19	15.2
Sunset	58	51	44	37	32	28	25	22	20	16.2
Gold Hill	63	55	48	-41	38.3	32.8	29.9	28	26.4	22.2
Brainerd	75	63	55	48	45	39	35	32.8	30.2	28.9
Puzzler	75	63	55	48	45	41	35	34	31	29.8
Frances	76	68	59	52	49.4	44	40.6	39	37.4	36.8
Ward	76	68	59	53	49.4	45	41.2	39.3	38	36.8
Tungsten	58	51	45	38	32	32	30	26	21	19.2
Cardinal	58	56	53	53	42.6	42.6	37.4	31	28.4	26.6
Eldora	69.2	62.4	55.6	51.4	42.6	42.6	37.4	31	28.4	26.8
Nederland	60	57	54	50	..	..	..	..	..	..
Stevens Camp	60	57	54	50	..	..	..	..	..	..

Commodity	BETWEEN	AND	Rate in Cents per 100 lbs.
Grain, feed and bran, straight or mixed carloads.	Denver	Eldora	30
		Nederland	35
		Stevens Camp	38
	BETWEEN	AND	
Hay and straw, baled, at actual weight, cars to be loaded to full visible capacity.	Denver	Eldora	30
		Nederland	35
		Stevens Camp	38

	FROM	TO	Rate in Cents per 100 lbs.
High explosives, as described in tariff.	Denver	Puzzler	75
		Ward	76
		Tungsten	54
		Cardinal	65
		Eldora	70
		Nederland	65
		Stevens Camp	65
	FROM	TO	
Lumber and articles taking lumber rates, as described in tariff, carloads.	Denver	Langdell	13
		Crisman	14
		Salina	16
		Wall Street	17
		Copper Rock	19
		Sunset	20
		Gold Hill	26.4
		Brainerd	30.2
		Puzzler	31
		Ward	34
		Tungsten	21
		Eldora	25
		Nederland	25
		Stevens Camp	28
	FROM	TO	
Mine props and mine poles, carloads.	Lakewood	Louisville	13
		Lafayette	13
		Marshall	13
		Superior	13
	FROM	TO	
Slabs and cordwood, fuel wood, carloads.	Lakewood	Denver	10

RATES IN CENTS PER TON OF 2,000 LBS.

Between DENVER and	Tungsten ore and concentrates containing tungstic acid of Not over 5 Per cent.	From 5 Per cent to 10 Per cent.	Over 10 Per cent.
Wall Street	175	250	300
Sunset	200	300	375
Ward	250	375	450
Tungsten	200	300	375
Eldora	250	375	450

RATES IN CENTS PER TON OF 2,000 LBS.

Between DENVER and	Other ore and concentrates Actual value per ton Not over $14	$20	$30	$50	$100	Over $100
Wall Street	150	180	250	275	300	400
Sunset	180	180	300	350	375	500
Ward	180	180	375	425	450	600
Tungsten	180	180	300	350	375	500
Eldora	180	180	375	425	450	600

IT IS FURTHER ORDERED, That The Denver, Boulder & Western Railroad Company and The Colorado & Southern Railway Company be, and they are hereby, allowed and permitted to cancel, effective on not less than three days' notice to the Commission and to the public, the rates on household goods, scrap iron and tungsten ore, as set forth in items 198a, 210, 245a, 250a, and 251 of C. & S. Ry. Co. tariff 201-I, Colo. P. U. C. No. 288.

IT IS FURTHER ORDERED, That the rates as herein named shall not be exceeded to or from intermediate points of origin or destination located on the line of The Denver, Boulder & Western Railroad Company when such intermediate points are not specifically named in the order.

IT IS FURTHER ORDERED, That The Colorado & Southern Railway Company shall receive no greater division in any instance out of the through joint rates prescribed by the Commission in this cause than at present accruing to it out of the apportionment of the present through joint rates. The carriers shall file division sheets with the Commission showing the apportionment of the rates prescribed herein.

GEO. T. BRADLEY,
(SEAL) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colo., this 13th day of October, 1917.

IN THE MATTER OF THE APPLICATION OF THE CRYSTAL RIVER & SAN JUAN RAILROAD COMPANY TO DISCONTINUE OPERATIONS.

(Application No. 5.)

Submitted October 15, 1917. Decided October 27, 1917.

APPEARANCES: A. W. Heiner, for The Crystal Mining Company; W. Porter Nelson, for the Lead King Mine; J. H. Chambers, for The Minerals Recovery Company; Messrs. Crump & Allen, for the applicant company.

STATEMENT.

By the Commission:

On the 24th day of September, 1917, there was filed with the Commission an application in writing by The Crystal River & San Juan Railroad Company for an order of the Commission permitting the discontinuance, effective November 1, 1917, of train service on its line of railroad, extending from Marble, Colorado, to Placita, Colorado, a distance of 7.42 miles, and connecting at Placita with the Crystal River Railroad, which extends from Placita to Carbondale, Colorado, there connecting with the Denver & Rio Grande Railroad. The petition of the applicant shows that this railroad has been operated since its construction in 1906 in connection with the business of The Colorado Yule Marble Company, owns and controls the property known as the Colorado Yule Marble Company plant and quarry situated at Marble, Colorado. The petition also alleges that substantially all of the business of the applicant has been in shipping the product of the Marble Company from the town of Marble and transporting to the Marble Company

and the town of Marble necessary supplies, goods and merchandise.

The applicant further states that the railroad was built as an adjunct to and for the purpose of serving The Colorado Yule Marble Company in its operations; that all of the capital stock of the railroad company was owned and controlled by The Colorado Yule Marble Company; that on the 18th day of July, 1916, The Colorado Yule Marble Company, being unable to pay its current expenses, interest charges and other debts, was made defendant in a foreclosure proceeding upon certain mortgage bonds outstanding and in default, and upon that date the district court of the city and county of Denver, Colorado, appointed J. F. Manning receiver of the Marble Company, and that the receiver immediately took over and since that time has assumed charge, possession and control of all the assets of the property of The Colorado Yule Marble Company, including the capital stock of the applicant company, which had theretofore been pledged to The Colorado National Bank of Denver as security for certain loans by it advanced to the Marble Company.

The applicant further states that the receiver operated the Marble Company plant for a period ending about May 1, 1917, and that during such period the Crystal River & San Juan Railroad was kept in operation by moneys advanced by the receiver in order that the unfinished business of the Marble Company might be completed and certain contracts theretofore made kept and performed; that the receiver being without funds to further operate the plant was authorized about May 1, 1917, under order of the court, to fully cease and close down the plant.

The applicant further alleges that it is unable to pay its legitimate operating expenses, and that until such time as a reorganization of The Colorado Yule Marble

Company takes place the applicant should be permitted to cease its operations as a railroad.

This cause came on for hearing before the Commission at its hearing room in the Capitol building, Denver, Colorado, at the hour of 10:00 o'clock a. m., Thursday, October 4, 1917, after public notice had been given by the Commission to shippers along the line of railroad of the petitioner, and subsequent to the receipt by the Commission of a written report from Mr. Fred Wallis, one of its inspectors, who had been instructed by the Commission to carefully investigate by personal inspection the facts surrounding this application.

At the hearing appearance was entered by A. W. Heiner for The Crystal Mining Company, by W. Porter Nelson for the Lead King Mine, and by J. H. Chambers for The Minerals Recovery Company. Shortly before the hearing the Commission received a written protest from approximately fifty residents of Marble and vicinity, objecting to the discontinuance of the operation of the applicant, and requesting the Commission to continue the hearing until a later date. The Commission was unable to grant the continuance, but ruled, and notified the protestants, that they or any of them could forward to the Commission, prior to the 15th day of October, 1917, written statements of facts, which would be considered by the Commission in the determination of this cause.

In re Application of The Denver, Laramie & Northern Railroad Company, by M. S. Radetsky, Case No. 141, decided by the Commission on September 1, 1917, (4 Colo. P. U. C. 316), the Commission, in a carefully considered opinion, ruled that before a public utility operating within the State of Colorado will be permitted to withdraw entirely from the public service it must first show that after a fair trial its property is unable to earn its legitimate operating expenses, and that an increase

of rates commensurate with the value of the service performed, if permitted by the Commission, will not increase the revenues of such public utility sufficiently to meet legitimate operating expenses.

While this is not a case of attempted abandonment and withdrawal by a public utility of its property from the public service, inasmuch as the applicant in this cause requests an order of the Commission permitting the temporary discontinuance of service upon its line of railroad, the same reasoning applies in this case as was applied by the Commission in the case of The Denver, Laramie & Northern Railroad Company, *supra.*

Witnesses for the applicant fully sustained the allegations contained in the petition. It appears that since August 1, 1917, the applicant has reduced its service to three trips per week over its line, and that this operation has been made possible by advancements of moneys from The Crystal River Railroad Company, owned and operated by The Colorado Fuel & Iron Company. The Commission is convinced from a careful consideration of the testimony that the applicant is without available funds to operate its line of railroad.

During the operation of the plant of the Marble Company a population of about 2,000 people was supported in the town of Marble, while today, with the discontinuance of the operations of the Marble plant, the town of Marble contains less than 200 people. While some testimony was introduced to show that several cars of ore would be shipped during the winter months the revenues to be obtained therefrom, which would be nominal in amount, are practically the only revenues of any substance which could be anticipated by the applicant.

The report of the Commission's inspector corroborates the testimony of the representatives of the applicant. A witness in charge of the operation of the railroad of the applicant stated that unless tie renewals were

made upon this line of railway, in his opinion it would be unsafe to operate the railroad during the winter months, regardless of the insufficiency of revenues.

While the Commission looks with disfavor upon an attempt of a railroad to abandon or discontinue service upon its line, yet a situation here confronts the Commission which warrants an order permitting the temporary discontinuance of train service upon the line of the applicant. Testimony introduced at the hearing shows that every attempt is being made by the receiver of The Colorado Yule Marble Company to reorganize that corporation, to the end that the vast marble beds, famous for their quality of marble, may again become a large factor in Colorado's manufacturing industries, and, of course, if this reorganization is brought about moneys will be available for repairs and maintenance and the continued operation of the line of railroad of the applicant.

The discontinuance of operation of the applicant's line of railroad at this time will necessitate a haul of about seven miles by stage between Marble and Placita for such merchandise as may move between Marble and points on the line of the Crystal River Railroad Company and connecting lines, and, while this haul is undesirable to the comparatively few shippers residing in the vicinity of Marble, yet it is apparent to the Commission that the amount of business originating upon or destined to the line of the applicant is not sufficient for the Commission to require the continued operation of the applicant's railroad when considered in connection with the company's financial status and the present unsafe condition of its line of railroad.

ORDER.

IT IS THEREFORE ORDERED, That The Crystal River & San Juan Railroad Company be, and it is hereby, permitted to discontinue operation upon its line of railroad until the 1st day of April, 1918, unless this order be modified or extended by the Commission.

IT IS FURTHER ORDERED, That The Crystal River & San Juan Railroad Company shall not remove its line of railroad or any part thereof.

(SEAL)

GEORGE T. BRADLEY,
M. H. AYLESWORTH,
A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 27th day of October, 1917.

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INDEX—DIGEST.

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I. Factor in valuation, 1.

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2. The Commission held that the amount of depreciation as determined by actual inspection has no bearing on the fair value of property of a public utility for rate making purposes. Idem.

3. Fair value for rate making may be different in amount when the depreciation reserve is set aside on the sinking fund basis than when it is set aside on the straight line basis. Idem.

4. The Commission held, in arriving at the fair value of public utilities properties for rate making purposes, that deduction on account of depreciation should not be made for the reason that property is old, obsolete, inadequate or otherwise incapable of giving good service, that if only such items as are in use or useful are included, the element of depreciation, insofar as wear and tear, obsolescence and inadequacy affect the fair value of the property for rate making purposes, will have been sufficiently taken into account. Idem.

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a. Value of service.

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b. Prior rates.

2. The finding and prescribing of reasonable rates of utilities by the Commission does not of itself constitute a finding or conclusion that the former rates were unjust or unreasonable. Town of Manitou v. Colorado Springs L., H. & P. Co., 268.

3. The fact that rates have been found to be reasonable by the Commission does not act as a bar to the future consideration of the same rates in connection with the evidence presented at such subsequent hearing, and the Commission, under Section 49 of the Act, may rescind, alter or amend any order or decision after full hearing. Oakdale Coal Co. v. C. & S. Ry. Co., 155.

II. Rates of particular utilities.

a. Electric.

4. Any and all schedules of a utility should be made available to any of its consumers, who will comply with the terms and conditions of such schedules and pay the charges provided therein, and it is the duty of the utility to advise its consumers under what schedules they may be most advantageously served, and the duty of the Commission to determine whether or not the consumer has been correctly billed and charged under the schedules. Town of Manitou v. C. S. L., H. & P. Co., 268.

5. The Commission held, in a proceeding to determine the reasonableness of the rates of an electric utility, that a minimum charge to commercial lighting consumers should not exceed the minimum charge for domestic service, merely for the reason that the consumer is classed as a commercial user, and prescribed a minimum monthly guarantee based upon the consumer's connected load to apply to all consumers alike. City of Lamar v. Intermountain Ry. L. & P. Co., 391.

6. The Commission found, in valuing an electric utility for rate making purposes, that it would be impossible to actually arrive at the normal operating expenses of the utility, which should be considered in determining reasonable rates, due to the increases in prices of fuel, materials, labor and other fluctuating expenses. Idem.

b. Express.

7. In predicating block and sub-block express rates within the State of Colorado in accordance with the modified plan as adopted by the Commission, the distance actually traversed by the line of railroad is a factor to be considered as well as the air line route between the blocks or sub-blocks. Kline v. Adams Express Co., 84.

c. Railroad.

8. The Commission was of the opinion that it would be impossible to establish a differential as between the various grades of coal which could be made applicable throughout the state. Oakdale Coal Co. v. C. & S. Ry. Co., 155.

9. It is impracticable to establish differentials which shall be applicable in all cases as between two competing districts and rates to points a short distance from the point of origination may quite properly be fixed without reference to rates from other districts, and to points great distances from point of origination may be the same as from competing districts, the differential being absorbed by the distance. Grand Mesa Fuel Co. v. D. & R. G. R. R. Co., 89.

10. It is not required of carriers that they shall absorb, in any amount, in freight rates the disabilities local to the shippers in transporting their commodities to the rails and cars of the carriers. Idem.

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I. Findings as evidence, 1.

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that the findings and order of the Commission, in an award of reparation, are prima facie evidence of the facts therein stated, is essential to the determination of the validity of the power conferred upon the Commission by the act to award reparation. Copeland Ore Sampling Co. v. M. T. Ry. Co., 179.

II. Jurisdiction of Commission, 2.

2. The Commission's jurisdiction to award reparation and to regulate rates of public utilities is paramount to that of the courts, and, while an award of reparation ordered by the Commission is enforceable through a suit for the collection of the same in a court of competent jurisdiction, the finding of the Commission that the rates or charges assessed and collected were unreasonable and unjust is a condition precedent to action by the courts. Idem.

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1. The Commission found, in a valuation proceeding to determine the fair value for rate making purposes of an electric utility that furnished steam from the same plant, that the steam was in every sense a by-product of the electric plant and that the revenues and expenses directly assignable to the steam operations should be classed as non-operating. City of Lamar v. Intermountain Ry., L. & P. Co., 391.

2. The Commission found that in a town where the demand for steam heating was limited an electric utility utilizing exhaust steam might with propriety supply such steam heating service at any rate it may choose so long as its total net revenues are not actually reduced thereby, and that under such conditions the value, rather than the cost, of service must govern in the establishing rates for steam heating service. Idem.

II. Amortization of expenses.

3. In the valuation of a utility for rate making purposes the Commission was of the opinion that the cost of making inventories and conducting rate hearings, even if allowable as an operating expense, should not be included in the operating expenses for any one year, but apportioned over a period of years, and that such expense would not be properly apportionable to the combined properties of the company on the basis of gross revenue. In re Colorado Springs Light, Heat & Power Co., 197.

REVENUES.
Of auxiliary steam plant, see RETURN, 1.

SCHEDULES.
All schedules of electric utility available to public, see RATES, 4.

SEGREGATION.
Of expenses, see APPORTIONMENT.

SEPARATION.
Of expenses, see APPORTIONMENT.

SERVICE.
Of public utilities, jurisdiction of Commission over, see COMMISSION.

I. Jurisdiction, powers and duties of Commission, 1-5.
  a. Abandonment, 1, 2.
  b. Extensions, 3, 4, 5.
II. Duties of utilities, 6.

I. Jurisdiction, powers and duties of Commission.

a. Abandonment.

1. A public utility may not withdraw from public service without the consent of the State, and in the event a common carrier is unable to earn its legitimate operating expenses, then the public demands do not require the operation of the utility and the State should give its consent to the withdrawal from pubilc service, providing a showing is made that an increase in rates commensurate with the value of the service would not increase the revenues sufficiently to pay operating expenses. In re Denver, Laramie & Northern R. R. Co., 316.

2. While it is primarily the duty to the Commission to regulate the rates and service of public utilities, it is also the duty of the Commission to determine when a utility shall be permitted to withdraw from public service, and a public utility may not withdraw from public service except after showing made to the Commission that the public demands do not requier the continued operation of such utility. Idem.

a. Extensions.

3. The public utilities act expressly gives the Commission power to order extensions of street railway systems and it has been the practice of the Commission, in ordering such extensions, to order the railway company to apply to the municipality for a revocable permit. East Denver Bus. & Prop. Assn. v. D. T. Co., 276.

4. Every public utility under the jurisdiction of the Commission must furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the health, comfort and

safety of its patrons, employes and the public, and as shall in all respects be adequate, efficient, just and reasonable; and the Commission has no power to order an extension of a street railway line because it will enhance the value of the property, nor has it the authority to prohibit the removal of street railway tracks solely on the ground that the removal of said tracks will depreciate the value of the property. Streamer v. D. & I. R. R. Co., 122; Citizens of Colorado Springs v. C. S. & I. Ry. Co., 146.

5. The Commission has no power to order extensions of street railway lines, construction of loops, or rerouting of cars solely on the ground that such order will enhance or depreciate the value of property. East Denver Bus. & Prop. Assn. v. D. T. Co., 276.

II. Duties of utilities.

6. A public utility, while exercising and enjoying charter privileges and franchises, must furnish adequate facilities to the public upon its entire system, and not simply a part, and cannot be excused from performing its whole duty merely because by ceasing to operate a part of its system the net returns will be increased. In re Denver, Laramie & Northern R. R. Co., 316.

SERVICE, VALUE OF.
See VALUE OF SERVICE.

SHIPPERS.
Disabilities of, as affecting freight rates, see RATES, 10.

SINKING FUND BASIS.
Of computing depreciation, see DEPRECIATION, 3.

STATE.
Consent of State necessary for utilities to abandon service, see SERVICE, 1, 2.

STATUTES.
See CONSTITUTIONAL LAW.

STEAM HEATING UTILITIES.
Commission has no jurisdiction over, see UTILITIES, PUBLIC, 2.

STEAM PLANTS.
As auxiliary to electric plants, see RETURN, 1, 2.

STRAIGHT LINE BASIS.
Of computing depreciation, see DEPRECIATION, 3.

STREET RAILWAYS.
Extensions of, see SERVICE, 3, 4, 5.

SUB-BLOCK.
Express rates, see RATES, 7.

SUITS.
For collection of awards of reparation, see REPARATION, 2.

SUPERVISION.
Allowance for, in valuation proceedings, see VALUATION, 2.

TAXES DURING CONSTRUCTION.
Allowance for, in valuation proceedings, see VALUATION, 7.

TERMINAL COMPANIES.
When "public utility," see UTILITIES, PUBLIC, 1.
Jurisdiction of Commission over, see UTILITIES, PUBLIC, 1.

UTILITIES.
Duty to advise consumers of most advantageous schedules, see RATES, 4.

UTILITIES, PUBLIC.
Duty to operate in accordance with charter and franchises, see SERVICE, 6.
Jurisdiction of Commission over, see COMMISSION.
May not withdraw from service except after showing, see SERVICE, 1, 2.

I. What constitutes "public utilities," 1, 2.

1. The commission decided that The Denver Union Terminal Railway Company was a public utility, and, as such, subject to the jurisdiction of the Commission. East Denver Bus. & Prop. Assn. v. D. T. Co., 276.

2. The Commission has no jurisdiction over the supervision or regulation of the rates and service of steam heating utilities. City of Lamar v. Intermountain Ry. L. & P. Co., 391.

VALUATION.
As affected by depreciation, see DEPRECIATION, 2, 3, 4.
See RETURN.

I. Nonphysical elements affecting value or cost, 1-7.
  a. Discount on securities, 1.
    1. Allowance for engineering and supervision, 2.
    2. Interest during construction, 3.
    3. Insurance during construction, 4.
    4. Contractors' profits, 5.
    5. Miscellaneous construction expenses, 6.
    6. Taxes during construction, 7.

I. Nonphysical elements affect value or cost.
  a. Discount on securities.

1. In the valuation of a utility for rate making purposes, the Commission held that no allowance whatever should be made for dis-

count on bonds or other financial expenses in determining the fair value of the property. In re Colorado Springs L., H. & P. Co., 197; City of Lamar v. Intermountain Ry., L. & P. Co., 391.

b. Overhead expenses.

1. Allowance for engineering and supervision.

2. The Commission held, in a valuation proceeding, that an allowance of 20 per cent for engineering and supervision on additions to property was excessive and should not be allowed. City of Lamar v. Intermountain Ry., L. & P. Co., 391.

2. Interest during construction.

3. The Commission was of the opinion that, in the valuation of a utility for rate-making purposes, interest during the construction period should be considered in arriving at the fair value of the property, whether any such amounts were in fact made, as money was tied up in construction work for certain periods and the interest on such money was foregone by the company. In re Colorado Springs L., H. & P. Co., 197.

3. Interest during construction.

4. In the absence of specific information as to the amount actually paid by a utility to cover insurance during the construction period the Commission was of the opinion that it would be proper to include under insurance the amount which the company would actually be required to pay at the present time for employes' and public liability insurance, and for fire and tornado insurance, on such property as it would be advisable to insure. Idem.

4. Contractors' profits.

5. Where it developed that property had been installed by and under the supervision of a utility's employes, the Commission held that no allowance for contractors' profits should be made under construction overheads. Idem.

5. Miscellaneous construction expenses.

6. An allowance included under construction overheads of approximately 2 per cent for general and miscellaneous expenses during construction was found by the Commission to be reasonable and proper in the valuation of a utility for rate making purposes. Idem.

6. Taxes during construction.

7. In the valuation of a utility for rate making purposes, the Commission was of the opinion that a certain portion of taxes paid by the company should be charged to its fixed capital accounts, and that the inclusion of taxes as a construction overhead was a proper

allowance, provided the operating expenses of the utility are properly credited with such amounts as are charged to its construction accounts. Idem.

VALIDITY.
Of power lodged in Commission to award reparation, see REPARATION, 1.

VALUE.
Of property, as affected by extensions of street railway lines, see SERVICE, 4, 5.

VALUE OF COMMODITY.
As affecting freight rates, see RATES, 11.

VALUE OF SERVICE.
In establishing rates for steam of auxiliary steam plants, see RETURN, 2.
See generally RATES.

WITHDRAWAL.
Of utilities from public service, consent necessary, see SERVICE, 1, 2.

SECTION 2.

GENERAL ORDERS.

GENERAL ORDER No. 31.

(Supersedes General Order No. 30.)

In the Matter of Notification of Accidents.

Effective October 1st, 1917.

IT IS ORDERED, That when any wreck, or any collision of trains, or any collision of trains with vehicles or pedestrians, resulting in loss of life or injury to persons, occurs upon the line of any common carrier in Colorado, either steam or electric, the superior officer, agent or employe of the carrier on the ground at the time of the accident shall *immediately* notify the Public Utilities Commission of the State of Colorado, Capitol Building, Denver, Colorado, by telegram, the details of such accident, stating the immediate location and the nature of the accident, and the number of persons killed or injured.

IT IS FURTHER ORDERED, That every officer, agent or employe of any carrier who violates, or fails to comply with, this order is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

GEO. T. BRADLEY,
(Seal) M. H. AYLESWORTH,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 29th day of September, 1917.

SECTION 3.

COURT DECISIONS AFFECTING JURISDICTION OF COMMISSION.

[No. 8542.]

DENVER & SOUTH PLATTE RAILWAY CO.
v.
CITY OF ENGLEWOOD.

(Supreme Court of Colorado, July 3, 1916. Rehearing denied December 4, 1916.)
(62 Colo. 229; 161 Pac. 151; P. U. R. 1916E, 134.)

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1. **Municipal corporations—Power of town in granting a franchise in the streets.**

A town organized under the general law is not empowered by Rev. Stat., sec. 6676, to prescribe the rates which a street railway company occupying the street under a franchise of the town may exact for its service. Whether the rule is the same in the case of a municipality organized under article XX of the constitution, is not decided.

2. **Utilities Commission—Powers.**

Under c. 127 of the Acts of 1913, the Public Utilities Commission is entrusted with the supervision and regulation of all services rendered by the persons and corporations therein referred to, throughout the state—including rates and regulations established by previous contract. Gabbert, C. J., and Teller, J., dissent.

3. **Remedy for errors of the Commission.**

Every order or decision of the condition may be reviewed by the Supreme Court, under the provisions of the act. An equitable action to restrain the enforcement of the order complained of will not lie.

[Headnotes by the Court.]

En banc. Error to District Court, Arapahoe county; H. S. Class, Judge.

Injunction by the City of Englewood against the Denver & South Platte Ry. Co. After sustaining demurrer to the answer, the court rendered judgment for plaintiff on defendant's refusal to plead further, and defendant brings error. Reversed with instructions to dismiss.

Mr. W. H. CALEY, and Mr. F. W. VARNEY, for plaintiff in error.

Mr. R. H. BLACKMAN, and Messrs. CRUMP & ALLEN, for defendant in error.

Hon. FRED FARRAR, Attorney General, Mr. FRANK C. WEST, Assistant Attorney General, and Mr. M. H. AYLESWORTH, for the Public Utilities Commission.

SCOTT, J.: This is an action in injunction and the issue was determined in the pleadings. There is no dispute as to the facts.

The complaint alleges that the City of Englewood, defendant in error, on the 6th day of December, 1906, and while it was an incorporated town, by ordinance granted to the grantors of The Denver and South Platte Railway Company, defendant in error, a franchise for the operation of a street railway upon and across certain of its streets. That section 6 of said ordinance fixed the rates of fares to be charged within said city, and further provided by reasonable regulation for the sale of coupon tickets which shall entitle passengers taking passage on the cars of said grantees, their successors or assigns, going north on said Broadway, at or north of Quincy Avenue, to be transported the same as regular Tramway passengers, without extra fare, upon the cars of the Denver City Tramway Company at Hampden Avenue; and, also entitling passengers going south on the cars of The Denver Tramway Company to be transported upon the cars of said grantees to the intersection of any street between Hampden and Quincy Avenues, the latter inclusive avenue without additional fare, upon presentation of said coupon ticket.

It was further alleged, "That at the time of the passage of said ordinance, and the granting of said franchise to the grantors of the said defendant, the Denver

City Tramway Company was engaged in operating a street railway as a common carrier between the city of Denver and the said Hampden Avenue, at the intersection of said Hampden Avenue and Broadway, in the said City of Englewood, and that thereafter the defendant company did, until on or about the 28th day of October, A. D. 1914, substantially comply with the terms and conditions of said section six of said ordinance, and for some years thereafter did in fact provide for those seeking passage upon the cars of the said The Denver City Tramway Company, without extra charge as provided in section six of said ordinance.''

It is then alleged that since the said 28th day of October, 1914, the defendant has refused to comply with that provision of the ordinance in the matter of providing the sale of coupon tickets entitling passengers to transportation to and from the city of Denver, on the line of the Denver Tramway Company, as provided by the terms of the ordinance.

The prayer was for injunction to compel the enforcement of the terms of the ordinance in the particular respect.

The answer of the defendant company, admits the ordinance and the terms thereof, and alleges that from the date of the passage of the ordinance up to October 28th, 1914, the defendant had given and tendered to all persons seeking passage on its cars between the point complained of, free service and transfers entitling passengers to passage between such points.

The answer further alleges that the defendant has sought to make arrangements with the Denver Tramway Company for the transfer of passengers taking passage upon its line, between the points set out in the complaint, and that the only provision it has been able to make is that the Denver Tramway Company shall receive five

cents from all passengers so transferred and transported.

It is then alleged that the defendant is a public utility, and subject to the provisions of the Public Utility Law, and further, that:

"Pursuant to the provisions of law in such cases made and provided it did file with the Public Utilities Commission of the State of Colorado, its schedule of rates and that its schedule of rates so filed was not suspended by the said Public Utilities Commission herein upon its own motion, or upon the complaint of others for a period of thirty days; and that thirty days expired from the time of filing the same and from the 28th day of September, A. D. 1914, and until the 28th day of October, A. D. 1914; and thereupon and pursuant to law, the said rates did on the 28th day of October, A. D. 1914, go in effect and become and now are the established effective rates, fares and charges, practices, rules and regulations of this defendant company."

It is then said in substance, that to comply with the ordinance in the matter complained of, it must violate the Public Utility Law as relates to the prohibition of free service, or free transportation.

Further, that the plaintiff and all others who may claim to be injured by reason of the premises, have a plain, speedy and adequate remedy at law under the Public Utilities Law of the State.

To this answer the plaintiff filed a demurrer, upon the ground that the same does not constitute a sufficient defense to the complaint. The court sustained the demurrer, and the defendant electing to stand upon its answer, judgment was rendered in accordance with the prayer of the complaint. This judgment is before us for review.

It will be seen that the defendant company contends that its present rates of service are those fixed by the state public service commission in due compliance with the statute creating such commission and prescribing its powers and duties, and the first question therefore presented in this particular is, may the commission alter a rate or regulation, fixed by a franchise ordinance prior to the enactment of the Public Utilities Law.

It must be conceded that the ordinance and the acceptance thereof, constituted a contract, which the city and the company, were at the time, empowered to make. If the contract is now an enforcible one, the present action in equity was proper.

The city of Englewood was at the date of the ordinance a town operating under the general law of the state, as appears from the pleadings. Its sole power to enact such an ordinance was in section 6676, Rev. Stat. 1908, as follows:

"No franchise or license giving or granting to any person or persons, corporation or corporations, the right or privilege to erect, construct, operate or maintain a street railway, electric light plant or system, telegraph or telephone system within any city or town, or to use the streets or alleys of a town or city for such purposes, shall be granted or given by any city of the first or second class or by any incorporated town in this state in any other manner or form than by ordinance passed and published in the manner hereinafter set forth."

It will thus appear that the legislature had conferred no specific power upon the town of Englewood to enact a rate-making ordinance. The only specific power conferred upon the municipality by this section, is to grant a franchise in the form of an ordinance. There does not appear a suggestion as to a rate-making power, and no such power can be inferred. It may be conceded

that as between the parties, such ordinance constituted a valid contract.

The question to be determined is as to the effect upon such a contract by the enactment of the public utility law, chap. 127, Laws 1913. This act is very broad and seems to confer the absolute power to regulate, both as to rates and otherwise, all public utilities within the state, at least all such as are specified in the act, and among which are street railways.

Section 13 of the act provides:

"Section 13. All charges made, demanded or received by any public utility, or by any two or more public utilities, for any rate, fare, product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such rate, fare, product or commodity or service, is hereby prohibited and declared unlawful."

By section 14, the Public Utilities Commission was given the power, and it was made its duty, to adopt all necessary rates and regulations of all public utilities, as follows:

"Section 14. The power and authority is hereby vested in The Public Utilities Commission of the State of Colorado, and it is hereby made its duty to adopt all necessary rates, charges and regulations to govern and regulate all rates, charges and tariffs of every public utility of this state as herein defined, the power to correct abuses, and prevent unjust discriminations and extortions in the rates, charges and tariffs of such public utilities of this state, and to generally supervise and regulate every public utility in this state and to do all things, whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of such power, and to enforce the same by the

penalties provided in this act, through proper courts having jurisdiction."

Section 21 fixed the maximum rate to be charged passengers by a street railway and provides for transfers as follows:

"Section 21. No street or interurban railroad corporation shall charge, demand or collect or receive more than five cents for one continuous ride in the same general direction within the corporate limits of any city and county, city or town, except upon a showing before the commission that such greater charge is justified. Every street or interurban railroad corporation shall upon such terms as the commission shall find to be just and reasonable furnish to its passengers transfers entitling them to one continuous trip in the same general direction over and upon the portions of its lines within the same city and county, or city or town, not reached by the originating car."

Further powers were conferred upon the commission by Sec. 23 as follows:

"Section 23. (a) Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, tolls, fares, rentals, charges or classifications, or any of them demanded, observed, charged or collected by any public utility for any service, or product or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices, or contracts, or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, discriminatory, or preferential, or in any wise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges, or classifications, are insufficient, the commission shall determine the

just, reasonable or sufficient rates, fares, tolls, rentals, charges, rules, regulations, practices, or contracts to be thereafter observed, and in force, and shall fix the same by order as hereinafter provided.

(b) The commission shall have the power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate, fare, toll, rental, charge, classification, rule, regulation, contract, or practice, or any number thereof, or the entire schedule or schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts, and practices, or any thereof, of any public utility, and to establish new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices, or schedule, or schedules, in lieu thereof.''

From the sections quoted, and from other provisions of the act, it fully appears that the legislature intended to delegate to the Public Utilities Commission the administration, supervision, and regulation, of all service rendered to the public throughout the state, including municipalities. Rates and regulations fixed by contract are specifically included within the powers of the commission.

From what has been said it will be seen that the town of Englewood had no express authority to fix a rate of fare, so as to limit or prohibit the assumption of such power by the legislature.

The uniform rule in this respect was stated in Home Telegraph Co. v. Los Angeles, 211 U. S. 265, 53 L. Ed. 176, 29 Sup. Ct. 50, to be:

''It has been settled by this court that the State may authorize one of its municipal corporations to establish by an inviolable contract the rates to be charged by a public service corporation (or natural person) for a definite term, not grossly unreasonable in point of time, and

that the effect of such a contract is to suspend, during the life of the contract, the governmental power of fixing and regulating the rates. Detroit v. Detroit Citizens' St. Ry. Co., 184 U. S. 368, 382, [46 L. Ed. 592, 22 Sup. 410]; Vicksburg v. Vicksburg Waterworks Co., 206 U. S. 496, 508, [27 Sup. Ct. 660, 50 L. Ed. 1102, 6 Ann. Cas. 253]. But for the very reason that such a contract has the effect of extinguishing *pro tanto* an undoubted power of government, both its existence and the authority to make it, most clearly and unmistakably appear, and all doubts must be resolved in favor of the continuance of the power. Providence Bank v. Billings, 4 Pet. 514, 561, [7 L. Ed. 939]; Railroad Commission Cases, 116 U. S. 307, 325, [29 L. Ed. 636, 6 Sup. Ct. 334, 388]; Vicksburg, S. & P. Railroad Co. v. Dennis, 116 U. S. 665, [6 Sup. Ct. 625, 25 L. Ed. 770]; Freeport Water Co. v. Freeport City, 180 U. S. 587, 599, 611, [45 L. Ed. 679, 21 Sup. Ct. 493]; Stanislaus County v. San Joaquin R. C. & I. Co., 192 U. S. 201, 211, [48 L. Ed. 406, 24 Sup. St. 241]; New York ex rel. Metropolitan Street Ry. Co. v. New York S. Tax Commrs., 199 U. S. 1, [50 L. Ed. 65, 25 Sup. Ct. 705, 4 Ann. Cas. 381]. And see Water, Light and Gas Co. v. Hutchinson, 207 U. S. 385, [52 L. Ed. 257, 28 Sup. Ct. 135]."

In Freeport Water Co. v. Freeport, *supra,* it is said:

"This power of regulation is a power of government, continuing in its nature; and if it can be bargained away at all, it can only be by words of positive grant, or something which is in law equivalent. If there is reasonable doubt, it must be resolved in favor of the existence of the power. In the words of Chief Justice Marshall in Providence Bank v. Billings, 4 Pet. 514, 561, 7 L. Ed. 939, 955, 'Its abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon it does not appear.' "

In the well considered case of Benwood v. Public Service Commission, 75 W. Va. 127, 83 S. E. 295, and reported in L. R. A. 1915C 261, it was said:

"But the city of Benwood says it had the right given it by the legislative charter to 'contract and be contracted with.' True this general provision usually found in municipal charters is in the charter of the city of Benwood. But that provision cannot be construed as delegating beyond legislative control, the power to fix public service rates. For, as we have seen, the presumption is against such delegation of the power. The delegation 'must clearly and unmistakably appear.' It does not so appear in the general provision, merely to contract and be contracted with."

And further: "We do not say that the contract as to rates contained in the franchise was not good as between the water company and the city as long as the legislature did not exercise its superior and supreme power over the subject of the rates. From the general powers to establish waterworks and to contract and be contracted with, impliedly the city had the power to contract in the matter of rates for water furnished the public as long as the legislature did not exercise its reserved power in that particular. But that implied power was inferior to the reserved power. It was subject to the right of the legislature to prescribe different rates at any time. The legislature, not having expressly delegated to the city power by which it could inviolably agree as to the rates, could exercise power in that particular regardless of the franchise provisions. It had withheld supreme power unto itself. Neither by the charter nor by subsequent legislation did it delegate to the city of Benwood authority to agree unalterably as to the rates for a stipulated period.

The water company and the city in the making of the so-called franchise contract were bound by cognizance of the fact that their dealings were subject to future exercise of the legislature's power over rates for water furnished the general public in the locality. Hence, the franchise was made subject to what the legislature might thereafter do as to the rates dealt with by the franchise. It was subject to the legislature's making use of the inherent power reserved, and not exclusively delegated to the city of Benwood, to supervise all public service charges. And when the legislature in its wisdom saw fit to exercise its reserved power of supervision over the matter of public service rates, by the creation of the Public Service Commission and the delegation of the power to the Commission in that behalf, the rates mentioned in the franchise became subject to supervision and regulation by the Public Service Commission. The legislature had withheld the exercise of its power over these rates until that time. It could use the power when it pleased. No length of nonuser affected the state's right thereto. Chicago, B. & Q. R. Co. v. Iowa, (Chicago, B. & Q. R. Co. v. Cutts), 94 U. S. 155, 24 L. Ed. 94."

It was further held in that case: "It is most earnestly insisted on behalf of the city that the contract is inviolable, and that to uphold the powers of the Public Service Commission to the extent of allowing the Commission to change the rates would in effect abrogate the contract, contrary to constitutional inhibition against the enactment of any law impairing the obligation of a contract. In the light of what we have said, this position cannot be sustained. Nothing that was binding in the contract will be impaired. By it the state was not bound. The contract related to a subject-matter belonging to the state. The state had not given the city the power or agency to contract away its right thereto for a given

time. The contract, having been entered into without express legislative authority, was permissive only. It was conditioned upon the exercise of the sovereign power over the subject-matter. All this the parties to the contract were bound to know when they entered into it. There can be no impairment of the contract by the act of the state in claiming its own, when it is not bound by the contract. The supervision and regulation of the rates by the state, through the Public Service Commission, do not take from either of the parties to the contract any right which they had thereunder. Such supervision and regulation do not therefore impair the obligation of a contract. Home Telep. & Teleg. Co. v. Los Angeles, *supra;* State ex rel. Webster v. Superior Court, 67 Wash. 37, 120 Pac. 861, Ann. Cas. 1913D, 78, [L. R. A. 1915C, 287]; Knoxville Water Co. v. Knoxville, 189 U. S. 434, 23 Sup. Ct. 531, 47 L. Ed. 887; Louisville & N. R. Co. v. Mottley, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671; Wyandotte County Gas Co. v. Kansas, 231 U. S. 622, 34 Sup. Ct. 226, 58 L. Ed. 404; Dawson v. Dawson Teleph. Co., 137 Ga. 62, 72 S. E. 508."

The doctrine announced in that case is a fair statement of the overwhelming weight of judicial opinion.

The case of State ex rel. Webster v. Superior Court, 67 Wash. 37, 120 Pac. 861, Ann. Cas. 1913D, 78, and also reported in L. R. A. 1915C, p. 287, contains an exhaustive review of the authorities on this subject. See also Milwaukee Electric Ry. Light & Power Co. v. Railroad Comm., 238 U. S. 174, 59 L. Ed. 1254, 35 Sup. Ct. 820, P. U. R. 1915D, 591. This doctrine has been recognized by this court in the case of Wolverton v. Mountain States Tel. Co., 58 Colo. 58, 142 Pac. 165, Ann. Cas. 1916C, 776, wherein it was said:

"And it is now held that even in case of such contracts with public utilities for specific rates and for definite periods of time, these are subject to legislative acts

of regulation. Louisville & Nashville Ry. Co. v. Mottley, 219 U. S. 467, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671, 31 Sup. Ct. 265; Southern Wire Co. v. St. Louis, &c., Co., 38 Mo. App. 111."

We must hold therefore, that at the time of the adoption of the ordinance in question, the town of Englewood was without express legislative power to fix rates or regulations for public utilities and that its contract with the defendant company, was subject to the legislative power afterward asserted, by the enactment of the Public Utilities Statute.

It follows therefore, that the power to regulate the rates of the public utility in question, is vested by the act exclusively in the Public Utilities Commission. The law fully provides that every order or decision made by the commission, may be reviewed by the Supreme Court, upon the application of either party, or of any person pecuniarly interested in the utility, for the purpose of having the lawfulness of the order or revision determined.

Hence, and for the reasons stated, the plaintiff below had, by reason of the provisions of the Public Utility Act, a plain, speedy and adequate remedy at law for the determination of its grievance.

It will be noted that the town, now the City of Englewood, is a municipality deriving its municipal powers from legislative grant. Whether or not the rule here announced may be applied in the case of an ordinance by a municipality operating under art. XX of the Constitution, and conducting its municipal affairs under constitutional powers and limitations, without the intervention of legislative acts, is a different and more difficult question, which we do not determine.

The judgment is reversed with instructions to dismiss the proceedings.

En banc.

GABBERT, C. J., and TELLER, J., dissent.

CHIEF JUSTICE GABBERT dissenting:

The majority opinion is based upon three propositions: First, that by the Public Utilities Act power is conferred upon the Public Utilities Commission to change the rates for carrying passengers fixed by contract; second, that the railway company having filed with the Commission its schedule of rates, which were not suspended by the Commission, upon its own motion or upon the complaint of others for thirty days, the same became effective; and, third, that by the act in question the city has a plain, speedy and adequate remedy at law by a proceeding before the Commission. From each of these I dissent.

1. It is said specific power is not conferred upon the City of Englewood to enact a rate-making ordinance, and therefore rates fixed by the ordinance granting the railway company a license to construct and maintain a street railway upon its streets may be changed by the Utilities Commission. In the first place the question of rates for transportation over the line of the railway company is not involved, and in the second place express power is conferred upon the city to fix rates which may be charged by a street railway company to which a franchise is granted. The provisions of the ordinance which the railway company seeks to be relieved from does not relate to rates which it may charge for transportation over its own line, but to the provision whereby it was required to sell coupon tickets which would entitle persons taking a car going north from a specified point to passage on the line of the Denver City Tramway Company into the City of Denver, and also entitle persons going south on the cars of the Tramway Company to be transported over the line of the railway company to a street designated in the City of Englewood. This is in no sense a charge for transportation over the line of the railway

company. The fare over its line has always been five cents, and its effort is not to increase or change rates, but to be relieved from its contract, whereby it was required to furnish transportation over the line of the Tramway Company in the instances named. But conceding, for the sake of argument, that rates are involved, the cases cited in support of the proposition that authority is not conferred upon the City of Englewood to fix rates are not in point. Our statutes and the Constitution confer upon the city the power to fix rates as a condition upon which a franchise to operate a street railway over its streets is granted. Section 6676, Revised Statutes 1908, quoted in the majority opinion, must be read in connection with the section following, whereby it is provided that a corporation desiring to secure a franchise from a city or incorporated town must publish a notice of its intention to apply to the corporate authorities for the passage of an ordinance granting such franchise, which notice must specify the terms upon which such franchise is desired. This means that the franchise can only be granted upon terms, and necessarily confers upon the municipal authorities the express power to contract with the corporation seeking the franchise, by specifying the terms upon which it is granted. So that when a corporation accepts a franchise imposing terms, it thereby enters into a contract the municipal authorities are authorized to make, which cannot be abrogated by any act of the legislature that would impair the obligation of such contract. In addition, we have a constitutional provision (section 11 of article XV), which provides: "No street railroad shall be constructed within any city, town or incorporated village without the consent of the local authorities having * * * control of the street or highway proposed to be occupied by such street railroad." From this provision it follows that when a street railway cannot be constructed over the streets of a city without

the consent of the municipal authorities, the latter have the express power to specify the terms and conditions upon which it may be constructed and maintained.

2. Conceding that power is vested in the Utilities Commission to change a rate fixed by contract, this cannot be accomplished in the manner attempted by the railway company, i. e., by posting notice of such change with the Commission. A change in a contract rate can only be made by a utility corporation making application to the Commission for such change, on notice to the parties interested, after a hearing whereby all parties are afforded an opportunity to be heard and a change allowed by an express order of the Commission to that effect.

3. The act does not require the city to apply to the Commission to have its contract with the railway company enforced. It has never been modified. It is in full force and effect, and the only remedy open to the city is by an action in the District Court to compel the railway company to comply with the terms of its contract.

The result of the conclusion announced by the majority opinion is sufficient to demonstrate without further argument that it is wrong. The railway company was granted the privilege of occupying the street of the city upon terms which it now refuses to comply and yet continues to occupy the street. One of the considerations which moved the municipal authorities to grant a franchise to the railway company has been taken away and it is permitted to exercise a privilege which it must be conclusively presumed would never have been granted except for such consideration.

The judgment of the District Court should be affirmed.

MR. JUSTICE TELLER concurs in this opinion.

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