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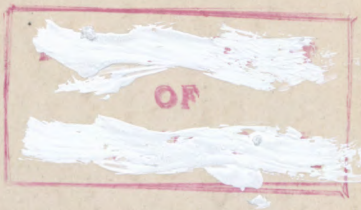
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REPORTS OF DECISIONS

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THE PUBLIC UTILITIES COMMISSION

of the

STATE OF COLORADO

From November 1, 1917, to December 31, 1919

VOLUME 5

(Cited "5 Colo. P. U. C.")

MEMBERS OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

*GRANT E. HALDERMAN, *Chairman*

A. P. ANDERSON

†FRANK P. LANNON

GEORGE A. FLANNIGAN, *Secretary*

*Succeeded George T. Bradley, term expired January 14, 1919.

†Succeeded Leroy J. Williams, resigned, February 10, 1920.

Leroy J. Williams succeeded M. H. Aylesworth, resigned, January 21, 1918.

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DECISIONS OF

THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF COLORADO

DECISION NO. 142.

THE EAST DENVER BUSINESS AND PROPERTY ASSOCIATION,

v.

THE DENVER TRAMWAY COMPANY,

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.

November 13, 1917

PETITION OF THE CENTRAL DENVER PROPERTY OWNERS' ASSOCIATION FOR REHEARING.

Denied.

By the Commission:

On the 12th day of November, 1917, the petitioner, The Central Denver Property Owners' Association, intervenor and cross-complainant in the above entitled cause, filed with this Commission its written petition for rehearing as to that portion of the order and decision of the Commission in this cause, East Denver Business and Property Association v. Denver Tramway Company, Case No. 116, 4 Colo. P. U. C. 276, 294, made and entered on August 22, 1917, reading as follows:

> "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 restate 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. * * *
>
> 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 loop, the officials of the defendant company have been unable to exercise their best judgment in later lears."

The petitioner alleges that the contract referred to in this portion of the Commission's order and decision was not in issue or included within the issues in this cause, and that while the contract was referred to by witnesses testifying before the Commission in this cause the references were not for the purpose of

proving or attempting to prove that the contract was an essential element of the question pending before the Commission.

It is further alleged that that part of the order and decision of the Commission quoted in the petition of the petitioner is prejudicial to the interests of the petitioner and other persons affected directly or indirectly by the contract because—

> "That said statement of the Commission is capable of being misunderstood as being a ruling of the Commission upon or affecting said contract, whereas said contract was not properly before the Commission for construction or determination. Moreover, the statement above quoted from the order and decision of the Commission may be taken and held in some future proceeding wherein said contract is under consideration as being a precedent to be followed in the construction or adjudication of said contract, to the prejudice of the parties thereto and other parties interested therein."

The petitioner, through its attorneys, Messrs. Symes and Farrar, Lewis and Grant, prays that it be granted a rehearing to the end that the order and decision of the Commission, made and entered on August 22, 1917 be modified to the extent that that part of the order of the Commission quoted in the petition of the petitioner be stricken therefrom.

This Commission is not a court, and is therefore without power to construe, enforce or to declare null and void as between the parties thereto the terms of the contract referred to by witnesses in this cause. In its order the Commission stated that the contract was in no way binding upon the Commission, and it is unnecessary to cite the great number of decisions of courts and commissions to this effect.

ORDER.

IT IS THEREFORE ORDERED, That the petition of The Central Denver Property Owners' Association for a rehearing be denied.

(Seal.)

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

Dated at Denver, Colorado, this 13th day of November, 1917.

DECISION No. 143.

IN RE APPLICATION OF THE SUBURBAN LIGHT & POWER COMPANY TO INCREASE ELECTRIC RATES AT AURORA, COLORADO.

THE TOWN OF AURORA, COLORADO, *Protestant.*

Investigation and Suspension Docket No. 12

November 16, 1917.

APPEARANCES: C. M. Einfeldt and F. A. Einfeldt, for the Respondent Company; Luke J. Kavanaugh, Esq., Town Attorney, and Geo. E. Smith, Mayor of the Town of Aurora.

STATEMENT.

By the Commission:

On the 20th day of July, 1917, The Suburban Light & Power Company, by C. M. Einfeldt, its president, filed with this Commission a schedule of proposed advances in its rates and charges for electric service in the town of Aurora, Colorado, to become effective thirty days after the filing thereof in accordance with the provisions of Sec. 16 of the Public Utilities Act. On the 17th day of August, 1917, the town of Aurora, by George E. Smith, mayor, and Luke J. Kavanaugh, town attorney, filed a written

protest with the Commission objecting to the proposed schedules of the respondent company and requesting the Commission to suspend the operation of the schedule to the end that the town of Aurora might be heard as to the merits of the proposed rate advances.

On the 18th day of August, 1917, the Commission issued its order, entitled Investigation and Suspension Docket No. 12, entering upon an investigation concerning the propriety of the increases and the lawfulness of the schedule filed by the respondent company, and suspending the operation of the schedule until the 17th day of December, 1917, unless otherwise ordered by the Commission.

On the 9th day of October, 1917, the Commission issued an order and notice to the respondent, The Suburban Light & Power Company, and to the town of Aurora, to appear at the hearing room of the Commission on the 6th day of November, 1917, at the hour of 10:00 o'clock a. m., and present testimony pertaining to the propriety and reasonableness of the advances in the rates and charges of The Suburban Light & Power Company set out in the schedules so filed by that company.

Pursuant to this notice given to the parties in interest this cause came on for hearing at the hearing room of the Commission on the 6th day of November, 1917, at 10:00 o'clock a. m.

Mr. Fred W. Herbert, statistician of the Commission, who had previously examined the books and accounts of the respondent company, appeared in behalf of the Commission's statistical staff, and testified in support of an audit which he had prepared. Mr. Fred J. Rankin, electrical engineer of the Commission, appeared in behalf of the Commission's engineering staff, and testified in support of a valuation of the property of The Suburban Light & Power Company which he had prepared. C. M. Einfeldt, president of The Suburban Light & Power Company, testified in behalf of the respondent, and several witnesses appeared for the town of Aurora.

History of the Company.

Following is a brief statement of the ownership and operation of the electric property of the respondent company:

The Suburban Light & Power Company was organized on December 2, 1912, on which date amended articles of incorporation were filed with the Secretary of State of Colorado, changing the name from The Lamar Light, Heat & Power Company, incorporated December 10, 1908, to The Suburban Light & Power Company, and extending the operations of the company to the City and County of Denver, and the counties of Adams and Arapahoe and other counties in the State of Colorado.

The Lamar Light, Heat & Power Company was incorporated for $50,000.00 consisting of 500 shares of the par value of $100.00 per share, which amount was not changed in the amended articles of incorporation on December 2, 1912.

The original incorporators were Alfred E. Bent, John W. Bent and Wesley P. Bell, and the amended articles were filed by A. E. Bent, president, and E. I. Bent, secretary, providing for an authorized capital of $50,000, of which $30,000 was issued and outstanding.

On February 14, 1913, the controlling interest of The Suburban Light & Power Company was purchased by C. M. Einfeldt, who since that date has operated the property of the Suburban Light & Power Company in the town of Aurora adjacent to the city of Denver, supplying the town of Aurora and its inhabitants with electricity for lighting, heating and power purposes.

On July 23, 1912, an ordinance was granted to A. E. Bent and C. M. Einfeldt by the board of trustees of the town of Aurora, granting to A. E. Bent and C. M. Einfeldt, their successors and assigns, the right to construct, maintain and operate an electric light, heat and power system for the transmission, distribution and sale of electrical energy for all purposes in the town of Aurora, regulating the rates to be charged the consumers of light and establishing the rates for street lighting and power for public and private use.

At a special meeting of the board of directors of The Suburban Light & Power Company held on December 3, 1912, a resolution was offered and passed authorizing the company to purchase from A. E. Bent and C. M. Einfeldt all the property owned by them in the town of Aurora, consisting of an electric light, heat and power system constructed by them in said town under provisions of ordinance No. 132 of said town, together with the transfer of

the rights granted by said ordinance No. 132 to A. E. Bent and C. M. Einfeldt. The consideration named in this deed of transfer was as follows: $30,000 of the full-paid and non-assessable capital stock of The Suburban Light & Power Company, and $10,000 of six per cent first mortgage bonds of the company. This represents a book value of the property of $40,000 as acquired by purchase on January 1, 1913.

On January 1, 1913, The Suburban Light & Power Company issued bonds to the amount of $10,000, the issue consisting of six per cent fifteen-year coupon bonds in denominations of $500 and $1,000 secured by mortgage upon the electric plant of the company located and operated in the town of Aurora, Colorado. This amount of $10,000 of bonds was a part of an authorized issue of $30,000, the remaining $20,000 of bonds to be issued from time to time in the acquisition of additional property.

Description of Property.

The Suburban Light & Power Company furnishes electric current to thhe town of Aurora and its inhabitants—the said town having a population of approximately 700. The respondent company does not operate a generating plant, but purchases its current wholesale from The Denver Gas & Electric Light Company and distributes it to the consumers in Aurora. The property therefore consists entirely of a distrribution system for supplying electric current for domestic and power purposes and for the street lighting system. Current is supplied by The Denver Gas & Electric Light Company at 2300 v., 60-cycle, single phase, and the entire supply is metered at the Aurora town limits. The lines of The Denver Gas & Electric Light Company do not extend beyond this point.

Valuation.

The inventory of the property of the respondent company was made by the engineering staff of the Commission in this case, rather than by the respondent company, due to the limited extent of the operations of the company, and the property was valued by the engineering staff of the Commission, excluding intangible values as of August 31, 1917.

The final summary of the appraisal as submitted by the Commission's engineering staff is given in Table No. 1.

TABLE No. 1.

THE SUBURBAN LIGHT AND POWER COMPANY.

APPRAISAL OF ELECTRIC PROPERTY AS OF AUGUST 31, 1917.
BY THE COMMISSION'S ENGINEERING STAFF.

FINAL SUMMARY.

Classification—	Normal Reproduction Cost.
Organization	$ 296.00
Franchises	100.00
Distribution System	8,529.00
Line Transformers	431.00
Consumers' Meters	1,329.00
Municipal Street Lighting System	3,899.00
General Office Equipment	106.00
Customers Installations	173.00
Miscellaneous Equipment	314.00
Working Capital	250.00
Total	$15,427.00

Depreciation.

Mr. Rankin, electrical engineer for the Commission, submitted the normal reproduction cost of the property of the respondent company in use and useful and in good service condition, without deduction for accrued depreciation, on the theory that the Commission would set aside depreciation on so-called sinking fund basis. Mr. Rankin stated, however, that the accrued depreciation on all physical property, as determined by the age and life method, would not exceed 10 per cent of the normal reproduction cost of such property.

Fair Value of Electric Property.

After giving due consideration to the evidence bearing on the value of the properties of the respondent company in use and useful, and considering the 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 $16,000. In arriving at this amount the Commission has considered that the annual depreciation requirement should be set aside on the sinking fund basis and has therefore, in accordance with the principles announced in the case of the City of Lamar v. Intermountain Railway, Light & Power Company, case No. 100, 4 Colo. P. U. C. 391, made no deduction on account of accrued depreciation.

Revenues and Expenses.

Following is the income statement of The Suburban Light & Power Company for the years September 1, 1914, to August 31, 1915, September 1, 1915, to August 31, 1916, September 1, 1916, to August 31, 1917:

OPERATING REVENUES.

	Sept. 1, 1914 to Aug. 31, 1915	Sept. 1, 1915 to Aug. 31, 1916	Sept. 1, 1916 to Aug. 31, 1917
Commercial Lighting	$2,176.40	$2,375.55	$2,759.35
Municipal Street Lighting	1,508.40	1,536.00	1,512.00
Miscellaneous Revenue	30.30	92.25	.....
Total Operating Revenue	$3,715.00	$4,003.80	$4,271.35

OPERATING EXPENSES.

Salaries, General Officers	$ 800.00	$ 900.00	$1,100.00
Salaries, Office Clerks	374.70	756.40	1,195.25
General Office Expense	131.80	123.12	135.66
Rent	120.00	120.00	120.00
Purchased Power	1,472.00	1,536.00	1,734.20
Sub. Sta. Supplies and Expense	31.83	22.99	39.00
Total Above Items	$2,930.33	$3,458.51	$4,324.11
Depreciation	$ 200.00	$ 324.00	$ 336.00
Taxes	98.78	287.31	315.23
Total Operating Expenses	$3,229.11	$4,069.82	$4,975.34

The Commission in this case is confronted with an allowance from salaries of general officers and office clerks in the sum $2,295.25 for the year September 1, 1916, to August 31, 1917. In other words, the salaries of officers and employes of the respondent company represent more than 50 per cent of its total operating revenues, and, in the opinion of the Commission, are excessive and cannot be justified when applied to the operating revenues of this company and the value of its property in use and useful, which value has been determined by the Commission to be $16,000.00.

The depreciation annuity, as shown on the books of the respondent company under the Commission's Classification of Accounts, Account 775, for the year beginning September 1, 1916, and ending August 31, 1917, is $336.00. In the opinion of the

Commission, this is somewhat low. The Commission is of the opinion that an annual depreciation allowance of $400.00, to be set aside on the sinking fund basis, is adequate.

While the Commission is of the opinion that no attempt should be made to interfere with the internal management of a public utility by a regulatory body, except perhaps in rare cases, it will not approve salaries to officials which are unreasonably high and not commensurate with the duties performed. The Commission recognizes efficient service, and, in certain cases, has made allowance for efficiency; but in no case has it penalized efficient management. But in event this Commission should take the position that the operating expenses of a public utility should not be duly scrutinized by a regulatory body in a rate-making case, then regulation would be ineffectual. In the opinion of the Commission the operating expense of a public utility should be as carefully considered as the amount allowed for fair value of the property of the public utility.

The respondent whose property in use and useful is found to be of the value of $16,000.00, and whose total revenues for the year September 1, 1916, to August 31, 1917, were $4,271.35, shows on its books a salary of $1,100.00 per annum to its president and $1,195.25 to its office clerks. The testimony in this case was to the effect that the president of the corporation gives practically no time to the management of this small property. The testimony shows that the son of the president manages and operates the property and that he devotes only a portion of his time to such end and receives therefor a salary of $100.00 per month.

It is quite apparent that this public utility cannot expect to earn a fair rate of return upon the value of its property in use and useful under such an arrangement. While the respondent company maintains an office, such office is in reality a store room, and the customers of the utility are compelled to visit the residence of the manager, who is employed at night elsewhere, to transact business with the utility. It is the opinion of the Commission that a property of this character is really a "one-man property" and should be managed and operated by one man at a salary not to exceed $1,000.00 a year. In the schedule of reasonable rates, which will hereafter be set forth by the Commission small allowance for contingencies will be permitted.

Free Service.

Witnesses testified that under the franchise contract of the public utility with the town of Aurora, which is at this time in force and effect, the town of Aurora, by the terms of such contract, receives electric current without charge for its town hall. In this case it is contended by the manager of the respondent company that the town hall is used for other purposes than municipal, and that the use of electricity has become excessive. While this Commission, until such time as it has investigated the property of a public utility and has readjusted its rates, will not require such public utility to charge for service furnished a municipality when the terms of a franchise ordinance provide that the service shall be free—for the reason that it is to be presumed that the rates set forth in the franchise ordinance are based upon a consideration of the free service to be so rendered—yet in a case where the Commission has readjusted the schedules of a public utility, this free service, which is discriminatory, must be discontinued. The respondent company will be ordered to bill the town of Aurora in accordance with the schedule hereinafter provided by the Commission.

Rates.

The Commission is of the opinion that the rates for municipal lighting now charged by the respondent company are reasonable, but that the present rates and charges for electric service furnished by the respondent company are unreasonably low and do not afford to the public utility a fair return upon the value of its property in use and useful. The Commission is also of the opinion that the proposed schedule of the respondent company will be excessive. The present rates and charges of the respondent company, as filed with the Commission, are as follows:

COMMERCIAL LIGHTING.

Rate.

First 10 K. W. per month, per K. W.	12c
Next 10 K. W. per month, per K. W.	11c
All over 20 K. W. per month, per K. W.	10c

Prompt Payment Discount.

10 per cent discount if paid on or before the 10th day of the month.

Minimum Guarantee.

Minimum charge $1.00 per month.

COMMERCIAL POWER.

Rate.

Net per K. W. H. for power	5c
Net per K. W. H. for heating	5c
Minimum charg per H. P. per month	$1.00

STREET LIGHTING.

Rate.

For each 60 c. p. lamp per month	$2.00

Prompt Payment Discount.

10 per cent discount if paid on or before the 10th day of the month.

Free lights for town hall.

The schedule of rates and charges proposed by the respondent company are as follows:

COMMERCIAL LIGHTING.

Rate.

All commercial lighting, per K. W. H.	15c

Prompt Payment Discount.

10 per cent discount if paid on or before the 10th day of the month.

Minimum Guarantee.

$1.50 per month.

COMMERCIAL POWER.

No change.

STREET LIGHTING.

No change on street lights.

Town Hall lighting to be charged for on the basis of Commercial Lighting schedule as proposed, viz., 15c per K. W. H. gross.

The Commission is of the opinion that the following schedule of rates and charges to be charged by The Suburban Light & Power Company in the town of Aurora are reasonable:

COMMERCIAL LIGHTING.

Schedule A.

Rate.

$0.12 per kilowatt hour for all current consumed during the month.

Prompt Payment Discount.

A discount of 1 cent per kilowatt hour 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 net minimum monthly bill of $1.25.

Availability.

This schedule shall be available to all consumers using the company's standard lighting service.

Schedule B.

Rate.

$0.12 per kilowatt hour for the first 5 kilowatt hours consumption per active room per month.
$0.05 per kilowatt hour for all consumption in excess of the above.

Prompt Payment Discount.

A discount of 1 cent per kilowatt hour 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 net minimum monthly bill of $1.25, provided that consumers using electric ranges under this schedule shall guarantee a net minimum monthly bill of $2.00.

Availability.

This schedule shall be available to residence consumers only.

COMMERCIAL POWER.

Schedule C.

Rate.

$0.05 net per kilowatt hour for all energy consumed.

Minimum Guarantee.

The consumer must guarantee a minimum monthly bill of $1.00 net per rated horsepower on all motors installed.

STREET LIGHTING.

Schedule D.

Rate.

For each 60 candlepower series, incandescent lamp per month, $2.00.

Prompt Payment Discount.

A discount of 10 per cent will be allowed on all bills rendered for street lighting if paid on or before the 10th day of the month next succeeding that in which service is rendered.

ORDER.

IT IS THEREFORE ORDERED, That the respondent company, The Suburban Light & Power Company, be permitted to establish by filing and posting in the manner provided in section 16 of the Act, the following rates and charges for electric service, said rates and charges to become effective on all electric service furnished on and after the 1st day of December, 1917:

COMMERCIAL LIGHTING.

Schedule A.

Rate.

$0.12 per kilowatt hour for all current consumed during the month.

Prompt Payment Discount.

A discount of 1 cent per kilowatt hour 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 net minimum monthly bill of $1.25.

Availability.

This schedule shall be available to all consumers using the company's standard lighting service.

Schedule B.

Rate.

$0.12 per kilowatt hour for the first 5 kilowatt hours consumption per active room per month.

$0.05 per kilowatt hour for all consumption in excess of the above.

Prompt Payment Discount.

A discount of 1 cent per kilowatt hour 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 net minimum monthly bill of $1.25 provided that consumers using electric ranges under this schedule shall guarantee a net minimum monthly bill of $2.00.

Availability.

This schedule shall be available to residence consumers only.

COMMERCIAL POWER.

Schedule C.

Rate.

$0.05 net per kilowatt hour for all energy consumed.

Minimum Guarantee.

The consumer must guarantee a minimum monthly bill of $1.00 net per rated horsepower on all motors installed.

STREET LIGHTING.

Schedule D.

Rate.

For each 60 candlepower series, incandescent lamp per month $2.00.

Prompt Payment Discount.

A discount of 10 per cent will be allowed on all bills rendered for street lighting if paid on or before the 10th day of the month next succeeding that in which service is rendered.

GEO. T. BRADLEY,

(Seal) M. H. AYLESWORTH,

A. P. ANDERSON,

Commissioners.

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

DECISION No. 144.

WM. CAMPBELL, ET AL.,

v.

THE CITY OF GRAND JUNCTION, COLORADO, AND JAMES H. RANKIN, COMMISSIONER OF WATER AND SEWERS OF SAID CITY OF GRAND JUNCTION, COLORADO,

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Case No. 136.

November 27, 1917.

APPEARANCES: L. L. Morrison, Esq., for the Petitioners. Henry Tupper, Esq., for the City of Grand Junction, Colorado, and James H. Rankin, Commissioner of Water and Sewers, of the City of Grand Junction, Colorado, Defendants.

STATEMENT.

By the Commission:

On the 21st day of July, 1917, twenty (20) residents and consumers of water residing in the city of Grand Junction, Colorado, filed with the Commission a written petition directed against the city of Grand Junction, a municipal corporation organized and existing under and by virtue of the laws of the state of Colorado, under special charter adopted in accordance with and pursuant to the provisions of Article XX of the Constitution of the State of Colorado, alleging that the city of Grand Junction owns 300 inches of water derived and taken from a stream of mountain water known as Kannah Creek, which flows through a conduit from the creek for a distance of about 20 miles into reservoirs located a short distance south of the limits of the city of Grand Junction, from which it is conducted through two metallic pipes 12 inches in

diameter to the water mains of the city of Grand Junction for the use of consumers. The complaint states that from June 1, 1912, to June 30, 1916, all users of water from the water works of the city of Grand Junction were permitted to use water for domestic purposes and for sprinkling lawns, gardens and trees at any and all hours of the day and night—the 300 inches of Kannah Creek water being ample therefor. It further alleges that for some time prior to the 30th day of June, 1916, the amount of water obtainable from the water works of the defendant city of Grand Junction began to diminish in quantity and has continued so to diminish since that date; that on the 30th day of June, 1916, the city council of the city of Grand Junction passed an ordinance requiring all persons using water from the water works of the city of Grand Junction to use water for sprinkling lawns, gardens and trees only during every alternate period of twelve hours—beginning at noon and ending at midnight, or vice versa, according as the users resided in houses located on odd or even numbered lots, the order of sprinkling being reversed monthly from April to September, inclusive; that said ordinance was wholly disregarded by the water users and in no manner enforced by the defendant until on or about the 15th day of June, 1917, when one person was arrested and fined thereunder; that the city of Grand Junction since that date made no arrests for the violation of the ordinance, although the ordinance had continually been violated up to the time of filing of this complaint.

The complainants further allege that the 12-inch pipes are partially obstructed with mud, weeds, sticks and pieces of lumber, so that they are incapable of conducting more than one-half their normal capacity; that the concrete lining of one reservoir is badly cracked and that the bottom of this reservoir has settled away from the sides so that a large amount of water passes thereout and is lost to the taxpayers and water users of the city of Grand Junction. It is also alleged that, while the commissioner of water and sewers of the city of Grand Junction has stated that consumers are wasting water, the consumers are not wasting water, but, on the other hand, that the service is inadequate and the amount of water furnished to consumers is insufficient. Complainants charge that the restrictions placed on the use of water for irrigation purposes are unreasonable and subject the users of water to unnecessary inconvenience. They pray that this Commission, after an investigation and hearing, issue an order granting such relief to

water consumers of the city of Grand Junction as to the Commission seems just and equitable.

On the 4th day of August, 1917, the city of Grand Junction and commissioner of water and sewers filed with the Commission an answer in writing alleging in substance that the city of Grand Junction is a municipal corporation, organized and existing under and by virtue of the laws of the state of Colorado, under a special charter adopted in accordance with and pursuant to the provisions of Article XX of the Constitution of the State of Colorado; that the charter, including section 96 thereof, was ratified, affirmed and validated by the amendment to the said Article XX, which amendment was adopted by vote of the qualified electors of the State of Colorado in 1912, and that section 96 of the charter provides that the ownership, management and control of the water works and water system is a local and municipal matter, and, among other things, provides:

> "The city council shall by ordinance fix rates, establish regulations for the use of water by consumers; provide for the orderly administration of the department, and provide fines and penalties for the violation thereof."

It is alleged by the city of Grand Junction that the ownership, management and control of the water works and water system and the matter of imposing regulations for sprinkling, and the use of water from the water works and system in the city of Grand Junction are matters of municipal and local concern and not subject to the regulation or control by the State of Colorado, and that the Public Utilities Commission has no jurisdiction or control over the water works and water system of the city of Grand Junction.

For a further defense the city of Grand Junction alleges that the said city is the owner for domestic purposes of 300 inches of water taken from a mountain stream known as Kannah Creek; that this water flows through pipes from the intake on Kannah Creek a distance of about 20 miles to the reservoirs located a short distance from the city, from which reservoirs the water is brought through two metallic pipes 12 inches in diameter to the city mains for distribution to consumers; that the installation of the present water system of the city of Grand Junction was completed on or about June 20, 1912; that from said date until June 30, 1916, the water users were permitted to use water from said water system at any and all hours of the day and night.

It is alleged by way of answer that in the year 1900 the city of Grand Junction installed its first municipally owned water system and that a reservoir was then constructed about one mile south of the city into which water was pumped from the Gunnison River, and delivered from this reservoir to the city through a 12-inch cast iron pipe, and that said pipe since that date has been continuously used; that in 1908 the 12-inch cast iron pipe being found inadequate, a second 12-inch pipe made of steel was installed to supplement the first 12-inch pipe in conducting the water from the reservoir to the city; that prior to June 20, 1912, the water pumped into said reservoir and used therefrom did not exceed a maximum of about 125 statute inches; that on or about June 20, 1912, the city began the use of water from Kannah Creek, from which stream was purchased and condemned the use of 300 inches; that the water from this stream was conducted to the reservoirs of the city by means of a pipe 20 miles in length; that the maximum capacity for conducting water from the reservoirs to the city has remained the same, and that in the last few years the use of water from the system has largely increased through its use in parks, cemeteries, fountains, etc.; that in the year 1917 a very large acreage irrigated by city water has been planted for the first time to gardens in response to the nation-wide demand for increased garden production because of the war; that because of the large and steady increase of the amount of water used subsequent to June 20, 1912, without any corresponding increase in the carrying capacity and distributing system of the said city, the pressure in the pipes decreased, thus diminishing fire protection in the city; in consequence thereof the city council of Grand Junction on June 30, 1916, passed an emergency ordinance, which is as follows:

> "Section 1. The use of water from the city water works for sprinkling lawns, gardens and trees will be permitted as follows: On residence or other property in the city of Grand Junction having even numbers or if numbered would have even numbers, during the months of April, June and August of each year such sprinkling shall only be done from 12 o'clock midnight to 12 o'clock noon of each day, and during the months of May, July and September shall only be done from 12 o'clock noon until 12 o'clock midnight of each day.
>
> "On residence or other property in the city of Grand Junction having odd numbers, or if numbered would have

odd numbers, during the months of April, June and August of each year such sprinkling shall only be done from 12 o'clock noon to 12 o'clock midnight of each day, and during the months of May, July and September of each year such sprinkling shall only be done from 12 o'clock midnight to 12 o'clock noon of each day.

"Provided, however, the use of water for sprinkling city parks, school, jail or library lawns and trees shall be permitted on every day from 7 o'clock of the forenoon to 6 o'clock of the afternoon and at no other time.

"Section 2. It shall be unlawful for any person to use water for sprinkling lawns, gardens and trees at any other time than herein designated during the months of April, May, June, July, August and September of each year.

"Section 3. Any person violating any provision of this ordinance on conviction shall be fined not less than $2.00 and not more than $100.00 for each offense.

"Section 4. In the opinion of the city council a special emergency exists for the preservation of public health and safety, and this ordinance shall therefore take immediate effect."

It is further alleged that the demand for water during the years 1916 and 1917 was increased by the unusual and almost unprecedented continued dry and warm weather which prevailed in the city of Grand Junction; that the defendant city, through its commissioner of water and sewers, has caused tests and examinations to be made of the system by competent engineers, and that after the investigation the conclusion of the authorities was that the 12-inch pipes were not obstructed by mud, sticks or stones, but that the carrying capacity of the pipes was to some degree diminished by tubercles which had accumulated in the pipes during their 17 years of use; that it is the intention of the city to take up a section of the cast iron pipe for inspection as soon as there are adequate rains so that the demand for water will, temporarily, be sufficiently diminished to permit one 12-inch pipe to carry an adequate supply of water to the city. The defendant alleges, however, that if the pipe is obstructed the cleaning thereof will entail considerable expense and the work can be done only at such time as one 12-inch pipe will carry sufficient water to supply consumers;

that consumers at all times have been furnished reasonable service; and that the distributing system of pipes was installed originally to supply consumers with water for domestic use, but that such system is now being used largely as an irrigation system, and that the cost of increasing the carrying capacity of the pipes will entail large and useless expense upon the city of Grand Junction. The city prays that this complaint be dismissed.

After notice this case came on for hearing in the council chamber in the city hall of the city of Grand Junction, on the 28th day of August, 1917.

Jurisdiction of Commission.

The answer of the defendant city of Grand Junction alleges that the ownership, management and control of the water works owned by the municipality of Grand Junction, a home rule city operating under a charter form of government as provided by Article XX of the Constitution of the State of Colorado, and the regulation of service and control are matters of local and municipal concern, and not subject to regulation and control by the State of Colorado, and that the Public Utilities Commission has no jurisdiction or control over the water works and water system of the city of Grand Junction.

In the following cases the Commission has held that the regulation of rates and service of public utilities are not matters of local or municipal concern:

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; P. U. R. 1916E, 421;

In re Rates and Rules Colorado Springs Light, Heat & Power Company, 2 Colo. P. U. C. 23, P. U. R. 1916C, 464;

The East Denver Business and Property Association v. Denver Tramway Company, 3 Colo. P. U. C. 333;

Ratner v. The Denver Gas & Electric Light Company, 3 Colo. P. U. C. 379;

The East Denver Business and Property Association v. Denver Tramway Company, 4 Colo. P. U. C. 276.

See also:

Portland Railway, Light & Power Co. v. City of Portland, 210 Fed. 667;

City of Woodburn v. Public Service Commission of Oregon, 161 Pac. 391;
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., 116 N. E. 210;
Chicago & Southern Traction Co. v. I. C. R. R. Co., 246 Ill. 146, 92 N. E. 583.

In the case of the City of Woodburn v. Public Service Commission of Oregon, *supra,* the Supreme Court of the State of Oregon in an opinion rendered by Mr. Justice Harris fully sustains the position taken by this Commision that regulation and control of all public utilities, privately or municipally owned, operating within the State of Colorado, by the power and authority vested in it by the laws of the state pertaining to public utilities is a proper exercise of the police powers of the state.

The opinion of Mr. Justice Harris is in part as follows:

"The power to fix rates by compulsion as distinguished from the power to fix rates by agreement is not granted to cities or towns, nor is the right of the legislative assembly to legislate upon that subject curbed, by Section 2 of Art. XI, of the state constitution, because in its essence it is neither a municipal power nor an incident to a pure municipal power, therefore, even under the rule announced by the majority opinion in Kalich v. Knapp, 73 Ore. 558; 142 Pac. 594; 145 Pac. 22, the legislative assembly was not prohibited from making the Public Utility Act applicable to urban as well as extraurban territory."

Also:

"The power to regulate rates does not appertain to the government of a city; it is not municipal in its character; nor is it even incident to a grant of authority to enact or amend a charter for a city or town."

Also in the case of the Portland Railway, Light & Power Company, *supra,* Judge Bean stated:

"The regulation of fares to be charged by public service corporations is not primarily a municipal matter, but is a

sovereign right belonging to the state in its sovereign capacity."

Article XX of the Constitution of the State of Colorado provides, among other things, that the municipal corporation of Denver, and certain other territory surrounding what was formerly known as the city of Denver, shall be a single body politic and corporate by the name of the "City and County of Denver," granting to the city and county of Denver the power to hold a charter convention and to frame a charter for the city and county in harmony with Article XX of the Constitution. By Section 6 of Article XX of the Constitution of the State of Colorado, cities of the first and second class are empowered to propose for submission to a vote of the qualified electors, proposals for charter conventions, and to have the same power as set out in Sections 4 and 5 in Article XX and Section 1, or rather with full power as to real and personal property and public utilities, works or ways, as set out in Section 1 of Article XX.

On the 14th day of September, 1909, the city of Grand Junction adopted a special charter in accordance with and pursuant to the provisions of Article XX, as provided in Section 6 of Article XX of the Constitution of the State of Colorado, one section of the charter adopted by the city of Grand Junction, viz., Section 96, reads as follows:

> "The city council shall by ordinance fix rates, establish regulations for the use of water by consumers; provide for the orderly administration of the department, and provide fines and penalties for the violation thereof."

Section 6 of Article XX of the Constitution of the State of Colorado, as amended in the year 1913, provides among other things, that every city and town in the State of Colorado having a population of 2,000 inhabitants, shall have the power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters. The section further provides that after the charter has been framed and approved in reasonable conformity with the provisions of Article XX, the city or town shall have the powers set out in Sections 1, 4 and 5 of the article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon,

provide, regulate, conduct and control. The section sets forth certain powers which are presumed to be local or municipal in effect, which have no bearing upon the issues herein, and then states:

> "It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government, in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny to such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.
>
> "The statutes of the State of Colorado, so far as applicable, shall continue to apply to such cities and towns, except in so far as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.
>
> "All provisions of the charter to the city and county of Denver, and the cities of Pueblo, Colorado Springs and Grand Junction, as heretofore certified to and filed with the secretary of state, and of the charter of any other city heretofore approved by a majority of those voting thereon and certified to and filed with the secretary of state, which provisions are not in conflict with this article, and all elections and electoral votes heretofore had under and pursuant thereto, are hereby ratified, affirmed and validated as of their date."

The city attorney of Grand Junction in this case contends that the regulation of rates and service of a public utility, privately or municipally owned, operating within the city of Grand Junction, are matters of local and municipal concern; and that because Section 6 of Article XX of the Constitution of the State of Colorado as amended, ratified Section 96 of the charter of the city of Grand Junction, which provides for regulation of rates and service of municipally owned water works, this Commission is without jurisdiction in this case. It is not to be presumed that the voters in amending the Constitution of the State of Colorado would provide that all matters contained in charters of cities should be ratified, affirmed and validated as of their date, without knowledge of the contents of these charters. In fact, Section 6 contains the provision, "Which provisions are not in conflict with this article." Certainly it is true that if the regulation of rates and service of public utilities are not matters of local and municipal concern, then an

attempt by a city in framing its charter to grant to the municipal government additional powers, which are not local and municipal, is an enlargement of powers, and, therefore, in conflict with Article XX of the Constitution.

From consideration of the record in this case it appears that the city of Grand Junction is the owner of 300 inches of Kannah Creek water, which has been appropriated and purchased by the city for domestic use under its municipally owned water system. This water is conveyed to distributing reservoirs and then by two 12-inch mains from the distributing reservoirs to the distribution system in the city of Gand Junction. It is contended by the complainants that while the city of Grand Junction owns and controls 300 inches of the Kannah Creek water, which is alleged to be more than sufficient to serve all water consumers in the city of Grand Junction without restriction as to use, the condition of the reservoirs, supply pipes, and distribution system is such that it has been necessary for the city officials to place unreasonable restrictions upon the use of water, to the end that consumers located in the city of Grand Junction are not adequately served.

Witnesses at the hearing testified that there was not sufficient pressure for proper fire protection during the irrigating season, and that ordinances adopted by the city restricting the use of water for irrigation were not enforced and that in certain portions of the city during the summer months the pressure was inadequate for home consumption independent of irrigation use.

It seems that prior to the year 1912 water was pumped into the reservoir of the city in an amount not to exceed 125 statute inches, but that on about June 20, 1912, the city began to take water from Kannah Creek, from which stream the city purchased and condemned the use of 300 inches, and that this water is conducted to the reservoirs of the city by means of pipes about 20 miles in length, and that since 1908 the maximum capacity of the pipes used for conducting the water from these reservoirs to the city has remained the same. Prior to the summer of 1912 there was in force and effect an ordinance passed and adopted by the city council of Grand Junction, placing restrictions upon the use of water for irrigation purposes, but due to an increased amount of available water for irrigation purposes the restrictions were withdrawn, and in the summer of 1916 the commissioners of the city of Grand Junction passed an ordinance, which has heretofore been set forth, restricting the use of water for irrigation purposes.

Mr. James H. Rankin, commissioner of water and sewers of the city of Grand Junction, testified at the hearing that while the reservoir capacity has not been increased during the past few years, nor had the capacity of the carrying pipes from the reservoirs to the distribution system of the city been increased, yet there was a much larger use of water in the several years preceding the hearing, while many extensions to the distribution system had been made.

The witness also testified that it was the plan of the city of Grand Junction at an early date to make an examination of the carrying pipes and to clean same if necessary.

Witnesses appearing in behalf of both the city and the complainants testified that the use of water had greatly increased in the two or three years preceding the hearing due to increased use in parks, cemetries, gardens and lawn irrigation.

Mr. C. D. Vail, hydraulic engineer for the Public Utilities Commission, testified as to a preliminary investigation made by him at the request of the Commission and closed his report with the following statement:

> "A careful and thorough study of this plant would probably disclose at least three causes for present conditions: (1) An extravagant use of water due to restrictions not being enforced; (2) poorly designed distributing system; and (3) excessive loss of head in the 12-inch mains from the distributing reservoirs to the city system, especially in the cast iron main. It is probable from experiments made by Engineer Romberg during July, 1917, that this pipe is heavily coated with barnacles, and, furthermore, indicates that it may have other more serious obstructions near the north end of the Fifth Street bridge."

It appears that the city of Grand Junction has a rule which requires all consumers to discontinue the use of water when a fire alarm is given by a siren whistle. In fact, during the hearing of this case a practical demonstration of this rule and its effect occurred, and the engineer for the Commission made an examination of the pressure gauge in the fire room and found a record of 45 pounds at the time the signal was given. In two minutes the gauge registered 60 pounds and in four minutes 67 pounds. The gauge registered as high as 70 and returned to 68 pounds. Mr. Vail testified that 70 pounds would be a fair pressure for the city of

Grand Junction. He stated, however, that the registry of the gauge was not conclusive proof of good pressure, and it would have been possible for the gauge to register a higher pressure at the fire house than at outlying districts of the city.

At the conclusion of the hearing the Commission's hydraulic engineer was instructed to make a thorough investigation of the operating conditions surrounding the water plant owned by the city of Grand Junction, and to make a written report to the Commission, copies of which were to be furnished to the parties interested.

On the 18th day of October, 1917, the Commission received from its hydraulic engineer a written report stating the results of his investigation, which was made jointly with Mr. E. M. Romberg, representing the city of Grand Junction, and from a careful consideration of the record of this case and this report the Commission finds:

Reservoirs and Supply Mains.

The municipal water plant of the city of Grand Junction owns 300 inches of Kannah Creek water which is delivered by a supply main, and by this main carried 20 miles into two reservoirs of a capacity of 900,000 and 500,000 gallons, respectively, making a total of 1,400,000 gallons of water in the reservoirs. Tests made by the engineer of the Commission shows that the supply main of the municipal plant has a loss which does not exceed 5 per cent, which loss is not excessive when compared with other lines of this character. It would appear from measurements taken that the smaller reservoir has settled about 7½ inches at the northeast corner, which is the result of allowing the reservoir to overflow and to saturate the ground sufficiently to cause settling. It would appear that the condition of the reservoir is not serious, but it is recommended that the water in the future be kept at least two feet below the spillway.

The Commission is of the opinion that the city of Grand Junction has not sufficient distributing reservoir capacity, and that in the interest of good service it should at an early date remedy this condition by an enlargement of the reservoir capacity.

Delivery of Water from Reservoirs to City.

Prior to the year 1908 water was delivered from the reservoirs to the distribution system of the city by a 12-inch cast iron pipe,

but since the year 1908 this delivery has been made by the 12-inch cast iron pipe and an additional 12-inch steel pipe. From tests made by the Commission's engineer it appears that the cast iron pipe has become tuberculated to an extent that its carrying capacity has been greatly reduced and said tests further indidcated an obstruction in flow between the Main Street bridge and the corner of Fifth Street and Struthers Avenue. While the life of this pipe is not materially affected, it would appear advisable to remove this pipe at some future time, using the pipe taken up at other places in the distribution system, and replacing it with pipe of larger diameter rather than attempt to remove the tuberculation. The 12-inch steel pipe appears to retain its original carrying capacity, although showing considerable deterioration in many places. The pipe lines were constructed prior to the purchase by the city of Kannah Creek water, and were, of course, never designed to deliver 300 inches of water. In their present condition over one-half of the static head is used in friction loss in the event the full supply of water is required through these pipes with a subsequent serious effect upon the fire pressure during times of maximum use.

City Distrubuting System.

Grand Junction, like many other growing cities, has at this time a poorly designed distributing system. As in other cities pipe lines have been extended in accordance with the growth of the city, furnishing consumers with water for domestic use at the least possible cost without sufficient study or knowledge of the requirements and needs to meet fire protection.

Adequate Service.

The Commission is of the opinion that its first duty in this case is to determine whether consumers of water residing in the city of Grand Junction are obtaining adequate service under reasonable rules and regulations. It has been the experience of this Commission that every public utility could be reconstructed to the advantage of the consumer, in the event the expense involved in this reconstruction be not taken into consideration. Certainly it is true that any expense to which the City of Grand Junction would be put by an order of this Commission, would, in the end, be paid by the consumers either in increased rates or increased taxes. It therefore becomes necessary for the Commission in determining the issues herein to bring about, if possible, adequate service to water

users in Grand Junction at the least possible expense to the water users and taxpayers. While the question of rates is not in issue in this case and the Commission has not been called upon by the municipality of Grand Junction to make recommendations in regard to its rate schedule, the method of measuring the service becomes highly important when considered with adequate service. Grand Junction has a schedule of flat rates, as is true of many other cities of similar size, and for this reason must necessarily provide for restrictions in use of water to the end that this use does not become wasteful, resulting in inadequate service. It is perhaps true that the statement of city officials, repeated by an enthusiastic citizenship, to the effect that the city owns sufficient water to provide for a population of 25,000 people has encouraged an extravagant use of the water owned by the city and distributed to consumers through a distributing system inadequate to properly carry the same. The Commission recognizes the fact that different localities require different amounts of water for irrigation, yet no community should encourage wasteful use of any commodity.

Before issuing an order requiring the expenditure of money for reconstruction work in the Grand Junction water system, the Commission desires to make recommendations which will perhaps relieve the consumers and taxpayers from additional rates and taxes.

It may be found advisable by the commissioners of the city of Grand Junction to provide for the installation of meters and thus bring about an economical use of water.

Inspectors sent by this Commission to Grand Junction in the irrigation season of 1917, and as late as the month of September, found many violations of the ordinance of the city restricting the use of water for irrigation, and it would appear that the city has not properly enforced this ordinance.

Recommendations.

The Commission has decided not to issue a final order in this case, but to make certain recommendations to the city of Grand Junction and to carefully investigate the water service at Grand Junction during the spring and summer months of 1918 to determine whether or not a compliance with these recommendations has brought about adequate service without unreasonable restrictions and regulations upon the use of water by the consumers. In the

event these regulations do not produce the desired effect, the Commission will issue an order at the proper time.

It is Recommended:

1. That the commissioner of water and sewers cause an examination to be made of all private and public uses of water with a view to restricting waste, and have a thorough inspection made of all pipes and fixtures connected with or to the distribution system.

2. That all ordinances relating to the waste of water either by allowing it to run when not in use, or resulting in waste due to leaky pipes and fixtures, be strictly enforced by imposing fines and penalties as provided therein.

3. That the present and future ordinances restricting the use of water for irrigation of lawns and gardens, be strictly enforced without discrimination as to persons.

4. That all cemeteries be required to install meters and that all water furnished to cemeteries in excess of 300,000 gallons per acre of irrigated area for any one month shall be deemed excessive, and a schedule of rates and charges be collected for all water used in excess of the above amount.

ORDER.

IT IS THEREFORE ORDERED, That the issues in this cause shall not be finally determined at this time, but shall be subject to such orders as to the Commission may seem just and proper.

GEORGE T. BRADLEY,

(SEAL) M. H. AYLESWORTH,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 27th day of November, 1917.

DECISION NO. 145.

IN RE APPLICATION OF THE DENVER, BOULDER & WESTERN RAILROAD COMPANY TO INCREASE FREIGHT RATES.

Case No. 140.

December 7, 1917.

MODIFICATION OF ORDER.

STATEMENT.

By the Commission:

On October 13th, 1917, the Commission issued an order in the above entitled cause, authorizing and permitting The Denver, Boulder & Western Railroad Company to increase certain of its freight rates between points on its line and between such points and points on the line of The Colorado & Southern Railway Company. This order was issued by the Commission after hearing held in connection with the applications of the applicant to increase its rates. The statements relied upon by the applicant as justifying the requests made, as well as the findings and conclusions of the Commission in the cause, are fully set forth in the Commission's order. The Commission found that the conditions warranted an increase in rates, and, being of such opinion, prescribed a revised schedule of class and certain commodity rates.

The Commission stated, in its opinion, that the reasonableness of a schedule of rates such as was prescribed could only be determined definitely after such rates had been in effect for a certain period; that it was impossible to determine at the time that each and every rate prescribed in the schedule might not be in excess of the value of the service rendered; that a trial alone would deter-

mine such facts with certainty, and that the Commission expressly reserved the right to modify or change the order or opinion upon proper showing that the rates prescribed are unreasonable or unjust to the applicant or to the public.

A petition for modification of the Commission's order, insofar as it applies to joint through coal rates and local and joint through ore rates, has been filed with the Commission by the applicant. In this petition it is stated that the Commission in its order prescribed rates unjust and unreasonable to the applicant in that less than thirty per cent of the total estimated increase in revenue would result from the rates allowed by the Commission; that the increase of approximately thirty per cent in estimated revenue represents less than forty per cent of the increased operating expenses; that no increase in joint through coal rates were allowed; that no increase in the rates on tungsten ore and concentrates were allowed, and that only sixty per cent of the increased revenues applied for on other order and concentrates was allowed.

In its original order in this cause the Commission declined to authorize any changes in the joint through rates on coal to points on the Denver, Boulder & Western Railroad as schedules were on file with the Commission proposing increases of 15 cents per ton, and under suspension by orders of the Commission. At the time of the issuance of the orirginal order in this cause the coal rate suspension case was on the Commission docket for hearing November 12, 1917. Subsequently, at the request of the carriers, the hearing was vacated temporarily and at the present time no date has been assigned for such hearing.

In the suspension case referred to increases of 10 and 15 cents per ton are proposed in practically all of the existing coal rates in the State of Colorado, whereas, in the instant cause, increases are proposed by the applicant ranging as high as $1.10 per ton. The entire amount of such increases, as explained in the Commission's original order, is proposed by the carriers involved to accrue to The Denver, Boulder & Western Railroad Company. The points of origination from which the proposed increases apply are Denver, the Northern Colorado district, the Walsenburg district and the Trinidad district, all of such points being on, and the rates applying in connection only with the Colorado & Southern Railway.

Inasmuch as no decision in the coal suspension case can be rendered until a hearing has been held and it is apparent to the Commission that there is immediate need of additional revenue

to enable the applicant to continue opperations, the Commission will modify its order and grant permission to the applicant to increase the rates on coal as originally requested.

In its original order the Commission stated:

> "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 ensure 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 exceding the combination of the intermediate, and all the other complex details entering into the question of rate-making."

In prescribing the rates on ores and concentrates, therefore, the Commission carefully considered the relationship of such proposed rates and authorized a schedule which resulted in certain increases, but did not grant the entire amount of the incrases proposed by the applicant. In its petition for modification of the order the applicant has submitted evidence which was not before the Commission at the hearing in the cause, and which in detail sets forth the amount of tonnage and value of the various classes of ore shipped from stations on its line. In addition, affidavits have been submitted by shippers of ore, expressing the willingness of the shippers to have the Commission authorize and permit the schedule of ore rates as applied for by the applicant. The ore shipments of these shippers represent practically the entire tonnage of ore originating at stations on the applicant's line, that of one shipper alone representing approximately 62 per cent of the total.

After a consideration of the application of The Denver, Boulder & Western Railroad Company, together with the additional evidence now before the Commission in the cause and the affidavits of the ore shippers, the Commission is of the opinion that the proposed changes are justified and an order will therefore be issued allowing the rates to become effective on three days' notice to the Commission and to the public.

As in the original order in the cause, a clause will be inserted in this order providing 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, as was stipulated by witnesses on behalf of The Colorado & Southern Railway Company, at the hearing in this cause.

ORDER.

IT IS THEREFORE 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:

Between DENVER and	RATES IN CENTS PER TON OF 2,000 POUNDS 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	400
Sunset	200	300	500
Frances	350	425	700
Ward	350	425	700
Tungsten	200	300	500
Eldora	350	425	700

OTHER ORE AND CONCENTRATES

Between DENVER and	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	400	500
Ward	180	180	375	450	575	700
Tungsten	180	180	300	350	400	500
Eldora	180	180	375	450	575	700

TO	COAL, CARLOADS, FROM Trinidad District	Walsenburg District	Northern Colorado District	Denver
Langdell	280	255	130	220
Salina	340	315	190	280
Shale	360	335	210	300
Gold Hill	425	400	275	365
Ward	550	525	400	490
Tungsten	425	400	275	365
Eldora	550	525	400	490
Nederland	------	------	400	------
Stevens Camp	------	------	400	------

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 intrmediate 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, Colorado, this 7th day of December, 1917.

DECISION NO. 146.

IN RE APPLICATION OF THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY TO ABANDON SERVICE AND REMOVE TRACKS BETWEEN SHELTON JUNCTION AND FENTON.

Application No. 9.

December 15, 1917.

APPEARANCES: Messrs. Henry T. Rogers and Geo. A. H. Fraser, for the applicant, The Atchison, Topeka & Santa Fe Railway Company. Boone Best, Esq., for the Protestants.

STATEMENT.

By the Commission:

On October 30, 1917, The Atchison, Topeka & Santa Fe Railway Company filed with the Commission its notice and application in writing in which the material allegations are as follows: That upon the expiration of thirty days from the filing of said notice it proposed to discontinue service on the trackage described, and to remove said track from the ground; that the trackage proposed to be removed is a part of the applicant's trackage which originally extended from Rocky Ford, Colorado, on the main line, to Shelton Junction, Colorado, a point on the Arkansas Valley branch, which parallels the main line on the north side of the Arkansas river; that the distance from Rocky Ford to Shelton Junction is approximately six miles; that some years ago approximately 3.54 miles of this trackage was removed, being that part extending from Rocky Ford northeast to Fenton station, at which station there is a sugar beet dump and other loading facilities; that the applicant proposes at this time to remove that part of the trackage extending north-

east from Fenton station to Bridge 89-B, a distance of approximately 1.78 miles, leaving intact that part which lies between Bridge 89-B and Shelton Junction, a distance of approximately .66 of a mile. Applicant further proposes to remove the beet dump and other loading facilities from Fenton station to a point just north of Bridge 89-B, where the patrons who are now accommodated at Fenton station will be served. All freight now loaded at Fenton station would, according to this proposed arrangement, be loaded at the new station just north of Bridge 89-B, and from there switched to the main line at Shelton Junction. Bridge 89-B crosses what is known as the Holbrook Canal. It is stated in the application that one of the objects of abandoning this trackage is to eliminate the aforesaid Bridge 89-B, which is alleged to be in bad condition, and also to avoid the necessity of reconstructing the aforesaid trackage between Bridge 89-B and Fenton station, which trackage is also claimed to be in bad condition, necessitating immediate repairs.

Pursuant to notice duly given to all parties in interest the hearing in this cause was held in the hearing room of the Commission in the Capitol building, city and county of Denver, at the hour of 10:00 a. m., November 20, 1917.

It appears from the evidence adduced that the line of railway extending from Rocky Ford to Shelton Junction was originally constructed by The American Beet Sugar Company for the purpose of furnishing facilities to the patrons in the territory adjacent to and along the line of said railway, of which Fenton station is the center. Later this line was purchased and taken over by the applicant, The Atchison, Topeka & Santa Fe Railway Company, and operated by it, with the exception of that portion extending from Rocky Ford to Fenton, which was abandoned some time after its purchase. It also appears from the evidence that the patrons of this railway made no serious objection to the abandonment of that part of the line between Rocky Ford and Fenton, because they would still receive service on that portion of the line extending from Fenton to Shelton Junction.

A large number of witnesses and patrons of the road present at the hearing of this case strenuously objected to the removal of that portion of the track between Fenton and Bridge 89-B.

The evidence shows that immediately surrounding Fenton station there are 2,000 acres or more of very fertile farming land, intensively cultivated by some twenty families.

It was the intention of the applicant to show, and it introduced testimony at the hearing of this case for the purpose of showing, that the inhabitants of Otero county, and more especially the patrons living in the vicinity of the trackage in question, are abundantly supplied with railroad facilities exclusive of the trackage sought to be taken up; that the only effect of the removal of this trackage on said inhabitants would be to entail upon a small number of persons a longer haul of their products to the nearest railroad station; that the trackage proposed to be removed has at no time produced revenue sufficient to cover the cost of its maintenance and operation; that by abandoning this trackage and removing the beet dump from Fenton station to a point northeast of the north end of Bridge 89-B, ample facilities for loading produce would be furnished at that point, and that the patrons of the railway would also be furnished with ample facilities for handling produce at Rocky Ford, Swink and intermediate stations, and at Shelton Junction; that if the trackage proposed to be abandoned should have to be maintained, it would require the applicant to expend large sums of money on this trackage, especially by reason of a contract between the applicant and The Holbrook Irrigation Company, owner of a canal crossed by Bridge 89-B, which contract calls for the rebuilding of the bridge with steel girders and pile approaches; that the cost of such construction and maintenance is out of all proportion to the revenues derived from the operation of the trackage in question.

The evidence shows that the applicant must and will, regardless of the issue of this case, expend a considerable sum of money in reconditioning its line of railway between Shelton Junction and Bridge 89-B.

Applicant's division superintendent testified that the cost of reconditioning the track which it is proposed by the applicant to abandon, would be $7,140.52. In this estimate is an item of $3,600 for rebuilding Bridge 89-B.

Applicant introduced in evidence its exhibit "A," which purported to give the total number of carload shipments originating at and delivered to the station of Fenton for the years 1912, 1913, 1914, 1915 and 1916, and for the nine-month period from January 1, 1917, to October 1, 1917, aggregating 432 cars. However, the exhibit shows that for the year 1916 there were 126 carloads of produce shipped out of and received at Fenton station, including flour and feed, sugar beets, vegetables, melons and other products;

while only nine months, January 1, up to and including September 30, are shown for the year 1917, as compared with twelve months in 1916. The carload shipments for the nine months of 1917 aggregated 57 cars. During October, November and December, 1916, there were received at and shipped from Fenton station 88 cars. If a like number of cars were shipped during the same period of 1917, which is the heavy shipping season of the year, the total for 1917 would be 145 cars.

The evidence further disclosed that inasmuch as the train crews leave the main line at Shelton Junction and proceed from there to obtain cars already loaded or to set cars for loading, there would be practically no difference in the expense of operation if the station remains at Fenton rather than be moved to Bridge 89-B; that practically the only difference in operating expense would be that due to the additional time required to move cars from the proposed station at Bridge 89-B to Fenton, a distance of 1.78 miles, and from Fenton to Bridge 89-B.

Witnesses for the protestants testified that if the station is moved a decrease in the amount of sugar beets raised will result, inasmuch as growers will thereby be compelled to haul their beets to the new station; that some will be compelled to haul beets by wagon a distance of 4.5 miles. One witness testified that such a change would compel him to haul six miles, since he would be unable to haul to the new station. Other witnesses testified that the nearest station to them would be Hays, on the main line, but that the roads to this station are very sandy and in poor condition, and rather than haul over this road, they would prefer to haul their beets an even greater distance, either to Rocky Ford or to Swink. Witness living south of Fenton testified that they would prefer to haul their beets to Rocky Ford or to Swink rather than to the proposed new station, on account of the bad condition of the roads. It also developed from the testimony of the protestants that if they were compelled to haul their beets and other products to the proposed new station it would become necessary for the patrons of the railway to construct a wagon bridge over the canal which is now spanned by Bridge 89-B.

One witness testified that he rents his farm to tenants and he has been notified that if the station is removed the tenants will cease raising sugar beets. The testimony also developed that one patron of the railway had donated the right-of-way through his land to The American Beet Sugar Company, such right-of-way

being on that part of the railroad which has been abandoned; that the road was built and thereby damaged his farm; that if this branch as now operated is allowed to remain he will have no complaint, but in the event the proposed removal of track occurs, he will feel that he has been injured; that none of that part of the right-of-way which he donated to the railway company, and which has since been abandoned, has reverted to him.

One of the strongest contentions of the applicant is that traffic to and from Fenton station does not justify the expenditure of money necessary to recondition and maintain the trackage proposed to be abandoned. One item insisted upon by the applicant is that of interest on its investment.

Mr. C. D. Vail, railway engineer for the Commission, testified that he made an inspection of the track proposed to be abandoned; that there is no passenger train service on this line; that it is used ony for handling of freight originating at or destined to Fenton, most of the traffic being cantaloupe and sugar beet shipments; that trains seldom are operated on the branch more than three times a week; that traffic is very light and does not require a roadbed to be built or maintained to the main line standard; that many of the original ties are still in use; that, in view of the light traffic, 20 to 25 per cent tie renewals would place this track in good operating condition; that Bridge 89-B can be repaired; that the stringers and caps are in good condition; that piling should be driven to end bents and that one piling on the upstream side is in bad condition. Mr. Vail further testified that in event the same type of construction is used this bridge can be placed in good operating condition for $600; that it can be renewed completely for $1,200; that the ties can be renewed and the track between Shelton Junction and Fenton placed in good operating condition for $3,000. He estimated the total cost of placing the bridge and roadbed in good operating condition at $3,600.

The board of directors of The Holbrook Irrigating District filed a communication with the Commission concerning Bridge 89-B, which spans their canal, as follows:

> "We, the undersigned Board of Directors of The Holbrook Irrigation District, hereby agree that any arrangement that the Public Utilities Commission may deem just and proper in the matter of the Santa Fe railroad bridge 89-B, across the Holbrook Canal on the Fenton Branch, will be acceptable to

said board, wishing only the best possible clearance in the center of the canal.

"We have no desire to hold the Santa Fe Railroad Company to any strict compliance with their contract in regard to a steel structure.

(Signed) H. M. BEST,

A. J. LUGINBILL, Pres't,

S. A. WALLACE,

Board of Directors, Holbrook Irrigating Ditch."

There is quite a discrepancy between the figures submitted by the applicant and those of the Commission's engineer as to the cost of reconstructing Bridge 89-B. The applicant's figures for the reconstruction of the bridge are $3,600. Those of the Commission's engineer are $600 for repairing the bridge, and $1,200 for entire reconstruction.

The testimony of the applicant's witnesses was that if the track was ordered retained that the expense of reconditioning it from Bridge 89-B to Fenton will be $7,140.52. In this estimate is included $3,600 for rebuilding Bridge 89-B. If the figures of the Commission's engineer are used—$1,200 for building Bridge 89-B new, instead of $3,600—the expense of reconditioning the track, including the building of Bridge 89-B, would be $4,740.52. Interest on this at 7 per cent per annum would be $331.82. Interest at 7 per cent per annum based on expenditures on the estimate of $600 was made by the Commission's engineer for the repairing of Bridge 89-B and $3,000 for placing the roadbed in repair for the entire distance from Shelton Junction to Bridge 89-B, would amount to $252. It is admitted that the item of expense of operation from Shelton Junction to Fenton over and above that which would be necessary in the operation from Shelton Junction to the proposed new station would be inconsiderable. The items of interest on the investment, maintenance and repairs, and taxes, therefore represent the financial burden resting upon the applicant if the station is required to be maintained at Fenton.

It appears to the Commission that the removal of the station as proposed would result in inconvenience and hardship to the patrons of the applicant's line, and probably would result in a decrease in the produce raised in this community. While the road was built originally by The American Beet Sugar Company, it

afterwards was purchased by The Atchison, Topeka & Santa Fe Railway Company and that part from Rocky Ford to Fenton was abandoned, and The Atchison, Topeka & Santa Fe Railway Company now proposes to abandon that part from Fenton to Bridge 89-B, which would necessitate a longer haul and further hardship upon patrons of the road living in this community.

The testimony presented by The Atchison, Topeka & Santa Fe Railway Company as to receipts from and expenses of operation on this particular branch is very indefinite, and is wholly inadequate for the purpose of determining whether or not during the years 1916 and 1917, or any other period, this particular branch has been operated at a profit or at a loss. While the applicant files its Exhibit "A," setting forth the number of carloads received at and shipped from Fenton, the Commission is without information as to the origin of the carloads received or the destination of the carloads shipped out, or the amount of revenue received from same. However, the Commission has heretofore repeatedly held that evidence tending to show that a branch line is not at the time paying expenses does not in itself afford a good reason for the abandonment of such branch line, when the railway system as a whole is being operated at a profit.

In re Denver, Laramie & Northern R. R. Co., 4 Colo. P. U. C. 316, this Commission said:

> "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 that 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."

The Commission in the case referred to followed a decision of the former Railroad Commission, which was reviewed by the Supreme Court of the State of Colorado. In Colorado & Southern Ry. Co. v. State Railroad Commission, 54 Colo. 64, at page 94, Mr. Justice Gabbert, in 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 possession and enjoyment of its charter powers and privileges, to furnish necessary service

does not, even though the compliance of the order entails a loss, deprive it of its property without due process of law, or compel it to devote its property and revenue to a public use without just compensation, for the 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."

This principle, which is an old one, has been repeatedly enunciated by the Interstate Commerce Commission and by the courts, and it is unnecessary to cite here the numerous decisions on this question.

After a full consideration of this case the Commission is of the opinion that the evidence before it is not sufficient to justify it in granting the applicant, The Atchison, Topeka & Santa Fe Railway Company, permission to discontinue service on and to dismantle the line in question.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, The Atchison, Topeka & Santa Fe Railway Company, shall continue to maintain and operate its line between Fenton station and Bridge 89-B.

GEO. T. BRADLEY,

(SEAL) M. H. AYLESWORTH,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 15th day of December, 1917.

DECISION NO. 147.

THE COMMERCIAL CLUB OF NEW RAYMER, COLORADO,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Case No. 143.

December 19, 1917.

APPEARANCES: Charles R. Graves, Esq., for Complainant, The Commercial Club of New Raymer. L. B. Burrow, Esq., for Defendant, Chicago, Burlington & Quincy Railroad Co.

STATEMENT.

By the Commission:

On the 5th day of November, 1917, there was filed with the Commission a complaint and petition signed by a committee representing the Commercial Club of New Raymer, Colorado, including the president, C. R. Graves, and the vice-president, Fred L. Knapp, requesting an order of the Commission directing the defendant carrier to install adequate depot facilities at New Raymer.

On the 13th day of November, 1917, the defendant filed with the Commission its answer to the complaint, generally denying the allegations contained therein; and in addition, stating that at the present time the cost of all material for the construction of a new station is extremely high and difficult to secure; that there is an extreme scarcity of labor, and that the defendant is not now engaged in the construction of any new station buildings or any other similar improvements on its line which do not in some way serve to promote the successful carrying on of the war. Defendant

asserted in its answer that the present facilities are sufficient to take care of the business at New Raymer without any delay or damage until after the period of the war; and, after referring to the announced policy of the national administration, ordering and requesting all railroads to postpone unnecessary improvements, the defendant prays that this case be dismissed, or that action thereon be postponed until after the termination of the war. Defendant states that it makes this request not wholly because of the expenditure necessary to improve station facilities at New Raymer, but because of the necessity on the part of the railroads to reduce their consumption of material and employment of men to a minimum in all cases where the use of such material and the work of such men do not directly increase the efficiency of the railroad in the matter of aiding the national government in the successful prosecution of the war.

The above cause was heard by the Commission on the 30th day of November, 1917, at the hour of 10:00 o'clock a. m., at the hearing room of the Commission in the State Capitol building, in the City and County of Denver, Colorado.

New Raymer is a municipality located on the Sterling-Cheyenne branch of the Chicago, Burlington & Quincy Railroad in Weld county, thirty-seven (37) miles west of Sterling; it has a population of two hundred and is exclusively an agricultural community. The farmers located in this community are principally engaged in the raising of wheat, beans and corn, in the feeding of hogs and in general farming. The town is about eight years old and is served by three general stores, two lumber yards, three garages, three hotels, one bank, two elevators, one meat market, one furnishing goods store, one furniture store, one hardware and implement store and two oil stations. A modern city and rural school (the Lincoln School) has just been completed at a cost of about $30,000.00. The district served by the Lincoln School (District 91) is approximately eighteen miles in length and nine miles in width. The 208 pupils enrolled are carried to and from New Raymer by means of seven motor buses.

The present depot facilities at New Raymer consist of three box car bodies, one with a partition through the middle serving as waiting room and office, another as freight depot and the third as a residence for the agent.

All witnesses for the complainant testified that the structures now used as a depot by the defendant carrier are inadequate and

not of sufficient size to properly handle the business at this station. Witnesses for the complainant testified that it is almost a daily occurrence to have freight piled outside the depot for want of space within, and that at times freight is damaged on this account; also that freight is placed in that portion of the depot used as a waiting room, where it occupies space supposedly set apart for passengers and those wishing to transact business with the agent. Witnesses for the complainant further testified that the town of New Raymer is rapidly growing; that in the last two years it has more than doubled in population; that while this section is known as a dry farming country, there have been no crop failures since the land has been broken up; that bank deposits have grown; that the general mercantile business of the town shows a steady increase; that merchants are carrying heavier stocks of merchandise; that new homes are continually being erected, and that the appearance of the town is altogether one of prosperity.

Mr. G. T. McShane, division superintendent for the defendant carrier, testified that the depot facilities at New Raymer are not of the best. He stated he was under the impression that recently it was the intention of the railroad company to erect a depot at New Raymer, but that, on account of the increased cost and scarcity of labor and materials, and a request by the United States Government to defer all work that does not tend to aid in winning the war, the defendant has postponed a number of improvements which in ordinary times would have been made. Witness stated that if request for a new depot at New Raymer were deferred until after the war it was his opinion that such request would receive favorable consideration. He testified further that some improvements authorized by the defendant for this year will not be carried out on account of the scarcity of labor; that the increased cost of constructing depots is 50 per cent higher now than during normal times, and that the cost of building a standard small town depot today would be approximately $3,500.00. This type of structure, Superintendent McShane explained, includes waiting room, office and freight room, the second story of the building being used as living quarters for the agent. He said that defendant's budget for the present year had included an item for building a depot at New Raymer, but that the improvement had been deferred for the reasons given.

Witness read a communication dated October 1, 1917, from Hon. Newton D. Baker, secretary of war and chairman of the Council of National Defense. In this it was stated that:

"Every effort that this country is capable of making should be applied to bringing the war to a speedy and successful conclusion. The resources of the country in a general way may be said to consist of men, money and material and during the period of the war any new enterprise or undertaking should be tried and justified by the text 'Will the men, money and material so applied best contribute in this way to the winning of the war?'

"New enterprises which are not fundamental to the efficient operation of the country's necessary activities should not be undertaken. This will not result adversely upon business or conditions of employment because every man and every resource will be needed during the war. All effort should be centered to help win the war."

Having in mind the unusual and abnormal conditions brought about by the war, the Commission at this time is not disposed to order any improvements of the nature requested in this complaint, except there be an urgent necessity therefor and conditions warrant the required expenditure.

The Commission is of the opinion that the depot facilities at New Raymer on the line of the defendant carrier are inadequate and, after a careful consideration of the evidence in this case, is of the opinion that the defendant railroad should construct suitable depot facilities at that point, after submitting plans for such depot facilities to the Commission for its approval.

If existing abnormal conditions continue on account of the war, and there exists a question as to the practicability of com mencing construction of new depot facilities at New Raymer within the period of one year hereinafter mentioned, before the expiration of such year the defendant may file with the Commission an application in writing requesting an extension of time, stating in its application the reasons why it believes an extension of time should be granted. Immediate consideration by the Commission will be given to such application.

During the interval prior to the construction of adequate depot facilities it may become necessary to temporarily place an additional box car body at New Raymer to properly house and protect freight at that point, in which event the complainant may file such request in writing with the Commission and, upon investigation by the Commission, if found necessary, same will be ordered.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, Chicago, Burlington & Quincy Railroad Company, shall, within one year from the date of this order, begin the construction of a suitable station building with a freight platform at New Raymer, Colorado, on its line of railroad.

IT IS FURTHER ORDERED, That the architectural plans for the station building shall be submitted to the Commission for approval prior to the construction of said station building.

GEO. T. BRADLEY,

(SEAL)

M. H. AYLESWORTH,

A. P. ANDERSON,
Commissioners.

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

DECISION NO. 148.

CITY OF LA JUNTA,

V.

THE OTERO COUNTY GAS COMPANY,

Case No. 145.

December 20, 1917.

APPEARANCES: For the City of La Junta, H. W. Allen, Esq., City Attorney;

P. E. Williams, Esq., City Attorney, Rocky Ford;

J. T. Updike, Esq., for The Otero County Gas Company.

STATEMENT.

By the Commission:

On the 15th day of August, 1917, there was filed with the Commission by The Otero County Gas Company, a public utility furnishing gas for fuel and illuminating purposes in La Junta, Rocky Ford and Swink, an amendment to its schedule of rates and charges, at that time on file with the Commission, providing for a minimum monthly bill of $1 net per consumer. This amended schedule became effective September 15, 1917, in accordance with the provisions of the laws of the State of Colorado pertaining to public utilities.

On the 17th day of November, 1917, there was filed with the Commission a copy of a resolution adopted by the board of aldermen of the city of La Junta, protesting the minimum charge as filed in the schedule of The Otero County Gas Company on August 15, 1917, effective September 15, 1917, requesting the Commission to investigate into the merits of the minimum charge and calling the attention of the Commission to a franchise contract entered into by the city of La Junta and the public utility which provides that no minimum shall be charged.

Pursuant to notice given to all parties in interest the above cause came on for hearing in the city of La Junta at 9:00 a. m., December 4, 1917, at which time F. W. Herbert, statistican for the Commission, submitted a digest of the annual report of The Otero County Gas Company, as filed with the Commission in accordance with its rules and regulations, covering the operations of that company for the year ended December 31, 1916. F. J. Rankin, electrical and gas engineer for the Commission, testified as to the fundamental principles underlying a minimum charge for public utility service, and submitted an itemized statement of the charges usually entering into and going to make up the minimum bill of an average monthly consumer. J. T. Updike, president of The Otero County Gas Company, testified as to the increased cost of operation of the company and stated that during the winter of 1916-1917 there were about 175 meters showing no consumption of gas. This witness stated further that the cost of labor and material had increased 100 per cent since the company commenced operation in the year 1914, and that the price of coal had increased from $1.80 f. o. b. mine to $3.20 f. o. b. mine, a difference of $1.40. Mr. Updike developed the fact that prior to the year 1917 the defendant company manufactured gas entirely from crude oil, but due to the increased cost of that commodity its use in the manufacture of gas had become prohibitive, and it, therefore, became necessary for the company to install equipment for the manufacture of coal gas.

No objections were raised by the cities of La Junta and Rocky Ford or the town of Swink questioning the authority of this Commission to order different rates, charges, rules or regulations than those contained in the franchise agreement entered into between the municipality and the defendant public utility. The Commission has so often announced the rule in this regard that it will be unnecessary to set forth in detail the reasons justifying

the action taken by the Commission under the authority conferred upon it by the legislature (see Denver & South Platte Railway Company v. City of Englewood, 62 Colo. 229, 161 Pac. 151; P. U. R. 1916E, 134). While the Commission unquestionably has the authority to modify or change a rate schedule provided for in a franchise agreement between a municipality and a public utility after hearing and investigation, it will give serious consideration to the terms of the franchise contract before exercising the police power of the state.

The Commission is of the opinion that, generally, the rate schedules of a public utility providing that no charge shall be made when consumers make no use of the service, are discriminatory. It is true that the addition of a minimum charge to the rate schedules of the defendant will slightly increase the gross revenue; and the question was properly raised by counsel for the city of La Junta as to whether the present rates and charges of the defendant, providing no minimum, are not sufficient to yield a fair return on the capital invested in the property, and as to whether, if such a minimum is to be collected, the present rates and charges should not be reduced.

According to the annual report of The Otero County Gas Company for the year 1916, filed with this Commission, the operating revenue amounted to $14,089.02 and the operating expense $12,592.19, making the net operating revenue $1,496.83. The net non-operating revenue for the same period amounted to $85.25, leaving $1,582.08 as the gross income available for depreciation and a return on the investment in the property. It is apparent to the Commission that the earnings of the defendant are not excessive at this time, and that the collection of a reasonable monthly charge from consumers making no use of the service will not increase the earnings of the company to the point where the company will earn an unreasonable rate on the investment in its property. In this connection it must be remembered, however, that this is a new property and that better results may be expected when the business has reached a higher point of saturation than at present.

The Commission's engineer submitted an estimate of the cost to the company of serving consumers making a limited use of the service. According to this estimate, the average cost to the company of maintaining service for consumers using no gas whatever is 56 cents per month, and the average cost of serving consumers whose bills are less than the established minimum is approximately

85 cents per month. The estimate of the Commission's engineer follows:

	Cost per Consumer	
	Annual	Monthly
Fixed charges on first cost of gas meter	$ 1.20	$0.100
Meter reading, billing, bill delivery, bookkeeping, claim and statistical	1.80	.150
Meter installation, removal, maintenance and testing	1.20	.100
Inspection on consumers' premises	.24	.020
Customers' repairs, including household devices, but excluding meters and services	.24	.020
Fixed charges on service connection	1.80	.150
Maintenance of service connection	0.24	.020
	$ 6.72	$0.560
General expense, such as office rentals, telephone, telegraph and general supervision of the particular items listed above	1.01	.084
Total Consumer Cost	$ 7.73	$0.644
Average net cost of gas used by minimum consumer	2.40	.200
Total	$10.13	$0.844

Since in the present case the service connections were installed at the expense of the consumer the fixed charges on such service should not be considered in arriving at the cost of serving a minimum bill consumer.

In the final disposition of this matter the Commission must have in mind the fact that while comparatively high minimum bills or readiness-to-serve charges may, in most cases, be justified from the standpoint of the cost of service, such minimum bills or fixed charges frequently will be found to be so high that the consumer will not take the service, and if such minimum bills were established the result would be a loss in both consumers and revenue to the utility. It would be absurd merely for the purpose of scientific exactness for the Commission to place upon the small consumers of the company a burden which they would not bear. This would result in their abandoning the service and, unless their rates had been such as to cause the company a positive loss, their departure from the system would result in increased cost to the remaining consumers.

After due consideration of the issues involved in this case the Commission is of the opinion that the minimum monthly charge of $1.00, as now filed by The Otero County Gas Company with this Commission, is unreasonable, and that The Otero County Gas Company shall establish a reasonable minimum monthly charge not to exceed seventy-five (75c) cents gross or seventy (70c) cents net per month per consumer.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, The Otero County Gas Company, be and is hereby ordered and required to file with the Commission, prior to January 1, 1918, an amended schedule establishing a minimum monthly charge not to exceed seventy-five (75c) cents gross or seventy (70c) cents net per month per consumer; the net rate to apply if the minimum bill is paid within the discount period indicated on the bill.

IT IS FURTHER ORDERED, That this minimum charge shall be effective for all gas used during the month of December, 1917.

GEO. T. BRADLEY,

(SEAL) M. H. AYLESWORTH,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 20th day of December, 1917.

DECISION No. 149.

IN RE APPLICATION OF THE DENVER, BOULDER & WESTERN RAILROAD COMPANY TO DISCONTINUE SERVICE, REMOVE ITS TRACKS AND WITHDRAW FROM THE PUBLIC SERVICE.

Application No. 12.

December 26, 1917.

APPEARANCES: E. E. Whitted, Esq., and L. R. Ford, for the Applicant, The Denver, Boulder & Western Railroad Company;

H. O. Andrew, Esq., for the White Raven Mine.

John R. Wolff, Esq., for The United States Gold Corporation, The Up To Date Mining Company, The Allied Gold Mining Company, The E. B. Hill Coal & Lumber Company, and C. W. Adams, owner of the Logan Mines;

Frank L. Moorhead, Esq., city attorney for the city of Boulder, Colorado;

Messrs. H. Casaday, D. E. McAllister, E. B. Hill, W. F. Bleeker, for the Boulder Commercial Association;

Messrs. W. D. Wright and W. D. Wright, Jr., for The Long Lake Lumber Company and The Mitchell Lumber Company;

John D. Milliken, Esq., for The National Gold Mining Company, and the Grange Ranch and Farm lode, of Gold Hill;

J. N. Baxter, Esq., for the Huron Gold Ores Company and the Lost Dutchman Gold M. & M. Co.;

Chas. A. Murray, Esq., for the Eldora Power Company;

Wm. C. Russell, manager of the Caribou Mines & Mills Company and the Boulder County properties.

STATEMENT.

By the Commission:

This cause arises out of an application filed by the applicant, The Denver, Boulder & Western Railroad Company, with the Pub-

lic Utilities Commission on the 24th day of November, 1917, giving notice to the Commission that on the 27th day of December, 1917, it proposes to discontinue service, both freight and passenger, over its entire line of railroad, and thereafter to remove its tracks and dismantle its property and dispose of the same. On the 24th day of November, 1917, the Commission received a notice from The Denver, Boulder & Western Railroad Company that it would cancel and withdraw all of its tariffs of every character on the 27th day of December, 1917.

The application and notice were filed in accordance with the rules of the Commission pertaining to proposed abandonments and withdrawals from the public service by public utilities. The applicant, in its application and notice, states as reasons for the proposed discontinuance and withdrawal from the public service by The Denver, Boulder & Western Railroad Company that the railroad cannot under present conditions be operated so as to pay its operating epenses and taxes, and that the corporation has not been able for a considerable period of time to operate its railroad and pay such expenses and taxes or earn any fair return upon the value of the property.

On the 24th day of November, 1917, the Commission issued an order directed against The Denver, Boulder & Western Railroad Company, the applicant herein, requiring it, through its officers and representatives, to appear before the Commission at the State Capitol building in the City and County of Denver, Colorado, on Monday, the 10th day of December, 1917, at the hour of 10:00 o'clock a. m., to show cause why The Denver, Boulder & Western Railroad Company should not continue to operate its line of railroad. The Commission further ordered that The Denver, Boulder & Western Railroad Company continue to operate its line of railroad in accordance with the rules, regulations and tariffs now on file with the Commission until the further order of the Commission, and the railroad company was ordered not to dispose of any of its property, including real estate, rights of way, stations, rails and equipment, until the further order of the Commission, and the secretary of the Commission was instructed to give notice to the general public of the hearing. General public notice of the date of hearing was given, and upon the application of The Denver, Boulder & Western Railroad Company the hearing was postponed until December 12, 1917, at 10:00 o'clock a. m. In the general notice given by the Commission all shippers and interested parties were given authority

to appear before the Commission on the date of hearing to present such testimony as their interests seemed to require.

Prior to the date set for the hearing of this cause written protests opposing the application of The Denver, Boulder & Western Railroad Company were filed with the Commission, and at the time of the hearing the protests were made a part of the record and all interested parties were permitted to intervene as protestants, as shown by the above appearances.

On December 12th, the date of hearing, before taking testimony in this cause, the Commission made a general statement to the applicant and the protestants, setting forth the history which necessarily pertains to the application of The Denver, Boulder & Western Railroad Company, and stating as well the rule in Colorado controlling the proposed abandonment and withdrawal from the public service of a public utility.

In re Denver, Laramie & Northern Railroad Company, 4 Colo. P. U. C. 316, decided by the Commission on September 21, 1917, the Commission laid down the rule pertaining to abandonment and withdrawal from the public service by a common carrier within the State of Colorado. In that case the Commission held that prior to the withdrawal from the public service by a common carrier the consent of the Commission must be had and obtained through a full showing by the applicant before the Commission that there is no public demand for the service. In defining the term "public demand" the Commission stated:

> "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."

The Commission also announced to the parties in this cause that the burden of proof is on the applicant, The Denver, Boulder & Western Railroad Company, to prove that there is no public demand for the continued operation of its line of railway by showing, first, that after a fair trial it has been unable to earn its legitimate operating expenses; second, that the increases in rates, which, prior to the hearing of this cause, had been ordered by the Commission, would not after a fair trial produce revenue sufficient to pay legitimate operating expenses; third, that further increases

in rates commensurate with the value of the services, if permitted by the Commission upon application by the applicant, would not increase its revenues to the extent of paying operating expenses.

History and Description of Applicant.

The applicant railroad extends west from Boulder to Sunset, a distance of 13.3 miles, from which point it diverges north to Ward, distant 26.1 miles from Boulder, and south to Eldora, 33.4 miles from Boulder, with an operated mileage of 46.79 miles. The territory through which this line was built and operates is largely mining territory, and to a large extent the applicant depends upon such mining industry for its freight revenues. The railroad depends largely upon the tourist travel for its passenger revenues, the line being known generally throughout the United States as the Switzerland Trail. The entire line of the applicant is three-foot, narrow gauge track, laid with 56-lb. rail. The equipment of the applicant consists of six steam locomotives, twenty-three box cars, thirty-five coal cars, eight other freight cars, and fifteen passenger cars. This railroad connects with the Colorado & Southern Railway, and with the Union Pacific Railroad, at Boulder where freight and passengers are interchanged.

The railroad was originally organized under the name of The Colorado & Northwestern Railway Company, and its operations commenced in the year 1898. On July 1, 1904, a reorganization took place, the new company taking the name of The Colorado & Northwestern Railroad Company, and its operations were continued by such 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 funded debt of the applicant railroad company is $800,000.00, of which $700,000.00 was actually outstanding as of January 1, 1917. The capital stock of the company consists of $300,000.00 common stock, all of which was actually outstanding as of January 1, 1917.

History of Rate Increases.

On the 3rd day of August, 1917, The Denver, Boulder & Western Railroad Company filed an application with the Commis-

sion for increases in freight rates between points on the line of its railroad, and between such points and stations on the Colorado & Southern Railway and the Denver & Salt Lake Railroad. On the 13th day of September, 1917, after due notice, the Commission heard the application of The Denver, Boulder & Western Railroad Company (Case No. 140), and, after receiving testimony of the railroad applicant, and testimony introduced by the shippers—who testified in effect that the increases should be permitted in consideration of the continued operation of the railroad—the Commission, on the 13th day of October, 1917, granted the prayer of the application of the railroad company and increased its freight rates in accordance with the terms of the application, with the exception of rates on coal and ore. In re Denver, Boulder & Western R. R. Freight Rates, 4 Colo. P. U. C. 449. The Denver, Boulder & Western Railroad Company filed a motion for rehearing or modification of the order of the Commission, permitting increases on coal and ore requested in the original application of the railroad company, and, on the 7th day of December, 1917, the Commission modified its order, granting to The Denver, Boulder & Western Railroad Company the increases prayed for in both coal and ore rates. 5 Colo. P. U. C. 31.

Findings and Conclusions.

The principal witness for the applicant was L. R. Ford, general manager of The Denver, Boulder & Western Railroad Company, who submitted exhibits showing actual operating expenses, including taxes and excluding depreciation of equipment, beginning with the fiscal year 1907 and ending December 31, 1916. The exhibits introduced by Mr. Ford show that for the period of ten and one-half years beginning with the year 1907, the applicant earned a net income of $73,194.50; that only in the years 1913, 1914 and 1915 were there net deficits, which were respectively $2,602.28, $14,913.80 and $60.62; that for the year 1916 the net income was $14,903.45, and for the six months ended December 31, 1916, the net income was $7,395.06. While it is true that the exhibits of the applicant show no depreciation reserve, yet the testimony shows that the applicant company has been able to meet necessary requirements of its property in the way of maintenance and repairs.

The witness Ford also testified as to the difficulties of operation of the line of the applicant railroad company, as well as the

necessary increases in the cost of operation and the cost of material brought about by the war.

Many witnesses testified in detail as to the number of mining properties operating, with the consequent shipments on the railroad line of the applicant, as well as the number of people residing along the line of the railroad company and the prospects as to sustaining or increasing the present business of the railroad line of the applicant railroad.

The witness Ford admitted on cross-examination that he had recommended to the owners of the railroad certain extensions to be made into the Nederland territory, which has, in the past two years, developed large tungsten properties. Representatives of the applicant admitted that during the year ended September, 1916, tungsten ore shipments over the line of railroad of the applicant, together with shipment of materials and supplies into the tungsten territory, produced $30,000.00 in revenue, and that while automobiles and trucks are hauling from and to the Nederland district large shipments of tungsten ore and supplies, had the two-mile extension been made from Sulphide Flats to Nederland the automobile competition, of which the railroad representatives complain bitterly, would have been to a large extent done away with, with resulting benefits to the railroad company.

The witness Ford, for the applicant railroad company, in Case No. 140, requesting increases in freight rates—which were granted to the applicant by this Commission on the 13th day of October, 1917, and the 7th day of December, 1917—stated in answer to a question by counsel for the railroad company that he had asked for increases on all of the rates from 5 per cent to 60 per cent, and had estimated sufficient increases to place the road on a self-sustaining basis, estimating the tonnage to be handled as well as the increased expenses brought about by abnormal conditions due to the war, and covering a period up to September 13, 1917, at which time the witness testified before the Commission. The witness testified in that case that in the event the proposed increases in rates were granted by the Commission operating expenses could be paid, including taxes, and a net return of between $5,000.00 and $6,000.00 earned annually. Upon being cross-examined by members of the Commission in this case, as to statements made by him in Case No. 140, the witness testified that there had been certain increases in labor and coal costs arising since September 13, 1917, the date of his testimony in Case No. 140, which increases would reduce to some extent the net return approximated.

From the testimony and the exhibits furnished, the Commission is convinced that if the estimates of the witness were correct when made in Case No. 140, at which time the applicant requested increases in rates which were later granted by the Commission, the additional increased expenses of operation have not been so increased as to entirely retire the net income which was estimated by the witness to be earned over and above operating expenses and taxes in the event the Commission should grant the increases in rates prayed for.

The witness Ford also testified that the company had on hand supplies which had been paid for, and among these supplies were 9,000 ties and 200 tons of coal. The witness also testified that the applicant had the sum of $7,000.00 to its credit in bank.

Witnesses for the protestants testified as to the conditions of the mines located and operating along the railroad line of the applicant, as well as to certain new industries which are being developed at this time.

The Commission is convinced from a careful consideration of the testimony of the witnesses in this case, and particularly the testimony of the representatives of the applicant railroad company, that the increases in rates which have been granted to the railroad company by the Commission, will exceed the increases in the cost of operation of this railroad company which have been brought about by the war. In fact, the representatives of the applicant admit that should the railroad company continue to develop the business, which was developed during the latter part of 1916 and the first half of 1917, the increases in rates granted by the Commission will not only exceed the increases in the cost of operation, but will be sufficient for the railroad company to pay its operating expenses and taxes, with a resulting net income. Certainly it is true that the owners of this railroad have not as yet given the increases in rates granted by the Commission a fair trial so as to ascertain whether revenues can be produced which will pay the operating expenses of the railroad company and produce a net income. While it is true that the prices for materials, which could be obtained by the owners by junking the road at this time, are greatly in excess of the prices in 1916, yet this fact cannot justify withdrawal from the public service by a railroad company.

The territory served by this railroad has been greatly developed subsequent to the operation of the road, and testimony of witnesses representing the city of Boulder demonstrates that this munici-

pality has under construction, upon the line of railroad of the applicant, a water works of considerable extent, which would not have been begun had the municipality reason to believe the applicant railroad might discontinue operation, and which cannot be completed unless the applicant continues to operate its line of railroad.

In the event this Commission should grant its consent to the proposed abandonment and withdrawal from the public service by the applicant, The Denver, Boulder & Western Railroad Company, many people residing along the line of railroad of the applicant will be left without service, and large industries developed with the knowledge that they may be properly served by a railroad company, will be confiscated. The owners of the applicant railroad are, through the invitation of the State of Colorado, operating a public highway within the State of Colorado, and enjoy privileges which result only to a common carrier. The acceptance by the railroad company of the invitation of the State of Colorado and the enjoyment of these privileges necessarily carry with them the burden of giving adequate service at reasonable rates under the regulation of the Public Utilities Commission of the State of Colorado while such railroad is engaged in the operation of a common carrier, and necessitate as well the consent of the State of Colorado through the Public Utilities Commission before the railroad corporation may withdraw from the public service.

This Commission announced the rule in Colorado in connection with the proposed abandonment and withdrawal from the public service by a common carrier In re Denver, Laramie & Northern Railroad Company, *supra*, an application to discontinue service and remove tracks. The opinion of this Commission in that case was written after very careful consideration of the decisions of courts and commissions of the United States. The rule therein announced, that, before its abandonment and withdrawal from the public service, the common carrier must obtain permission of the State of Colorado through the Public Utilities Commission; that this consent may be given by the Commission only when the common carrier proves to the Commission 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 revenue of the public utility sufficient to meet the legitimate operating expenses, is hereby affirmed.

See:

Gates v. B. & N. Y. A. L. Ry., 53 Conn. 333, 5 Atl. 695;
State ex rel Naylor v. Dodge City, M. & T. R. Co., 36 Pac. 747;
State ex rel Little v. Dodge City, M. & T. R. Co., 36 Pac. 755;
State ex rel Grinsfelder v. Spokane St. Ry. Co., 19 Wash. 518, 53 Pac. 719;
Day v. Tacoma Ry. & P. Co., 141 Pac. 347;
Pana v. Central Ill. P. S. Co., P. U. R. 1916B, 177;
Ex parte Central Ill. P. S. Co., P. U. R. 1916B, 920;
Smith v. Atlantic S. R. Co., P. U. R. 1915F, 125;
State ex rel Caster v. Kansas Postal T. & C. Co., 96 Kan. 298, 150 Pac. 554, P. U. R. 1915E, 222.

On October 13, 1917, and on December 7, 1917, the applicant herein was granted by this Commission increases in rates varying from 5 per cent to 60 per cent, which increases were granted with the acquiescence of all shippers on the line of railroad, and after representatives of the railroad had expressed their intention to continue to operate and give a fair trial of the rates so increased. (2) The Commission finds that the increased rates have not been given a fair trial by the applicant common carrier and is of the opinion that the fair trial of these increased rates and charges will produce revenue sufficient to pay the operating expenses of the railroad company, including taxes, as well as a net income.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, The Denver, Boulder & Western Railroad Company, shall continue to operate its line of railroad in accordance with the rules, regulations and tariffs now on file with the Commission, and in accordance with the increases in rates granted by the Commission in Case No. 140, 4 Colo. P. U. C. 449, 5 Colo. P. U. C. 31, until the further order of this Commission; that the applicant railroad company shall not dispose of any of its property, including real estate, rights of way, rails, stations and equipment, until the further order of this Commission.

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

Dated at Denver, Colorado, this 26th day of December, 1917.

DECISION No. 150.

IN RE ADVANCE OF 25 CENTS PER TON IN COAL RATES FROM OAK HILLS DISTRICT.

Investigation and Suspension Docket No. 13.

December 27, 1917.

APPEARANCES: Tyson S. Dines, Jr., for respondent, The Denver & Salt Lake Railroad Company, W. R. Freeman and C. Boettcher, Receivers; D. Edgar Wilson, for respondent, The Chicago, Rock Island & Pacific Railway Company.

STATEMENT.

By the Commission:

By tariffs filed with the Commission the respondents propose a blanket increase of 25 cents per ton in the rates on coal from mines in the Oak Hills district (Routt County, Colorado), on the line of the Denver & Salt Lake Railroad, to all destinations to which rates are now carried on the line of the originating carrier and the lines of the Chicago, Burlington & Quincy Railroad, the Chicago, Rock Island & Pacific Railway, the Denver & Inter-Mountain Railroad, the Union Pacific Railroad and the Denver, Boulder & Western Railroad. The tariff providing for the increase in the local rates was filed to become effective December 19, 1917; that containing the increase to points on the Denver, Boulder & Western Railroad to become effective December 22, 1917, and that containing the increase to points on the other carriers named to become effective December 18th, 1917.

The rates as carried at the present time to points on the Chicago, Burlington & Quincy Railroad, the Chicago, Rock Island & Pacific Railway and the Union Pacific Railroad are those pre-

scribed by this Commission in its order In re Eastern Colorado Coal Rates, 1 Colo. P. U. C. 48, dated May 10, 1915, which rates under the provisions of that order became effective August 1, 1915. Upon the filing of the schedules containing the proposed advance of 25 cents per ton, the Commission, therefore, deemed it essential that a public hearing and investigation be held with respect to the proposed advance before allowing the same to become effective. The operation of the schedules proposing the advance was therefore suspended and deferred until the 17th day of March, 1918, pending an investigation and decision thereon. A public hearing in the cause was held at Denver, Colorado, on the 20th day of December, 1917.

The line of railroad of the respondent, The Denver & Salt Lake Railroad Company—then The Denver, Northwestern & Pacific Railway Company—was completed into the coal producing territory in Routt county during the year 1909, and during the same year operations extended as far as the coal fields located in the vicinity of Oak Hills. In establishing rates for the transportation of this coal the carrier published and made effective rates of $1.40 per ton on slack coal, and $1.60 per ton on all kinds other than slack, to Denver. These were the rates applicable on coal moving from the Walsenburg fields to Denver, and, it is was considered by the officials of the carrier operating from the Oak Hills field that it was necessary and expedient to meet the Walsenburg rates in order to place the Routt County coal on the market. This was so testified to by officials of the carrier at the hearing held In re Eastern Colorado Coal Rates, *supra*. As the coal gradually became introduced and found its market the production increased in even greater volume and it became necessary to reach the markets beyond Denver. From a production of 3,000 tons in 1908 an increase was made in 1909 to 92,154 tons, in 1910 to 254,162 tons, and in 1916 to 919,895, while the production for 1917 will reach more than 1,000,000 tons.

With the increase in development of the Routt County field and the consequent increase in production the carrier commenced negotiations for the establishment of joint through rates which would allow the coal to move to markets beyond its rails in order that the output might not be restricted. Rates were established, shortly after the publication of the local rates to Denver, to points on lines of carriers connecting with the originating carrier's line and were also voluntarily established upon the basis of the Walsenburg rates.

The average distance from the mines in the Walsenburg district to Denver is 185 miles and from the mines in the Oak Hills district as originally constituted 195 miles, although at the present time, due to the etxension westward of the Oak Hills district, the average distance from that field is 212 miles. The difference in the average distance from the Oak Hills and Walsenburg districts to all destinations on the Chicago, Burlington & Quincy Railroad and the Union Pacific Railroad is constant, since the point of interchange in both cases is Denver. To points on the Chicago, Rock Island & Pacific Railway east of Limon the difference is 95 miles in favor of the Walsenburg district if the average distance of 195 miles is used from Oak Hills to Denver, and 112 miles if the average distance of 212 miles from Oak Hills to Denver is used. This is caused by the interchange point being Denver on coal from the Oak Hills district and Pueblo on coal from the Walsenburg district.

The result of allowing the proposed rates to become effective will be to place the rates from the Oak Hills district upon the Trinidad basis, which at the present time, and always has been, 25 cents per ton higher than the rates from the Walsenburg district. The average distance from the mines in the Trinidad district is 212 miles.

At the hearing in this cause exhibits were filed by the respondent, The Denver & Salt Lake Railroad Company, showing statistics of operations together with revenues and costs of handling the coal traffic. From these exhibits it appears that the movement of coal is comparatively constant during the different months of the year, the two months showing the lowest movement during the fiscal year ended June 30, 1917, being February and March. Approximately 31 per cent of the coal handled during the fiscal year ended June 30, 1917, was consigned to Denver; 10 per cent moved to destinations in Colorado beyond Denver on connecting lines; and the balance was destined to interstate points.

This Commission, in its order dated May 15, 1915, prescribed rates from the Oak Hills district upon the Walsenburg basis of rates. This action was predicated upon the fact that the former rates from the Oak Hills district as voluntarily established by the carriers were upon the Walsenburg basis and the testimony of the officials of The Denver & Salt Lake Railroad Company was to the effect that it was necessary to maintain the Walsenburg basis in order to allow the Oak Hills district coal to compete with the Walsenburg coal.

The Interstate Commerce Commission has considered, in connection with interstate traffic, the rates on coal from the Oak Hills district to various destinations. In re Coal Rates From Oak Hills, Colorado, 30 I. C. C. 505, rates to points on the Chicago, Rock Island & Pacific Railway were under suspension and investigation. In that case the Commission found that rates were voluntarily carried to certain destinations on this line from Oak Hills on the Walsenburg basis, and held that since Walsenburg rates had been voluntarily applied by the Rock Island from Oak Hills to certain points east of Limon there existed no good reason why such rates should not be applied to all points involved east of Limon, and, therefore, found the Walsenburg basis to be reasonable from Oak Hills. Subsequently tariffs were filed proposing the cancellation of these rates on account of dissatisfaction over the divisions, which the Interstate Commerce Commission had prescribed In re Coal Rates From Oak Hills, Colorado, 35 I. C. C. 456, and 40 I. C. C. 497. The Commission held, however, that inasmuch as the evidence of the respondents in justification of the proposed cancellations rested wholly upon the alleged insufficiency of divisions and not in complaint against the volume of the rates themselves, the rates should not be cancelled. In re Oak Hills, Colorado, Coal, 45 I. C. C. 455.

In Hayden Bros. Coal Corporation v. D. & S. L. R. R., 39 I. C. C. 94, the Interstate Commerce Commission prescribed rates on coal from Oak Hills to various destinations in Kansas, Nebraska, Missouri and South Dakota on the lines of The Atchison, Topeka & Santa Fe Railway Company, the Missouri Pacific Railroad Company and The Chicago & North Western Railway Company, which in general were the same as the rates from Walsenburg. To certain points on the Atchison, Topeka & Santa Fe Railway rates were prescribed which were 50 cents per ton higher than the Walsenburg rates, the differential being granted on rates to these points due to the difference in distance, amounting to more than 250 miles.

The Interstate Commerce Commission also commented on the Oak Hills rate adjustment in South Canon Coal Co. v. C. M. Ry. Co., 38 I. C. C. 174, wherein the operators at South Canon, as well as The Colorado Midland Railway Company, the originating carrier from that district, desired to have the South Canon rates placed upon the Walsenburg basis. The South Canon rates were, at the time of the instituting of the suit, 50 cents per ton higher than the Walsenburg rates. The Commission held that a differential of

25 cents per ton was reasonable from South Canon over the rates from Walsenburg. The Commission mentioned the difficult operating conditions on the Denver & Salt Lake Railroad from Oak Hills to Denver, as compared with operating conditions from Walsenburg to Denver, and stated that the extension of the Walsenburg rates to other producing fields which are not so favorably located as is the Walsenburg district had been extended through the voluntary action of the carriers.

By the filing of the tariffs proposing an increase of 25 cents per ton it is conceded by the carriers, respondents herein, that the proper basis of rates from Oak Hills is not less than 25 cents over the Walsenburg basis—due to the greater difficulties of operation and the greater distance of the haul.

At the hearing in this cause no protests were received from, or appearances entered by, operators, shippers, or the public, although notice had been given of the hearing. No analysis or verification has been made by the Commission of the exhibits of the respondent, The Denver & Salt Lake Railroad Company, which exhibits purport to show the cost of handling traffic over respondent's line of railroad, nor is it deemed requisite to do so.

The Commission is fully aware of the difficulties of operation on the respondent's line of railroad from Oak Hills to Denver, and has several times considered the conditions peculiar to this road. A number of decisions involving rate adjustments have been rendered, in connection with which the operating problems of the Denver & Salt Lake Railroad have been thoroughly discussed. For this reason it is unnecessary in this case to again discuss these operating problems.

The fact must not be overlooked that, in the order of this Commission In re Eastern Colorado Coal Rates, *supra,* and in the orders of the Interstate Commerce Commission with reference to Oak Hills coal rates, the rates were predicated upon the Walsenburg basis primarily, if not solely, through the position taken by the carriers that the Walsenburg basis was necessary in order to allow the movement of the coal. The Oak Hills coal is now well known and in great demand, being considered the equal of any other bituminous coal produced in the state, and its market is very extensive, extending as far as Omaha, Nebraska.

An advance of 25 cents per ton in the interstate rates from the Oak Hills district to interstate destinations has already become effective, having been permitted by the Interstate Commerce Com-

mission in an order issued under the provisions of the amended 15th Section of the Act to Regulate Commerce, without, however, formal hearing.

The Commission has considered the evidence presented in this cause, as well as its decisions in previous cases, and is of the opinion that the proposed advance should be permitted to go into effect. An order will therefore be entered vacating the suspension as of December 27, 1917.

ORDER.

IT APPEARING That, by an order dated December 14, 1917, the Commission entered upon a hearing and investigation concerning the propriety of the increases and the lawfulness of the rates as applicable to the intrastate transportation of coal from the Oak Hills district in Routt County to various destinations, stated in schedules enumerated and described as Amendment 110 to Colo. P. U. C. No. 25; Supplement 6 to Colo. P. U. C. No. 35; and Supplement 1 to Colo. P. U. C. No. 48, all issued by The Denver & Salt Lake Railroad Company, W. R. Freeman and C. Boettcher, Receivers, and ordered that the operation of the said schedules be suspended until the 17th day of March, 1918.

IT FURTHER APPEARING, That an 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 order heretofore entered in this proceeding suspending the operation of the said schedules be, and it is hereby, vacated and set aside as of December 27, 1917.

GEO. T. BRADLEY,

(SEAL)

M. H. AYLESWORTH,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 27th day of December, 1917.

DECISION No. 151.

JAMES AMBER, AND TWENTY-SIX OTHERS,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Case No. 146.

December 27, 1917.

APPEARANCES: Wm. R. Kelly, Esq., for the complainants. L. R. Burrow, Esq., for the defendant.

STATEMENT.

By the Commission:

On the 22nd day of November, 1917, there was filed with the Commission a complaint and petition signed by James Amber and twenty-six others, on their own behalf and on behalf of the communitiy of Buckingham, Colorado, an unincorporated town, alleging that they reside in or in the vicinity of Buckingham and are patrons of defendant carrier either as passengers or as shippers or receivers of freight at said town; that defendant is a common carrier engaged in the business of the transportation of passengers and property between points in Colorado to and from and through said town; that the town of Buckingham is located in Weld county, Colorado, and is the center of a community of about five hundred farmers and business men, and is the shipping and distributing point for a large area of cultivated land; that said defendant maintains no station agent at Buckingham, and no freight or passenger stations for serving the community, except that two dis-

carded box car bodies are sometimes used for such purposes. The complaint and petition further alleged that because no regular station is maintained, tickets cannot be purchased at Buckingham, and on said account great inconvenience and damage is caused to patrons of defendant because livestock and other freight shipments cannot be billed and freight bills cannot be paid at this point; that a caretaker of the box car bodies used as a depot is on duty only once or twice daily, and then only at the incoming of trains; that incoming machinery, merchandise and other freight are dumped on the ground and left unprotected, and much breakage and loss to freight shippers and receivers are thereby caused; that to consign outgoing livestock and merchandise over defendant's railroad at Buckingham defendant's patrons are forced to journey either to New Raymer or Keota, each point eight miles distant from Buckingham, or, in some cases, assume the risk of telephonic inaccuracies in telephoning billings to New Raymer or Keota, while to adjust claims for breakage, shortage or overcharge patrons of the carrier must make the trip to the agency station at either of the two stations named.

Petitioners pray that the Public Utilities Commission enter an order to compel the defendant carrier to erect, equip and maintain a new and up-to-date freight and passenger station, and to keep on duty a station agent for the sale of tickets and the billing and receiving of freight at said station, and for such other relief as is proper.

On the 4th day of December, 1917, the defendant filed with the Commission its answer to the complaint, generally denying the allegations contained therein, and, in addition, stating that at the present time the cost of all material for the construction of a new station is extremely high and difficult to secure; that there is an extreme scarcity of labor, and that the defendant is not now engaged in the construction of any new station buildings or any other similar improvements on its line which do not in some way serve to promote the successful carrying on of the war. The defendant company in its answer asserts that present facilities are sufficient to take care of the business at Buckingham until after the period of the war, and, after referring to the announced policy of the national administration ordering and requesting all railroads to postpone unnecessary improvements, the defendant prays that this case be dismissed or that action thereon be postponed until after the termination of the war. The defendant states that it makes this request not only because of the expenditure necessary

to improve station facilities at Buckingham, but because of the necessity on the part of the railroads to reduce to a minimum their consumption of material and employment of men in all cases where the use of such material and the employment of men do not directly increase the efficiency of the railroad in the matter of aiding the national government in the successful prosecution of the war.

The above cause was heard by the Commission on the 18th day of December, 1917, at the hour of 10:00 o'clock a. m., at the hearing room of the Commission in the Capitol building in the City and County of Denver, Colorado.

The town of Buckingham is located on the Sterling-Cheyenne branch of the Chicago, Burlington & Quincy Railroad in Weld county, 44.26 miles west of Sterling, 7.7 miles west of New Raymer, and 7.93 miles east of Keota. At New Raymer and Keota the defendant carrier maintains agency stations. Buckingham has a population of approimately sixty, and is exclusively an agricultural community.

The farmers located in this section are engaged principally in the raising of wheat, barley, corn, beans, potatoes, dairy products and livestock. The community is served by a grain elevator, three coal dealers, two general merchandise stores, a lumber yard, one bank, two hardware stores, a garage, livery stable and a resturant. The present depot facilities at Buckingham consist of two box car bodies, one serving as a freight depot, the other as a waiting room for passengers.

Witnesses for the complainants testified that the defendant carrier does not maintain an agent to look after the business of the company, that tickets cannot be purchased and passengers are compelled to alight at the nearest agency station to obtain tickets, a condition which causes great inconvenience; that bills of lading cannot be obtained from the custodian for livestock and other freight shipments which originate at this point, nor is a convenient means given for filing complaints against faulty service and claims for shortage, breakage and overcharges; that although a custodian or caretaker is employed at a nominal salary he is not always on duty on the arrival or departure of trains; that merchandise and other freight are dumped upon the ground and left unprotected and breakage and loss to shippers are caused thereby.

Witnesses for the complainants further testified that in order to consign livestock and other merchandise at this point over defendant's road shippers are forced to journey to either New Ray-

mer of Keota, eight miles distant, or assume the risk of inaccuracies in phoning the billing to the stations named; that receivers of incoming freight are not furnished freight bills and that therefore there is no way one can check merchandise received with freight bills in order to ascertain whether the freight received is the correct amount shipped by consignor; that there are from 300 to 500 patrons of the railroad living in the vicinity of Buckingham; that this locality extends many miles north and south from Buckingham. Witnesses for complainants testified that the car body used as a waiting room for passengers is dark, there being no windows, and most of the time it is uncleanly; that in ordering empty cars for loading there is no means of knowing when such cars will be furnished, it being necessary to place orders with train conductors or by railroad company telephone to New Raymer or Keota; that frequently the telephone line of the company between Buckingham and New Raymer on the east of Buckingham, and between Buckingham and Keota on the west, is out of order, which occasions delays in receiving prompt and efficient service.

Mr. G. T. McShane, division superintendent of the defendant carrier, testified that his attention had never been called to the fact that the two box car bodies and the employment of a custodian at Buckingham would not properly take care of the small amount of business at this point. The company records show the earnings for Buckingham station for the period of thirteen months ended August 31, 1917, to average $1,204.00 per month, the large proportion of which is carload business. These figures take into account freight shipped both east and west from Buckingham and any freight that is prepaid to New Raymer for Buckingham. The figures were taken from the montly reports furnished by the agents at Keota and New Raymer, on either side of Buckingham. Mr. McShane testified that the occasional inability of shippers to get cars for loading was principally due to the car shortage condition; that distribution was made from his office and conductors instructed where to leave such cars; that there was no reason why the station custodian should not inspect and take charge of freight, look after the filing of claims, and obtain prompt settlement of legitimate claims, and that he (the witness) would guarantee to repair the car bodies now used as a depot and see that the custodian in future meets trains and properly looks after the business at this point. Witness further testified that on account of the increased cost and scarcity of labor and material, and the request of the United States government to defer all work that

does not tend to aid in winning the war, the defendant company has postponed a number of improvements which, in ordinary times, would have been made; that the increased cost of constructing depots is fifty per cent higher than in normal times.

Having in mind the unusual and abnormal conditions brought about by the war the Commission at this time is not disposed to order any improvements of the nature requested in this complaint, except there be an urgent necessity and conditions warrant the required expenditure.

The Commission is of the opinion that the depot facilities at Buckingham, on the line of the defendant carrier, are adequate, provided certain minor repairs are made, and that the custodian be required to meet all trains stopping at this point, to receive and properly check all freight bills, and to deliver freight bills to consignees, to place in freight room for safekeeping and protection from the weather all freight uncalled for, to make claims for patrons of the road for shortage, breakage and overcharges, to issue bills of lading, and to order cars for shippers.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, Chicago, Burlington & Quincy Railroad Company, shall employ and maintain a custodian at Buckingham, to be on duty at the station on the arrival and departure of trains, to receive claims for shortage, breakage and overcharges when filed with him, to issue bills of lading on outgoing shipments, to receive freight bills for incoming freight and properly check same, to see that uncalled for freight is properly housed and protected.

IT IS FURTHER ORDERED, That two windows be placed in the car body used as a waiting room; that said car body be provided with seats and kept in a neat and cleanly condition; both car bodies be painted and necessary repairs be made to make them weather-tight and serviceable.

IT IS FURTHER ORDERED, That the telephone line of the defendant company be kept in operating condition, and that the custodian be instructed to report any bad condition thereof immediately upon his attention being called to the same.

(SEAL)

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

Dated at Denver, Colorado, this 27th day of December, 1917.

DECISION NO. 152.

THE WESTERN LIGHT & POWER COMPANY,

v.

THE CITY OF LOVELAND.

Case No. 144.

December 31, 1917.

APPEARANCES: Paul W. Lee, Esq., and H. U. Wallace, for the complainant. Messrs. Pershing, Fry, Nye & Tallmadge and Ab. H. Romans, City Attorney, for the defendant.

STATEMENT.

By the Commission:

(Commissioner Aylesworth not participating.)

This is an action brought November 2, 1917, by The Western Light & Power Company against the City of Loveland, Colorado, for a determination by this Commission on the question whether, under subdivision (b), Sec. 35, Chap. 110, Session Laws of 1917 of Colorado, the defendant, the City of Loveland, had before the effective date thereof, to-wit, July 16, 1917, begun actual construction work on its proposed electric light plant and has since prosecuted such work in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking under any franchise, permit, ordinance, vote or other authority heretofore granted but not heretofore actually exercised, or whether a certificate of public convenience and necessity is required.

Said subdivision (b) reads as follows:

"(b) No public utility shall henceforth exercise any right or privilege under any franchise, permit, ordinance, vote or other authority heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the Commission a certificate that public convenience and necessity require the exercise of such right or privilege; provided, that when the Commission shall find after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise, permit, ordinance, vote or other authority heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the Commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege; and provided further, that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state."

On November 5, 1917, the Commission issued its notice and order of hearing and duly served the same upon the defendant, the City of Loveland, directing said defendant to appear at the office of the Commission at the Capitol Building in the City and County of Denver, Colorado, at the hour of 10:00 o'clock a. m., November 16, 1917, and present facts and testimony to the Commission as to whether, under subdivision (b), Sec. 35, Chap. 110, Session Laws of 1917 of the State of Colorado, defendant, the City of Loveland, had before the effective date of said law begun actual construction work on its proposed plant, and had prosecuted such work in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, or whether the Commission should require the defendant to obtain a certificate of public convenience and necessity as required by said law. An answer to the complaint was filed by the defendant city on the 16th day of November, 1917.

At the hearing many witnesses were examined for both complainant and defendant, the mayor and city clerk of the defendant city of Loveland being among those who testified. The following facts were testified to:

That on January 5, 1914, the defendant City of Loveland by Ordinance No. 171, appropriated $6,000.00 for the purpose of constructing a reinforced concrete dam eighteen miles west of the City of Loveland, on the Big Thompson River, as a part of the electric light works proposed by the defendant; that on August 11, 1914, at a special election held in Loveland, the erection of an electric light plant to be owned and operated by the City of Loveland was authorized; that on February 19, 1915, the City of Loveland, by Ordinance No. 172, appropriated $10,000.00 to defray the cost of labor and materials for the construction of its municipal light plant; that on February 19, 1915, the City of Loveland, by Ordinance No. 173, submitted to the qualified taxpaying electors the question of issuing $79,000.00 worth of bonds to be used for the construction of its light plant, which proposition was carried; that on March 21, 1916, the City of Loveland, by Ordinance No. 175, appropriated out of general revenue $12,000.00 for the payment of work done or to be done, materials furnished, etc., in the construction of the proposed plant; that on May 16, 1916, the City of Loveland, by Ordinance No. 176, provided for the issuance of $79,000.00 in bonds to be used in the construction of its light plant, which issue was enjoined by the district court of Larimer county at the suit of complainant; that on February 20, 1917, the City of Loveland, by Ordinance No. 178, appropriated out of general revenue $12,000.00 to be used for the payment of work done and materials furnished; that on March 6, 1917, the city, by Ordinance No. 179, submitted to the electors of the City of Loveland the proposition of voting $83,000.00 worth of city bonds for the construction of its light plant, and on April 3, 1917, by vote of the qualified electors, the council was authorized to issue such bonds; that on May 1, 1917, the defendant city, by Ordinance No. 180, provided for the issue of $83,000.00 in municipal bonds for the construction of said plant.

The testimony was further to the effect that the dam across the Big Thompson River was completed on March 2, 1915, and was accepted and paid for, the city expending $4,717.96 therefor; that on October 5, 1915, the defendant city entered into a lease with The Colorado & Southern Railway Company, leasing a portion of the railway company's right-of-way as the right-of-way for part of the municipality's transmission line and certain structures; that before the effective date of the statute in question the defendant city obtained from the Unitd States Geological Survey a power permit in connection with construction of the defendant's light

plant; that on July 10, 1916, the city awarded a contract for the construction of a tunnel leading from the dam for the purpose of laying a pipe line from the dam to the power plant; that on April 21, 1917, the sum of $11,927.26 was paid for the construction of this tunnel; that on March 31, 1917, the defendant city purchased a part of its right-of-way for the transmission line, pipe line and power house, paying therefor the sum of $532.50; that on October 2, 1917, the defendant authorized an advertisement for the sale of $83,000.00 of municipal bonds—the bids to be received November 6, 1917—which advertisement was duly made.

It also appears from the evidence that on November 7, 1914, an injunction suit was brought against the City of Loveland by one Litle to enjoin the city from constructing the dam provided for in the city's contract of November 6, 1914, and that such action was dismissed by the court on February 15, 1915. It also appears that at the end of the fiscal year 1917, $24,000.00 had been expended by the city in prosecuting the work of construction of its electric light plant.

The defendant city's engineer also testified that the construction of the trench or pipe line from the dam is the next work to be done, but that the costs of labor and materials were excessively high during the past summer, and further, that the city could not obtain permission from the board of county commissioners to construct the ditch for laying the pipe line, which runs for a great part along the county road; that this county road is the Loveland road leading to Estes Park, and that the commissioners refused permission for such construction on account of the danger to the large number of tourists traveling to and from Estes Park during the summer months; that the construction of the trench for the pipe line required considerable rock blasting work, which work is of a very dangerous character.

It also appears from the testimony that $163,680.00 will now be required for the completion of the project. It appears further from the testimony that suit was brought against the defendant city to enjoin the sale of the $83,000.00 of municipal bonds for which bids were advertised on November 6, 1917, and summons thereon was served on defendant on November 6, 1917.

The mayor of the City of Loveland testified that on November 6, 1917, at the meeting which was called to consider bids on the said bonds, several persons were in attendance; that one in particu-

lar wished to buy the bonds, but after learning that the city had been served with a summons, refused to put in his bid.

The Complainant, The Western Light and Power Company, has for some years and is now supplying the City of Loveland with electricity for street lighting purposes and the inhabitants of the city with electricity for light and power purposes.

It is the contention of the complainant, first, that it is maintaining within the City of Loveland a fully equipped distributing system, which is adequate and suitable in every respect to supply the City of Loveland and inhabitants thereof with electricity, and that public convenience and necessity do not now demand, nor at any time hereafter will require, competition; second, that the city by and through the mayor and city council proposed to proceed with the construction of its plant to supply electrical energy to the City of Loveland and to its inhabitants under the purported authority of a special election held on the 11th day of August, 1914; that such special election was held under the provisions of a certain ordinance No. 167, entitled "An ordinance calling a special election of the qualified electors of the City of Loveland for Tuesday, the 11th day of August, 1914, and providing for the submission to the vote of the duly qualified electors of the said city of Loveland, at a special election, the question of authorizing the city council of said city to erect electric light works for the purpose of supplying said city and the inhabitants thereof with electric light and power, the said works to be owned, managed and operated by the said city"; that the special question so submitted at such election was not submitted to all the voters of the City of Loveland who were taxpayers under the laws of Colorado, that by reason of the failure of the city and its authorities to follow the mandates of the statute, the vote was illegal, and that the alleged right of the defendant City of Loveland to erect its electric light works never, in fact, existed, and is now invalid.

As to the first contention of the complainant, The Western Light & Power Company: If the Commission were to admit that there exists at this time no public necessity for the construction by the City of Loveland of a municipal electric light plant, the Commission, nevertheless, could not consider the question of convenience and necessity at this time if the city commenced construction of its plant before the effective date of the law providing for the issuance by the Commission of certificates of public convenience and necessity, and if the city has since complied with the

statute in other respects; and the Commission does find from the evidence that the defendant, the City of Loveland, prior to the 16th day of July, 1917, did begin actual construction of its light plant in the county of Larimer, and subsequently thereto has prosecuted such work in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under a vote of the electors of the City of Loveland.

In making this finding the Commission is taking into consideration the second contention of the complainant, The Western Light & Power Company, as to the invalidity of the election held August 11, 1914, authorizing the construction of its plant. The Commission is of the opinion and so finds that it is without power to adjudicate this question, such question being one for the courts to construe, and, until the courts have passed upon this matter, the Commission will act upon the presumption that the election was valid.

This is the position taken by the California State Railroad Commission in the Matter of the Application of the Southern Sierras Power Company for the determination of the question whether it was necessary for said company to secure a certificate of public convenience and necessity, 2 Calif. R. R. Com. Decisions, at page 647; the Commission saying:

> "Even if the company were correct in its contention, as to which it is unnecessary to pass judgment in this proceeding, and even if it were possible to declare the franchise forfeited now because of the improbability of being able to comply with its alleged requirements within the three-year period, such action, if taken at all, must be taken by the courts and not by this Commission. Until the courts have passed upon this matter the Commission will act on the supposition that the franchise is valid."

See also Crescent City L. W. & P. Co. v. Keller, 6 Calif. R. R. Com. 847.

Prior to the enactment of the Public Utilities Act of the State of Colorado, effective August 12, 1914, concerning public utilities, creating a Public Utilities Commission and prescribing its duties and powers, competition between public utilities had been looked upon with favor. Under this theory public utilities corporations were led into rate wars in which each company endeavored to obtain an advantage over the other by temporarily reducing rates, which

ordinarily had the effect of destroying one or both of the utilities, resulting in inadequate service, and generally in a consolidation of these public utilities operating in the same field, with the result to the public of being compelled to pay the losses of one or both companies brought about by this ruinous competition, this generally taking the form of increased rates which the consumers were compelled to pay.

Today various states have adopted laws regulating rates and service of the public utilities, these laws having been adopted primarily in the interest of the public and to give the public utility a fair return upon its investment.

After a period of two years, during which time the Public Utilities Commission of the State of Colorado has regulated the rates and service of public utilities operating in the State of Colorado, the legislature, recognizing that to properly regulate public utilities the state must not permit a new public utility to enter the territory already adequately served by an existing public utility, on the 16th day of April, 1917, declared it to be the policy of the state in this regard, by amending the Act pertaining to public utilities, to provide that no public utility in the future shall begin construction of a new facility, plant or system without first having obtained from the Public Utilities Commission a certificate that the present or future public convenience and necessity require the proposed construction. This provision of the law applies to the condition now existing in the municipality of Loveland and like territory already served by a public utility.

It is the intent of the law that in the event a public utility now serving a territory has been and is now unable to give adequate service at reasonable rates the Commission, after hearing, and determining these facts to be true, shall permit another public utility to enter the territory to the end that the public may be properly served at reasonable rates. The legislature, realizing that a municipality desiring to own and operate its own plant should be permitted to do so under certain fair and equitable rules, also provided that the municipality may purchase the existing properties of the public utility serving the municipality, after determination by the Public Utilities Commission of the value of the property of the plant or system serving the municipality, and upon which valuation and terms of purchase to be made by the Public Utilities Commission the municipality is empowered to purchase and the public utility is directed to sell the properties of the public

utility. The statute provides that the municipalities shall be public utilities in the event they desire to enter the field of public utility service.

The Colorado Act pertaining to public utilities in this regard is not unusual, but is the declared policy of many of the states. Without the right to restrict competition between public utilities the public will not obtain the highest grade of service at a reasonable cost. If the public is required to sustain more than one instrumentality, such as two electric light plants or two gas plants, operating in the same field when one is amply sufficient, the actual cost to the public served is not only necessarily greater than it would be under one system, but the service also is less efficient.

The Colorado law provides, however, that when the Commission shall find, after hearing, that the public utility (municipal or otherwise) had begun actual construction work prior to the enactment of the law restricting competition, and is prosecuting such work in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise, permit, ordinance, vote or other authority hertofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the Commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege; and, provides further, that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state.

Were it not for the fact that the municipality of Loveland had begun construction of its proposed electric light plant prior to the enactment of the laws restricting competition between public utilities, the State of Colorado, through this Commission, would refuse the municipality the right to construct an electric light plant serving the City of Loveland and its residents with electric energy, since the city and its residents are now served by The Western Light & Power Company. If the municipality desired to appear before the Commission and purchase the properties of The Western Light & Power Company serving the City of Loveland, in accordance with the terms of the Public Utilities Act, that would be its privilege.

The City of Loveland having begun the construction of its electric light plant prior to the enactment of the amendment to the Public Utilities law requiring a certificate of public conven-

ience and necessity to be obtained from the Commission before a public utility may enter the territory which is now being served by a public utility, the issuance of a certificate of public convenience and necessity by this Commission becomes unncessary, and it becomes the duty of the Commission to determine whether the municipality of Loveland is prosecuting the work in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking.

The Commission has determined that the municipality has complied with the terms of the law in this regard. The municipality, however, must now proceed under such rules and regulations as the Commission may prescribe.

Today the United States is in a state of war, and as a consequence there is insufficient labor and material to carry on economically the work and industries necessary to a satisfactory termination of the war. Largely on this account there has been brought about a great scarcity of both labor and materials necessary to the successful termination of same. The Federal authorities at Washington are continually advocating the conservation in every way possible of man-power and materials; requesting that all unnecessary construction at this time be deferred, and that sacrifices be generously made in order that all power and energy may be directed in an united effort to bring the war to a speedy and successful conclusion.

It is the policy of this Commission to co-operate with the national government in every way possible, and this also should be the position of the state and municipalities. The Commission has sufficient knowledge of the scarcity of labor and material, and is also informed that many kinds of material cannot be immediately obtained at any price. It is equally true that the cost of labor and material today exceeds by more than one hundred per cent the cost of a year ago.

The testimony before the Commission, with the estimates prepared by the municipality's engineer, shows that the cost of completing the proposed electric light plant has greatly increased since the beginning of the war; that this increase is such that approximately two dollars must now be spent where one would suffice under normal conditions. Recognizing the existence of this condition, and realizing also that the City of Loveland and its inhabitants are now well served by an existing public utility, the Commission, under its authority to provide rules and regulations for the com-

pletion of this plant, and in keeping with the intent of the law and the requests of the national government, will hold that the City of Loveland has prosecuted the work of constructing its municipal plant in good faith, uninterruptedly and with reasonable diligence according to the magnitude of the undertaking, and that the municipality may and shall proceed no further with the construction of its municipal plant until further application be made to the Commission by the municipality to complete its work, or until such time as the Commission on its own motion shall authorize the municipality to resume work under more normal conditions.

It is not the purpose of the Commission to abrogate or impair any of the rights of the municipality, which must be protected. But the rights of the national government in connection with its need of materials and labor for the proper prosecution of the war must also be protected, and must be given consideration over other demands for materials and labor, except where such demands relate to matters absolutely essential to public welfare. It is the purpose of this Commission, however, to provide that no public utility, taxpayer or person may again appear before the Commission and attempt to show to the satisfaction of the Commission that the municipality of Loveland has not proceeded in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, until such time as the municipality may proceed under the regulations of the Commission to construct its electric light plant, in a manner to conserve to the taxpayers of Loveland their funds raised by the issuance of bonds or in the process of general taxation.

ORDER.

IT IS THEREFORE ORDERED, That the Public Utilities Commission of the State of Colorado finds that the municipality of Loveland had begun actual construction of its electric light plant prior to the enactment of the amendment to the Public Utilities law of the State of Colorado, known as Section 35, and at the date of this hearing was prosecuting the work in good faith, uninterruptedly and with reasonable diligence in propertion to the magnitude of the undertaking.

IT IS FURTHER ORDERED, That the municipality shall not proceed further to build and complete the proposed municipal electric light plant and system until such time as the municipality

shall again appear before the Commission and show to the Commission that it is ready to proceed in the interests of the municipality, or until such time as the Commission on its own motion shall authorize the municipality to resume work under more normal conditions.

IT IS FURTHER ORDERED, That no public utility, taxpayer or person may appear before the Commission for the purpose of showing that the municipality of Loveland is not prosecuting the work of constructing and completing its proposed municipal electric light plant and system in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, until the further order of this Commission.

GEO. T. BRADLEY,

(SEAL) A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 31st day of December, 1917.

DECISION No. 153.

P. H. TROUTMAN, doing business under the firm name and style of "THE ROUND CREST CANNING COMPANY",

v.

WELLS FARGO & COMPANY.

Case No. 137.

December 31, 1917.

ORDER OF DISMISSAL.

By the Commission:

The complainant in this cause having filed a motion to dismiss the said cause, and the Commission having read and considered the petition for dismissal,

IT IS ORDERED, That the above cause be, and it is hereby, dismissed.

GEORGE T. BRADLEY,

(SEAL) M. H. AYLESWORTH,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 31st day of December, 1917.

DECISION No. 154.

IN THE MATTER OF THE APPLICATION OF THE DENVER & RIO GRANDE RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT AT GRADE ADDITIONAL TRACKS ACROSS COUNTY ROADS IN VICINITY OF KELKER, COLORADO.

Application No. 2.

January 2, 1918.

STATEMENT.

By the Commission:

On September 7, 1917, in compliance with the requirements of Section 29 of the Public Utilities Act, as amended, The Denver & Rio Grande Railroad Company filed with the Commission an application for permission to construct a double crossover connection at grade between the main line tracks of the Denver & Rio Grande Railroad and the main line tracks of the Atchison, Topeka & Santa Fe Railway in the vicinity of Kelker, to permit the joint operation of the main lines of the two companies as a double track railroad extending from Kelker southward to Pueblo. The construction of the proposed tracks will create an additional crossing at grade over a primary state highway and one over a secondary highway, both of which are adjacent to the existing grade crossings.

At the present time the primary state highway is protected by a wig-wag crossing signal, and the applicant proposes, in event of the construction of the new crossover tracks, to further protect this crossing by the installation of crossing gates, operated from

the interlocking tower, where an operator in control of train movements will be on duty day and night.

The existing protection device, consisting of electric wig-wag crossing signal, at the primary state highway grade crossing was constructed by the applicant pursuant to the order of this Commission entered June 15, 1916, in Re Crossing Protections between Denver and Pueblo, 2 Colo. P. U. C. 150. After an inspection of the changes proposed by the applicant in tracks and crossings the Commission's engineer advised that construction of the crossover tracks as proposed by the applicant would cause a steep grade between the tracks and result in an undesirable crossing, due to the difference in elevations of the tracks. The attention of the applicant was called to this fact, together with suggestions for improvements in the construction which would obviate these conditions.

Thereupon the applicant advised the Commission that by increasing the rate of grade on each of the connecting tracks, as indicated on plats filed, the levels of the connecting tracks will be practically the same as the main tracks at each crossing, and that the slight difference in elevation of the two tracks will be further corrected and aligned when the main line is ballasted.

From inspections made by the Commission it appears that the travel over the secondary highway is very light, and that, while the travel over the primary highway is of considerable volume, being the main highway between Colorado Springs and Pueblo, a protection such as the applicant proposes to afford by the construction and maintenance of crossing gates will provide the highway with much greater safety than at the present afforded by the wig-wag signal. The Commission is of the opinion that permission should be given to the applicant to construct and maintain the proposed tracks and crossings in accordance with the plans and specifications filed with the Commission.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, The Denver & Rio Grande Railroad Company be, and it is hereby, permitted to construct crossover tracks at grade between the main line tracks of the applicant and the main line tracks of the Atchison, Topeka & Santa Fe Railway, crossing primary and secondary state highways at grade, in the vicinity of Kelker, Colorado, Sec. 33, T.

14 S. R. 66 W., 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.

The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of said crossings 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.

GEORGE T. BRADLEY,

(SEAL)

M. H. AYLESWORTH,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 2nd day of January, 1918.

DECISION No. 155.

THE CITY OF BOULDER,

v.

THE COLORADO & SOUTHERN RAILWAY COMPANY.

Case No. 114.

January 5, 1918.

APPEARANCES: F. L. Moorhead, Esq., attorney for complainant. E. E. Whitted, Esq., attorney for the defendant.

STATEMENT.

By the Commission:

On the 29th day of December, 1916, the city of Boulder, complainant herein, filed a complaint with this Commission alleging that the defendant, The Colorado & Southern Railway Company, is engaged in the operation of a railroad which passes through the city of Boulder, the track of the defendant company crossing certain streets and avenues of the city upon grade, and that The Denver & Interurban Railroad Company, by arrangement with the defendant, operates electric trains upon said tracks of the defendant through the city of Boulder.

The complainant alleges that the railway crossings at grade on 12th Street near Marine Street, and on 12th and Water Streets, are unsafe, and, while admitting that a flagman is stationed at 12th and Water Streets and, under order of this Commission, a flagman and an electrically operated audible and visual signal are

maintained at the crossing on 12th Street near Marine Street, the complainant alleges that these railway crossings at grade are dangerous and are not properly protected.

It is further alleged that there is a large amount of traffic on 12th Street, which is the main highway running north and south through the business district, thence leading to the University of Colorado and from Boulder to the city of Denver, and that a street car line operated by The Western Light & Power Company within the city of Boulder crosses the railroad tracks of the defendant at the crossings at grade located on 12th Street at Water Street and near Marine Street, and that cars of said street car line operate over said crossings approximately every fifteen minutes from 6:00 o'clock a. m. to 12:00 o'clock midnight; and that from a point about fifty feet north of the crossing on 12th Street near Marine Street said 12th Street runs to the south 800 feet on a very steep grade, and that the track of the defendant company located on either side of this crossing is obstructed from view with high bluffs rising very abruptly south of the track.

The complainant further alleges that at the intersection of 12th and Water Streets, the defendant maintains several tracks over which trains of the defendant are operated, and that this crossing is not properly protected.

It is further alleged that the railway tracks of the defendant cross Marine Street at grade about 100 feet northwest of the 12th Street crossing and Arapahoe Avenue at grade at 11th Street.

The complainant further alleges that the grade crossings complained of should be abolished and that the defendant railway company can avoid these street crossings at a reasonable expenditure by relocating its present line of track in such a manner that the grade crossings complained of will be eliminated, inasmuch as the proposed relocation of track would be entirely east of 12th Street.

The complainant filed with its complaint maps and plans showing the present line of railway and that proposed by the city of Boulder. The prayer of the complainant requests an order from this Commission requiring the defendant to change its line of railway in accordance with the plans submitted by the complainant, or by such modification of the plans as to the Commission may appear just and proper, and that the Commission make such rules and regulations concerning the operation of trains and cars upon the tracks of the defendant company within the city of Boulder as to the Commission appear equitable.

On the 23rd day of January, 1917, the defendant filed its answer with the Commission, together with a motion to dismiss the complaint on the ground that the Commision is without jurisdiction or power to consider or determine this cause, and is without power or authority to order the defendant to change its line of railroad in the city of Boulder. The defendant denies that the railway crossings located at grade, and complained of as unsafe by the municipality, are in fact unsafe, and alleges that the crossings are properly protected and that the operation of its trains and the trains of the Denver & Interurban Railroad within the city of Boulder are such that there is no danger to the general public. The defendant further alleges that an order of this Commission relocating its line of railway within the city of Boulder in accordance with the proposed plans would necessitate an expenditure in excess of $50,000.00 for labor and material and would impose an unjust burden upon the defendant.

The hearing of the above cause convened at the hearing room of the Commisssion in the State Capitol Building in the City and County of Denver, Colorado, on April 20, 1917.

Jurisdiction of Commission.

Counsel for the defendant railway company interposed an objection to the jurisdiction of the Commission in the event the Commission, by order, after hearing, required the defendant to relocate its line of railway within the city of Boulder at the expense of the railway company, or in apportioning the expenses between the railway company and the municipality.

Sections 24 and 25 of the Public Utilities Act of the State of Colorado provide in substance that if, after hearing, the Commission shall find that the rules, regulations, practices, equipment, appliances, facilities or service of any public utility are unjust, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced or employed, and fix the same by order; and may, after hearing, order additions, extensions, repairs or improvements to, or change in the existing equipment, apparatus, facilities or other physical property of any public utility or any two or more public utilities, or may order a new structure or structures to be erected to promote the security or convenience of the employes of the public utility or the public.

On the 16th day of April, 1916, Section 29 of the Public Utilities Act was amended, to the end that the Commission may, after hearing, require each public utility to maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such a manner as to promote and safeguard the health and safety of its employes, passengers and the public, and to require the performance of any other act which the health or safety of its employes, passengers or the public may demand; and may determine, order and prescribe, in accordance with the plans and specifications to be approved by it, the just and reasonable manner including the particular point of crossing at which the tracks or other facilities of any public service company may be constructed across the tracks or other facilities of any other public service company at grade or above or below grade, or at the same or different levels; or at which the tracks or other facilities of any railroad corporation or street railway corporation may be constructed across the tracks or other facilities of any other railroad corporation or street railway corporation or acoss any public highway at grade or above or below grade; or at which any public highway may be constructed to cross the tracks or other facilities of any railroad corporation or street railway corporation at grade or above or below grade; and to determine, order and prescribe the terms and conditions of installation and operation, maintenance and protection of all such crossings which may now or hereafter be constructed, including the watchman thereat or the installation and regulation of lights, block interlocking or other system of signalling, safety appliance devices or such other means or instrumentalities as may to the commission appear reasonable and necessary to the end, intent and purpose that accidents may be prevented and the safety of the public promoted.

This section also provides that the Commission after hearing may order any crossings now existing or hereafter constructed at grade or at the same or different levels to be relocated, altered or abolished according to the plans and specifications to be approved and upon just and reasonable terms and conditions to be prescribed by the Commission, and to prescribe the terms and conditions upon which the separation shall be made, and the proportion in which the expense of the alteration or abolishment of the crossing or separation of the grade shall be divided between the railroad or railway corporation affected, or between

the corporation or corporations and the state, county, municipality or public authority in interest.

It will be seen that the legislature of the State of Colorado has by broad powers conferred upon the Public Utilities Commission of the State of Colorado the necessary authority to grant the prayer of the complainant in the event the Commission after hearing determines that the complaint should be sustained.

In the case of R. R. Commission of Alabama v. Alabama Great Southern Railroad Co., et al., 185 Ala. 354, 64 So. 13, L. R. A. (N. S.) 1915D, 98, the Supreme Court of Alabama held that under powers conferred by the legislature upon the Railroad Commission of Alabama, which were more limited and restricted than those conferred upon the Colorado Commission, the Alabama Commission after hearing was justified, in the interests of the convenience and safety of the public, in requiring the railroads entering the city of Birmingham to abandon their depots and rights-of-way and to jointly enter the city upon one right-of-way and to jointly construct a union depot at an expense apportioned by the commission.

The same principle was announced in the case of Worchester v. Norwich & W. R. Co., 109 Mass. 103; Gulf C. & S. F. R. Co. v. State, (Tex. Civ. App.), 167 S. W. 192; Dewey v. Atl. Coast Line R. Co., 142 N. C. 392, 55 S. E. 292; R. R. Com. v. Alabama Northern R. Co., 182 Ala. 357, 62 So. 749.

In this case the evidence is to the effect that the cost of the separation of grade of these objectionable crossings will greatly exceed the cost of the relocation of the line of railway within the limits of Boulder. It will be noted that this case differs from an attempt by the Commission to order an extension of the line of railway beyond the terminus of a railway company, and upon which proposition the Commission expresses no opinion.

Conclusions.

Witnesses for the City of Boulder and the defendant railway company testified as to all conditions surrounding the crossings at grade complained of, and witness E. F. Vincent, chief engineer for The Colorado & Southern Railway Company, submitted an estimated cost of the relocation of the line of railway as proposed by the city of Boulder, which estimated cost was in excess of $48,000, exclusive of rights-of-way to be acquired. The defendant strenuously objected to the grades proposed by the municipality of Boulder from an operating standpoint, it being

contended that the maximum grade was in excess of the present grade and that it would not be practical to start southbound trains from the depot on the line proposed by the municipality of Boulder, without first backing trains to overcome curve resistance.

Mr. C. D. Vail, railway engineer for the Commission, on May 2, 1917, filed with the Commission a written report suggesting, among other things, that should the Commission order the relocation of the railway line as proposed by the municipality of Boulder, all traffic should be diverted via Louisville between Louisville Junction and Boulder during the construction of the proposed change of line, which, in the opinion of Mr. Vail, would greatly reduce the cost of the work.

On May 12, 1917, in accordance with recommendations made by Mr. Vail in his report of May 2nd, the Commission issued the following order:

> "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 12th 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 rerouting 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 C. D. Vail, Railway Engineer of the Commission."

On the 10th day of October, 1917, Chief Engineer E. F. Vincent filed with the Commission a detailed estimate of the cost of change of the line of The Colorado & Southern Railway Company based on a survey made by engineers of The Colorado & Southern Railway Company, using a maximum grade of 1.3 per cent compensated for curvature. This maximum was greatly reduced near the depot to reduce the resistance of starting southbound trains in order to overcome the objections raised by The Colorado & Southern Railway Company to the line proposed by the municipality of Boulder, which was presented at the hearing of this cause.

The estimated cost submitted by Mr. Vincent on October 10, 1917, calls for an expenditure of $92,500.00 in event all traffic is diverted via Louisville, and $81,280.00 in event traffic is not discontinued over the present line during construction. However, each of these estimates included an item of $15,000.00 for rights-of-way not included in the estimate cost made by Mr. Vincent at the hearing on the proposed relocation as submitted by the municipality.

On the 29th day of October, 1917, Mr. Vail, railway engineer for the Commission, submitted a written report to the Commission upon the estimates made by Mr. Vincent in his report of October 10th. In his report Mr. Vail agrees with Mr. Vincent that a 1.3 per cent compensated grade should be used as a maximum, and that under the plans of Mr. Vincent the maximum grade had been greatly reduced near the depot to overcome curve resistance on starting of southbound trains. The revised estimates of Mr. Vincent therefore met objections raised by the operating department of The Colorado & Southern Railway Company to the location first made by the municipality.

Mr. Vail further states that all unit prices used in the estimate of Mr. Vincent made on October 10th were agreed to by himself and Mr. Vincent, and that in his opinion the estimates in the report of Mr. Vincent submitted on October 10th are about correct, with the exception of the estimated cost of train service made by Mr. Vincent to provide for a routing of all through cars via Louisville, which estimated cost Mr. Vail claims to be excessive by from $10,000.00 to $15,000.00.

It appears that the difference between Mr. Vincent's first and last estimates—with the exception of $15,000.00 for rights-of-way, which would reduce the total estimate of $92,500.00 to $77,500.00, and the item of cost of diverting of traffic via Louisville, which Mr. Vail contends is approximately $12,500.00 in excess of the actual amount required, thus reducing the last estimated cost to $65,000.00—is made up of increased cost of labor and materials and increased quantities caused by reducing the maximum grade. The reduction of 0.1 per cent in the maximum grade increased the grading quantities over 50 per cent. It further appears that the cost of labor and material has steadily advanced since the hearing of this cause.

One instance of this advanced cost is the estimate on the bridge across Boulder creek, necessitated by the change, which was estimated at $13,000.00 in the report of Mr. Vincent on

April 30th, and at $20,800.00 in his report of October 10th, for the same item. In addition to the increased cost of materials and labor must be emphasized the generally known fact that it is practically impossible to secure new materials during the period of the war. It will not be necessary for the Commission to set forth the estimates submitted by the engineers at this time.

In this case the Commission is confronted with certain railway crossings at grade in the municipality of Boulder, which, while being partially protected by orders of this Commission, may be entirely eliminated by the relocation of the railway line of the defendant company.

The Commission is of the opinion that a permanent condition of safety will come about only through the elimination of these crossings and that such elimination is for the best interests of the defendant railway company, the municipality of Boulder and the street railway company. The Commission is convinced from the testimony that the cost of separating the grades of the objectionable crossings will exceed the cost of relocating of the railway line of the defendant within the city limits of Boulder. However, in the elimination of these crossings the Commission, under the laws of the State of Colorado, should apportion the costs among the interested parties in a manner which seems to the Commission to be fair and equitable.

The Commission is also of the opinion that at this time no order should be made causing the relocation of the tracks of the defendant railway company, because of the abnormal prices of labor and materials and in the interest of conservation of materials and labor, which should be utilized for the more important and serious needs of the country today.

It must be understood that the Commission will order expenditures necessary for the safety of the traveling public, even during the period of the war, but in this case the Commission has already protected these crossings by flagmen, automatic and visual signals; by orders requiring the running of trains of the defendant at a speed not to exceed 5 miles an hour through the city limits of Boulder, and by requiring that the motormen of the street car company shall bring street cars to a full stop at the railroad crossings and that cars shall not proceed until the conductor or motorman has stepped off his car, viewed the tracks of the crossing road in both directions and knows that the way is clear.

The Commisison is of the opinion that this case should not be dismissed, but that no order should be made by the Commission requiring the relocation of the railway line of the defendant company and apportioning the expense among the railway company, the municipality of Boulder and the street car company, until such time as the cost of labor and materials may again reach the normal trend. At that time the work necessary to be done may be performed at a much lower cost to all parties concerned, and the material, which it is now impossible to obtain, may be obtained at reasonable prices.

The Commission therefore will not dismiss this case, but will hold the same open for such further orders, to be made by the Commission upon its own motion or upon application of the complainant, as, in the opinion of the Commission, the interests of the public seem to require.

GEO. T. BRADLEY,

(SEAL)

M. H. AYLESWORTH,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 5th day of January, 1918.

DECISION No. 156.

IN THE MATTER OF THE APPLICATION OF THE FREMONT TOWNSITE COMPANY FOR PERMISSION TO CONSTRUCT HIGHWAY CROSSINGS OVER TRACKS AT GRADE AT GIBSON STREET, IN THE TOWN OF PENROSE, COLORADO.

Application No. 13.

January 7, 1918.

STATEMENT.

By the Commission:

On the 19th day of December, 1917, an application was filed with the Commission by the Fremont Townsite Company for permission to construct highway crossings at grade across the tracks of the Beaver, Penrose & Northern Railway at Gibson Street, in the unincorporated town of Penrose, Colorado. A canning factory is in the process of construction and the applicant desires to have this highway opened in order that vehicular traffic may get to and from the factory. The opening of this street will necessitate crossing the tracks at three different places, all of which are at grade. There appearing no reason why the application should not be granted the Commission will issue an order permitting the construction of the crossings over the tracks at Gibson Street.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, the Fremont Townsite Company be, and it is hereby permitted to construct highway crossings at grade over the tracks of the Beaver, Penrose & Northern Railway at Gibson Street, in the town of Penrose, Colorado, 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.

The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of said crossings 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.

GEORGE T. BRADLEY,

(SEAL)

M. H. AYLESWORTH,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 7th day of January, 1918.

DECISION No. 157.

IN THE MATTER OF THE APPLICATION OF THE DENVER & RIO GRANDE RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT ADDITIONAL TRACKS ACROSS HIGHWAYS IN THE CITY OF GUNNISON, COLORADO.

Application No. 6.

January 8, 1918.

STATEMENT.

By the Commission:

This proceeding arises upon application from The Denver & Rio Grande Railroad Company for permission to construct a spur track in the city of Gunnison, to serve the municipal light and water plant of that city, the construction of which will necessitate the crossing of certain streets and highways at grade. It is proposed to extend the spur track from the present track at a connection to be made on 9th Street, running thence along Virginia Avenue to the plant which is located between 6th and 7th Streets, crossing en route both 7th and 8th Streets. From an inspection and investigation made by the Commission it appears that there is very little travel over any of the streets involved in the application and that the construction of the proposed track will result in grade crossings on 7th and 8th Streets which will not be objectionable if graded to a standard crossing in accordance with the requirements of the Commission. The crossing on Virginia Avenue, if constructed, would require a five-foot fill, but inasmuch as Virginia Avenue, although platted, has never been opened as a public thoroughfare west of 7th Street, the Commission is of the opinion that it will not be necessary to construct a crossing at grade at this place.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, The Denver & Rio Grande Railroad Company, be, and it is hereby permitted to construct a track at grade from a connection with the main track at 9th Street to the plant of the municipal light and water plant between 6th and 7th Sreets, in the city of Gunnison, Colorado, crossing 8th Street, 7th Street and Virginia Avenue, 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, *Provided,* that the applicant shall not be required to construct a standard crossing at Virginia Avenue until the further order of the Commission.

The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of said crossings 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.

(SEAL)

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

Dated at Denver, Colorado, this 8th day of January, 1918.

DECISION No. 158.

IN THE MATTER OF THE APPLICATION OF THE PUEBLO GAS & FUEL COMPANY, A CORPORATION, FOR PERMISSION TO INCREASE ITS RATES AND CHARGES FOR GAS SERVICE IN THE CITY OF PUEBLO.

Case No. 142.

January 31, 1918.

APPEARANCES: For the applicant company, Messrs. Adams and Gast; for the city of Pueblo, Chas. M. Rose, City Attorney.

STATEMENT.

By the Commission:

On August 21, 1917, The Pueblo Gas & Fuel Company, by James M. Daily, its general manager, and Adams & Gast, its attorneys, filed with the Commission an application for permission to make certain changes and increases in its rates and charges for gas service in the city of Pueblo. The applicant in its petition states that it is a Colorado corporation engaged in the manufacture and sale of gas in the city of Pueblo; that its rates and charges for such service are now on file with the Public Utilities Commission of the State of Colorado; and alleges, among other reasons, why the prayer of the petition should be granted, that its present charges are unscientific in that they provide different rates for gas consumed for illuminating than for fuel purposes and therefore require a dual system of meters, which system operates improperly to burden the business and as a discrimination against the class of consumers most in need of low rates; that the rates prayed for in the petition will reduce the charges made

to consumers for gas for illuminating purposes and slightly increase the rates for gas used for fuel, which will somewhat reduce the petitioner's expenses on account of meters, and finally result in a reasonable increase in its net earnings. The applicant alleges that the value of its property as fixed by the Colorado Tax Commission is $407,000.00, upon which sum operations for the year 1916 produced a net return of but 7.55 per cent, no charge or allowance whatever being made for depreciation; and further alleges that the rates prayed for are reasonable and that, even under normal conditions, they would produce no more revenue than is necessary and proper to permit of adequate charges for depreciation and a fair and reasonable return upon the value of the properties.

The petition of the applicant further recites that at the present time conditions are far from normal and that the necessity for relief has been made acute, for the reasons that in the last two years the cost of coal at the mine has increased 27.5 per cent, the cost of gas oil 141.9 per cent, the cost of 1¼ inch service pipe 87.3 per cent, and the cost of 2-inch main pipe 134.8 per cent, while during the past year barn and garage supplies have advanced 35.7 per cent, and taxes 12.67 per cent over those for the year 1915, for which year taxes showed an 18.97 per cent increase over the preceding year; that during the last year the retort house labor cost per ton of coal carbonized increased 32.1 per cent, the wages of pipe-fitters 25 per cent, and of common laborers 55 per cent, and that the entire payroll for operation and maintenance —exclusive of construction and miscellaneous labor—increased 20.8 per cent. The applicant further alleges that it has been unable to earn its interest charges during any year in which the present rates have been in force.

Pursuant to notice duly given to all parties in interest, this cause came on for hearing at the hearing room of the Commission at the hour of 10 o'clock a. m. on the 15th day of January, 1918. At this hearing Fred W. Herbert, statistician for the Commission, appeared in behalf of the Commission's statistical staff, and testified in support of an audit which he had prepared of the books and accounts of the applicant. Fred J. Rankin, gas and electrical engineer of the Commission, appeared in behalf of the Commission's engineering staff, and testified in support of a statement prepared under his supervision relative to the operations of the property of the applicant. James M. Daily, general manager of the applicant company, appeared in behalf of the applicant and

testified as to the increases in the operating expenses of the applicant brought about by the abnormal conditions prevailing at the present time.

The rates of The Pueblo Gas & Fuel Company now in force and effect and on file with the Commission are as follows:

Commercial Lighting.

Rate:

For monthly consumptions of 5,000 cubic feet or less, $1.50 per M.
For monthly consumptions of more than 5,000 cubic feet, but less than 10,000 cubic feet, $1.40 per M.
For monthly consumptions in excess of 10,000 cubic feet, $1.15 per M.

Prompt Payment Discount:

A discount of 15 cents per thousand cubic feet is allowed on the above rates if payment is made during the 10-day discount period.

Minimum Guarantee:

50 cents per month per consumer.

Fuel.

Rate:

For all gas consumed during the month, $1.10 per M cubic feet.

Prompt Payment Discount:

A discount of 10 cents per thousand cubic feet is allowed for payment within the 10-day discount period.

Minimum Guarantee:

50 cents per month per consumer.

Commercial and Industrial Fuel.

Rate:

$9.00 per year per consumer,
plus
$30.00 per year per 100 cubic feet of maximum demand,
plus
70 cents per M cubic feet for the first 50,000 cubic feet of monthly consumption, and 50 cents per M cubic feet for all gas consumed during the month in excess of 50,000 cubic feet.

Prompt Payment Discount:

A discount of 10 per cent on the total bill is allowed for prompt payment.

Minimum Guarantee:

Not stated.

The applicant asks in its petition that the rate for commercial lighting or illuminating gas be abolished, and that the rate for gas used for fuel and illuminating purposes be made $1.20 per thousand cubic feet with a discount of 10 cents per thousand cubic feet for prompt payment, and that on all gas consumed through prepayment meters the rate be made $1.20 net per thousand cubic feet. No change in the minimum monthly bill of 50 cents net is suggested. Applicant further asks that the rate for commercial and industrial fuel be modified by increasing the rate for the first 50,000 cubic feet of monthly consumption from 70 cents to 75 cents per thousand cubic feet.

The Pueblo Gas & Fuel Company was incorporated July 31, 1902, and passed into the control of Henry L. Doherty & Company in April, 1906. The company is capitalized for $300,000.00, represented by 3,000 shares of stock having a par value of $100.00 each. The bonded indebtedness of the company consists of first mortgage 5 per cent bonds in the amount of $522,000.00 and sinking fund 5 per cent bonds in the amount of $106,000.00, making a total bonded indebtedness of $628,000.00. The unfunded indebtedness of the company as shown by its annual statement filed with this Commission amounts to $374,000.00. The business of the applicant consists entirely of the manufacture and supply of artificial gas for illuminating and fuel purposes, the total population of the territory served being approximately 51,000.

No detailed inventory and appraisal of the property of the applicant was submitted to the Commission in this case either by the applicant or by the engineering staff of the Commission. The Commission's engineer testified at the hearing that if an examination of the accounts of the applicant disclosed that the net earnings for the year 1916 were not in excess of those stated in the petition, namely, $30,755.04, an appraisal of the property would be of no assistance to the Commission in determining whether or not slight advances in rates should be made at this time, for the reason that after making a nominal allowance for renewals and replacements the net earnings for the year 1916 would give a return of 8 per cent on only $342,000.00. The engineer for the Commission further testified that based on appraisals made of similar properties, and based on experience in the appraisal of public utility properties generally, the property of the applicant would show an appraised value in excess of twice the amount upon which a return of 8 per cent was earned in 1916.

The operating revenues and operating expenses of the applicant for the calendar year 1916, as well as for the years ended October 31, 1916, and October 31, 1917, as reported by the Commission's statistician, are set out in table No. 1. From this statement it is apparent that the net operating revenues for the calendar year 1916 amounted to $30,755.04 as set out in the petition of the applicant, and that while for the year ended October 31, 1917, there was an increase of approximately 11 per cent in operating revenues over the twelve month period ended October 31, 1916, there was an increase of appoximately 21 per cent in operating expenses, making the net operating revenues for the year ended October 31, 1917, $25,921.81. It is further apparent from this statement of revenues and expenses that for the year ended December 31, 1916, the gross income of the applicant did not exceed the interest on its funded debt, and that for the year ended October 31, 1917, the gross income was approximately $5,000.00 less than the interest on the funded debt for that period. According to the record in this case it is the practice of the applicant to charge all replacements to its operating expense accounts, so that no allowance for a reserve for renewals and replacements has been made. Had a reserve for renewals and replacements been set aside during the years under consideration the gross income for such periods would have been still further reduced.

TABLE No. 1.

THE PUEBLO GAS & FUEL COMPANY.

INCOME STATEMENT.

		Year 1916	Year Ended Oct. 31, 1916	Year Ended Oct. 31, 1917
	Operating Revenues.			
501	Commercial Earnings	$ 79,816.82	$ 79,333.51	$ 89,001.61
502	Industrial Earnings	21,204.01	20,774.07	19,887.62
	Total earnings from gas	$101,020.83	$100,107.58	$108,889.23
509	Earnings from Residuals	$ 19,457.49	$ 19,615.62	$ 23,632.56
510	Profit on Merchandise Sales	3,614.23	3,461.90	3,792.23
511	Profit-Piping and Connections	*1,260.26	*1,430.01	*1,681.04
515	Miscellaneous Earnings	469.52	461.73	510.67
	Total Operating Revenues	$123,301.81	$122,216.82	$135,143.65

Operating Expenses.			
600 Coal Gas Production	$ 46,641.51	$ 46,485.41	$ 54,786.45
620 Water Gas Production	2,943.47	2,515.04	4,190.72
700 Distribution	7,825.59	7,269.00	9,778.49
730 Utilization	340.40	304.45	391.79
740 Commercial	3,999.60	4,120.51	4,528.23
745 New Business	5,635.83	5,268.00	6,259.52
760 General Expense	13,695.46	13,578.38	16,023.40
Total Above Items	$ 81,081.86	$ 79,540.79	$ 95,958.60
779 Taxes	11,464.91	11,140.02	13,263.17
Total Operating Expenses	$ 92,546.77	$ 90,680.81	$109,221.77
Net Operating Revenue	$ 30,755.04	$ 31,536.01	$ 25,921.88
Non-operating Revenues	428.32	359.78	745.18
Non-operating Expenses	422.50	422.50	422.10
Net Non-operating Revenue	$ 5.82	$ *62.72	$ 323.08
Gross Income	$ 30,760.86	$ 31,473.29	$ 26,244.96

*Deficit.

While the report of the Commission's statistical staff did not extend beyond October 31, 1917, the manager for the applicant company testified at the hearing in this case that the net earnings for the year ended December 31, 1917, amounted to only $24,187.00, or 5.94 per cent on the assessed valuation of the property. (Rec., p. 10.)

The Commission's engineering staff made a study of the plant and operations of the applicant for the purpose of determining whether or not the property is over built, whether economies in operation might be expected to reduce operating expenses, whether the service being furnished by the applicant company to its consumers conforms with the standards established by the Commission regulating the service of gas utilities, and whether the business of the company is reasonably well developed. This report shows that the plant of the applicant consists of what is known as a mixed gas plant, the gas manufactured being a mixture of coal gas and water gas; that the capacity of the coal gas plant is barely ample to supply the demands of consumers, and that the water gas plant is necessary at times of maximum send-out, when gas benches are down for repairs, or in cases of emer-

gency. This report further shows that neither the plant nor the distribution system of the applicant is over built, the holder capacity being small for a plant of its size, and that all of the property is in use and useful in the service furnished by the applicant, and that extreme economy is practiced throughout in the operation of the plant.

The report of the engineering staff further shows that the heating value of the gas being delivered by the applicant to its consumers is not up to the average of 575 British thermal units as established by the Commission, but that in all other respects the service furnished by the applicant conforms with the rules and regulations established by this Commission for the regulation of gas utilities. The fact that the heating value of this gas is not as high as that established by the Commission is attributed in part by the Commission's engineer to the extreme economy practiced in the use of coal, the "yield" obtained for the year 1917 being 6.65 cubic feet of gas per pound of coal carbonized. The Commission's engineer testified that investigations now being carried on seemed to indicate that an average heating value of 575 British thermal units per cubic foot is excessive for the coal available, and expressed doubt as to whether such a standard would best serve the interests of the gas consumers of the applicant. The report of the engineering staff of the Commission discusses in detail the operations of the plant of the applicant and the effect thereon of increases in cost of coal, labor and material and supplies.

The Commission is of the opinion and finds that it is not necessary to determine the value of the property of the applicant in this case, and that the expense of making a complete inventory and appraisal should be saved to the applicant and to the Commission. The Commission finds that the gross income of the applicant for the year ended October 31, 1917, available for renewals and replacements of property, and for a return on the fair value thereof, was $26,244.96; that if the modification in rates and charges asked for by the applicant is granted, there will be a decrease in the monthly bills of small consumers now using the service of the applicant mainly for illuminating purposes, and that the net result of allowing such changes to be made will amount to an increase of approximately 8½ per cent in the earnings of the applicant from commercial and industrial gas sales. Had such rates been in effect for the year ended October 31, 1917, the gross income of the applicant would have been increased by approxi-

mately $9,250.00, making the gross income for that year available for renewals and replacements and for a return on the investment in the property approximately $35,500.00. The Commission is of the opinion that this amount is not excessive, and that for the year 1918 the gross income of the applicant can scarcely be expected to reach this amount, inasmuch as further increases in operating expenses may be expected.

The Commission finds that the heating value of the gas now being delivered by the applicant is not up to the standard established by the Commission, the average being approximately 550 British thermal units per cubic foot. In this respect, the applicant is placed in a peculiar position. Prior to the establishment by the Commission of rules and standards regulating the service of gas utilities, public hearings were held at which the applicant, The Pueblo Gas & Fuel Company, appeared and offered no objection to the establishment by the Commission of a rule requiring that the average heating value of manufactured gas sold in the state of Colorado shall be 575 British thermal units per cubic foot. In fact, the record in that case shows that the gas utilities at these hearings represented to the Commission that such a heating value is not excessive, and that it could be complied with by the gas utilities. It develops from the record in the present case that no heating value determinations were made by The Pueblo Gas & Fuel Company prior to March, 1917, and that the result of such tests as have been made shows that the average heating value of the gas manufactured is somewhat below the standard fixed by the Commission. Under such a showing the Commission might very well take the position that no increases in rates and charges should be permitted until the applicant made a showing to the Commission that its service is in all respects up to the standards established by the Commission or that such standards can not be reasonably complied with. Gas service is not necessarily poor, however, for the reason that its heating value is low and it may well be that the heating value standards established by this Commission is excessive for gas made from the coal available. Pending further investigation by this Commission as to the proper standard to be maintained by utilities manufacturing artificial gas from Colorado bituminous coals, no drastic order will be issued. The Commission is of the opinion, however, and finds that the yield in cubic feet of gas per pound of coal carbonized now being obtained by the applicant is excessive, and that at the altitude of the city of Pueblo such yield should not exceed 6.25 cubic

feet per pound of coal carbonized. By reducing the yield to this amount the heating value of the gas will be materially improved.

From a study of the record in this case the Commission finds that the operating expenses of gas utilities have materially increased during the last year. While such increases are to some extent due to the increase in the cost of coal, fuel is not the major item for the reason that such increase in price is largely offset by increased earnings fom residuals, such as coke, tar and ammonia. Other operating expenses such as wages, taxes and materials and supplies have increased to a considerable extent during the same period. While in this case the gross earnings of the applicant have made a satisfactory increase such increase is not sufficient to meet the increase in operating expenses above mentioned.

The Commission is of the opinion that the present dual system of rates should be abolished, and that the same schedule should apply to gas sold for illuminating purposes as to gas sold for fuel purposes. The rate for commercial lighting is of the discriminatory "step" type and should, therefore, not be pemitted to remain in its present form. The rate for gas sold through prepayment meters should, in the opinion of the Commission, be slightly higher than the rates to other consumers, for the reason that such meters are in themselves more expensive and are likewise more expensive to maintain and adjust.

After giving due consideration to the facts in this case, the Commission is of the opinion that the petition of the applicant should be granted.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, The Pueblo Gas & Fuel Company, be permitted to establish by filing and posting in the manner provided in Section 16 of the Public Utilities Act, the following rates and charges for gas service:

Illuminating or Fuel Gas.

Rate:

For all consumption during the month, $1.20 per thousand cubic feet.

Prompt Payment Discount:

A discount of ten cents per thousand cubic feet will be allowed on all bills paid within the discount period, provided that no discount shall be allowed on gas sold through pre-payment meters.

Minimum Guarantee:

Each consumer must guarantee a net minimum monthly bill of fifty cents.

Industrial Fuel.

Rate:

A fixed charge of $9.00 per year per consumer, plus

A fixed charge of $30.00 per year per one hundred cubic feet of maximum demand, plus

Seventy-five cents per thousand cubic feet for the first fifty thousand cubic feet of gas consumed during the month, and fifty cents per thousand cubic feet for all consumption during the month in excess of fifty thousand cubic feet.

Prompt Payment Discount:

A discount of ten per cent will be allowed on all bills paid within the discount period.

Minimum Guarantee:

One-twelfth of the above yearly fixed charges is payable each month and constitutes the minimum gross monthly bill under this schedule.

IT IS FURTHER ORDERED, That the foregoing rates and charges shall apply to all service rendered by the applicant on and after February 1, 1918.

(SEAL)

GEO. T. BRADLEY,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 31st day of January, 1918.

DECISION NO. 159.

IN RE ADVANCE OF 25 CENTS IN COAL RATES FROM SOUTH CANON AND PALISADE.

Investigation and Suspension Docket No. 14.

February 5, 1918.

APPEARANCES: L. A. Rafert, for respondent, The Colorado Midland Railroad Company; H. L. McReynolds, for respondent, The Chicago, Rock Island & Pacific Railway Company.

STATEMENT.

By the Commission:

In the schedules filed with the Commission by the respondent herein effective February 2, 1918, it is proposed to increase the rates on coal from the South Canon district in Garfield County and the Palisade district in Mesa County, both on the line of The Colorado Midland Railroad Company, to Manitou, Colorado City, Colorado Springs, Denver, and points on the Union Pacific Railroad, the Chicago, Burlington & Quincy Railroad and the Chicago, Rock Island & Pacific Railway in eastern Colorado. The rates in effect at the present time to Denver and points on the three lines named are those prescribed by the Commission in its order In re Eastern Colorado Coal Rates, 1 Colo. P. U. C. 48, and 1 Colo. P. U. C. 94, and the Commission, therefore, has deemed that the propriety of the proposed schedules should be determined by an investigation and hearing concerning the same. An order was issued suspending the operation of the schedules until April 2, 1918, and a hearing held at Denver, Colorado, on January 24, 1918.

The following table shows the history of the changes in rates to illustrative points from the South Canon and Palisade districts from 1908 to the present time, and, for purposes of comparison, shows the rates contemporaneously in effect from the Walsenburg and Trinidad districts:

—RATES IN CENTS PER TON OF 2,000 LBS.—

	South Canon		Palisade		Walsenburg		Trinidad	
	Lump	Slack	Lump	Slack	Lump	Slack	Lump	Slack
Colorado Springs:								
1908	200	200	250	250	150	130	175	140
April 7, 1913	200	165	250	250	150	130	175	140
Dec. 10, 1914	150	130	175	140	150	130	175	140
Proposed	175	155	200	165	...	...	...	...
Denver:								
1908	225	225	275	275	160	140	185	150
April 7, 1913	225	165	275	275	160	140	185	150
Aug. 1, 1915	160	140	185	150	160	140	185	150
Proposed	185	165	210	175	...	...	...	...
Brush:								
(C. B. & Q. R. R.)								
1908	345	345	345	345	270	270	295	295
April 15, 1913	320	320	320	320	270	270	295	295
Aug. 1, 1915	265	265	290	290	265	265	290	290
Proposed	290	290	315	315	...	...	...	...
Burlington:								
(C., R. I. & P. Ry.)								
1908	410	410	410	410	335	320	360	345
April 15, 1913	385	385	385	385	335	320	360	345
Aug. 1, 1915	335	320	360	345	335	320	360	345
Proposed	360	345	385	370	...	...	...	...
Julesburg:								
(U. P. R. R.)								
1908	425	425	425	425	350	350	375	375
April 15, 1913	400	400	400	400	350	350	375	375
Aug. 1, 1915	350	350	375	375	350	350	375	375
May 15, 1916	350	325	375	350	350	300	375	325
Proposed	375	340	400	365	...	...	...	...

The distance from the South Canon district to Colorado Springs, the eastern terminus of the Colorado Midland Railroad and the point of connection with the other respondents herein, is 216 miles, and from the Palisade district 283 miles. The distance from the Walsenburg district to the same point is 110 miles and from the Trinidad district 138 miles. To all points beyond

Colorado Springs the difference in mileage between these various groups remains the same, as the same service is performed beyond Colorado Springs in the moving of traffic to such points.

The general basis of rates from the South Canon district to all destinations involved is upon the same basis as the rates from the Walsenburg district, and the rates from the Palisade district the same as from the Trinidad district. This basis was established voluntarily by the originating respondent herein to Colorado Springs effective December 10, 1914. To Denver and the other destinations involved the rates were also prescribed upon the same general basis by the Commission in its order In re Eastern Colorado Coal Rates, *supra*, effective August 1, 1915. By the tariffs filed it is proposed to increase the present rates from the South Canon and Palisade districts 25 cents per ton, which results in placing the South Canon rates upon the basis of the rates from the Trinidad district and the rates from the Palisade district 25 cents per ton higher than the rates from the Trinidad district.

The testimony before the Commission In re Eastern Colorado Coal Rates, *supra*, shows that The Colorado Midland Railway Company, at that time in the hands of a receiver, desired to compete with the Walsenburg and Trinidad district rates and that it was almost a necessity that such rates be met in order to market the coal at Colorado Springs, Denver and points beyond. As the line of this company reached Colorado Springs it was able to establish the desired rates at that point, but met with opposition from the connecting lines when endeavoring to establish the rates to points beyond. The Colorado Midland Railway Company expressed its willingness to assume and bear the burden of the disability in distance and operating conditions in its division of the rates which it desired established. Specific reference to the testimony with respect to the South Canon and Palisade rates, as presented to the Commision in that case, will be found at 1 Colo. P. U. C. 53, and 56.

The Commission, in issuing its order, prescribed rates from South Canon upon the Walsenburg basis and from Palisade upon the Trinidad basis due to the attitude of the originating carrier in signifying its intention of bearing the disabilities of distance. Immediately after the issuance of the order The Colorado & Southern Railway Company filed a petition with the Commission for a rehearing of that portion of its order relating to the rates from South Canon and Palisade to Denver. A petition was also filed by

the Union Pacific Railroad Company with respect to rates from these districts to points on its line. Both petitions were denied by the Commission and these carriers appealed on writ of review to the Supreme Court of Colorado. The cause was dismissed by the Supreme Court, however, on November 5, 1917, *non prosequitur*.

The Commission, in denying the petition of The Colorado & Southern Railway Company, 1 Colo. P. U. C. 94, affirmed its original order in the cause and stated that the request of The Colorado Midland Railway Company for the Walsenburg and Trinidad basis of rates should only have been denied in the event the establishment of such rates would result in actual loss to the Colorado Midland Railway, thus placing the burden upon the transportation of other commodities. The Commission said, at page 97:

> "We have here the offer of The Colorado Midland Railway Company to give the coal mines upon its own line of railroad the privilege of a competitive market, and assuming the disabilities of the longer haul. In other words, The Colorado Midland Railway Company, through its representative, Mr. Babcock, offers to the participating carriers on the joint through rate as established by the Commission, that part of the joint through rate which will give the participating carriers a fair return for the haul of this commodity from Colorado Springs to Denver, so that The Colorado Midland Railway Company must assume the entire disadvantage of the longer haul. Had the line of The Colorado Midland Railway Company extended into the city of Denver, the railroad would without doubt be permitted to meet the short line rate without consent of this Commission, unless the Commission should determine that the rate so established would result in a loss to The Colorado Midland Railway Company, and, therefore, become a burden upon the transportation of other commodities by the railroad and resulting in rates unreasonable for the hauling of those commodities. The Commission is compelled to accept the evidence of Mr. Babcock, that the rate established is remunerative to The Colorado Midland Railway Company, even though the said company assume the disability of the longer haul and allow the participating carriers a fair return for the transporting of said commodity upon their lines."

The Commission, therefore, decided that, until the participating carriers had failed to agree among themselves as to the basis

of divisions of the through joint rates and applied to the Commission for an apportionment of such rates, no petition for rehearing on the propriety of the Commission's original order prescribing the rates should be entertained.

The witness for The Colorado Midland Railway Company in the above cause stated that the proposed rates would greatly increase the tonnage revenue of the company, and that while he realized the proposed rates would not be highly remunerative, or even fairly remunerative to his company, yet he felt assured of a profit on the haul of the commodity, and that the future of the railroad depended to a great extent upon the favorable action of the Commission, taken with the development of the coal resources on the line of the company.

In the instant case the witness for the respondent, The Colorado Midland Railroad Company, testified that during the twelve months ended October 31, 1917, 11,965 tons of coal moved to Colorado Springs, Denver, and points in eastern Colorado on the lines of the other respondents, and 11,314 tons moved to points in Kansas and Nebraska. The production of Garfield County for this period was 116,719 tons and of Mesa County 202,315 tons, a total of 319,034 tons. The coal shipped by the respondent to Colorado Springs, Denver and eastern Colorado points therefore comprises 3.74 per cent of the total production of the two counties, and that to points in Kansas and Nebraska 3.55 per cent. The Denver & Rio Grande Railroad Company's lines also serve the coal districts in these two counties, and transport the product to various points in the western part of the state. The greater portion of the coal of these counties is used as engine fuel by the carriers.

Reference is made by the respondents to South Canon Coal Company v. C. M. Ry. Co., 38 I. C. C. 174, wherein the Interstate Commerce Commission authorized the same basis of rates upon interstate traffic to points in Kansas and Nebraska as the carriers seek to establish upon intrastate traffic by the filing of the tariffs suspended herein. In that case the carriers other than The Colorado Midland Railway Company opposed the establishment of any rates lower than were in effect at the time of the institution of the case. They opposed, as a matter of principle, to being parties to joint rates which they considered too low, and feared that a reduction in the rates from South Canon and Palisade would lead to similar reductions in other rates in which they were more im-

mediately interested. Reference to the operating and financial conditions of The Colorado Midland Railway, as then existing, is found in the Commission's decision at page 178:

> "The Colorado Midland traverses a mountainous region which is sparsely settled. Its operating conditions are extremely difficult. The maximum adverse grade between South Canon and Colorado Springs is 3.25 per cent, while the maximum adverse grade between Walsenburg and Colorado Springs is 1.4 per cent. A locomotive which is able to haul 1,483 tons from Walsenburg to Colorado Springs can haul only 642 tons from South Canon to Colorado Springs.
>
> "The Colorado Midland has been in poor financial condition for a number of years and has been in the hands of the receiver since December, 1912. Its operating ratio for the fiscal year 1914 was 104.29 per cent. Coal and ore constitute a large proportion of its tonnage, coal traffic alone being 26 per cent of the whole. Special efforts have recently been made to improve its financial condition by increasing its tonnage, and it is the opinion of the road's officials, aided by expert advice, that the proposed reduction in the rates from South Canon and Cameo will materially increase the output of complainant's mines and that the financial condition of the railroad will be correspondingly improved.
>
> "The other defendants sharply disagree with the Colorado Midland in this respect. They contend that the operating conditions on this road are so unfavorable that a reduction in the rates and the consequent shrinkage in the Colorado Midland's divisions would impair rather than augment that carrier's revenues."

The Interstate Commerce Commission prescribed rates from the South Canon district which should not exceed the rates from the Walsenburg district by more than 25 cents per ton, and found the rates from the Cameo-Palisade district as then in effect to be reasonable. The Cameo-Palisade rates being upon a differential of 25 cents over South Canon district rates after the establishment of the rates prescribed by the Interstate Commerce Commission. Since the promulgation of that order The Colorado Midland Railway Company has passed out of a receivership, having been sold at foreclosure sale and reorganized June 1, 1917, as The Colorado Midland Railroad Company.

A case in many respects analogous to the present one is that decided by this Commission December 27, 1917, In re Advance of 25 Cents Per Ton in Coal Rates From Oak Hills District, Colo. P. U. C. In that case the Denver & Salt Lake Railroad had in effect rates from the Oak Hills district on coal which were upon the same basis as the rates from Walsenburg—the coals from these two districts coming into active competition. Although the mileage was much greater from the Oak Hills district and the operating conditions more severe, the carrier voluntarily had established the Walsenburg basis of rates in the first instance. By the filing of tariffis proposing an increase of 25 cents per ton the Denver & Salt Lake Railroad conceded that the proper basis of rates from the Oak Hills district was not less than 25 cents per ton over the rates from the Walsenburg district. The Commission, in its decision, found that the increase was warranted and vacated the suspension, thus establishing rates from Oak Hills which were 25 cents per ton higher than from Walsenburg.

The distance from the South Canon district to Denver is even greater than from the Oak Hills district, the distance from the former being 291 miles and from the latter 195 miles. The increase proposed herein would place the South Canon and the Oak Hills districts upon the same basis of rates—the South Canon rates at the present time being 25 cents less than from Oak Hills.

The rates per ton mile to Colorado Springs and Denver as at present in effect and proposed by the respondents are as follows:

TO	South Canon		Palisade	
	Lump mills	Slack mills	Lump mills	Slack mills
Colorado Springs:				
Present	6.9	6.0	6.2	4.9
Proposed	8.1	7.2	7.0	5.8
Denver:				
Present	5.5	4.8	5.2	4.2
Proposed	6.4	5.8	5.9	4.9

From statistics submitted by the originating respondent carrier at the request of the Commission it appears that the increase in tonnage expected to result from the decrease in rates has not materialized. The coal tonnage of the road for the fiscal year ended June 30, 1915, the year just preceding the taking effect of the decreased rates August 1, 1915, amounted to 26.97 per cent of the total tonnage, that for the fiscal year 1916, 21.08 per cent, and that for the calendar year 1916 only 16.88 per cent.

While the coal tonnage to Denver and points on the lines of the connecting respondent carriers herein has increased since the establishment of the rates on August 1, 1915, yet the decrease in the revenue derived therefrom has been more than sufficient to offset the increase in the tonnage. A statement of the average revenue per ton per mile received from the transportation of coal to these points follows:

TO	——Fiscal Year Ended June 30th——			
	1914	1915	1916	1917
	mills	mills	mills	mills
Denver	7.12	7.72	5.08	4.89
C., B. & Q. R. R. points	8.19	8.49	7.23	6.73
C., R. I. & P. Ry. points	10.00	10.88	7.75	7.40
U. P. R. R. points	7.60	7.83	6.83	6.64

The establishment of the proposed rates will result in rates which will still be greatly less than the rates as carried prior to the reduction in rates made in 1915. For instance, the proposed rates on lump coal to Colorado Springs from South Canon will be 25 cents per ton less than the rates in effect in 1913 and prior thereto, to Denver 40 cents less, to C. B. & Q. R. R. points an average of 55 cents per ton less; to C., R. I. & P. Ry. points 50 cents less, and to U. P. R. R. points 50 cents less; from Palisade the proposed rates to Colorado Springs will be 50 cents per ton less, to Denver 65 cents less, to C., B. & Q. R. R. points 30 cents less, to C., R. I. & P. Ry. points 25 cents less, and to U. P. R. R. points 25 cents less.

The Commission is of the opinion that the respondents have met the burden of proof in justifying the proposed rates from the South Canon and Palisade districts to all destinations involved and will therefore issue an order vacating the order of the suspension entered January 16, 1918.

ORDER.

IT APPEARING that, by order dated January 16, 1918, the Commission entered upon a hearing and investigation concerning the propriety of the increases and the lawfulness of the rates, charges and regulations stated in schedules enumerated and described as Amendment 11 to Colo. P. U. C. No. 40, Amendment 189 to Colo. P. U. C. No. 137, Amendment 7 to Colo. P. U. C. No. 211, and Amendment 7 to Colo. P. U. C. No. 212, of The Colorado Midland Railroad Company, (Colorado Midland Railway Com-

pany issue), and ordered that the operation of the said schedules be suspended until April 2, 1918.

IT FURTHER APPEARING, that an investigation of the matters and things involved has been had, and the Commission on the date hereof had made and filed a report containing its findings of fact and conclusions thereon:

IT IS ORDERED, That the order heretofore entered in this proceeding suspending the operation of the said schedules be, and it is hereby, vacated and set aside as of February 7, 1918.

GEO. T. BRADLEY,

(SEAL)

LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 5th day of February, 1918.

DECISION No. 160.

CITIZENS OF MOSCA,

v.

THE DENVER & RIO GRANDE RAILROAD COMPANY.

Case No. 150.

February 14, 1918.

APPEARANCES: Mr. Jesse Booth, Esq., for the complainants, Citizens of Mosca; Mr. O. A. Hiller, Esq., for the Alamosa Auto Association; Mr. Boorford, Esq., for the Saguache Commercial Club; Mr. C. M. Corlett, Esq., for the Citizens of Monte Vista; E. N. Clark, Esq., for the defendant, The Denver & Rio Grande Railroad Company.

STATEMENT.

By the Commission:

On the 9th day of January, 1918, The Denver & Rio Grande Railroad Company filed with the Commission its notice in writing, in accordance with the rules of this Commission, of its intention to discontinue passenger trains Nos. 317 and 318, operating between Alamosa and Salida, on a narrow gauge line. The notice was effective and the changes went into effect January 13, 1918. In the same notice and effective on the same date trains Nos. 323 and 324, operating between Alamosa and Salida twice each way each week, were changed to leave Salida for Alamosa, Mondays, Wednesdays and Fridays of each week, returning from Alamosa to Salida on Tuesdays, Thursdays and Saturdays of each week.

Trains Nos. 323 and 324 are now operated as mixed freight and passenger trains carrying mail and express and are the only regular trains operated on this branch.

On January 11, 1918, Citizens of Mosca, a station on this line, filed a petition protesting against the present service and the taking off of said passenger trains. Protests were also received from the Business Men's Association of Moffat, The Commercial Club of Crestone, the Hooper Board of Trade, the Saguache Commercial Club, and the Alamosa Auto Association, each representing the citizens of different stations along this line.

The answer herein of the defendant, The Denver & Rio Grande Railroad Company, was filed with the Commission on January 14, 1918. In its answer the defendant by way of justification of the above described change in service alleged: That the changes are made in train service between Alamosa and Salida for the purpose of conserving motive power, equipment and men and rendering same available for use in moving congested traffic and relieving such congestion, and are also in accordance with the general plan and policy of the United States Government to require common carriers to utilize their power and equipment and men to the best advantage of the government and the people at large in connection with the carrying on the war; that by and through the changes made and complained of a substantial amount of power, equipment and men will be relieved from the service, which power, equipment and men, while contributing somewhat to the convenience of the complainants and other patrons of the Alamosa and Salida branch line, were not necessarily employed in that service and could be relieved from that service without great or substantial detriment to said complainants and with advantage to the people at large and to the United States government in its efforts to meet the emergencies created by the war; that the action of the defendant complained of was but one of many acts done by the defendant in its efforts to harmonize the conduct of its affairs with the well-known policy of the United Statets government to utilize to the utmost all the resources at its command, so that such resources should all contribute to the general prompt movement and handling of traffic essential to the successful carrying on of the war and the conservation of all forces and resources of the United States government.

At the hearing in this cause, which convened in the hearing room of the Commission, in the state capitol building, Denver, on

the 21st day of January, 1918, the defendant, in support of its contention introduced as a witness Mr. James F. Howe, its general auditor of passenger receipts, who testified to the following effect:

> That he did not know the total number of cars that was hauled ordinarily in the mixed trains now operated by the defendant, but that the defendant operated a sufficient number of passenger cars to take care of the passengers; that a passenger from any point on the narrow gauge line between Alamosa and Salida could buy a ticket to or from Denver, good either by way of Alamosa or Salida, and that in this way the patrons of this line would have a daily service; that the rate of fare either way was the same; that the expense of labor alone for the operation of these trains for the calendar year 1917 was $8,505.99; that he estimated the total cost of operation of the trains, including all items, would be doube that amount, or $17,011.98; that the earnings of train No. 317 was $15,976.19 and for train No. 318 $15,501.10, making a total of $31,477.29.

Mr. L. F. Wilson, superintendent of transportation of the Denver & Rio Grande Railroad, testified to the following effect:

> That the maximum grade on this branch line from Villa Grove to Mears Junction is 3 per cent.; that if there were more than two or three loaded cars hauled over this grade more than one engine would be needed; with a heavy tonnage two or three engines would be required to haul the train from Villa Grove to Mears Junction; that before the present change was made this company operated a passenger train in each direction each day between Alamosa and Salida; it also operated two freight trains each way each week to take care of the freight business; that the passenger train required no helper engine; that under the former arrangement 12 passenger trains and 4 freight trains were operated weekly; that under the present arrangement there were six trains operated weekly; that this, he figured, saved one and one-third engines daily, which the defendant has been able to put in the coal and ore trade; that as to man-power, the present arrangement saves one entire crew.

For the complainants Mr. Jesse Booth of Mosca, testified as follows:

That he lives at Mosca on the narrow gauge line between Alamosa and Salida; that if he were going to Denver via Alamosa he would leave Mosca at 4:20 p. m. and arrive at Alamosa at 5:30 p. m.; that he would leave Alamosa at 8:30 p. m. arriving in Denver at 7:30 a. m. the next day; that if he should go to Denver via Salida he would leave Mosca at 9:05 a. m. and arrive at Salida at 6:00 p. m. if on time; that he would leave Salida at 10:55 p. m. and arrive in Denver at 7:30 o'clock the next morning; that he has only every other day service via Alamosa, and that, as a result, if he should go via Salida it would necessitate his being on the train approximately seven hours longer than if he should go via Alamosa; that the people of Mosca have no way of getting their mail at any regular time; that under the present service they get their mail irregularly, and at times it accumulates over a period of days, while they are supposed to get their mail from one direction or other every day. If the mail clerk makes a mistake he sends it around via Alamosa or the other way, and residents of Mosca then get mail semi-weekly and some of it tri-weekly; that they have the same trouble with their express under the present arrangement.

Mr. A. E. Headley, for the complainants, testified in effect as follows:

That under the present arrangement on Tuesday, January 15th, the train left Alamosa at 8:00 o'clock in the morning and arrived at Salida at 10:00 o'clock that night; that the train carried 60 passengers; that it was a mixed train and was all day making the trip of 85 miles with three engines; that the mixed trains always have two and sometimes three engines.

Mr. Hiller of Alamosa, for the complainants, testified in part as follows:

That he is in the banking business, and has noticed a change in particular in the mail service; that Alamosa acts as a clearing house for the San Luis valley banks, the banks in the valley sending their items to Alamosa to be cleared;

that as a result of the change in the train service only gives banks in the northern part of the county an opportunity to clear their items every other day; that there are two banks at Saguache, one at Hooper and one at Moffat; in other words, that items sent to witness' bank in Alamosa would require at least four days before the bank would know that the item was received for credit, while formerly it required only two days to do this. Witness further testified: "Another inconvenience is the matter of banks obtaining currency, which they may need at a moment's notice. They could write to us or to the other bank at Alamosa for currency and we would ship it up to them and they would receive it the following day, writing down Monday and they would have their currency on Wednesday. Under the new arrangement it will take at least four to six days before they can get this currency shipment, and might seiously inconvenience the bank if they needed it hurriedly. Those are the main things I have noticed that effect us in particular."

Mr. H. B. Means testified on behalf of the Saguache protestants as follows:

"My residence is Saguache; I am in the banking and stock raising business; Mr. Hiller has already explained to you the banking part of this system; we clear with the Alamosa bank; it takes at least twice as long to get returns; we have quite a country there—some 75 or more square miles, you might say, before we get to Alamosa from the northern part of the San Luis valley. We get checks from Bonanza, Villa Grove, Crestone and all those places intersecting this territory from Alamosa to Salida. If we hadn't anything to do with the outside world except Denver we would not protest so much, but we have a business within ourselves, in our own valley."

Referring to the condition of the train on which he rode from Hot Springs to Salida, en route to Denver, witness said in part:

"I could not tell you how many cars—it was quite a long train, but they had these two coaches, smoker and passenger coach. The conductor told me he had 60 passengers. The coaches were full, nothing but a smoker and one of the old-fashioned coaches that they light with coal oil lamps."

That part of the system of the defendant, the Denver & Rio Grande railroad, which is affected by this action, is a narrow gauge line extending from Salida south to Alamosa. Salida is also on the main line of the defendant, which is standard gauge extending in an easterly and westerly direction between Pueblo and the Utah state line, and in a northerly and southerly direction between Pueblo and Denver. Alamosa is also on the standard gauge of the San Luis Valley branch, this line extending eastward from Alamosa to Walsenburg, thence north to Pueblo, connecting with the main line at Pueblo. From Pueblo the passengers from Salida and Alamosa reach Denver on the same train arriving at Denver the following morning. The present schedule provides for a mixed passenger and freight train every other day, going from Salida to Alamosa on Monday's Wednesdays and Fridays, and from Alamosa to Salida on Tuesdays, Thursdays and Saturdays.

It appears from the evidence the defendant has arranged that a passenger at any station on the narrow gauge line between Alamosa and Salida may purchase a ticket at the same fare to Pueblo and points north thereof, and may proceed either via Salida or Alamosa, leaving Pueblo on the same train for the north. On returning they would have to reach Salida on Mondays, Wednesdays and Fridays, and reach Alamosa on Tuesdays, Thursdays and Saturdays, in time to connect with the narrow gauge trains on those days.

It is the contention of the defendant that in this way a passenger at any station on this narrow gauge line would have a daily service into Denver and return. However, it is contended by the complainants that these conditions do not always work as intended on account of delays, failure of trains to make connections, mistakes of mail clerks in routing the mail, and mistakes on the part of expressmen in routing express, and the inconvenience of traveling on a slow mixed train.

One of the main objections on the part of the protestants at Mosca and points on the south end of this line is that in going to Denver via Salida, which they would have to do every other day, it would necessitate their leaving Mosca at 9:05 o'clock in the morning instead of 4:20 o'clock in the afternoon, which is the scheduled hour for leaving when going via Alamosa, being on the road more than 7 hours longer; that the distance from Mosca to Salida is less than 85 miles, and they are compelled to travel practically all day to reach Salida—the hour of arrival in Denver being the same whether going via Alamosa or via Salida.

From the testimony in this case it appears to the Commission that under the old system as existed before the change of service, it required only six crews on the passenger trains weekly, since each crew made the trip from Alamosa to Salida and return each day. While the defendant contends there were twelve passenger trains a week, there were, in reality, only six crews operating these twelve trains. This would require an assignment of one engine to take care of this passenger train each day, together with one passenger crew. Under the former schedule there were also two freight trains each way weekly, requiring a freight crew and an engine at least four days in each week. Therefore, under the former schedule it appears that the service between Alamosa and Salida required six passenger crews and four freight crews, together with two engines, each week.

Under the present schedule, it is the contention of the defendant that six train crews will take care of all the business, although it requires an extra man to each crew for six days in the week operating a mixed train.

When the Commission considers the question as to whether this mixed train can be operated with six crews a week it is in duty bound to consider not only the convenience and necessities of the patrons of the road, but also a more important question—that of safety of operation. The testimony shows that under the present schedule a large number of freight cars are being handled by the defendant company over a pass on a three per cent grade, extending between Villa Grove and Mears Junction. The testimony further shows that in addition to the passenger equipment carried on this mixed train, so many freight cars are handled in connection with the passenger cars that it sometimes requires three engines to move this heavy train over this grade.

The Commission is bound to consider the convenience of the patrons, as well as the motive ascribed by the defendant for changing its operations from the former to the present schedule, this motive being "for the purpose of conserving power, equipment and men, and rendering same available for use in moving congested traffic in accordance with the general plan and policy of the United States government." The Commission is in full accord and perfect harmony with the policy of the Director General of Railroads in conserving motive and man-power for the purpose of aiding the government in winning the war. It must be remembered, however, that this is not a case where duplicate or competing trains are taken off for the purpose of preventing

waste. The only passenger trains serving the people on this line have been abandoned and a mixed passenger and freight train substituted. The figures submitted by the defendant and quoted above show an earning for these passenger trains for the calendar year 1917 of $14,465.31, after allowance has been made for labor, supplies, materials, etc. An application for permission to change this service and to substitute practically the service now in effect was made to this Commission about four years ago, but was denied.

The Commission must seriously consider and take cognizance of the question of the safety of passengers. Under the present system of operating mixed trains where passenger coaches and loaded freight cars are hauled together, and where the tonnage is so heavy it requires at times three engines to move the same over this heavy grade, and considering the elements of danger of descending grades, the Commission hesitates to issue an order sanctioning the operation of trains in this manner when such trains carry passengers.

The Commission has considered the proposition of limiting the freight tonnage it should allow in a mixed train. If the Commission should limit the tonnage to such a figure as might reasonably guarantee safety of operation, it appears that, on account of the amount of freight which moves between Alamosa and Salida, the defendant would then be required to operate a number of extra freight trains on the Alamosa-Salida line to take care of the freight business which could not be handled by the mixed train.

This would increase the number of train crews and the number of engines that would be required in the service to practically the same, or a greater number, than required under the former system of operation.

While the Director General of Railroads is desirous of eliminating all unnecessary trains, the Commision does not believe that it is the intention of the government to go to such an extent as to eliminate trains for which there is a legitimate public demand or to so change the operation of trains as to endanger the traveling public. The Commission is of the opinion that the operation of trains under the present system with due regard for the safety of the traveling public, and also to properly serve the patrons of the road, would require such an amount of increased extra freight service that there would be practically no saving in either motive power or man power.

The Public Utilities Act of 1913, which became effective August 12, 1914, expressly charged the Commission with the duty of safeguarding the health and safety of the employees and passengers of all common carriers, as well as the public. Section 13 (b) reads as follows:

"Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public and shall in all respects be adequate, efficient, just and reasonable."

Section 26 provides as follows:

"Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any railroad corporation or street railroad corporation, or person operating any such railroad or street railroad does not run a sufficient number of trains or cars, or does not possess or operate sufficient motive power, reasonably to accommodate the traffic, passenger or freight transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places, or does not trun any train or trains, car or cars, upon a reasonable time schedule for the run, the commission shall have the power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time of starting its train or car or to change the time schedule for the run of any train or car, or to change the stopping place or places thereof, or to make any other change the commission may determine to be reasonably necessary to accommodate and transport traffic, passenger or freight, transported or offered for transportation."

Section 29 provides:

"The Commission shall have the power, after a hearing had upon its own motion or upon complaint, to make general or special orders, rules or regulations, or otherwise, to require every public utility to maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, * * * and to require the performance of any other act

which the health or safety of its employees, passengers, customers or the public may demand."

For the reasons herein stated it is the opinion of the Commission that the defendant, The Denver & Rio Grande Railroad Company, should restore the service which was in effect on the Alamosa-Salida line immediately prior to January 13, 1918.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, The Denver & Rio Grande Railroad Company, establish and operate daily passenger train service, except Sundays, between Alamosa, Colorado, and Salida, Colorado, and between Salida, Colorado, and Alamosa, Colorado;

IT IS FURTHER ORDERED, That the defendant, The Denver & Rio Grande Railroad Company, establish and operate freight train service twice each week between Alamosa, Colorado, and Salida, Colorado, and twice each week between Salida, Colorado, and Alamosa, Colorado;

IT IS FURTHER ORDERED, That the defendant, The Denver & Rio Grande Railroad Company, establish and make effective the passenger and freight train service provided for in this order on or before the 25th day of February, 1918; and that the defendant, The Denver & Rio Grande Railroad Company, file with the Commission copies of working time schedules in accordance with the rules of this Commission.

GEORGE T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 14th day of February, 1918.

DECISION No. 161.

THE AZTEC COAL MINING COMPANY, et al.,

v.

THE COLORADO & SOUTHERN RAILWAY COMPANY, AND THE DENVER & RIO GRANDE RAILROAD COMPANY,

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Case No. 148.

March 8, 1918.

APPEARANCES: For the Complainants, Messrs. Carle Whitehead and A. L. Vogl; for The Colorado & Southern Railway Company, Messrs. E. E. Whitted, A. S. Brooks and B. B. Greer; for The Denver & Rio Grande Railroad Company, Messrs. E. N. Clark and J. G. McMurry.

STATEMENT.

By the Commission:

On December 27, 1917, the complainants, The Aztec Coal Mining Company, operating the Toltec mine; The Big Four Coal and Coke Company, operating the Big Four mine; The Black Canon Coal and Fuel Company, operating the Caddell mine; The Huerfano Coal Company, operating the Mutual and Ludlow mines; The Monument Valley Fuel Company, operating the Larimore mine, and The Sunnyside Coal Mining Company, operating the Sunnyside mine, filed their joint complaint, alleging that these companies are, respectively, operating the coal mines above described in the Walsenburg district of Colorado; and The Huerfano Coal Company is also engaged in mining coal in the Trinidad district.

The complaint alleges in substance that the defendants are common carriers engaged in the transportation of coal by steam railroad from the mines in said districts to various points in Colorado, and defendant, The Colorado & Southern Railway Company, is also engaged in such transportation from the northern coal fields in Boulder and Weld counties, Colorado; that defendants for several months have failed to furnish sufficient cars to keep complainants' mines in operation and by reason thereof complainants have been unable to keep their mines in steady operation and fill their orders, and have closed their mines from time to time, thus preventing complainants from producing the coal to meet their demands; that in July, 1912, defendants made rules governing distribution of cars to mines in said districts, which rules are generally known as the "idle-hour basis"; that for several months defendants have failed to observe and enforce such rules, and have distributed cars contrary thereto so that discrimination has resulted; that defendant, The Colorado & Southern Railway Company, has given undue preference to the northern fields in the matter of furnishing cars and has discriminated against the Walsenburg and Trinidad districts, with the result that mines in the northern fields have operated more steadily and more hours than have the mines of complainants.

Relief is prayed that defendants be required to strictly observe and enforce said rules; that they be required to adopt such further rules as may be necessary to insure distribution of cars in conformity with such rules; that The Colorado & Southern Railway Company be required to cease and desist from discriminating in favor of the mines in the northern fields as against the mines in the southern fields, and that the defendants be required to establish such rules as may be necessary to prevent discrimination in car distribution in favor of the northern fields.

The answer of defendant, The Denver & Rio Grande Railroad Company, which is hereafter referred to as the Denver & Rio Grande, alleges in substance that the complainants ship coal to points within, and to points without, the state of Colorado, and the Denver & Rio Grande has transported coal, during the times mentioned in the complaint, from some of complainants' mines to points located within and points located without the state of Colorado; that it has furnished all its available equipment of cars and has performed its duty in supplying all mines served by it. In its answer the Denver & Rio Grande admits the establishment of the "idle-hour" rules, and denies any failure to observe or

enforce them, or any discrimination or preference in favor of any mine; that the rules above mentioned were adopted in 1912 by the Denver & Rio Grande at the suggestion of the Interstate Commerce Commision, which supervises them. This defendant alleges in its answer that the United States government, through the Interstate Commerce Commission, has taken jurisdiction of all cars in coal traffic in said districts and that the Public Utilities Commission of the State of Colorado has no jurisdiction to regulate such distribution in any particular; that the Denver & Rio Grande and its equipment are now under control of the federal government, as is also the equipment of other carriers, and that it is therefore impossible for the Denver & Rio Grande to respond to any rules of the Public Utilities Commission of the State of Colorado.

The answer of the defendant, The Colorado & Southern Railway Company, which is hereafter referred to as the Colorado & Southern, admits the making of the "idle-hour" rules, and makes the same denials as the Denver & Rio Grande.

The Denver & Rio Grande, in its answer and at the opening of the case, contended that this Commission has no jurisdiction over the distribution of coal cars of an interstate carrier in the state of Colorado, for the reason "that the United States government, through the Interstate Commerce Commission, has taken jurisdiction of the distribution of all cars engaged in coal traffic in said districts."

This contention is not correct, as the Public Utilities Commission has jurisdiction over such portion of the commerce within this state as is purely intrastate, subject to such measures as federal authorities may take to protect interstate commerce. The fact that the carrier is engaged in both interstate and intrastate commerce does not prevent this Commission from enforcing the provisions of the Colorado law applying to intrastate traffic, and which indirectly affect the interstate portion, in the absence of action by Congress or its agency, providing a burden is not put upon interstate commerce.

State Public U. C. v. Baltimore & O. S. W. R. Co., (Ill.), 118 B. E., 81.
12 C. J., p. 70, 71.

The Denver & Rio Grande further objects that it, and all other common carriers, are now under the specific and exclusive

control of the federal government, and that it cannot respond to any rules of this Commission. This position is likewise unfounded, for the reason that, until the Director General of Railroads by order, otherwise specifically determines, the transportation systems remain subject to all existing state statutes and orders of state regulating commissions. Both objections as to jurisdiction are therefore overruled.

The complaint herein is not against the "idle-hour" rules, but is, instead, that such rules are not fairly administered. The Commission holds that it will not undertake to institute any new rules respecting car distribution in this case, and will confine itself to the two questions presented; first, alleged non-enforcement of and non-compliance with the "idle-hour" rules as affecting intrastate traffic in Colorado; and, second, alleged discrimination in car distribution in favor of the northern coal fields as against the southern coal fields in Colorado.

The "idle-hour" rules were adopted shortly after the decision made by the Interstate Commerce Commission in the case of Colo. Coal Traffic Ass'n v. D. & R. G. R. R. Co., 23 I. C. C. 458, and are described in the decision of the Interstate Commerce Commission, in the case of the Huerfano Coal Company v. Colo. & S. E. R. Co., 28 I. C. C., 502, as follows:

> "These rules distribute cars on what is known as the 'idle-hour system.' The aim is that all the mines affected shall work the same number of hours per calendar week. Reports are made weekly to the carriers by the operators, showing the time lost, if any, on account of failure of car supply. Whenever it appears that, by reason of such failure, any mine has had more idle hours than any other mine, the basis of distribution is immediately so modified as to equalize the number of idle hours during the next ensuing week."

This cause came on for hearing at the hearing room of the Commission, in the state capitol building, Denver, Colo., on the 6th and 7th days of February, 1918.

The mines within the rules are all those mines in Huerfano and Las Animas counties, Colorado, upon the tracks of the Colorado & Southern, the Colorado & Southeastern, and the Colorado & Wyoming, and on the tracks of the Denver & Rio Grande between Trinidad, Walsenburg and Southern Junction, including the line between Walsenburg and a point three miles west of

Walsenburg to La Veta, and all branches of the Denver & Rio Grande between the points above specified. Since the rules were made the Ojo and Oakdale mines have been brought under the operation of the rules.

The mines of the complaining operators are all situated in the Walsenburg district except that the Huerfano Coal Company also operates in the Trinidad district. It appears here as it did in the original case before the Interstate Commerce Commission, Colo. Coal T. A. v. D. & R. G. R. R. Co., 23 I. C. C., 458, that except during times of car shortage there is little complaint. The evidence of complainants with reference to non-compliance with the rules shows that a serious car shortage existed in these fields from the latter part of September, 1917, to the early part of January, 1918; that during this period there was lack of co-operation under the rules between the defendants in this cause; that the mines on the Colorado & Southern had the advantage of the car distribution; also that train conductors directed some of the distribution. Exhibits were presented, compiled from "idle-hour" records, indicating that certain mines of complainants and others had not made up during the second week, or at all, inequalities occurring during the preceding week, and showing considerable discrepancy in the matter of idle hours among mines working on domestic coal; that the conditions were very good at the date of the hearing, February 6, 1918. There was considerable evidence as to the desirability of a joint distribution of cars.

After consideration of the "idle-hour" rules the Commission is of the opinion that the establishment of a joint distributor, in lieu of the chief dispatchers of each railroad, who, under the rules, now have direct charge of the distribution of cars, and are supposed to co-operate in such distribution, would be such a change of the rules as to amount to an administrative question involving the reasonableness of the rules, which is a matter for the Interstate Commerce Commission to determine.

Penn. R. Co. v. Puritan Coal Co., 237 U. S., 121; 59 L. E., 867.

The carriers produced evidence to show a normal, first-class car supply at the date of the hearing, and a lack of cars from connections during the shortage period; that the rules were adhered to and enforced as closely as possible; that in some instances train conductors had directed car distribution; that any trouble which might have occurred was due to car shortage; that the mines have not co-operated fully with the carriers, but have

done so generally; that the rule is to set cars as fas as possible by 7:30 a. m.; that the Colorado & Southern and the Denver & Rio Grande do co-operate in the car distribution under the rules; that car distribution by a joint distributor is not feasible, but that the establishment of a joint agent at Walsenburg is under consideration; that there has been a bona fide effort under Rule 9 to adjust during the second week inequalities occurring during the first week; that some mines have a disability on account of not being equipped to use certain kinds of cars; that after conferences with the Commission the carriers had endeavored to set cars regularly each day before the men went to work at the mines.

It appears from the record that during the period from November 1, 1917, to January 1, 1918, the complainants and certain other mines had a considerably larger number of idle hours over other mines producing the same character of coal. It also appears there should be closer co-operation between the Denver & Rio Grande and the Colorado & Southern in the observance of the "idle-hour" rules, and that there have been some differences in interpretation of the rules among carriers and operators.

The Commission is of the opinion that a joint agency of the Colorado & Southern and the Denver & Rio Grande at Walsenburg would tend to simplify matters of car distribution and promote a more equal distribution in these fields; that the mine operators should strictly observe the rules requiring information from them to the railroads; that additional equipment when required should be used to keep up switching facilities; that the railroads should endeavor to get cars to the mines before 7:30 a. m.; that in no case should distribution be left to train conductors, but the chief dispatchers should see that employees under them conform to the idle-hour basis.

On the second question—as to alleged discrimination against the southern fields and in favor of the northern fields—the evidence shows that most of the coal from the northern fields is supplied for use in Denver; that the business from the southern fields is the best paying business of the Colorado & Southern, which endeavors to handle such business as fully as possible; that if cars were taken from the northern fields the supply so withdrawn, rather than benefitting other coal fields in Colorado, eventually would be dissipated by such cars being diverted to interstate traffic; that the northern fields have the use of small ore cars, not feasible for use elsewhere; that these cars form about 10 per cent of the northern car supply, and are used in the short haul to Denver; that during the last four

months empties have been moved out of Denver in preference to loaded cars to facilitate movement of coal; that car delivery from connecting lines has been irregular, and the railroad has endeavored to keep the empties moving out of the Denver yard. It does not appear that discrimination has been practiced against the southern fields and in favor of the northern fields.

The Commission therefore recommends:

(a) That a joint agency of the defendants in this cause be established at Walsenburg, Colorado, in order that there shall be a more complete co-operation between said defendants in making effective the "idle-hour" rules, and to bring about a more equal distribution of cars to the coal mines within the scope of such rules.

(b) That, after a conference of mine operators and representatives of the defendants, a reprint of the rules be made, and that there be embodied in such reprint a correct interpretation of rules which have given rise to differences of opinion, so that mine operators and carriers' employees alike may be fully advised as to the proper interpretation of the rules.

ORDER.

IT IS THEREFORE ORDERED, That sufficient motive power be provided by The Colorado & Southern Railway Company and The Denver & Rio Grande Railroad Company, defendants herein, at Walsenburg, Colorado, to furnish adequate switching facilities to the coal mines included within the "Idle Hour Rules", located on their respective lines.

IT IS FURTHER ORDERED, That at all times, and particularly during periods of car shortage, the said defendants require a more careful adherence to Rule 9, which provides for an adjustment during the second week of hours lost on account of car shortage during the first week; that the chief dispatchers of the defendants keep more closely in touch with the distribution of cars to mines, and prevent train conductors or other employees from making independent, or other, distribution than that provided for in the rules.

IT IS FURTHER ORDERED, That the mine operators fully co-operate with the carriers and observe strict compliance with Rules 6, 7 and 8 of the "Idle Hour Rules".

IT IS FURTHER ORDERED, That the following requirements be observed, so far as possible, as to coal mines within the "Idle Hour Rules": The carriers furnish the kind of equipment required by each mine, and the operators accept and use the equipment so furnished; the carriers set cars for loading prior to 7:30 a. m. of each working day; and the special freight train of The Denver & Rio Grande Railroad Company, called the "La Veta high-ball", operated from Pueblo, Colorado, to Walsenburg, Colorado, be so operated as to have cars in Walsenburg in time for distribution at the mines prior to 7:30 a. m. each day.

GEO. T. BRADLEY,

(SEAL)

LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 8th day of March, 1918.

DECISION No. 162.

IN THE MATTER OF AN INVESTIGATION AND HEARING, ON MOTION OF THE COMMISSION, INTO THE REASONABLENESS OF THE RATES AND CHARGES, AND INTO THE ADEQUACY OF THE SERVICE, AND THE RULES, REGULATIONS AND PRACTICES SURROUNDING THE SAME, OF THE WESTERN COLORADO POWER COMPANY AT MONTROSE, DELTA AND OLATHE, COLORADO, AND ALL OF THE TERRITORY SERVED BY THE WESTERN COLORADO POWER COMPANY FROM ITS GENERATING STATIONS LOCATED AT MONTROSE AND DELTA, COLORADO.

Case No. 85.

March 12, 1918.

APPEARANCES: Messrs. Geo. W. Bruce and F. D. Catlin for The Uncompahgre Valley Water Users' Association; F. D. Catlin, Esq., for the city of Montrose; Messrs. H. J. Baird, city attorney, and Geo. W. Bruce, for the city of Delta; Messrs. C. J. Moynihan and H. L. Butler, for The Western Colorado Power Company.

STATEMENT.

By the Commission:

On May 26, 1916, the Commission received from The Uncompahgre Valley Water Users' Association a communication stating that at a meeting held on May 2, 1916, at Montrose, Colorado, a resolution was passed by the Association, requesting the Public Utilities Commission of the state of Colorado to make a complete

investigation of the rates and charges for electric service in the Uncompahgre Valley. This communication was filed by B. S. Tobin, acting secretary of the association.

Subsequent to receipt of this communication the Commission concluded to institute upon its own motion an investigation into the reasonableness of the rates and charges of The Western Colorado Power Company for electric service in that territory, and into the adequacy of the service and the rules, regulations and practices surrounding the same, such investigation to include the cities of Montrose and Delta, the town of Olathe and all territory contiguous thereto and served by The Western Colorado Power Company. While the complaint in this cause was brought by the Uncompahgre Valley Water Users' Association representing the entire territory involved, the cities of Delta and Montrose intervened and were represented by counsel at the hearings thereon.

Pursuant to notice duly given to the parties in interest, this cause came on for hearing in the city of Montrose, Colorado, at 1:30 p. m. on April 23, 1917. Testimony was introduced at this hearing bearing upon the inventory and appraisal of the property of The Western Colorado Power Company used and useful in furnishing electric service in the territory involved, upon the necessary operating expenses which are incurred in the production and delivery of such service, and upon other matters pertaining to the ultimate question of the fair and reasonable value of the property of the respondent, 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 visited the property of the respondent, as well as the general offices of the company in the city of Montrose, prepared an inventory and appraisal of the electric property of the respondent, examined the books and records, secured statements of revenues and expenses, compiled data relating to the question of rates involved herein, and at the above hearing submitted exhibits and gave testimony in support of such investigations. Following the hearings in this cause counsel for the respondent filed a brief with the Commission, but no briefs were filed in behalf of the Water Users' Association or of the intervenors in this case.

In addition to numerous consumers of the company who testified as to the general character of the service being furnished, and in a few cases as to the value of buildings and present market

value of real estate, the following witnesses submitted reports and exhibits and testified as to the matters at issue in this case:

Clay, J. A., general manager of The Western Colorado Power Company, who appeared in behalf of the respondent and testified as to the payments being made to The Utah Power & Light Company as a holding company, and as to the general quality of service being rendered by the Montrose-Delta properties.

Herbert, Fred W., statistician of the Public Utilities Commission of the state of Colorado, who examined the books and accounts of the respondent, appeared in behalf of the Commission's statistical staff, and testified in support of an audit which he had prepared and which was submitted at the hearing in this case.

Paine, F. B. H., consulting engineer of the firm of Paine, McClellan & Campion, who appeared in behalf of the company, and testified in support of an appraisal of the Montrose-Delta properties of The Western Colorado Power Company, which had been prepared under his direction.

Rankin, F. J., electrical engineer of the Public Utilities Commission of the state of Colorado, who appeared in behalf of the Commission's engineering staff and testified in support of an appraisal which he had prepared.

History of the Property.

The Western Colorado Power Company was organized on April 1, 1913, at which time it acquired and commenced the operation of the hydro-electric properties in the counties of La Plata, San Juan and San Miguel, Colorado, together with a transmission system extending into Ouray county, Colorado.

During the year 1913 negotiations were entered into for the purchase of what has been termed in this proceeding the "Montrose-Delta Group" of properties. These properties then comprised The Ouray Electric Light & Power Company and The Ridgway Electric Company, which were operating hydro-electric plants, and the Montrose Electric Light & Power Company and The Delta Electric Light Company, operating steam plants in the towns of Montrose and Delta, respectively. The Western Colorado Power Company came into possession of the Montrose-Delta group of properties on about January 1, 1914, and took over the physical operation of these properties as of that date, but it was not until April 1, 1914, that the actual holdings were taken over on the books

of the company, so that the earnings and expenses of these properties do not appear on the books of the company prior to April 1, 1914.

In January, 1915, negotiations were begun with the town of Olathe, located about midway between the towns of Montrose and Delta, for a franchise for the installation of a distribution system. This franchise was granted in February, 1915, and such distribution system was soon thereafter installed in the town of Olathe for the supply of commercial and residence lighting, street lighting and for commercial power. The company commenced to furnish this service to the town of Olathe in April, 1915.

Franchises.

The Western Colorado Power Company operates in the city of Montrose under a franchise granted to The Montrose Electric Light Company on March 3, 1908, which, as subsequently modified, will expire on March 3, 1918. This franchise was transferred to The Western Colorado Power Company on April 18, 1914, and embodies the principal rates now in effect in Montrose.

The company operates in the town of Delta under a franchise granted on July 16, 1908, to J. E. Shue and E. D. Blodget, which franchise was subsequently transferred to The Western Colorado Power Company. This franchise extends for a period of 20 years from date, and provides certain rates and charges to be made in the town of Delta during the life of such franchise. On April 4, 1914, a supplementary contract was made to the original franchise providing rates for street lighting purposes and extending to January 2, 1916. On March 22, 1916, a contract was entered into between The Western Colorado Power Company and the town of Delta for a new street lighting system, such contract to continue from year to year subject to the approval of the city council.

On January 1, 1915, The Western Colorado Power Company was granted a franchise by the town of Olathe, which franchise extends to February 5, 1933. This franchise provides that the rates charged in the town of Olathe shall be governed by the schedule of rates in effect in either Montrose or Delta, such rates to be selected by the town council, and that when such initial selection has been made the rates shall not thereafter be changed.

Description of Property.

This investigation covers only the property of The Western Colorado Power Company used and useful in supplying electric

service for general lighting and power purposes to the cities of Montrose and Delta, in the town of Olathe, and to a highly developed rural territory tributary to the transmission lines proper and adjacent to Montrose and Delta. The total population served by this property is approximately 7,000, and the communities served are strictly agricultural from every viewpoint.

Prior to 1914, independent and separately owned generating plants were operated in both Montrose and Delta. No electric service of any kind was furnished in Olathe, and the rural business, with the exception of what is known as the Spring Creek Mesa line, was undeveloped. Prior to that time also day service was not furnished in Delta. As heretofore stated, early in 1914 these properties came into the hands of the present owners and the construction of an 11,000 volt, 3 phase, 4 wire, transmission line, together with the necessary transformer sub-stations at Montrose and Delta, was undertaken and completed. This line is 26.3 miles in length, the voltage from any phase to ground being 6,600, so that it lends itself readily to the giving of service to the rural territory along the right of way. Practically all of the rural lines are operated at 6,600 volts, single phase, and are of galvanized iron wire.

Soon after the completion of the transmission line the Delta steam generating plant was closed down and is now operated as a reserve for carrying the load in Delta during interruptions to the transmission line, or at times of very light load the Delta plant may be used to energize the entire system. It is also possible to operate the Delta station in parallel with the Montrose station for the purpose of increasing the generating capacity of the entire system.

The Montrose station consists at this time of three units, having combined capacity of 300 kilowatts, all of which are direct connected to reciprocating engines operating non-condensing. The boiler plant at the Montrose station consists of three 150 horsepower horizontal return tubular boilers. Since the peak load of this system is now slightly in excess of 300 kilowatts the generating equipment at Montrose is hardly adequate, and if one of the units were to become disabled it would be difficult to supply continuous service to the entire system from the Montrose station. It is understood that plans are now being considered for additional generating capacity at the Montrose station and that such equipment will be installed as soon as delivery can be secured.

With the exception of the generating equipment, which has been in use for a number of years, the physical property of the company was reported by the engineers to be in an excellent state of repair. During the past three years the distribution systems at Montrose and Delta have been entirely reconstructed, and the transmission line, together with the rural lines and Olathe distribution system, has been added, so that the outside plant of the company is practically new.

Present Rates.

The principal rates now in effect to the consumers in this part of the territory of The Western Colorado Power Company are as follows:

Commercial Lighting—Montrose and Olathe.

Rate:

15 cents per kilowatt hour for the first 40 hours' use per month of customer's demand.

13 cents per kilowatt hour for the next 40 hours' use per month of customer's demand.

8 cents per kilowatt hour for all additional hours' use per month of customer's demand.

Minimum Guarantee:

$1.35 net per month per consumer.

Prompt Payment Discount:

A discount of 10 per cent is allowed on all bills paid within the discount period.

Commercial Lighting—Delta.

Rate:

15 cents per kilowatt hour of monthly consumption.

Minimum Guarantee:

$1.50 per month net.

Prompt Payment Discount:

The following discounts are allowed on all bills paid within the discount period:

10 per cent on monthly consumptions under 25 Kw. hours.
15 per cent on monthly consumptions of 25 to 50 Kw.hours.
20 per cent on monthly consumptions of 50 to 100 Kw. hours.
25 per cent on monthly consumptions of 100 to 200 Kw. hours.
33 1-3 per cent on monthly consumptions of 200 to 300 Kw. hours.
50 per cent on all monthly consumptions in excess of 300 Kw. hours.

Commercial Power—Montrose, Delta and Olathe.

Rate:

FOR DELIVERY AT 110, 220 or 440 VOLTS.

6 cents per kilowatt hour for the first 60 hours' use per month of connected load.

4 cents per kilowatt hour for all consumption during the month in excess of 60 hours' use of the connected load.

FOR DELIVERY AT 2,300, 4,000, 6,600 or 11,000 VOLTS.

5 cents per kilowatt hour for the first 60 hours' use per month of connected load.

3 cents per kilowatt hour for all consumption during the month in excess of 60 hours' use of the connected load.

Minimum Guarantee:

$1.00 net per month per horsepower of connected load.

Prompt Payment Discount:

A discount of 10 per cent is allowed on all bills paid within the discount period.

Commercial Power—Montrose, Delta and Adjacent Territory.

Rate:

7½ cents per Kw. hour for all consumption during the month.

Minimum Guarantee:

$1.00 net per month per horsepower of connected load.

Prompt Payment Discount:

None.

Commercial Power—Montrose and Contiguous Territory.

Rate:

6 cents per kilowatt hour for the first 30 hours' use per month of connected load.

5 cents per kilowatt hour for the next 30 hours' use per month of connected load.

4 cents per kilowatt hour for the next 30 hours' use per month of connected load.

3 cents per kilowatt hour for all consumption during the month in excess of 90 hours' use of connected load.

Minimum Guarantee:

$1.00 net per month per horsepower of connected load.

Prompt Payment Discount:

A discount of 10 per cent is allowed on all bills paid within the discount period.

Optional Commercial Power Rate—Montrose and Contiguous Territory.

Rate:

10 cents per kilowatt hour for all consumption during the month.

Minimum Guarantee:

50 cents net per month per horsepower of connected load.

Prompt Payment Discount:

None.

Commercial Power—Ranges and Appliances.

Rate:

4 cents per kilowatt hour for the first 50 kilowatt hours' consumption per month.
3 cents per kilowatt hour for all consumption in excess of 50 kilowatt hours per month.

Minimum Guarantee:

$1.50 net per month per consumer.

Prompt Payment Discount:

A discount of 10 per cent is allowed on all bills paid within the discount period.

Street Lighting—Montrose.

Rate:

$7.50 per month for each 6.6 ampere, series enclosed arc lamp when the number of such lamps is less than 34. When 34 or more lamps are in use, a discount of 20 per cent is allowed.
$1.00 per month per lamp for 60 candlepower, 6.6 ampere series incandescent lamps.
$1.75 per month for 80 candlepower series incandescent lamps.
When 10 or more incandescent lamps are in use, a discount of 10 per cent from the above rates is allowed.

Street Lighting—Delta.

Rate:

$7.50 per month per lamp for 6.6 ampere, series enclosed arc lamps.
$1.50 per month per lamp for 60 watt multiple incandescent lamps.

In addition to the foregoing rates the schedules on file with the Commission contain rates for sign and display lighting, irrigation service and a few special rates, such special rates being as a rule lower than those quoted to the regular consumers.

Plant Investment or Book Cost.

The books of the company show that the purchase price of the Montrose, Delta, Ouray and Ridgway properties was $357,776.83, and that the company issued 6 per cent demand notes therefor to The Utah Power & Light Company. After the several adjustments relating to the purchase of these several plants had been completed the purchase price as given above was distributed on the books of the company between the several properties as follows:

Montrose	$153,328.64
Delta	61,331.45
Ouray	122,662.92
Ridgway	20,443.82
Total	$357,766.83

From the above it will be seen that the price paid for the Montrose-Delta properties on January 1, 1914, is represented to be $214,660.09. The basis upon which this amount was apportioned to the Montrose-Delta properties is not clear from the record in this case, so that the Commission is in doubt as to whether or not the above represents the amount actually paid for these properties at the time of purchase.

At the time of the organization of The Western Colorado Power Company in April, 1913, a fund of $250,000.00 was set aside and designated as "Reconstruction Reserve." After the acquisition of the properties in question the reconstruction expenditures required to put them in good physical and service condition were charged to this reserve and not to the plant account. The amount so charged represented, however, payments for permanent inprovements which went into the properties in question. The total of these items thus charged to reconstruction reserve was $20,351.21 from April 1, 1914, to December 31, 1916. There were also charged to the same account additions to plant made from January 1, 1914, to April 1, 1914, in the sum of $1,293.22 (record p. 75). From April 1, 1914, to December 31, 1916, the additions to the Montrose-Delta group of properties for such items as the Olathe distribution system and a transmission line from Montrose to Delta, together with the necessary transformer substations and extensions necessary on account of the growth of the property, amounted to $67,-918.26 (Herbert report, p. 13). Mr. Herbert further directed attention to the fact that the plant account did not include the proportion of the office equipment in the Montrose general office

properly assignable to the Montrose-Delta group of properties. which equipment was appraised by the Commission's engineers at $5,433.00 and of which amount $613.92 should be assigned to the properties in question.

By assembling the foregoing items the following is arrived at as the cost to The Western Colorado Power Company for the properties in question on December 31, 1916:

Book Cost, January 1, 1914	$214,660.09
Additions charged to reconstruction reserve from January 1, 1914, to April 1, 1914	1,293.22
Permanent improvements charged to reconstruction reserve April 1, 1914, to December 31, 1916	20,351.21
Additions charged to plant investment from April 1, 1914, to December 31, 1916	67,918.26
General office equipment	613.92
Total	$304,836.70

While the above amount represents as nearly as may be determined the cost to The Western Colorado Power Company of the properties in question as of December 31, 1916, there are many reasons why it cannot be considered by the Commission as representing either the cost or value of the used and useful property of the respondent at this time. For example, the price actually paid for these properties on January 1, 1914, cannot be definitely determined. Further, the price paid for these properties may have been in excess of their value, and while the expenditures made for permanent improvements and for placing the properties in good service condition are a part of the cost of these properties to the respondent, plant replaced or abandoned at the time of such improvements should have been deducted from the capital account, but this does not appear to have been done.

No records are available from which the original cost of the present property can be determined.

Appraisals.

Two separate and distinct inventories and appraisals of the property of the respondent were submitted in this case, one in behalf of the company by F. B. H. Paine and one in behalf of the Commission's engineering staff by F. J. Rankin. No complete appraisal of the property in behalf of the petitioners or intervenors was submitted to the Commission in this case. The Paine appraisal was based on the cost of reproduction as of December 31, 1916, a

construction period of one and one-half years being assumed. The appraisal by Mr. Rankin was based on the cost of reproducing the property under normal conditions, use being made of average or trend prices throughout. Briefly stated, Mr. Paine, after making allowances for working capital, preliminary organization expense, cost of attaching the business, cost of acquiring money, and for promoters' remuneration, arrived at the sum of $360,282.88 as the amount upon which he contended the respondent should be entitled to earn a fair return. Mr. Rankin in his appraisal made allowances for preliminary organization expenses and working capital, but did not include therein any amounts whatever for the cost of attaching the business, cost of acquiring money, or promoters' remuneration, and arrived at the sum of $237,394.00. A summary of the appraisals submitted by Messrs. Paine and Rankin are set out in tables 1 and 2, respectively.

TABLE No. 1.

SUMMARY OF APPRAISAL SUBMITTED IN BEHALF OF RESPONDENT BY MR. F. B. H. PAINE.

	Items of Cost.	Total Direct Costs.
1.	Land	$ 5,124.00
2.	Buildings	18,810.20
3.	Plant Equipment	57,252.19
*4.	Distribution system	178,169.54
5.	Office furniture and fixtures	5,362.75
6.	Right of Way	2,841.37
†7.	Montrose-Ouray-Silverton Telephone line	523.34
8.	Working Capital (Stores and cash)	26,017.36
‡9.	Incorporation Fee	321.00
10.	Cost of attaching business	25,829.80
		$320,251.45
	Preliminary Organization and Expenses, 2½ per cent	8,006.29
	Cost of acquiring money, 5 per cent	16,012.57
	Promoters' Remuneration, 5 per cent	16,012.57
		$360,282.88

*Includes Substations—$4,541.8259.
†See Property Charges—Exhibit—.
‡Estimate.

TABLE No. 2.

SUMMARY OF APPRAISAL SUBMITTED ON BEHALF OF THE COMMISSION BY MR. F. J. RANKIN.

Acct. No.	Classification	Normal Reproduction Cost.
101.	Organization	$ 5,350.00
102.	Franchises	600.00
105.	Land and Right of Way	5,328.00
106.	Buildings	14,641.00
107.	Steam Power Plant Equipment	26,853.00
111.	Boiler Plant Equipment	18,624.00
113.	Miscellaneous Power Plant Equipment	1,472.00
120.	Transmission System	36,527.00
121.	Sub-station Equipment	4,439.00
140.	Distribution System	57,312.00
141.	Line Transformers	10,514.00
142.	Consumers' Meters	11,433.00
160.	Municipal Lighting System	18,829.00
162.	General Office Equipment	3,758.00
166.	Customers' Installations	1,839.00
168.	Miscellaneous Equipment	1,256.00
169.	Utility Equipment	1,188.00
....	Working Capital	17,431.00
	Total	$237,394.00

The appraisals submitted by the two engineers are not in such form as to permit of ready comparisons Mr. Paine in his appraisal did not follow the classification of accounts prescribed by the Commission for electric utilities, and the two reports are so radically different in the method of building up unit costs and applying construction overheads that a detailed comparison of the two appraisals will not be attempted. The total difference between the two appraisals is apparently $122,889. Attention must be called, however, to the fact that the appraisal by Mr. Rankin did not include any allowances whatever for cost of attaching the business, cost of acquiring money, or promoters' remuneration. By eliminating these items temporarily from the Paine appraisal the real difference in these two appraisals is found to be approximately $65,000.00. Mr. Rankin at the hearing testified that nothing had been included either in the unit costs or construction overheads used in his appraisal to cover the above items, but that

he did not by their exclusion deny the existence of such elements of value.

Exclusive of intangible values the Paine appraisal is in excess of that submitted by the Commission's engineering staff on account of (a) slight differences in inventories, (b) higher labor and material prices, and (c) higher construction overheads.

The differences in inventories, upon which the two appraisals were based, come about on account of differences in classification. Mr. Paine in his reproduction theory estimated the cost of reproducing the plant with standard equipment. For example, although a large quantity of the copper wire in the distribution system is single-braid and double-braid wire, Mr. Paine considered that in reproducing this property triple-braid wire would be used. This was true likewise in the case of cross-arms, guys, anchors and numerous other items of plant equipment. Counsel for the respondent argued that these differences were slight, but it must be remembered that the difference is not only in the cost of material, but that the allowances made for field supervision and tool expense, purchasing, storeroom expense, and for general construction overheads, as well as for the cost of money and promoters' remuneration, are increased on account of such assumption. Mr. Paine further included in his appraisal a 45-kilowatt engine driven generator at the Delta station, which was not installed for service, but on the other hand had been discarded for a number of years and was not in operating condition. A memorandum submitted with Mr. Paine's appraisal states that this unit is not installed, and is no longer serviceable. No contention was made by the respondent that this unit should be considered in determining the value of this property, although it was included as a part of the Paine appraisal.

The material prices used by Mr. Paine were, with the exception of copper wire, quite generally based on the market prices prevailing at the time—December 31, 1916. Mr. Paine testified that his material prices were not representative of the market conditions prevailing at the time of his appraisal, but that on the other hand such prices were representative of a reasonable average weighted price of a reasonable number of years. Further examination of Mr. Paine's appraisal, however, discloses the fact that his material prices were based almost entirely upon prices furinshed by the purchasing department of The Utah Power & Light Company, and there is nothing in the record to show that these were not the actual market prices then in effect. An

examination of such material prices shows that they are in some cases as much as 100 per cent in excess of the average prices paid by the respondent during the four or five-year period immediately preceding this investigation. The Commission can in no wise countenance reproduction estimates based strictly upon market conditions as of any definite date, and especially is this true as to the war prices prevailing on or about December 31, 1916.

The allowance made by Mr. Paine to cover the item of construction overheads is in excess of that made by the Commission's engineer, for the reason that the percentages applied by Mr. Paine are in themselves higher, and for the further reason that Mr. Paine's percentages were applied to a much higher base. Each engineer made use of what might be termed "direct" and "indirect" overheads. In the build up of unit costs Mr. Rankin, for the Commission, included therein certain allowances for such items as supply expense, field supervision and tool expense, employes' liability insurance and for incidentals. Mr. Paine included in his unit costs, in addition to labor and material, allowances for such items as incidental material, breakage, loss and waste in the field, inspection, purchasing, unloading, stores and supply expense, hauling and livery, tools and construction appliances, labor at the shop or yard, labor at the point of use, liability insurance, construction superintendence and contingencies.

In the opinion of the Commission the appraisal submitted by Mr. Paine furnishes an excellent illustration of the shortcomings of a strict reproduction theory in the appraisal of public utility properties. At the outset Mr. Paine assumed a reproduction period of eighteen months. A construction engineer with two assistants and three timekeepers were to be employed, and would have no other duties for a period of a year and a half. Storehouses were to be maintained for eighteen months with a storekeeper in charge of each at the towns of Montrose, Delta and Olathe. A purchasing agent would be employed, though he would presumably have other duties. Consulting engineers and architects would receive in the enighborhood of $11,000.00. Approximately $7,000.00 would be paid to administrative officers, and $10,500.00 would further be required for building up a construction organization. Solicitors would be put to work, and their pay and expenses during the developmental period would amount to $25,000.00. Financial agents would receive $16,000.00, and the individual who conceived the idea that the residents of the community might be induced to make use of electric service would re-

ceive a like amount. It does not surprise the Commission that counsel for the city of Montrose inquired of Mr. Paine whether he knew of any properties, constructed according to his plan, which were successful enterprises.

The average consumer of service in the towns of Montrose and Delta is fully aware of the fact that public utility properties of this size are not constructed according to the plan outlined by Mr. Paine. At Olathe, for example, where Mr. Paine would erect a storeroom and maintain it with a storekeeper for a year and a half, and, in addition, require a portion of the services of the construction engineer and his assistants, the entire property was actually built some two years ago and placed in service in less than three months. Just what duties this corps of engineers, assistants, storekeepers, timekeepers, purchasing agents and the like would have in a town of 600 people for 18 months is not clear to this Commission. The transmission line from Montrose to Delta furnishes another excellent illustration. This line was constructed in the fall of 1914, the construction period not exceeding five months, at a total cost to the company of $29,477.24. Under Mr. Paine's plan, which he maintained would be the most economical one, the company would spend 18 months in the construction of this line, and the "field cost" alone would amount to $36,133.00. Construction overheads would bring this amount up to $45,000.00, and organization expense, promoters' remuneration and cost of money would make the cost in excess of $50,000.00.

No doubt all of the things outlined by Mr. Paine would need to be done in building this property under any plan, but on account of its size the supervising engineer would in all probability be the consulting engineer as well, would act as purchasing agent, and would be the administrative officer on the ground during the construction period. Likewise storekeepers would also act as timekeepers, and might even drive trucks and assist in the general construction work.

Reproduction Cost Less Depreciation.

No estimate of the accrued depreciation on this property was submitted in behalf of the respondent. The Commission's engineering staff estimated that the accrued depreciation on the physical property as of December 31, 1916, amounted to $36,423.00. Mr. Paine maintained throughout the proceedings in this case that the physical property was in good service condition, and

that no deduction on account of accrued depreciation should be made in valuing it for rate-making purposes.

Working Capital.

Mr. Paine included in his report an allowance of $24,140.00 for working capital, and added thereto 7 per cent for taxes, interest and administrative expense, making the total amount claimed for this item $26,017.36. Mr. Rankin included in his report an allowance of $17,431.00, which was based upon a study made by Mr. Herbert, statistician of the Commission. The difference between the allowances made comes about largely by reason of the fact that in his analysis Mr. Herbet made deductions on account of current liabilities. He further deducted from the material and supplies on hand the estimated amount of such materials carried for construction purposes. In the opinion of the Commission materials and supplies carried for the purpose of construction should not be included in arriving at the allowance to be made for working capital, and the Commission is further of the opinion that deduction should be made for current liabilities, such as bills payable and consumers' deposits. The addition by Mr. Paine of 7 per cent for interest, taxes, etc., to the working capital allowance was not proper.

Cost of Money and Promoters' Remuneration.

Mr. Paine testified that the cost of acquiring the necessary funds with which to construct the property and develop its business, as well as promoters' remuneration, comprised a part of the cost of the enterprise, and requested an allowance of $32,025.00 for these items. This Commission has previously refused to make any allowance for the cost of acquiring money so that Mr. Paine's testimony covering this subject does not need to be discussed at length at this time. In Case No. 24, In re Investigation of the Reasonableness of the Rates and Charges of The Colorado Springs Light, Heat & Power Company, decided July 31, 1917, this Commission refused to make an allowance for bond discount, and in that case said:

> "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."

Claims frequently have been made for allowances for promoter's remuneration in valuation cases before public service commissions, but a review of a large number of commission decisions indicates that allowances have rarely been made therefor. The elements of cost that should be covered by or included in promoter's remuneration vary widely with appraisers of public utility properties. In some cases promoters' remuneration has been taken to include preliminary organization expenses, expenses preliminary to construction, such as preliminary surveys; engineering investigations and the like to determine the feasibility of the project and the cost of securing money. In the present case the respondent, through its witness Mr. Paine, requested an allowance for promoter's remuneration in the sum of $16,012.57 as "a remuneration to the person or organization responsible for obtaining the capital needs of the corporation to enable it to render service as and when needed by the public." The respondent requests the allowance of a like amount for the cost of acquiring

money and an additional allowance for preliminary organization and expenses prior to the construction of the physical property.

It is true that in addition to the value of its physical property the respondent is entitled to have considered as a part of its assets on which it is entitled to earn a return such amounts of money as it would be necessary to expend in the way of fees to the state, for legal expenses and the like in the formation of the corporation, and the actual or estimated cost of securing the franchises in the communities in which it operates. Under the headings of organization expense and franchises, the Commission in this case will allow approximately $6,000 for such expenditures.

Since there is nothing in the record in this case to show that the services of a promoter would be required or that such service would be of any value to the respondent, the item of promoter's remuneration except insofar as it has been included in organization expense and in general and miscellaneous expenses and construction expenditures is disallowed.

Cost of Attaching the Business.

That this is an element of value which must have adequate recognition in fixing the value of a public utility property for rate-making purposes has been fully recognized by the Commission in previous cases, and in the final determination of the fair value of this property for rate-making purposes this element of value will be given full consideration. In respondent's exhibit No. 4 Mr. Paine presented an estimate of what in his opinion it would cost to secure the consumers and volume of business enjoyed by the company at this time. According to Mr. Paine's testimony it would require a period of two years to secure the present business. The soliciting force would be gathered together at the very beginning of the construction period and it would be necessary to see customers many times before inducing them to take the service offered by the company. An agent would be employed and placed in general charge of soliciting the business. Associated with him would be an engineer who would solicit power business and spend a large portion of his time suggesting the proper installations for stores, offices, shops and residences. Two field salesmen would be employed who would approach every possible consumer, and on account of the alleged difficulty in inducing them to take the service it would be necessary for these salesmen to see each of such consumers numerous times. In addition, an office salesman would be

in charge of selling supplies, such as lamps and domestic appliances, and would have general charge of the routine order work. Stenographers, clerks and office boys attached to the office of the general agent would perform the usual duties in connection with cataloging consumers, listing their equipment, handling correspondence and other matters of that nature. The salaries and expenses of this department were itemized by Mr. Paine as follows:

Agent	$ 2,400.00 per year
Engineer	1,800.00 per year
Two field salesmen	2,400.00 per year
One office salesman	1,200.00 per year
Two stenographers	1,300.00 per year
One office boy	260.00 per year
Rent	360.00 per year
Postage and other petty disbursements	850.00 per year
Auto services	500.00 per year
Advertising of all kinds	1,000.00 per year
Total	$12,070.00 per year

Mr. Paine further called attention to the fact that for the two-year period ended December 31, 1916, the respondent spent in soliciting new business the sum of $6,041.41, and during that period made a net gain of 264 consumers. This was an average of $22.88 per consumer, whereas the cost per consumer according to Mr. Paine's plan would amount to only $16.31.

Estimates of a similar nature have been submitted to the Commission in other cases, but the Commission has never given them serious consideration. No doubt if the territory in question were without this service it would cost the company something to secure its present consumers, but the majority of these would demand service before the plant could be constructed and placed in operation. Further, according to the present accounting practices, the cost of soliciting new business is considered an operating expense and cannot be included as a part of the fixed capital accounts. If the Commission were to recognize the principle that the cost of securing new consumers should be capitalized, a corresponding reduction in the operating expenses of the utility would of course at once result.

Fair Value for Rate-Making Purposes.

After giving full consideration to the evidence bearing on the value of the respondent's property used and useful in supply-

ing electric service and considering that property as a going concern with an established business and in successful operation, the Commission finds that the fair value for rate-making purposes of the property used and useful in supplying electric service in the communities involved is $250,000.00. 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 made no deduction on account of accrued depreciation.

Revenues and Expenses.

The revenues and expenses of this property for the year ended December 31, 1916, are set out in Table No. 3. This statement shows that the operating revenue for that year amounted to $54,637.80 and the operating expenses $45,126.69, leaving the net income from operation available for depreciation and a return on the investment $9,511.11. Included in the item of general expense is the sum of $1,541.43 for valuation expense. This amount will be deducted from operating expenses, for the reason that if allowable at all it should not be included in the operations of any one year. Deducting this amount for the year 1916 leaves $11,052.54 as the net income available for depreciation and a return on the investment.

TABLE No. 3.

REVENUES AND EXPENSES FOR THE YEAR ENDED DECEMBER 31, 1916, AS SUBMITTED IN BEHALF OF THE COMMISSION BY MR. F. W. HERBERT.

	Operating Revenues—	
501.	Commercial Lighting	$39,231.98
502.	Municipal Lighting	5,543.36
503.	Commercial Power	5,132.34
503a.	Heating and Cooking	1,351.16
506.	Merchandise and Jobbing (net)	2,704.31
507.	Miscellaneous Revenue	674.65
	Total Operating Revenue	$54,637.80

	Operating Expenses—	
600.	Steam Power Generation	$16,981.52
671.	Transmission	117.08
680.	Sub-stations	75.69
700.	Distribution	4,617.67
720.	Utilization	455.18
740.	Commercial	5,374.03
745.	New Business	2,719.11
760.	General Expense	9,877.37
779.	Taxes	4,909.04
	Total Operating Expenses	$45,126.69
	Net Income from Operation	$ 9,511.11

Annual Depreciation Requirement.

Mr. Rankin estimated the annual depreciation requirement for this property on a 5 per cent sinking fund basis at $4,161.00 and on the straight line basis at $7,933.00. Mr. Paine agreed that a moderate reserve would be desirable, but pointed out that there was nothing to indicate that the company had ever had revenues sufficient to permit it to establish such a reserve or that without increased revenues it would be able to do so. He stated that in his opinion 3 per cent per annum would be a reasonable allowance, but did not indicate the base to which this percentage should be applied. The Commission is of the opinion that $4,000.00 per annum to be set aside on the 5 per cent sinking fund basis is a reasonable allowance for the property at this time.

Rate of Return.

Mr. Paine testified that the permissible rate of return in this case should not be less than 10 per cent, and that considering the location, character and extent of the community served, capital could not be obtained at a lower rate. He further testified that if this property were not connected with the property of The Western Colorado Power Company and, through it, with The Utah Power & Light Company, a rate of return of 12 per cent would be necessary in order to secure the necessary capital. Evidence was further adduced in this case to the effect that interest on mortgage loans ran from 5 per cent to 8 per cent in El Paso county, the average being about 6 per cent, whereas the prevailing interest rate in both Montrose and Delta counties was about 8 per cent, and that this was the rate which had prevailed for some time. The

Commission is of the opinion that 8 per cent is a reasonable rate of return to be allowed in this case.

From the foregoing findings it is apparent that the respondent is not earning in excess of a fair return on the fair value of the properties in question and that no material changes in the rates and charges should be made at this time, especially in view of the abnormal conditions brought about by the war. The Commission is of the opinion, however, that the respondent should file with the Commission a new schedule of rates to apply to the consumers involved in these proceedings and that all special rates should be abandoned. The several power schedules now in effect, on some of which there are no consumers, should be cancelled and one general tariff with suitable provisions for the different classes of service should be filed instead. The minimum monthly guarantee for commercial and domestic consumers should be made uniform throughout the entire territory, except that a slightly higher minimum monthly guarantee may be required of consumers outside the limits of incorporated towns. Such minimum monthly guarantee may be based either on the demand or connected load of commercial consumers and on the number of active rooms of residence consumers, but in any event it should not be less than $1.25 net per month per consumer.

The Commission is of the opinion that the present rates for street lighting now in force and effect are not excessive, and no changes in such rates will be made at this time.

ORDER.

IT IS THEREFORE ORDERED, That the rates and charges for electric service which shall hereafter be observed and enforced by The Western Colorado Power Company in the territory served by its Montrose and Delta plants shall be as follows:

Plant Investment or Book Cost.
Residence Lighting.

Rate:

First 3 kilowatt hours of consumption per active room per month, 15 cents per kilowatt hour.
Next 3 kilowatt hours of consumption per active room per month, 8 cents per kilowatt hour.
For all monthly consumption in excess of 6 kilowatt hours per active room per month, 3 cents per kilowatt hour.

Application of Rate:

This rate applies to alternating current service supplied at 110 or 220 volts for the lighting of private residences or apartment houses, including the lighting of barns and private garages.

This rate may also be used at the option of the consumer as a combination rate to include in addition to lighting, service for cooking, heating, small power and rectifier sets, provided the entire service is taken through one meter.

Prompt Payment Discount:

A discount of 10 per cent on the above rates will be allowed on all bills paid within ten days from the date thereof.

Minimum Monthly Guarantee in Incorporated Towns:

The minimum monthly guarantee for consumers using service for lighting purposes only shall be $1.35 gross or $1.25 net for residences of five active rooms or less.

For residences of more than five active rooms the minimum monthly guarantee shall be $1.35 for the first five active rooms and 10 cents for each additional active room, with a discount of 10 per cent on the entire minimum bill for prompt payment.

Minimum Monthly Guarantee Outside the Limits of Incorporated Cities and Towns:

The minimum monthly guarantee for consumers using service for lighting purposes only shall be $1.50 gross for residences of five active rooms or less, with a discount of 10 per cent for payment during the discount period.

For residences of more than five active rooms the minimum monthly guarantee shall be $1.50 for the first five active rooms and 15 cents for each additional active room, with a discount of 10 per cent on the entire minimum bill for prompt payment.

Additional Minimum Monthly Guarantee:

Consumers making use of this rate as a combination rate for lighting, heating, cooking and general power purposes, shall guarantee, in addition to the above minimum guarantees, 50 cents per month per horsepower of the aggregate connected load of such equipment, exclusive of standard lamp socket appliances.

Limit of Motors, Rectifiers, etc.:

Motors: 3 horsepower total capacity, single phase, 110 or 220 volts.
Rectifiers: 5 K. W. capacity, 110 or 220 volts.

Active Rooms:

No residence shall be considered as consisting of less than three active rooms for the purpose of computing monthly bills.

All rooms in residence shall be considered as active with the exception of the following:

Attics, unfinished,

Basements,

Bathrooms,
Closets,
Hallways, not used as living or reception rooms,
Porches,
Laundries,
Pantries,
Sleeping porches, unheated,
Vestibules.

Garages or barns, if lighted, shall be considered as one active room.

Each sleeping or living room in barns or garages shall be considered as an active room.

Each apartment shall be considered as a separate residence.

When the lighting in the hallways or apartments is paid for by the owner, four apartments or fraction thereof shall be considered as one active room.

The lighting of janitor's quarters in apartment buildings when paid for by the owner shall likewise be considered as one active room.

Public lighting other than the above used on the premises of apartment buildings shall not be considered as increasing the number of active rooms for the purpose of computing monthly bills.

Commercial Lighting.

Rate:

For the first 40 hours' use per month of active demand, 15 cents per kilowatt hour.

For the next 40 hours' use per month of active demand, 12 cents per kilowatt hour.

For the next 100 hours' use per month of active demand, 8 cents per kilowatt hour.

For the next 100 hours' use per month of active demand, 5 cents per kilowatt hour.

For all consumption in excess of 280 hours' use per month of active demand, 2½ cents per kilowatt hour.

Application of Rate:

This rate shall apply to alternating current service supplied at 110 or 220 volts for the lighting of commercial establishments.

Standard lamp socket appliances may be used under this rate but shall not be considered as constituting a part of the consumers' active demand.

Active Demand:

The active demand shall be considered as 80 per cent of the consumers' connected lighting load.

Prompt Payment Discount:

A discount of 10 per cent on the above rates will be allowed for payment within 10 days from the date thereof.

Minimum Monthly Guarantee:

For consumers having a connected load of 1,000 watts or less, the minimum monthly guarantee shall be $1.35 gross or $1.25 net.

Consumers having connected loads in excess of 1,000 watts shall guarantee a minimum monthly bill of $1.35 for the first 1,000 watts of connected load, plus

10 cents for each additional 100 watts of connected load, subject to a discount of 10 per cent on the entire minimum bill for payment within the discount period.

Commercial Power.

Rate:

A fixed charge of $1.00 per month per horsepower of maximum demand, plus an energy charge of

4 cents per kilowatt hour for the first 200 kilowatt hours of monthly consumption,

3 cents per kilowatt hour for the next 300 kilowatt hours of monthly consumption,

2¼ cents per kilowatt hour for all consumption during the month in excess of 500 kilowatt hours.

Availability:

This rate shall be available to all power consumers using the company's standard alternating current service for power purposes.

Determination of Maximum Demand:

The maximum demand to be considered and paid for hereunder shall be the highest five minute peak previously recorded by demand meter, or as determined by suitable indicating instruments, provided that for connected loads of 20 horsepower or less the company may at its option consider the demand in horsepower as equivalent to the total connected load in horsepower as determined from the name plate ratings of the motor or motors connected.

No consumer's installation shall be considered as having a maximum demand of less than one horsepower.

Prompt Payment Discounts:

On service delivered and metered at 110, 220 or 440 volts, a discount of 5 per cent will be allowed from the above rates for payment within the discount period.

On service delivered and metered at 2,300 volts or higher, a discount of 10 per cent will be allowed from the above rates for payment within the discount period, provided the consumer furnishes at his own expense such transformers as are required.

Minimum Monthly Guarantee:

$1.00 net per month per horsepower of maximum demand as defined herein, provided that consumers using power for seasonal,

standby, or breakdown service shall guarantee a net revenue of not less than $10.00 per year per horsepower of connected load.

Power Factor:

The consumer shall at all times take 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 85 per cent or less, the demand to be charged and paid for shall be obtained by multiplying the actual demand by 85 and dividing this product by the actual power factor. This requirement shall not apply to consumers having connected loads of 30 horsepower or less.

Domestic Fuel.

Rate:

First 50 kilowatt hours of monthly consumption, 4 cents per kilowatt hour.

For all consumption in excess of 50 kilowatt hours per month, 3 cents per kilowatt hour.

Prompt Payment Discount:

A discount of 10 per cent will be allowed on all bills paid within the discount period.

Minimum Monthly Guarantee:

The consumer must guarantee a minimum monthly bill of not less than $1.50 gross or $1.35 net.

Application of Rate:

This rate shall apply to consumers using service for domestic ranges and appliances only.

Sign Lighting.

Rate:

5 watt lamps—rates per lamp per year:

	Hours of Burning		
	Dusk to 11:00 p. m.	Dusk to Midnight	Dusk to 1:00 a. m.
Sign Operated Continuously—			
First 200 lamps	$0.64	$0.75	$0.84
Next 100 lamps	.55	.63	.71
Next 100 lamps	.46	.54	.62
Next 200 lamps	.37	.44	.51
All over 600 lamps	.27	.32	.37
Sign Operated by Flasher—			
First 200 lamps	.45	.53	.59
Next 100 lamps	.39	.44	.50
Next 100 lamps	.32	.38	.43
Next 200 lamps	.26	.31	.36
All over 600 lamps	.19	.22	.26

Charge for Renewals and Maintenance:

Where sign is operated continuously, $0.015 per 5 watt lamp per month.

Where sign is operated by flasher, $0.02 per 5 watt lamp per month.

Prompt Payment Discount:

The above rates are net and payable monthly in advance.

Terms and Conditions:

The above rates include energy, lamp renewals, maintenance and patrol service in those towns in which patrol service is maintained by the company. The complete installation of the sign, including the first installation of lamps, must be made at the expense of the consumer. Where no patrol service is maintained by the company a satisfactory time switch must be installed at the consumers' expense.

Window Lighting.

Rates Per Lamp Per Month:

Nominal Candle-power.	Number of lamps of each size installed									
	1	2	3	4	5	6	7	8	9	10 or more
Burning from Dusk to 10 p. m.										
70	$1.30	$1.05	$0.95	$0.85	$0.80	$0.75	$0.70	$0.65	$0.60	$0.55
100	1.65	1.40	1.30	1.20	1.10	1.05	1.00	.95	.90	.85
220	2.80	2.35	2.15	1.95	1.80	1.70	1.65	1.60	1.55	1.50
370	3.10	2.75	2.50	2.30	2.20	2.15	2.10	2.05	2.00	1.95
490	3.85	3.45	3.15	2.95	2.85	2.80	2.75	2.70	2.65	2.60
640	4.70	4.05	3.70	3.50	3.40	3.30	3.25	3.20	3.15	3.10
Burning from Dusk to 11 p. m.										
70	1.40	1.15	1.05	.95	.90	.85	.80	.75	.70	.65
100	1.75	1.50	1.40	1.30	1.20	1.15	1.10	1.05	1.00	.95
220	3.05	2.50	2.30	2.10	1.95	1.85	1.80	1.75	1.70	1.65
370	3.45	3.10	2.90	2.70	2.60	2.50	2.45	2.40	2.35	2.30
490	4.35	3.85	3.55	3.35	3.25	3.15	3.10	3.05	3.00	2.95
640	5.30	4.55	4.20	4.00	3.90	3.80	3.75	3.70	3.65	3.60
Burning from Dusk to Midnight.										
70	1.50	1.25	1.10	1.05	1.00	.95	.90	.85	.80	.75
100	1.85	1.65	1.50	1.40	1.30	1.25	1.20	1.15	1.10	1.05
220	3.30	2.65	2.45	2.25	2.10	2.00	1.95	1.90	1.85	1.80
370	3.80	3.30	3.00	2.90	2.80	2.75	2.70	2.65	2.60	2.55
490	4.80	4.25	3.90	3.75	3.65	3.60	3.55	3.50	3.45	3.40
640	5.90	5.05	4.65	4.45	4.35	4.25	4.20	4.15	4.10	4.05

Prompt Payment Discount:

All bills for window lighting service are payable monthly in advance. A discount of 10 per cent from the above rates will be allowed on monthly bills for payment at the office of the company during the 10-day period succeeding the date thereof.

Terms and Conditions:

The above schedule shall apply to service for special circuits permanently installed for the interior lighting of display windows only, provided the consumer furnishes all necessary inside wiring and fixtures except lamps. These rates include lamp renewals, energy and patrol service in towns in which patrol service is maintained by the company. Where patrol service is not maintained by the company a satisfactory time switch will be installed at the expense of the consumer.

Outside Lighting.

Rate:

Hours of Burning	Size of Lamp.	Rate per Lamp per Month First Lamp	Each Additional Lamp
Dusk to 10 p. m.....	220 Candlepower	$2.80	$2.50
	370 Candlepower	3.10	2.75
	490 Candlepower	3.85	3.40
	640 Candlepower	4.70	4.20
	1,000 Candlepower	6.20	5.20
	1,430 Candlepower	7.80	6.40
Dusk to 11 p. m.....	220 Candlepower	3.05	2.75
	370 Candlepower	3.45	3.10
	490 Candlepower	4.35	3.90
	640 Candlepower	5.30	4.75
	1,000 Candlepower	6.95	5.90
	1,430 Candlepower	8.75	7.35
Dusk to Midnight	220 Candlepower	3.30	3.00
	370 Candlepower	3.80	3.40
	490 Candlepower	4.80	4.35
	640 Candlepower	5.90	5.30
	1,000 Candlepower	7.70	6.60
	1,430 Candlepower	9.70	8.30
Dusk to 1:00 a. m.....	220 Candlepower	3.50	3.20
	370 Candlepower	4.20	3.80
	490 Candlepower	5.30	4.80
	640 Candlepower	6.60	5.90
	1,000 Candlepower	8.50	7.30
	1,430 Candlepower	10.80	9.30

Prompt Payment Discount:

Bills for outside lighting service are payable monthly in advance. A discount of 10 per cent will be allowed from the above rates on all bills for payment at the office of the company within 10 days from the date hereof.

Terms and Conditions:

This schedule includes the first installation of reflectors, lamps, control switches (except time switches) and wiring, together with main-

tenance, lamp renewals and patrol service and all energy required in the communities in which patrol service is maintained by the company. Where patrol service is not maintained by the company a satisfactory time switch shall be installed at the expense of the consumer.

IT IS FURTHER ORDERED, That such schedules of rates and charges for electric service shall become effective on April 1, 1918, and shall apply to all service rendered on and after that date.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 12th day of March, 1918.

DECISION NO. 163.

IN THE MATTER OF THE APPLICATION OF THE DENVER & SALT LAKE RAILROAD COMPANY, AND W. R. FREEMAN AND C. BOETTCHER, RECEIVERS, FOR PERMISSION TO INCREASE RATES ON LUMBER.

Application No. 8.

March 18, 1918.

APPEARANCES: Smith, Brock & Ferguson, by Elmer Brock, for applicant.

STATEMENT.

By the Commission:

This proceeding arises upon application of The Denver & Salt Lake Railroad Company, W. R. Freeman and C. Boettcher, receivers, for permission to increase the rates on lumber and forest products between points upon the applicant's line. The application filed with the Commission alleges that the present rates are unreasonably low, unjust and unfair to the applicant and do not afford a reasonable, adequate or compensatory return for the service performed in connection with the transportation of lumber and forest products. The increase proposed is two cents per hundred pounds from all shipping points on the applicant's line.

Tariffs previously had been filed with the Commission, effective June 18, 1916, proposing increases in the rates on lumber substantially as applied for in this proceeding, but were permanently suspended by the Commission, in In re Lumber Rates on D. & S. L. R. R., 3 Colo. P. U. C. 299. In the former proceeding the respondent sought to have the Commission apply the cost of service as the sole test of the reasonableness of the rates therein under review.

And in that proceeding the respondent did not seek to increase its schedule of lumber rates as a whole, but proposed increases between certain points only, leaving the remaining rates unchanged. The Commission held that the burden of proof had not been met by the respondent and that the justification for the proposed increases in rates had not been shown, and therefore ordered the respondent to cancel the tariffs under suspension. The decision of the Commission fully sets forth the operating conditions encountered by the respondent on its line of railroad, and also sets forth statistics of operations in connection with the transportation of lumber.
In the instant cause the applicant proposes a schedule which will result in corresponding increases from all the lumber shipping points on its line. A communication addressed to the receivers of the applicant and signed by shippers representing approximately 95 per cent of the lumber traffic has been filed in this cause by the applicant in support of the rates applied for.

At the request of counsel for the applicant, the testimony of witnesses for the applicant as introduced into the record in the former proceeding has been made and considered a part of the record in this cause. In addition thereto testimony has been placed in this record by witnesses for the applicant as evidence showing the increases in the cost of transportation.

Since the objection to the rates proposed in the prior proceeding has been removed by the proposal of a proper alignment of rates from all points of origination, since no objection has been made by any person or party to the proposed rates, and since the conditions existing at the time of the Commission's decision in the former cause have materially changed so as to justify the increase, the Commission is of the opinion that permission should be granted to the applicant to increase the rates on lumber as proposed and set forth in its application.

ORDER.

IT IS THEREFORE ORDERED, That the applicant be, and it is hereby, permitted and allowed to establish, on not less than five days' notice to the Commission and to the public by filing and posting in the manner prescribed in the Act, rates on lumber, carloads, as described in item 300 in the applicant's tariff Colo. P. U. C. No. 25, in cents per hundred pounds, which shall not exceed the following, and which shall not be exceeded from points not named herein and located between any two points of origination named:

	TO			
FROM	Denver	Swadley	Leyden Jct.	Rollinsville
Newcomb	10	10	10	..
Ladora	10	10	10	..
Dixie Lake	10	10	10	..
Tabernash	12	12	12	11
Kremmling	12	12	12	11
Yampa	15	15	15	..
Steamboat Springs	16	16	16	..

IT IS FURTHER ORDERED, That the applicant be, and it is hereby, permitted and allowed to cancel, on not less than five days' notice to the Commission and to the public by filing and posting in the manner prescribed in the Act, the rates on mine props and mine ties to Leyden Junction as now contained in Item 960 of the applicant's tariff Colo. P. U. C. No. 26.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 18th day of March, 1918.

Decision No. 164.

IN THE MATTER OF THE APPLICATION OF THE CRYSTAL RIVER & SAN JUAN RAILROAD COMPANY TO DISCONTINUE OPERATIONS.

Application No. 5.

March 27, 1918.

(Extension of Order.)

WHEREAS, Order was entered in the above application on October 27, 1917, that The Crystal River & San Juan Railroad Company be permitted to discontinue operation upon its line of railroad until April 1, 1918, unless such order be modified or extended by the Commission, and the said Railroad Company has, on March 27, 1918, made and filed with the Commission written application for the cessation of operation of said railroad for the further period of six (6) months from April 1, 1918, for the same reasons appearing in the original petition herein.

IT IS THEREFORE ORDERED, That the permission for discontinuance of operation, heretofore granted to The Crystal River & San Juan Railroad Company of its line of railroad, be and is hereby extended to May 1, 1918, unless this order be modified or extended by the Commission; in order that any protests may be considered and to enable the Commission to make such further investigation and decision upon the application of said Railroad Company for extension of order as may be deemed advisable.

(SEAL)

GEO. T. BRADLEY,
LEROY WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 27th day of March, 1918.

DECISION NO. 165.

IN THE MATTER OF THE APPLICATION OF THE DENVER AND RIO GRANDE RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT RAILROAD TRACKS ACROSS NINTH STREET AND WALNUT STREET, IN THE CITY AND COUNTY OF DENVER, COLORADO.

Application No. 14.

April 3, 1918.

STATEMENT.

By the Commission:

This proceeding arises upon application from The Denver and Rio Grande Railroad Company, in compliance with Section 29 of the Public Utilities Act of Colorado as amended April 16, 1917, for permission to construct trackage over and across Ninth Street, and over and across Walnut Street, in the city and county of Denver, Colorado, to serve the Tivoli Union Brewing Company.

There appearing no reason why this application should not be granted and it appearing further that in Ordinance No. 11, Series of 1918, the applicant has obtained authority from the city and county of Denver to occupy the above named streets, the Commission will issue an order permitting the construction of this trackage in conformity with the provisions of Section 29 of the Public Utilities Act of Colorado as amended April 16, 1917.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, The Denver and Rio Grande Railroad Company be, and it is hereby, permitted to construct a railroad track at grade commencing at a switch to be placed in an existing railroad track in Ninth Street

in the city and county of Denver, near the northwesterly side line of Walnut Street, thence extending on a curve southeasterly and easterly across Walnut Street and Ninth Street and entering Block 39 at a point 138 feet southeasterly from the southeasterly side line of Walnut Street and continuing across the alley near the center of said Block 39 in West Denver; also an additional track beginning at a switch to be placed in the track heretofore described at or near its crossing of the Mill Ditch in Ninth Street, thence extending southeasterly across the easterly portion of said Ninth Street and across said alley in Block 39 on the southerly side of and within 30 feet from the track heretofore described.

The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of these crossings 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) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 3rd day of April, 1918.

DECISION NO. 166.

IN RE ADVANCES OF 10 AND 15 CENTS PER TON IN COAL, COKE AND COKE BREEZE RATES IN COLORADO.

Investigation and Suspension Docket No. 11.

April 19, 1918.

APPEARANCES:

For Respondents:

Henry T. Rogers, G. W. Oliver, and J. J. Coleman for The Atchison, Topeka & Santa Fe Railway Co.

E. E. Whitted, A. S. Brooks and F. Montmorency for Chicago, Burlington & Quincy Railroad Co.

W. V. Hodges, D. E. Wilson and H. L. McReynolds for The Chicago, Rock Island & Pacific Railway Co.

E. E. Whitted, A. S. Brooks and B. B. Greer for The Colorado & Southern Railway Co.

Gerald Hughes and W. M. Bond, Jr., for The Colorado Midland Railroad Co.

C. C. Hamlin and J. H. Rothrock for The Cripple Creek & Colorado Springs Railroad Co.

J. Q. Dier for The Denver & Inter-Mountain Railroad Co.

E. N. Clark and J. G. McMurry for The Denver & Rio Grande Railroad Co.

Smith, Brock & Ferguson, by Elmer Brock, and W. H. Paul for The Denver & Salt Lake Railroad Co., W. R. Freeman and C. Boettcher, Receivers.

C. E. Warner for Missouri Pacific Railroad Co.

E. N. Clark and J. G. McMurry for The Rio Grande Southern Railroad Co.

C. C. Dorsey and J. Q. Dier for the Union Pacific Railroad Co.

For Protestants:

Carle Whitehead and A. L. Vogl for the Consumers' League of Colorado.

Paul W. Lee for The Western Light & Power Co.

Chinn & Strickler for The Colorado Springs & Interurban Railway Co., The Portland Gold Mining Co., and the Chamber of Commerce of Colorado Springs.

STATEMENT.

By the Commission:

This proceeding arises from an order entered by the Commission on the 8th day of August, 1917, suspending various schedules of rates contained in tariffs filed by the carriers in Colorado, in which blanket increases in all coal, coke and coke breeze rates were proposed, and entering upon an investigation to determine the reasonableness of the proposed rates. The tariffs were filed by, or on behalf of, twenty-one of the carriers operating wholly or in part in the state of Colorado, and provide for a general increase on intrastate traffic of 10 cents per ton in rates of 75 cents or less, and 15 cents per ton in rates of more than 75 cents. The tariffs under suspension were filed by the carriers following the filing of tariffs providing for a blanket increase of 15 cents per ton in the rates on coal, coke and coke breeze between interstate points, filed with the Interstate Commerce Commission under authority contained in its order in the "Fifteen Per Cent Case," decided June 27, 1917, and found at 45 I. C. C. 303, at page 322. The authority of that Commission and the tariffs filed thereunder provided for a blanket increase of 15 cents per ton in the rates on coal and coke, whereas the tariffs herein under suspension provide for 10 cents increase on rates of 75 cents or less, and 15 cents increase on rates of more than 75 cents.

The tariffs filed with this Commission were proposed to become effective August 27, 1917, and certain dates subsequent thereto. The Commission deemed that the rights and interests of the public appeared to be injuriously affected by the proposed increases and therefore deferred the operation of the schedules until the 25th day of December, 1917, and entered upon an investigation and hearing concerning the propriety of the increases and the lawfulness of the schedules.

The hearing thereon was originally set for August 21, 1917, but on August 21, 1917, was indefinitely postponed on request of the carriers. Subsequently the cause was again docketed, the hearing being set for November 12, 1917. This hearing was likewise vacated at the request of the carriers. As the original order of suspension expired on December 25, 1917, it became necessary to enter an order further deferring the use of the rates and charges until the investigation and decision thereon could be concluded. On December 15, 1917, therefore, a suspension order was issued further suspending the schedules until the 24th day of April, 1918.

The Commission was advised on February 4, 1918, of the readiness of the carriers to proceed and the cause was again docketed for hearing on the 26th day of February, 1918, which hearing, however, was again postponed at the instance of the carriers until the 6th day of March, 1918. The hearing was held before the Commission en banc on the 6th and 7th days of March, 1918. The carriers elected to file briefs in the cause, and the case was submitted for decision April 8, 1918.

Protests were entered against the proposed increases by the Golden Cycle Mining & Reduction Company, the Pikes Peak Consolidated Fuel Company, the Western Light & Power Company, the Colorado Fuel & Iron Company, the Consumers' League of Colorado, the Colorado Springs & Interurban Railway Company, the Portland Gold Mining Company, and the Chamber of Commerce of Colorado Springs.

The matter of increases in interstate rates, which the carriers represented were necessary as a remedial measure to take care of an emergency that had arisen in their operation, was first presented to the Interstate Commerce Commission by the carriers in the Western Classification territory on March 27, 1917, following similar action of the Eastern carriers. Permission was granted by that Commission to the carriers to file tariffs, subject to investigation and suspension, providing for a percentage increase, on not less than 50 days' notice, rather than filing tariffs in the usual manner by showing the individual rates. Thus a saving in time and expense was effected. Hearings were held before the Interstate Commerce Commission prior to the proposed effective dates of the tariffs with respect to the reasonableness of the proposed rates, in order that a prompt decision might be reached, as it was strongly asserted by the carriers that the situation had become critical and delay would detract from the beneficial effects of the remedial

measures proposed. Hearings were held lasting practically an entire month, resulting in the accumulation of thousands of pages of testimony and a mass of statistical and other exhibits.

The Interstate Commerce Commission, in its decision, dated June 27, 1917, held that no condition of emergency existed as to the western carriers which would justify permitting a general increase in their rates to become effective. That Commission had, shortly before the issuance of such decision, permitted the carriers in the eastern district to increase generally the rates on bituminous coal, coke and iron ore. In the later case the Commission was of the opinion that similar increases might be permitted in the western district in the rates on coal and coke, in order to preserve rate relationships between the districts, and, therefore, authorized the western carriers to file new tariffs carrying increases in rates on coal and coke not exceeding in any case 15 cents per ton. The proposed increases contained in the tariffs on commodities other than coal and coke were permanently suspended.

The carriers in the instant case state that the proposed advances in coal and coke rates in the state of Colorado are based upon general conditions affecting in the same way all carriers. A joint brief was filed by the respondents on behalf of all the carriers involved.

The arguments advanced by the carriers in justification of the proposed increases are, apparently, that the Interstate Commerce Commission has allowed increases on the same commodities on interstate traffic and the relationship between intrastate and interstate traffic will be disturbed if the increases asked for are not granted; that coal and coke as compared with other commodities are not bearing their proper proportion of transportation burdens; and that wages, fuel costs, costs of materials and supplies, costs of equipment, and taxes, both state and federal, have increased so materially as to warrant an increase in the rates for transportation.

The state of Colorado for many years has been eighth in rank among the United States both in production and value of the coal produced. The tonnage produced during the year 1917 was 12,515,305 tons. Figures are not yet available showing the consumption and distribution of the yield for the year 1917. In 1915, the coal shipped outside of the state, other than railroad fuel, amounted to 14 per cent of the total state production, and in 1916 to 16 per cent. The balance, therefore, of 86 per cent in 1915 and 84

per cent in 1916, was disposed of within the state as domestic, industrial and railroad coal. The amount used for railroad fuel in 1915 was 28 per cent of the total state production, and in 1916 it was 25 per cent. The amount used for industrial and domestic within Colorado was therefore, 58 per cent in 1915 and 59 per cent in 1916. These figures are reflected in the distribution of the coal from the Walsenburg and Trinidad districts, which together produce approximately 55 per cent of the coal in Colorado. In these combined districts during the year 1916 the distribution was as follows: Shipped out of the state, 16.5 per cent; railroad fuel 28.8 per cent; the balance, or 54.7 per cent, consumed in Colorado as domestic and industrial coal.

In 1916 the classes of consumption were as follows: At the mines 2 per cent; industrial, 16 per cent; public utilities, 3 per cent; railroads, 25 per cent; domestic, 27 per cent; coking, 19 per cent, and the balance, or 8 per cent, unreported. During the same year the distribution of coal transported commercially to other states, amounting to 16 per cent of the total yield, was: to Kansas, 31.2 per cent; Nebraska, 31.4 per cent; Texas, 23.3 per cent; Oklahoma, 7.1 per cent; New Mexico, 3.1 per cent; other states, 3.9 per cent.

It appears from the foregoing figures that, excluding entirely the coal used by the railroads, the movement and consumption of coal handled as intrastate traffic by the carriers within the state is four times that of the tonnage of coal shipped to points outside of the state.

Colorado's rank among the states in the production of coke is ninth,—the production for the year 1917 having been 1,115,879 tons. The proportion of this tonnage which moved outside of the state is not known, but the figures of the preceding years indicate that approximately 13 per cent of the coke production moves to points in other states.

Applying the percentage distribution figures of 1916 to the actual tonnage of 1917—and it is shown by statistics of previous years that such figures remain fairly constant from year to year—approximately 5,882,193 tons of coal moved under freight rates of carriers within the state in purely intrastate traffic, and approximately 970,884 tons of coke, or a total tonnage of 6,853,077. The figure shown for the estimated coal movement—5,882,193 tons—is reached after the elimination of 16 per cent representing coal moved outside of the state, 25 per cent representing coal used by the rail-

roads, 2 per cent consumed at the mines, and 10 per cent representing one-half of the amount of coal used for coking purposes, which is the approximate amount that does not move under freight rates, being produced immediately at the coke ovens. These figures are, of course, not actual but serve merely as approximate figures upon which to base an estimate of additional revenue expected to result from the rate increases proposed in this cause.

Upon the foregoing figures it is seen that a blanket increase of 10 cents per ton in the freight rates would result in additional revenue of $685,307, and a blanket increase of 15 cents per ton of $1,027,961. As the carriers are asking increases of 10 cents per ton on rates of 75 cents or less and 15 cents per ton on rates of more than 75 cents it is evident that the additional revenue which would accrue to the carriers, providing the rates were made effective, would be between these two amounts.

While the view has been expressed by the carriers, as shown above, that the proposed advances are based upon general conditions affecting all carriers in the same way, yet there has not been the slightest indication of any effort made by the carriers to present their evidence and testimony in a general plan, such as the blanket increases are presumed to contemplate. In other words, there has not been concerted action upon the part of the carriers to present their case in a comprehensive and logical manner. Indeed, the testimony and evidence presented to the Commission during the first day of the hearing appeared to be so abstract as to require a statement from the Commission requesting the carriers to offer specific testimony relating to the subject before the Commission. With the exception of one carrier the testimony offered had been to the effect that the Interstate Commerce Commission had allowed an increase on the interstate movement of coal, and therefore this Commission should allow the increase.

The major portion of the evidence and exhibits filed in the cause have to do with the increased costs of operation and materials and supplies. Such exhibits as have been introduced purporting to show statistics of the transportation of coal, its revenues and expenses, have been entirely unrelated, not only in the items set forth but in the periods represented. For instance, the exhibit of one carrier will show the number of carloads of coal transported in intrastate traffic during a certain period, while that of another carrier will show the number of tons, and that of a third the number of pounds. The first mentioned exhibit will illustrate the coal

movement of perhaps, the year 1914, the second exhibit a period of six months of the year 1917, and the third a period of four months of 1917, representing the coal movements during the months of January, April, July and October of that year.

Under the form of annual report as revised in 1914, which revision relieved the carriers of the necessity of furnishing certain statistical data of traffic movement required in the previous reports, the carriers are not obliged to furnish separate figures of the traffic movement within the state. Under the present form the extent of the requirement in this regard is the reporting of the number of tons of the various commodities handled in carload lots originating on the filing carrier's line within the state. Only two or three of the carriers are able to include this information in their annual reports. The tonnage originating in the state would not be indicative in any way of the amount moved in intrastate traffic, and is, therefore, useless as a basis for arriving at the actual intrastate movement.

From the exhibits and data furnished the Commission in this cause it would be impossible to even determine the amount of coal handled during a representative period by the respondent carriers, either in intrastate traffic or in interstate traffic.

The principal argument advanced by the carriers is based upon the relationship between interstate and intrastate traffic. It is claimed by the carriers that a relatively greater burden rests upon interstate traffic than upon intrastate traffic. To illustrate the comparison of these burdens, the carriers utilize the situation claimed to exist in what is known as the prairie section of Colorado, being that portion of the state lying east of the Rocky Mountains, and including the lines of the Atchison, Topeka & Santa Fe Railway Co., the Missouri Pacific Railroad Company, The Chicago, Rock Island & Pacific Railway Company, The Colorado & Southern Railway Company, the Union Pacific Railroad Company and the Chicago, Burlington & Quincy Railroad Company. The adjacent states into and through which the aforesaid carriers operate and transport coal are Wyoming, Nebraska, Kansas, Oklahoma, New Mexico and Texas. The general character of the country traversed by these carriers in eastern Colorado is practically the same on the line of each of the carriers, being level with grades of not to exceed one per cent as a maximum. As stated by the carriers:

> "The lines of these various carriers encounter the same operating conditions, and they carry the same commodities

> The rates on these commodities are approximately the same on all lines, so that the revenues received by these carriers are practically the same on equal units of business. The cost of operation on the various lines are within close limits the same. Labor is paid approximately the same wage on all lines. Materials and equipment cost all lines approximately the same. Fuel is drawn from the same source and varies in price only within narrow imits. The slight variation between revenues or costs of operation on these railroads would not in any case destroy the rule."

The carriers state that by taking the situation as applicable to one of the carriers, a "typical member of the group," the conditions similarly affecting all carriers in the group are shown, and for the purpose of showing such conditions choose the Atchison, Topeka & Santa Fe Railway. This company introduced into the record an exhibit purporting to show a comparison of revenues and expenses assignable to the intrastate freight business in Colorado, in which, as stated by the witness, "recognition has been taken of the firmly established fact that the short haul, or intrastate traffic, costs more to handle per unit of traffic than the long haul, or interstate traffic." It is claimed by the carriers that this comparison clearly demonstrates that interstate transportation as conducted prior to the recent advance in the interstate coal and coke rates was paying too great a proportion of operating expenses, or, in other words, was contributing too large part of carrier revenue as compared with intrastate business.

The exhibit of the Santa Fe, referred to, was compiled from a formula used in the Arkansas rate case, and which, it is stated by the carriers, was approved by the United States Supreme Court in Rowland v. Boyle, 244 U. S. 106, 37 Sup. Ct. 577, 61 L. Ed. 1022. The same formula is also used by the Santa Fe in four of the other states in which it operates.

In the formula the first of the two separate and distinct freight transportation services is called terminal or station service, covering both the originating and terminating service of traffic, which is constant and fixed, regardless of the length of haul. The second is called line transportation and its cost is haulage expense, and varies with the distance. Freight expenses are divided, according to the formula, between line and terminal expenses before the apportionment is made between state and interstate traffic. The

operating expenses assignable to the terminal or non-haulage service are apportioned between state and interstate traffic on the basis of the number of terminal units handled, while the line or haulage expenses, varying as the length of the haul varies, are apportioned between state and interstate traffic on the basis of ton-miles.

The witness stated that tests had been made, applying the same formula, in the states of Oklahoma and Missouri for five months ended December 31, 1913; in Kansas for the year ended June 30, 1915; and in Arizona for the three months ended October 31, 1913. The result of these tests, according to the witness, showed that the cost of handling an intrastate ton one mile was greater than the cost of handling an interstate ton one mile, in the following degrees: Oklahoma 387.5 per cent greater; Missouri 305.2 per cent; Arizona 348.8 per cent, and Kansas 170.1 per cent, the average of the four being 212.3 per cent. The Frisco line, in the Arkansas case, found the difference to be 319.6 per cent. The average of 212.3 per cent found from the tests in the four states was applied to operations in Colorado for the years ended June 30, 1915, June 30, 1916, and December 31, 1916.

The witness further stated that the average haul of a ton of intrastate traffic in Colorado is 29.5 miles, while that of an interstate ton is 167 miles, or 5.7 times as far. While not so specifically stated by the witness it is assumed that these figures relate to the movement of all freight, and not simply upon coal. Nor is any period named for which these figures are applicable. By referring to the annual report of the Santa Fe for the year ended June 30 1914, it is found that the average haul of an intrastate ton of traffic, all commodities, was 57.36 miles, and that of an interstate ton 118.34 miles, or only 2.06 times as far.

While the terms "intrastate" and "interstate" as applied to the comparative tables of revenues and expenses compiled for the purpose of showing the relatively higher cost of handling intrastate shipments may not strictly be classed as misnomers, yet it is evident that these terms are too limited in meaning to properly define the real application of such figures. Clearly the proper terms are "short hauls" and "long hauls" and the witness for the Santa Fe thus amplifies his definition of the application of the exhibit.

The average mileage operated by the Santa Fe in the state of Colorado is 506 miles, and it is this amount of mileage that is covered by the statistics introduced relative to Colorado revenues and

expenses. It is a fact that there are short hauls in interstate traffic as well as in intrastate traffic—although it is also true that the general average haul is greater on interstate traffic than on intrastate traffic. Assume that a line were drawn around a portion of the line of the Santa Fe to include 500 miles, 250 miles of which lie in one state and 250 miles in an immediately adjoining state, and that the same tests were applied for the purpose of determining the difference between the cost of the average haul of a ton of freight moving locally within the circumscribed territory and that of the traffic moving through or into or out of the same territory. Without doubt the same results would be obtained from such a test as in the one here presented to the Commission. The figures would not be exactly the same, but the general results would indicate that the cost of the "short haul" movement is much greater than that of the "long haul" movement. In that instance it would be impossible to classify the short haul as an intrastate haul, and the long haul as an interstate haul, for the short haul would have its application to interstate traffic to as great an extent as to intrastate traffic. Using the same deduction arrived at by the carriers in this case—that Colorado intrastate rates are too low as compared with interstate rates—and applying this deduction to the instance cited, it is found that all "short haul" rates, both intrastate and interstate, are not high enough when compared to the "long haul" rates. This would apparently indicate, therefore, that short haul rates generally should be increased, or, at least, that short haul rates generally should be a certain ton-mile revenue ratio above long haul rates.

This, then, is simply a feature of a proposition which has grown to be axiomatic—that the rate per ton per mile should decrease as the distance of the haul increases. There probably is not a regulatory body in the country which would refuse to recognize this principle, and this Commission has many times utilized it in the railroad cases before it. The difficulty of the application of the rule lies in the determination of the ratio of decrease or the limit of comparison between the short and the long haul. Can it be definitely determined that the rate per ton-mile on a certain commodity for a haul of 200 miles shall be fixed at 20, 30, 40 or even 50 per cent less than the per ton mile rate on the same commodity for a haul of 50 miles? If so, the Commission is unaware of any practical demonstration or finding to that effect.

Continuing as to the situation of the Santa Fe, which is stated to be typical of the traffic and transportation situations controlling

upon the lines of the other carriers in eastern Colorado. As stated above, the average local or short haul within the territory limited by the state lines of Colorado for the fiscal year 1914 was 57.36 miles, and the average long or interstate haul 118.34 miles, the former being 48.4 per cent of the latter. The average revenue per ton-mile for the long haul was 9.28 mills and for the local or short haul 15.04 mills, or 62.1 per cent greater than that for the long haul. Must it be accepted that this percentage of 62.1 should be increased to 100 per cent, resulting in the rate per ton mile on the short haul being double that of the long haul, and that the average revenue per ton-mile on the short haul should be increased to 18.56 mills?

While the Santa Fe is said to be typical of the prairie roads in eastern Colorado, another illustration may be given by referring to the annual report of the Union Pacific Railroad Company for the fiscal year ended June 30, 1913, the statistics of later years not being available. The average haul per ton of intrastate traffic in Colorado was 38.47 miles, and of interstate traffic in Colorado 67.87 miles, or 76 per cent greater on the interstate traffic. The average revenue per ton-mile on the interstate traffic was 9.42 mills and on intrastate traffic 22.23 mills, or 136 per cent greater on intrastate traffic. The Commission is not convinced that the exhibit of the Santa Fe and the evidence introduced by that carrier conclusively demonstrate that coal rates within the state of Colorado are so low as to place a burden upon interstate traffic, or that it clearly establishes the fact, as claimed by that respondent, that the proposed increase in any event should be granted the Santa Fe.

Contention is made by the carriers that failure to grant the proposed increases will result in discrimination through the recent increase in interstate rates and the maintenance of intrastate rates upon the present basis. Examples of two different characters are cited in support of this contention. The first involves the disturbance of differentials formerly applicable between the Trinidad district in Colorado and the Raton district in New Mexico. The second is the change brought about in the rates at the state boundaries—the rate to the last station within the state being unchanged and the rate to the first station in the adjacent state being increased fifteen cents per ton. The Commission will first consider the former example.

Prior to the increase of 15 cents per ton allowed by the Interstate Commerce Commission the differential between the Trinidad

and Raton districts was upon a basis of 10 cents per ton. The distance between the two districts is approximately 30 miles. In a large sense the coal produced in the Raton district is similar to that of the Trinidad district, being a coking coal, while the operating conditions in the two districts are generally similar. The differential of 10 cents per ton applied in either direction—the rates on coal northbound from Raton being that amount higher than the Trinidad rates and the Trinidad rates on southbound coal being the same amount higher than on coal from the Raton district. Coal northbound from Raton necessarily moves through Trinidad, and coal southbound from Trinidad through Raton.

The filing of the tariffs making the increase of 15 cents per ton in the interstate rates resulted in increasing the differential on coal moving from the Trinidad district into New Mexico and from the Raton district into Colorado. In other words, rates from Trinidad to all points in Colorado to which through rates are applicable are as in effect prior to the raise in the interstate rates; the rates from Raton district to the same points have been increased 15 cents per ton and the differential to such points has therefore been increased to 25 cents per ton. Southbound to points in New Mexico the rates from both the Trinidad and the Raton districts have been increased 15 cents per ton and the differential therefore remains unchanged. Rates intrastate in New Mexico were increased by the filing of tariffs in that state effective in August, 1917.

The respondents claim that another "Shreveport" situation is brought about by the present relation of rates, and cite many Interstate Commerce Commission decisions having reference to such conditions. In addition respondents cite an opinion of the United States Supreme Court relative to similar conditions, namely: Houston, etc., Texas Ry. Co. v. U. S., 234 U. S. 342, — Sup. Ct. —, 58 L. Ed. 1341. The Commission is aware of the many cases cited, and is, in addition, cognizant of the other related decisions in point, both of the Interstate Commerce Commission and the various courts. Reference may be made to analogous cases, such as, The Missouri River-Nebraska Cases, 40 I. C. C. 201; Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co., 39 I. C. C. 303; Business Men's League of St. Louis v. A., T. & S. F. Ry. Co., 41 I. C. C. 13 and 41 I. C. C. 503; and Traffic Bureau v. American Express Co., 39 I. C. C. 703.

The case of Traffic Bureau v. American Express Company, *supra*, passed through the courts upon application for injunction

restraining the express companies in the state of South Dakota from increasing intrastate express rates to remove discrimination found by the Interstate Commerce Commission to exist against rates from Sioux City, Iowa, to points in South Dakota. The express companies attempted to justify the order by generally increasing express rates throughout the state to the basis found reasonable by the Interstate Commerce Commission from Sioux City, Iowa. The Supreme Court of South Dakota granted the injunction. The United States Supreme Court, however, modified the lower court's order by dissolving the injunction so far as it extended to rates in the competitive territory, and as modified it was affirmed. In the decision, (American Express Co. v. South Dakota ex rel. Caldwell, 244 U. S. 617, 61 L. Ed. 1352), the Supreme Court stated:

> "But the finding that discrimination exists and that the interstate rates are reasonable does not necessarily imply a finding that the intrastate rates are unreasonable. Both rates may lie within the zone of reasonableness and yet involve unjust discrimination. Interstate Commerce Commission v. B. & O. R. R. Co., 145 U. S. 263, 277, 36 L. Ed. 699, 703, 12 Sup. Ct. Rep. 844, 4 I. C. R. 92. Proceedings to remove unjust discrimination are aimed directly only at the *relation of rates.* (Italics by the court.) If in such a proceeding an unreasonable rate is uncovered and that rate made reasonable, it is done as a means to the end of removing discrimination. The correction is an incident merely."

The Commission is of the opinion that the rates from the Trinidad district on the Atchison, Topeka & Santa Fe Railway should not be considered separate and apart from the general proposition of the application for an increase in rates on coal, regardless of the situation brought about with respect to the differential between Trinidad and Raton, especially in view of the contentions of the carriers as to the application being a general proposal of blanket increases. To so consider the Trinidad district would be to depart from the issues contained in the cause before the Commission, and would bring about a separation of what is herein considered as a unit. If the general increase is granted the rates from Trinidad will of course be included, and if it is denied the Trinidad rates will similarly be included in the denial.

It cannot be contended that the Commission should assume to adjust relationships of interstate rates, which, in effect, is what

is presented to the Commission in respect to the Trinidad-Raton differential. The Commission has never attempted to so interfere with interstate commerce, and, indeed, has even declined to consider the relationship of the Trinidad and Raton or Dawson districts in adjusting coal rates between districts within the state of Colorado, as a comparison or basis of the reasonableness of the differentials between the Colorado districts. Oakdale Coal Co. v. C. & S. Ry. Co., 4 Colo. P. U. C. 155. The Commission has not the jurisdiction to find that a differential of 10 cents per ton is just and reasonable as between Trinidad and Raton in the transportation of coal moving in interstate traffic or that a differential of 25 cents per ton is either unreasonable or reasonable.

While considering the point raised by the carriers in this respect, however, it is quite pertinent to point out that the adjustment proposed by the carriers will not clarify the situation or obviate the difference in the differential, although it was stated by the witness that such would be the case. To all points to which a 15 cent increase is proposed there will still remain a difference of 5 cents per ton in the differential between the two districts.

In this connection it is contended by counsel for one of protestants that to increase the rates from Trinidad to points in Colorado would be to encourage the cross-hauling of coal, an element of transportation which the federal government is endeavoring to eliminate in so far as is possible, considering it to be an economic waste of transportation facilities. The testimony of the Santa Fe witness shows that during the first six months of 1917 there was a movement of 1,438 cars of coal from the northern New Mexico mines directly through the Trinidad fields to points in Colorado, and that during the same period 3,121 cars of coal moved from the Colorado mines to New Mexico points. The witness also stated that the two coals are in all practical respects similar.

The second method in which the carriers assert that discrimination will arise as between intrastate and interstate traffic is through the making of increases in interstate rates to points immediately across the state line and leaving unchanged the intrastate rates to points next within the state boundaries. Instances are cited by the carriers in support of this contention. The following rates are as in effect to points adjacent to each other across the state lines and as will remain in effect in the event the application for the general increases is denied:

A. T. & S. F. Ry.: From Trinidad to		
Trail, Colorado	$2.55	
Coolidge, Kansas	2.55	Difference in distance 6 miles.
C. B. & Q. R. R.: From Walsenburg to		
Laird, Colorado	$3.40	
Sanborn, Nebraska	3.65	Difference in distance 5 miles.
From Lafayette to		
Laird, Colorado	$2.15	
Sanborn, Nebraska	2.85	
C. R. I. & P. Ry.: From Walsenburg to		
Burlington, Colorado	$3.35	
Kanorado, Kansas	3.60	Difference in distance 12 miles.
Mo. Pac. R. R.: From Walsenburg to		
Towner, Colorado	$2.80	
Astor, Kansas	3.15	Difference in distance 6 miles.
U. P. R. R.: From Walsenburg to		
Chemung, Colorado	$3.50	
Weskan, Kansas	3.65	Difference in distance 6 miles.
From Northern Colorado mines to		
Julesburg, Colorado	$2.00	
Barton, Nebraska	2.65	Difference in distance 12 miles.

In the first instance it is seen that there is no spread in the difference in the rates to adjacent towns. The difference in the Walsenburg rates to points on the Burlington line is 25 cents for a distance of 5 miles. From Northern Colorado mines to adjacent state and interstate points on the Burlington and Union Pacific it will be seen that the difference in rate in the first case is 70 cents for a difference in distance of 5 miles, and 65 cents in the latter case for a difference of 12 miles. The difference in effect previously in rates had been 55 and 50 cents, respectively, and had been in effect for several years.

Rates generally throughout the states lying just east of Colorado from the Colorado coal districts are upon blanket bases, the blankets extending for hundreds of miles. It is a natural condition consequent upon the maintenance or establishment of blanket rates that the spread in rates between the last point in the first group of stations and the first point in the next succeeding group will appear very high for the short difference in distance. This Commission eliminated the blanket system of coal rates in eastern Colorado, In re Eastern Colorado Coal Rates, 1 Colo. P. U. C. 48, without, however, disapproving the blanket basis of making rates.

Instances may be cited showing to what extent the blanket rates are in effect from the Colorado mines. Prior to the Commission's decision In re Eastern Colorado Coal Rates, *supra*, a blanket of

$3.50 per ton in the rates from Walsenburg extended from Boyero, Colorado, to a point some 331 miles distant, the next station beyond being increased 25 cents per ton, or $3.75, which blanket of such rate extended to the Missouri River or a distance of 517 miles from Boyero. In other words, Boyero, distant from the mines 308 miles, was charged a rate of only 25 cents less than Kansas City, Missouri, 825 miles from the mines. The rates to Boyero, however, were reduced by the Commission in the case referred to and at present the situation above referred to does not prevail to the extent mentioned. To Chemung, Colorado, however, the present rate is $3.50, while the rate to the next station beyond is $3.65. The Missouri River rate at the present time is $3.90, and therefore only 40 cents per ton higher than the rates to Chemung.

Similar instances in the spread of rates may be cited, such as the increase of $1.50 per ton in the rate on nut coal from Walsenburg to Dexter, Kansas, and Hooser, Kansas, on the line of the Missouri Pacific Railroad Company, a distance apart of only 7 miles. The difference in the lump rate between these two points is 50 cents. The rate on lump coal from Walsenburg to La Harpe, Kansas, is $3.90, while to Moran, Kansas, only 8 miles farther, it is $4.40, an increase of 50 cents per ton.

The Commission is of the opinion that the situation mentioned with regard to discrimination across the state lines is not of enough controlling force to be considered as an important factor in arriving at a decision which relates to the entire coal rate fabric of the state. There are many rates within Colorado which present similar spreads in rates and no attention is drawn to discrimination existing by reason of the maintenance of such rates. It may be here stated that the rates on lignite coal from the northern Colorado mines on the Burlington and Union Pacific to points on these lines in eastern Colorado were prescribed by the Commission In re Eastern Colorado Coal Rates, *supra*, after a finding that the prior rates were unjust and unreasonable. In that case the rate to Laird was reduced from $2.65 per ton to $2.15, which increased the spread between Laird and Sanborn, Nebraska, from 5 cents to 50 cents. And it may here be mentioned that the carriers did not then allege that the discrimination was brought about between intrastate and interstate traffic, nor did they seek to have the courts pass on the reasonableness of the rates then fixed. If the situation claimed by the carriers is to be a controlling factor it will then be incumbent upon the Commission, in passing upon the propriety of the

schedules herein suspendsd, to also consider the rates throughout the state with especial relation to removing or reducing the spreads of rates between points next adjacent to each other.

In the statement read at the hearing the Commission stated that before an order would be entered increasing the coal rates generally throughout the state the carriers must definitely show that the rates on coal in the state place a burden upon interstate coal traffic, or upon other commodities moving within the state. The evidence of witnesses of each of the carriers in this respect is to the effect that the coal tonnage amounts to a certain percentage of the total tonnage, but the revenue derived from coal traffic does not bear the same percentage ratio to the revenue drived from the entire freight traffic of the road; that, therefore, coal traffic does not bear its share of the transportation expenses, and that rates should be advanced so that the percentage coal revenue bears to the total revenue may be increased.

The comparison used by most of the witnesses was between tonnage and revenue, while that of the witness for the Santa Fe was between ton-miles of coal traffic and revenues. It is claimed by the Santa Fe that coal ton-miles amount to 44.4 per cent of the total traffic ton-miles, while the coal revenue amounts to only 29.1 per cent of total freight revenue. The Colorado & Southern stated that coal tonnage amounts to 53.32 per cent of total tonnage and coal revenue 36.60 per cent of freight revenue; the Denver & Rio Grande that coal tonnage is 37 per cent of total tonnage, and coal revenue 27.5 per cent of total freight revenue; and the Denver & Salt Lake that coal tonnage is 83.71 per cent of total, and coal revenue 62.94 per cent of total freight revenue. The figures of the Santa Fe are for intrastate traffic in Colorado, while those of the other carriers are for the entire lines and embrace both the carriers' intrastate and interstate traffic.

This is the first case brought to the attention of the Commission in which carriers have contended that the revenue derived from a certain selected commodity should bear the same or a definite relation to the total freight revenue as the tonnage or ton-miles represented by that commodity bear to total freight tonnage or ton-miles. At least such a proposition has never before been presented, either directly or indirectly, as having a bearing on cases before this Commission. To give approval to this theory would be to establish definitely that rates on the various commodities should bear a fixed relation each to the other. A finding, for instance,

that coal, ore, lumber, iron, and all other commodities should bring to the carrier revenues bearing the same relation to the total revenue as the amount handled bears to the total traffic.

That this contention is valid is, of course, unsupportable by any manner of evidence. Such a fallacy would assume that since coal revenue is not as great in ratio as coal tonnage, the rates on coal should be raised until the ratio reaches such point; that, therefore, coal revenue per ton per mile should not be less than the average revenue per ton-mile derived from all traffic. This theory is likewise untenable and the Commission cannot give its approval for its adoption and application to rates in Colorado. While revenue is dependent upon the rates a much greater controlling factor is the distance of the haul.

In only one instance (that of the Santa Fe), do the figures represent intrastate tonnage, and in this case the Commission is not furnished with the relationship of the Santa Fe's coal tonnage or ton-miles and coal revenue upon interstate traffic for purposes of comparison. The contention of the carriers, even were it found to be valid, would apply with equal force to interstate coal traffic. In the case of the other three roads mentioned the statistics furnished do include interstate traffic as well as the intrastate.

With respect to the fallacious theory advanced by the carriers and its application to interstate traffic it may be found illustrative to refer to the situation as found on one of the typical prairie lines, the Union Pacific. The bituminous coal tonnage of this company upon its entire line, including both the interstate and intrastate traffice, during the fiscal year ended June 30, 1912, amounted to 23.88 per cent of the total freight tonnage, while the coal revenue amounted to only 8.3 per cent of the total freight revenue; during the fiscal year 1913 the coal tonnage amounted to 18.9 per cent of the total tonnage and coal revenue to only 6.9 per cent of total freight revenue. In the year 1912 the percentage of coal tonnage to total tonnage was 188 per cent greater than the revenue percentage, and in 1913 174 per cent greater, while the case cited of the Colorado & Southern shows that the percentage of tonnage is only 46 per cent greater than that of the revenue, the Denver & Rio Grande only 35 per cent greater, and the Denver & Salt Lake only 33 per cent greater.

A further illustration of the unsoundness of the carriers' position is shown by considering the relation of the tonnage and revenues of the commodities which are handled in quantities only

next to that of bituminous coal on the Union Pacific entire line, during the fiscal year 1913. During this period grain was transported to the amount of 12.21 per cent of the total tonnage, while the revenue derived from grain traffic amounted to only 7.8 per cent of the total freight revenue, and it is interesting to note that the average revenue per ton-mile on grain was 9.62 mills—higher even than the average of all commodities, which was 9.27 mills. The lumber tonnage amounted to 6.88 per cent of the total, the revenue accruing therefrom amounting to as high as 7.2 per cent of the total revenue, while the ton-mile revenue was the lowest of any of the commodities handled in appreciable quantities, being 5.34 mills. The livestock traffic amounted to 6.03 per cent of the total tonnage, while its revenue represented 6.3 per cent of the total revenue, its ton-mile revenue being 11.08 mills.

The foregoing paragraph seems to conclusively show that there can be no correlation between the tonnage and the revenue of a certain selected commodity. Although the ton-mile revenue on grain was higher than the average of the road the percentage relation of its revenue to total revenue was considerably less than the percentage of the grain tonnage to the total tonnage, and while ton-mile revenue on lumber was practically half of the average ton-mile revenue of the road the lumber revenue relation to total revenue was greater than the relation of lumber tonnage to total tonnage.

Even assuming that there is merit in the contention offered, which relation must be accepted as one of the factors to be considered in fixing reasonable rates, that claimed by the Santa Fe, i. e., the relation between the commodity's ton-miles and the revenue, or that of the other carriers, the relation between the number of tons handled and the revenue? To more definitely show the fallacy of the carriers' theory, the illustration afforded by the table below may be offered, using as a foundation figures approximating those of the Colorado & Southern for the year ended June 30, 1914. The tons handled and the revenue figures are actual, being taken from the annual report as filed with the Commission. The number of ton-miles is only approximate and is based upon an average haul of coal of 100 miles. The figures in the second column are the basic figures of the Colorado & Southern with the application of the average haul of 136 miles of the class I and II roads in the Western District for the same year and the average per ton-mile revenue of such lines of 6.22 mills. The third column shows

the results derived by the use of a 200-mile average haul and a per ton-mile revenue of 8 mills. The table follows:

	C. & S. Ry.	Western District Class I. & II. Roads	Example
Tons, coal and coke	2,339,849	2,339,849	2,339,849
Tons, other commodities	2,482,969	2,482,969	2,482,969
Total traffic	4,822,818	4,822,818	4,822,818
Coal relation to total	48.5 per cent	48.5 per cent	48.5 per cent
Average haul, miles	100	136	200
Average revenue ton-mile	$ .0092	$ .00622	$ .0080
Ton-miles, coal and coke	233,984,900	318,219,464	467,969,800
Ton-miles, other commodities	308,092,724	308,092,724	308,092,724
Total ton miles	542,077,624	626,312,188	776,062,524
Coal relation to total	42.0 per cent	50.8 per cent	60.1 per cent
Revenue, coal and coke	$2,154,548	$1,979,325	$3,743,758
Revenue, other commodities	3,465,036	3,465,036	3,465,036
Total revenue	$5,619,584	$5,444,361	$7,208,794
Coal relation to total	38.3 per cent	36.3 per cent	51.9 per cent
Average revenue per ton	$.92	$.85	$1.60

This illustration is given for no other purpose than to demonstrate that reliability cannot be placed upon such a theory as the carriers advance, and is not presumed to represent any actual conditions now existing. The assumption is that the tonnage, ton-miles and revenue of commodities other than coal and coke remain the same in the different examples shown. It will be seen that a longer haul and a less rate per ton-mile may result in the percentage of coal revenue to total revenue being lower than that of the Colorado & Southern for the period shown, or a longer haul and lower rate per ton-mile may result in the percentage being much larger, in fact, even higher than the percentage relationship of coal tonnage and total tonnage.

The Commission must find that the theory of the carriers does not in any wise prove that intrastate rates on coal in Colorado are unreasonably low, or that the coal rates place a burden upon other commodities.

It is stated by the carriers that coal is a low grade commodity, but that its movement does not involve cheap or economical transportation; that, in the first place, the coal business is not evenly

distributed throughout the year, there being a heavy tonnage for a short time, two or three months, and for the remainder of the year a light tonnage, which leaves the carriers with an excess of equipment, tracks and facilities that cannot be advantageously employed. The statistics of coal production in Colorado show that the coal movement is fairly constant throughout the year, although it is to be admitted that coal moves in somewhat larger volume during the winter months than during the summer. The report for 1917 shows that the three heaviest months were January, August and December. The requirements for the transportation of coal are much different in Colorado than in the east. In the east the carriers are required to furnish a certain class of equipment for this loading, and the equipment must be kept exclusively in that service whereas the Colorado carriers are able to utilize any equipment into which coal can be loaded, such as stock, box, gondola, or open cars. And it is a well established fact that coal is one of the lowest rated commodities, both in the rates per ton per mile and the cost of transportation per ton per mile, being greatly below the average of all commodities transported.

The statement is made by carriers in their brief that the proposed increase of 10 and 15 cents in coal and coke rates will not average 5 per cent of the Colorado coal and coke rates on all lines. There is no evidence to support this contention and, to the Commission, it clearly appears to be greatly underestimated. It is evident that if this is the case the increase of 15 cents per ton allowed by the Interstate Commerce Commission will not average more than 1 or 2 per cent on the entire interstate movement of coal from Colorado. It is impossible to arrive at the percentage of average increase either upon intrastate or interstate traffic. The Commission has scrutinized the rates of the carriers applying on coal from Colorado mines to points in adjacent states and finds increases to be about as follows:

On the line of the Santa Fe into New Mexico the increases vary from 37 per cent at Lynn (an extreme instance, the mileage being very low and the rate being increased from 40 cents to 55 cents) to 2.3 per cent at Gallup; on the Santa Fe line in Kansas the range is from 13 per cent at Coolidge to 3.9 per cent in the eastern part of the state; on the line of the Rock Island in Kansas the increases range from 10 per cent at Kanorado to 3.7 per cent in the eastern part; on the Missouri Pacific the range is from 7.5 per cent to 4 per cent, and on the lines of the Burlington and

Union Pacific from 6 per cent to 4 per cent. The probable amount of average increase on interstate traffic allowed by the Interstate Commerce Commission in the rates from the Colorado mines is between 4 per cent and 5 per cent.

The difference in the average haul of coal largely determines the percentage of increase in the rates, and it will be seen that the increase will, of course, be relatively much greater within the state of Colorado as herein asked than on the longer hauls. For the fiscal year 1914 the average revenue per ton of the Denver & Rio Grande on coal traffic in Colorado and New Mexico was 96 cents; the Colorado Midland, $1.04; the Denver & Salt Lake, $1.19; the Colorado & Southern, 92 cents. This indicates that the proposed increase would certainly not be less than 10 per cent on existing rates, but more probably would average between 10 per cent and 15 per cent, while the increase granted by the Interstate Commerce Commission would average between 4 per cent and 5 per cent.

An exhibit filed by the Colorado & Southern sets forth the per mile earnings and taxes of the company's lines in Colorado from 1901 to 1917, inclusive, and the witness introducing the same called attention to the increases in the taxes. The information shown on this exhibit relative to the per-mile earnings and taxes is of sufficient interest to be included herein.

Year	Mileage	Taxes per Mile	Earnings	
			Gross	Net
1901	801.90	$216.28	$5,026.18	$1,362.34
1902	801.90	250.06	5,789.04	1,516.00
1903	801.88	245.12	6,121.13	1,566.74
1904	813.05	257.28	5,432.50	1,407.16
1905	808.18	238.69	6,669.02	1,959.87
1906	813.38	229.07	7,473.94	2,096.65
1907	819.76	242.07	8,330.79	2,645.54
1908	819.95	239.18	8,120.72	2,621.86
1909	821.24	262.85	8,624.45	2,774.19
1910	824.82	265.00	8,764.47	3,139.76
1911	826.17	281.05	7,824.76	2,597.10
1912	890.89	288.39	7,188.16	2,116.47
1913	900.74	328.84	7,294.21	1,984.46
1914	901.65	362.12	6,533.48	1,890.38
1915	901.65	409.35	7,086.45	2,152.08
1916	901.30	405.93	8,095.33	3,026.91
1917	906.90	473.18	9,590.65	3,645.43

The percentage of taxes to gross earnings in 1901 was 4.303 per cent, and in 1917, 4.934 per cent, while the percentage of taxes

to net earnings in 1901 was 15.875 per cent, while in 1917 it was 12.980 per cent. This statement shows that taxes per mile have increased 118.5 per cent from 1901 to 1917 while net earnings have increased 167.5 per cent.

In addition to the testimony and evidence submitted by the Denver & Rio Grande a supplementary financial statement was filed, comparing the results of its operation in 1916 and 1917. The principal importance given to this exhibit is expressed in the following, as stated by counsel in the brief:

> "The report, however, does contain the item 'Freight Revenue Per Train Mile,' showing that the revenue in 1916 was $5.27676 against $5.17629 in 1917, a decrease of 1.9 per cent. This is gross revenue. It does not reflect, therefore, the increased cost of operating a train in 1917 over 1916. That is, this figure does not indicate the net revenue derived from a train of a certain tonnage operated in 1916 as compared with the net revenue of a train of the same tonnage operated in 1917. It does mean, however, that the operation of trains in 1917 compared with operation in 1916 cost 1.9 per cent more per train mile in 1917 than in 1916, due to economic loss in the manipulation of the train equipment alone. In other words, it shows that the traffic handled by the Rio Grande in 1916 was so distributed and was so handled that it cost less to transport it than it did to transport the traffic offered in 1917. Or, stated in another way, it indicates that the excess traffic that was given to the Rio Grande in 1917 was furnished under unfavorable conditions from a transportation standpoint. It was furnished in heavy tonnage for a short period, producing congestion, or it was furnished during periods of temporary interruption of the line, * * * * * * * The result of these conditions is therefore indicated in the 1.9 per cent decrease in the revenue per train mile. This item is of particular importance in that it shows that the business of 1917, apart from any increase in costs of labor, materials and supplies, but due wholly to the peculiarities of the situation, was not handled as cheaply as in the preceding year."

The Commission is not furnished with the information to show the number of freight train-miles during the two periods indicated, and is of the opinion, in the absence of this most important item, which is necessary to consider in connection with the tonnage

handled, that the item of freight revenue per train mile is of negligible importance or value. To apply the theorem of the carrier above expressed to the comparison of the years 1917 and 1915 it is found that the results will be radically different. The per train mile freight revenue in 1915 was $4.54403, or $.63226 less than in 1917. The increase between 1915 and 1917 was 13.9 per cent. Upon the proposition of the carrier, therefore, this means that the operation of trains in 1917 compared with operation in 1915 cost 13.9 per cent less per train mile than in 1915, due to economic gain in the manipulation of the train equipment alone. And compared with 1914 it would show an even greater difference, since the freight revenue per train mile that year was $4.05317. The train-mile revenue in 1917, therefore, was $1.12312, or 27.7 per cent, greater than in 1914.

While this Commission has passed upon certain of the coal rates in the state in complaints entered and investigations instituted upon the Commission's own motion, it has never been the policy of the Commission in such decisions to materially reduce the rates. In practically every case passed upon the Commission has established the rates with particular consideration and weight given to the alignment of rates to remove discrimination, and to bring about uniformity and equality. Such reductions as have been made in these decisions have been solely for the purpose of removing such discrimination as was found to exist. This, primarily, was due to the fact that the majority of the complaints and investigations involving coal rates were brought under the discrimination section of the act. There have been few cases of the inherent reasonableness of particular rates *per se*. The largest, territorially considered, case involving coal rates was In re Eastern Colorado Coal Rates, 1 Colo. P. U. C. 48, and 90 to 99, decided in 1915. Practically the entire consideration of this case was upon the basis of discrimination between localities and the opinion was likewise rendered upon that basis.

On the contrary, the Commission has authorized substantial increases in coal and coke rates in Colorado, increases being granted within the last twelve months. A condition consequent upon the action of the Commission in Missouri Lumber & Supply Co. v. A. T. & S. F. Ry. Co., 3 Colo. P. U. C. 73, in reducing the reciprocal switching rates in Denver 5 cents per ton, was brought about effective February 1, 1916, and resulted in increasing the line haul revenue of the carriers transporting coal to Denver to the same

extent, where the coal was destined to industries on connecting lines. The amount of tonnage handled in switching movements is not known but it is undoubtedly considerable. The lignite coal to Denver from the nearby northern Colorado coal fields approximates 1,000,000 tons a year, while from the Walsenburg and Trinidad coal fields the bituminous coal tonnage during 1917 was 180,000. Effective in December, 1917, the Commission took action relative to the rates on coal and coke to Minnequa which resulted in increases to the carriers in the rates ranging from 5 cents to 37.5 cents per ton, depending upon the points of origination. It is likewise impossible to estimate the increase in revenue to the carriers upon this traffic, but when it is seen that in 1917 approximately 1,320,000 tons of coal and coke moved to Minnequa and which moved under rates that were increased in December, it will be readily seen that the additional revenue is great. In fact, it was stated before the Commission that, based upon previous movements of coal, the increase in revenue will be more than $250,000 per annum.

Effective December 27, 1917, the Commission issued an order permitting the carriers to increase 25 cents per ton the rates on coal from the Oak Hills district to Denver and points beyond. Of a production of 1,000,000 tons a year in this district probably 45 or 50 per cent will receive the application of the increase referred to. Effective February 7, 1918, tariffs were filed with the Commission by the carriers under authority of an order of the Commission increasing rates 25 cents per ton on coal from the South Canon and Cameo districts order of the Commission increasing rates 25 cents per ton on coal from the South Canon and Cameo districts on the Colorado Midland to Denver and points beyond. At the same time the rates from these districts to Colorado Springs were increased a like amount and the Commission allowed the same to take effect without suspension.

Throughout the hearing of this cause, and in the carriers' brief, mention was made of certain rates in the state which are, while perhaps not absolutely unremunerative, unduly and unreasonably low due to competition, and stated by the witnesses to be "depressed" rates. In the Commission's opinion there is not the least doubt of this fact, as evidenced by the rates which come into active or even potential competition with each other.

In a resume of that portion of the carriers' brief devoted to the general conditions and situation of all of the respondents, it

is asserted that: "It follows, therefore, that carriers cannot proceed in this case as they have in others. In the first place, statistics and figures cannot be relied upon when the methods of conducting the business have been so radically modified that the result of past operation may no longer be taken as an infallible guide for the present, or a safe prophecy for the future. In the second place, conditions under which the carriers have operated in the past and are now operating, render it impossible for many of them to present the detail history of the past year. The present conditions which have deprived the carriers of trained men and of the necessary funds for the compilations of statistics, render it impossible even if it were essential that the carriers prove this case by statistical evidence."

The Commission is not unaware of the material changes in conditions brought about principally by the war. It fully realizes the difficulty of the carriers preparing masses of detail information which may possibly prove to be superfluous. It believes that the carriers should be relieved of the compilation of all statistics or accounts such as are not absolutely essential and requisite to the proper and efficient operation and maintenance of the carriers' lines. It has followed this principle in the past few months, by permitting the carriers to suspend the future filing of certain reports previously required by the Commission. In addition many schedules have been entirely, and others in part, eliminated from the annual forms of reports required by the carriers.

As stated by the Commission during the progress of the case the burden of proof rests upon the carriers to show the reasonableness of the proposed increases, by showing that the present coal and coke rates in the state place a burden upon interstate rates, or upon the transportation of commodities other than coal or coke in the state. The Commission, after considering the testimony and evidence of the carriers generally applicable to all alike and also individually, must come to the inevitable conclusion that the carriers have not met the burden of proof which is upon them.

The material increase in costs of transportation over corresponding periods of the last year or two has been unquestionably shown, but it has not been demonstrably proved that an increase of rates generally throughout the state of from 10 to 15 per cent should be placed entirely upon the coal and coke traffic of the state. The carriers have not shown that the present coal and coke rates place a burden upon interstate coal and coke traffic, or upon other commodity traffic within the state.

While the carriers acknowledge their inability to compile minute detailed statements of revenues and expenses related to the transportation of freight, it is significant to point out that only two carriers have presented figures to the Commission to show even the amount of revenue per ton-mine on intrastate coal traffic. This forces the Commission to the conclusion that it cannot then be even ascertained by the carriers themselves that coal and coke traffic in the state is or is not bearing its proper burden of the transportation costs. Unless the carriers know what revenue is derived from intrastate and interstate coal and coke traffic how can it be determined definitely that the one places a burden upon the other, or upon other commodities?

Without doubt there must have been certain evidence presented to the Interstate Commerce Commission in the case before it to justify the increases allowed by it upon coal and coke rates. If so, the carriers have not presented similar evidence before this Commission, but have relied principally upon the fact that the Commission should allow the increase in order that uniform action may be had to correspond with the action of the Interstate Commerce Commission.

The carriers assert that the greatest emergency exists today that has ever existed in the railroad service in the history of the United States, and that the increases are necessary to provide suitable transportation facilities for the future, and are urgently required to meet the emergencies confronting the railroads. The Commission has had no disposition to delay the proceedings in this cause and it respectfully calls attention to the fact that the carriers, upon their own volition, requested that the cause be vacated from the hearing docket at each setting of the case by the Commission for hearing, until, at the behest of the carriers, a period of some nine months elapsed without any action being taken.

In December, 1917, the federal government, through the President, took over the possession, use, control and operation of the railroads of the United States, and on March 21, 1918, subsequent to the hearing in this cause, an act of Congress was approved entitled "An Act to provide for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes." This action was brought about largely to create a greater efficiency in operation and cooperation, and to harmonize the relations between the various carriers.

As before stated the Commission is of the opinion that the carriers have not met the burden of proof upon them to justify the proposed increases; that they have not shown that coal and coke rates in Colorado place a burden upon interstate coal and coke traffic, and that coal and coke rates in Colorado place a burden upon the transportation of other commodities in the state. Mention has been made by the carriers of depressed rates or rates which are unduly low through competition and which the carriers "would not of their own volition make." If, after an examination of the tariffs by the carriers and such examination indicates that such rates result in a burden upon other traffic, and that such specific rates are low and should be equalized in order to bring about a more ideal relation and remove apparent discrepancies, the Commission will set an early date for the taking of testimony and hear argument in support of same. An order will be entered permanently suspending the operation of the schedules herein under suspension and requiring the carriers to cancel such schedules.

ORDER.

IT APPEARING, That on August 8, 1917, the Commission entered upon an investigation concerning the propriety of certain increased rates, charges, regulations and practices for the transportation of coal, coke and coke breeze in the state of Colorado stated in schedules filed by the carriers in Colorado to become effective August 27, 1917, and at subsequent dates, said schedules being designated and enumerated in the order of suspension entered August 8, 1917;

IT FURTHER APPEARING, That a full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

IT IS ORDERED, That the carriers respondents herein be, and they are hereby, notified and required to cancel, on or before April 24, 1918, the schedules designated and enumerated in the Commission's order of suspension of August 8, 1917.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 19th day of April, 1918.

DECISION No. 167.

THE WESTERN LIGHT & POWER COMPANY,

v.

THE COLORADO & SOUTHERN RAILWAY COMPANY.

Case No. 152.

April 22, 1918.

APPEARANCES: Lee and Shaw, for the complainant; E. E. Whitted and A. S. Brooks, for the defendant.

STATEMENT.

By the Commission:

This cause arises on the complaint of The Western Light & Power Company against The Colorado & Southern Railway Company for a reduction of rates on coal from the Marshall and Louisville districts to complainant's power plant, located on defendant's line of railroad between Louisville and Lafayette in Boulder County, Colorado.

The complaint herein was filed with the Commission January 26, 1918, and alleges in substance as follows: That complainant is engaged in the business of generating, selling, transmitting and delivering electricity to public and private consumers in the counties of Boulder, Weld and Adams in the state of Colorado; that said electricity is generated and distributed from a central power plant located in the coal fields in Boulder county, Colorado, at a point between the stations of Lafayette and Louisville on defendant's line of railroad; that defendant is a corporation and is

operating the line of railroad on which complainant's plant is located; that said electric energy is produced by complainant by means of a generating plant utilizing coal produced in the said coal fields and shipped to the plant of the complainant from mines at Louisville, Lafayette, Gorham and intermediate points in Boulder county, Colorado; that complainant uses about sixty-five thousand tons of coal per annum, about 70 per cent of which is slack coal, and practically all of which is transported by the defendant; that the defendant has failed heretofore to provide a schedule showing rates to the plant of the complainant, but has charged and is now charging on the coal delivered to the complainant's plant 25 cents per ton on coal from Louisville and Lafayette stations and intermediate points, and 50 cents per ton from Gorham station, for all kinds of coal, with no individual rate on slack coal; that said rates are unjust, unreasonable and discriminatory against the complainant.

Complainant alleges that the just rates on said coal would be 15 cents per ton with a minimum of $4.00 per car from Gorham, and 7½ cents per ton with a $2.00 per car minimum from Louisville and Lafayette. Complainant prays that after a hearing the Commission determine and fix just rates.

On February 7, 1918, the defendant herein filed its answer in which it denies it has failed to file a schedule of rates as claimed by complainant, and alleges that rates duly published, filed and assessed on all such shipments are as follows, to-wit:

> From Gorham and Superior, rate 50 cents per ton, published in Amendment No. 53 C. & S. Tariff I-J, P. U. C. No. 261, effective March 30, 1917;
> From Louisville, rate 25 cents per ton, minimum weight 40,000 lbs., published in Tariff I-J, P. U. C. No. 261;
> From Lafayette, rate 25 cents per ton, switching charge, minimum charge $5.00 per car, published in C. & S. Tariff 1290-H, P. U. C. No. 316;

which said rates apply to all kinds of coal, and to the coal delivered to the complainant. The defendant denies that the rates charged by it are unjust, unreasonable or discriminatory, and denies that the rates asked for by the complainant are reasonable.

A hearing was held in the hearing room of the Commission, in Denver, Colorado, on the 15th day of March, 1918, all of the parties being represented by counsel. At that time testimony was taken and witnesses presented and examined by the respective parties.

From the evidence it appears that the power plant of the complainant was constructed in 1907 and located between Louisville and Lafayette on what is known as the Louisville-Lafayette branch of defendant's line of railroad, the location being in the center of a large coal producing section in Boulder county, Colorado; that part of the defendant's line of railroad over which complainant's coal is hauled and on which the 25-cent rate is charged, extends from Lafayette westerly to Louisville and thence south on a main line to Louisville Junction, a distance of approximately six miles. That part of the above described railroad from Louisville south to Louisville Junction is a part of the main line running into Boulder. At Louisville Junction this line connects with another main line extending northwesterly, also running to Boulder. On that part of the line from Louisville Junction to Lafayette there are located many of the larger mines in Boulder county, producing lignite coal, among them being Monarch No. 2, Bix Six, Centennial, Brooks, Harrison, Acme, Matchless, Rex No. 1, Rex No. 2, Hecla, Strathmore and Simpson. It appears that the power plant of the complainant was originally located in the center of this group or mining district for the purpose of taking advantage of the fact that large quantities of lignite slack coal was here produced, which could be obtained with a short rail haul, and, as this slack coal is chiefly useful for steam purposes and is non-storable on account of spontaneous combustion, could be obtained very cheaply. The testimony shows that The Western Light & Power Company is serving practically all of that territory in Colorado lying north of the city of Denver and east of the main range of mountains, containing a population of approximately two hundred thousand people. When complainant's plant was originally constructed there was very little demand or use for the slack coal produced in this section and complainant was able to obtain the same very cheaply. In 1915 the price for the said slack coal to the complainant was 95 cents per ton, not including freight, and complainant's coal for that year cost $48,247.00. In the year 1917 the price of this coal to complainant had risen to $2.17½ per ton, and the total cost to complainant for its coal during that year, not including freight, was $121,140.00. This radical increase in the price of coal, according to the testimony, was due to increased cost of operation of the mines, increased demand for the coal, and the fact that prices of coal were being fixed by the federal government. The increased cost of coal has resulted in greatly increasing the cost of operation of complainant's plant.

The testimony also shows that until 1917 very little coal was used by the complainant from the Marshall group, west of Louisville, on which the freight rate of 50 cents per ton was paid, and that until recently the complainant was able to obtain a sufficient supply of slack coal from the nearby mines in the Louisville-Lafayette group, and on which the 25-cent rate was charged from any of the mines to the complainant's plant. During the last year, on account of the lack of production, due, as complainant explains, to the exhaustion of the supply of coal in these nearby mines, the complainant has been compelled to resort to obtaining coal from mines at a greater distance away, located in the Marshall group. The principal mines in the Marshall group are approximately nine to thirteen miles from the complainant's power plant. The present rate of 50 cents per ton for this haul, to which complainant objects, applies—like the rate from the Louisville group—to all classes of coal. According to the testimony, however, the only coal moved under this rate is that which is transported to the complainant's plant, and is mainly slack coal.

It appears that the cost of operation for the movement of slack coal is practically the same as for other classes. While the 25-cent rate from the Louisville group has been in effect for many years, the 50-cent rate from the Marshall group was established as recently as March 20, 1917, and, according to the testimony of the defendant, was put into effect solely for the benefit of the complainant after complainant had been compelled to obtain its supply of coal from the Marshall district. The evidence shows that coal originating in the Louisville district and consigned to the complainant, is delivered to complainant's plant by train crews of defendant, operating in this district, as a switch movement.

The movement from the Marshall group, to which the 50-cent rate applies, is as follows: The empties are taken to Superior by the main line northbound train, and are set out by that train. When loaded, the crew pulls the cars out and separates them into northbound and southbound loads. The main line crews, southbound, haul the loads from Superior to Louisville Junction, where they are again set out. The northbound local freight train picks up the loads at Louisville Junction and hauls them to Louisville, where they are again set out. The Lafayette switch crew then takes them to the power plant.

It will readily be seen, therefore, that coal originating in the Marshall group, and taking the 50-cent rate, requires a greater haul

and greater expense in delivery and transportation than coal originating in the Louisville group which takes the 25-cent rate. The length of the haul from the Louisville group varies from one and one-half miles to four miles, and from the Marshall group from eight to thirteen miles.

According to the testimony of the defendant, the rate of 25 cents per ton from the mines in the Louisville group is the lowest coal rate maintained by the defendant between points on its line, and that, with the exception of the 25-cent rate herein under contention and one or two other instances of low rates which are maintained on account of competitive conditions, the minimum rate for the transportation of coal is 50 cents per ton. Particular instances of present rates of the defendant for short distances are furnished, as follows: From Forbes to Trinidad, eleven miles, 50 cents; from Sherman to Augusta, ten miles, 50 cents; from Sherman to Trinidad, thirteen miles, 60 cents. In addition the defendant submitted a table of comparative rates on coal for distances approximating those herein under consideration as prescribed by commissions in other states. The rates shown are in cents per ton of 2,000 pounds.

	Five Miles		Ten Miles		Fifteen Miles	
	Lump	Slack	Lump	Slack	Lump	Slack
Illinois	*32	..	40	..	45	..
Iowa	30	25	34	28	38	31
Kansas	35	..	40	..	50	..
Nebraska	34	..	34	..	42½	..
Missouri	30	..	30	..	40	..
South Dakota	67.4	..	67.4	..	75	..
Oklahoma	25	21	31	26	37	31
Texas	55	40	55	40	55	40

*Two miles 23 cents; over two, to four miles 27 cents.

After a consideration of the testimony and evidence in the cause, the Commission is of the opinion that the present rates of 25 cents per ton from the Louisville group and 50 cents per ton from the Marshall group to the complainant's power plant located between Louisville and Lafayette have not been shown to be either unreasonable or unjust.

It appears unfortunate for the complainant that a supply of coal from the nearby mines is being exhausted, and that complainant is compelled to obtain its supply from mines farther away, on which it pays a rate of 50 cents per ton. However, the defendant is entitled to a reasonable rate for the service performed, and it does

not appear that the rate of 50 cents is unreasonable. Should the supply of coal from the group of mines from which the 25-cent rate applies again be increased the complainant may still take advantage of this rate.

The defendant, with other carriers in the state, has had tariffs on file with the Commission under suspension since August, 1917, in which increases in coal and coke rates were proposed. Increases of 10 cents per ton were proposed in the rates herein under review. The Commission has recently issued an order permanently suspending the proposed increases and, therefore, the proposed increase of 10 cents per ton will not become effective on the rates complained of herein.

ORDER.

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

GEO. T. BRADLEY,

(SEAL)

LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 22nd day of April, 1918.

DECISION No. 168.

IN RE ADVANCE IN COAL AND COKE RATES IN COLORADO.

Investigation and Suspension Docket No. 11.

April 23, 1918.

IT APPEARING, That by order dated the 8th day of August, 1917, THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO entered upon a hearing concerning the propriety of the new rates and charges for the intrastate transportation of coal, coke and coke breeze, stated in schedules contained in tariffs, designated in the order of August 8, 1917.

IT FURTHER APPEARING, That pending such hearing and decision thereon the Commission ordered that the operation of the schedules contained in tariffs enumerated and described in said order of investigation be suspended, and that the use of the rates and charges, therein stated, be deferred upon intrastate traffic until the 24th day of April, 1918.

IT FURTHER APPEARING, That the Commission entered an order on the 19th day of April, 1918, permanently suspending the schedules contained in the tariffs designated in the order of August 8, 1917, and requiring the carriers to cancel such schedules on or before April 24, 1918.

AND IT FURTHER APPEARING, That the carriers have made application for a further extension of the schedules contained in the said tariffs and the order of the Commission of April 19, 1918, for a period of 15 days in order that application may be made for re-hearing in the cause.

IT IS ORDERED, That the operation of the schedules contained in the tariffs enumerated and described in said order of

investigation, of August 8, 1917, be further suspended, and that the use of the rates and charges therein stated be further deferred upon intrastate traffic until the 10th day of May, 1918, and that the effective date of the Commission's order of April 19, 1918, be also postponed to the 10th day of May, 1918.

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

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 23rd day of April, 1918.

DECISION No. 169.

IN THE MATTER OF THE APPLICATION OF THE CRYSTAL RIVER & SAN JUAN RAILROAD COMPANY TO DISCONTINUE OPERATIONS.

Application No. 5.

Extension of Order.

April 29, 1918.

APPEARANCES: Crump & Allen for the applicant company.

STATEMENT.

By the Commission:

An order was entered in the above application on October 27, 1917, that The Crystal River & San Juan Railroad Company be permitted to discontinue operation upon its line of railroad until April 1, 1918, unless such order be modified or extended by the Commission, and said railroad company, on March 27, 1918, filed with the Commission written application for the cessation of operation of said railroad for the further period of six months from April 1, 1918, for the same reasons appearing in the original petition herein.

On March 27, 1918, the Commission ordered that the permission for discontinuance of operation theretofore granted to said railroad company be extended to May 1, 1918, to enable the Commission to make such further investigation and decision upon the application of said railroad company for extension of order as might be deemed advisable.

The Commission caused such investigation to be made and set the hearing upon the application at the office of the Commission, Capitol Building, Denver, Colorado, for April 25, 1918. At that time and place the matter came on for hearing. The Commission's railway engineer, C. D. Vail, testified that during April, 1918, he inspected the railroad in question and found a portion of the railroad track covered with snow; that the portion which could be examined showed that the ties are in bad condition; that parts of the track were covered with gravel, while some large boulders were on the track; that it would cost at least $4,000.00 to place the track in condition to handle traffic and even this expenditure would not put the track in safe condition for a speed of more than ten miles per hour. No protests against an extension of the order in this cause has been filed with the Commission and no protestants appeared at the hearing.

It further appears from the evidence that the applicant continues to be without available funds to operate its line of railroad and the allegations of the petition for extension are sustained; the unsafe condition of the line, combined with the Company's financial status, requires the extension of the order heretofore made.

ORDER.

IT IS THEREFORE ORDERED, That the permission for discontinuance of operation, heretofore granted to The Crystal River & San Juan Railroad Company, of its line of railroad be, and is hereby, extended from May 1, 1918, until November 1, 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.

GEORGE T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

(SEAL)

Dated at Denver, Colorado, this 29th day of April, 1918.

DECISION No. 170.

A. H. RADETSKY,

v.

W. R. FREEMAN AND C. BOETTCHER, AS RECEIVERS OF THE DENVER & SALT LAKE RAILROAD CO.

Case No. 155.

April 30, 1918.

APPEARANCES: Barnett and Campbell, and Philip Hornbein, for the complainant. Milton Smith and Elmer Brock, for the defendant.

STATEMENT.

By the Commission:

The complainant herein is engaged in the business of buying and selling junk in the city and county of Denver, Colorado.

The defendants herein are the duly appointed, qualified and acting receivers of The Denver & Salt Lake Railroad Company and are operating said railroad, which extends from Utah Junction, a station near the city of Denver, northerly and westerly to Craig, a station in the county of Moffat, in the state of Colorado.

This action was originally brought by the complainant to have the Commission determine the proper classification and the proper rate to be applied on about 2,000 tons of old railroad rails, belonging to the complainant and which complainant contemplated shipping to Denver from Granby on said line of railroad, also the classification and rate to be applied on five carloads of rails belonging to the complainant and transported by defendant from Fraser, a station on defendant's line, to Denver. Three of the said five cars

that had already been transported, on arriving at Denver, were rebilled by the complainant and consigned to The Colorado Fuel & Iron Company at Pueblo, Colorado, and were transported from Denver to Pueblo over the Colorado & Southern Railway. The other two of said five cars, at the time of the hearing, were on a sidetrack at Utah Junction, near Denver. The complainant contends the old rails should be classified and shipped as junk, at a rate of 12½ cents per one hundred pounds as carried in defendant's tariff from Granby and Fraser to Denver, while defendants contend the proper rates applicable are the rates applicable to iron or steel rails—the fifth class rate of 43 cents per one hundred pounds from Fraser, and 48 cents from Granby, to Denver. The defendants refused to release the five cars to the complainant until the rate of 43 cents per hundred pounds was paid for the transportation of the same.

A hearing was held in the hearing room of the Commission, at Denver, Colorado, April 4, 1918. After the hearing, the complainant withdrew from the issues herein the matter of determination of the classification and rates on all of the said rails in question, with the exception of the three cars theretofore transported by defendants and which had been rebilled and reshipped by complainant to The Colorado Fuel & Iron Company at Pueblo, over the Colorado & Southern Railway.

The only issue, therefore, now before the Commission, is the proper classification and the proper rate on the three cars of rails transported by defendants from Fraser to Denver. For this reason it is unnecessary to consider any of the testimony in the record which does not apply to these three cars. The three cars transported by The Colorado & Southern Railway Company from Denver to The Colorado Fuel & Iron Company's plant at Pueblo were accepted by The Colorado & Southern Railway Company, and classified by it as junk. The rate assessed by that carrier for the haul from Denver to Pueblo was its junk rate of 4½ cents per hundred pounds.

The classification rule which governs the rates on scrap iron or junk is as follows:

> "Ratings apply on scrap or pieces of iron or steel having a value for remelting purposes only."

The defendants contend that an inspection showed that the rails in question were not in pieces, but were mostly of full length, and that in order to take the junk rate they should have been

broken into pieces. They also contend that the said rails were second-hand rails and might be sold for relaying rails. As to the first contention, this Commission inclines to the view expressed by the Interstate Commerce Commission in Continental Iron & Steel Company v. Louisville & Nashville Railroad Company, 22 I. C. C. 282. The Commission says:

> "From a practical standpoint and as a matter of physical possibility, it should be noted that few, if any, bridges could be 'broken into scraps or pieces' at the point where they are dismantled and the interpretation of the rule contended for by the carriers would have the inevitable effect of denying to scrap bridge material a lower rate than is accorded to the same material when new, or before its period of service as a bridge has ended. The shipment was billed as scrap iron and it is undisputed that it was used as scrap iron. Our conclusion is therefore that under the rule in question it was entitled to the scrap iron rate."

The complaint herein presents practically the same issue as was involved in the above case. If these rails are in fact scrap iron, to compel the complainant to break them into pieces before shipment, would be to practically deny him the junk rate, as the expense of breaking the rails into pieces at the point of shipment probably would represent a greater financial outlay than to pay the rate applying on new rails.

As to the defendants' contention that the rails in the three cars were relaying rails and could be disposed of for use other than scrapping: The evidence before the Commission is that most of these rails weighed only 52 and 56 pounds to the yard; that they were old rails, most of them having been made by the Edgar Thompson Company in 1877; that they were bought second-hand 11 years ago; that the complainant had industriously tried to sell them for relaying rails during a period of four or five months, had offered them for sale and showed them to different persons, all of whom had rejected the rails as relaying rails.

The buyer of scrap iron for The Colorado Fuel & Iron Company, who was called as a witness for the complainant, testified that he bought two carloads of rails as scrap iron at a price not to exceed $30.00 per ton; that they were used for remelting purposes; that his company does not buy any relaying rails. The complainant also introduced an exhibit, an order from The Colorado Fuel & Iron Company for two cars of scrap rail, at a price not to exceed

$30.00 per ton, f. o. b. Minnequa. Complainant testified the scrap iron price at that time was $30.00 per ton. The complainant shipped to The Colorado Fuel & Iron Company three cars of old rails, being one car more than was ordered. One car was refused by that company and afterwards was turned over to the Stearns-Roger Manufacturing Company and was purchased at the scrap iron price of $30.00 per ton.

The evidence is that the rails in these cars were scrap iron, and that complainant was unable to sell them for anything else. The order from The Colorado Fuel & Iron Company shows that two carloads of these rails were sold as scrap iron, while the Colorado & Southern bill of lading shows that the three cars of rails shipped from Denver to Pueblo were billed and classified as scrap iron. The defendant has not contradicted this testimony and the Commission is of the opinion that the three carloads of rails should be classified as scrap iron and receive the application of the junk rate of 12½ cents per one hundred pounds from Fraser to Denver. A case of this nature depends on its particular circumstances and conditions, and this opinion is not to be construed as a precedent in future cases where different conditions may perhaps exist. An order will be entered in accordance with the foregoing opinion.

ORDER.

IT IS THEREFORE ORDERED, That the defendants herein, W. R. Freeman and C. Boettcher, as Receivers of The Denver & Salt Lake Railroad Company, be, and they are hereby, authorized and directed to assess and collect charges upon three carloads of scrap iron rails from Fraser, Colorado, to Denver, Colorado, enumerated and described as follows:

Pa. 284484, Way-bill 31, December 19, 1917.
PLE 46347, Way-bill 43, December 31, 1917.
Pa. 355515, Way-bill 47, January 11, 1918.

which shall not exceed the charges assessed and collected upon the basis of the rate applicable to junk of 12½ cents per one hundred pounds.

(SEAL)

GEORGE T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 30th day of April, 1918.

DECISION No. 171.

IN RE ADVANCE IN GAS RATES AT FORT COLLINS.

Investigation and Suspension Docket No. 21.

April 30, 1918.

STATEMENT.

By the Commission:

By tariffs filed effective March 27, 1918, The Poudre Valley Gas Company proposed increases in its rates for gas service in the city of Fort Collins. On March 13, 1918, the Commission entered upon an investigation and hearing concerning the proposed increases and suspended the use of the increased rates, charges and rules contained in the schedules until the 25th day of July, 1918

The Commission has caused an investigation to be made of the proposed schedules of rates, and is now advised as to the same. No objection or protest has been received relative to the proposed rates, and it appears that by ordinance duly passed by the city council of Fort Collins on April 22, 1918, approval of the rates as filed with the Commission was recommended. The Commission is of opinion that the suspension should be vacated and the schedules allowed to take effect as of May 1, 1918, provided, that such order shall not affect any subsequent proceeding relative thereto.

ORDER.

IT IS THEREFORE ORDERED, That the order heretofore entered in this proceeding suspending the operation of schedules contained in Colo. P. U. C. No. 3 of The Poudre Valley Gas Company, be, and it is hereby, vacated and set aside as of May 1, 1918.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 30th day of April, 1918.

DECISION No. 172.

IN RE ADVANCE IN RATES OF THE FEDERAL GAS COMPANY, AT BOULDER, COLORADO.

Investigation and Suspension Docket No. 20.

April 30, 1918.

APPEARANCES: Goss & Kemp for the respondent. Frank L. Moorhead for the City of Boulder.

STATEMENT.

By the Commission:

On January 31, 1918, The Federal Gas Company filed with this Commission rate schedule P. U. C. Colo. No. 3, cancelling rate schedule P. U. C. No. 2, by which it was proposed to advance the rates for general gas service in the city of Boulder, Colorado, and by which it was further proposed that such rates should become effective on and after March 1, 1918. On the same date the company filed with the Commission a statement alleging increases in the cost of material and supplies used in the manufacture of gas and represented to the Commission that such material would cost approximately $8,600.00 more for the year 1918 than for the preceding year.

It appeared that the Commission should enter upon an investigation and hearing concerning the propriety of the proposed rates, and pending such investigation and hearing and decision thereon the proposed rates, on February 25, 1918, were suspended by order of the Commission until June 29, 1918. The case came on for hearing in the city of Boulder on April 16, 1918, appearances being entered by Frank L. Moorhead for the city of Boulder, and by Goss & Kemp for The Federal Gas Company. At the hearing

evidence and testimony were received by the Commission relative to the reasonableness of the present and proposed rates.

The city of Boulder and The Boulder Commercial Association filed protests against the proposed rates, and alleged that the same were unreasonable and that the Commission has no jurisdiction over the rates and schedules of The Federal Gas Company operating within the city of Boulder, because such city operates under charter pursuant to Article XX of the constitution of the state of Colorado, and that therefore such city has full and exclusive control of rates of public service companies operating within its boundaries.

These objections are denied as this Commission has uniformly held that the regulation of rates of public utilities is not a matter of local or municipal concern. Campbell v. City of Grand Junction, 5 Colo. P. U. C. —, decided November 27, 1917, and cases cited.

The rates now on file with the Commission and those proposed in the suspended tariff filed to become effective on March 1, 1918, are as follows:

	——Net Rates per M——	
	Now in effect	Proposed
Rate.	P. U. C. Colo. 2	P. U.C. No. 3
First 10,000 cubic feet of monthly consumption	$1.00	$1.30
Next 10,000 cubic feet of monthly consumption	.80	1.10
Next 10,000 cubic feet of monthly consumption	.70	.90
For all monthly consumption in excess of 30,000 cubic feet	.60	.80
Minimum Monthly Guarantee.		
For consumer	.50	.50

At the present time the company receives $1.00 net per M cubic feet for all gas sold through prepay meters. In the proposed rates a rate of $1.30 per M cubic feet is asked for all gas disposed of in this manner.

It appears from the record in this case that the gas business in the city of Boulder dates back to 1902, at which time the supply of gas was principally from a natural gas well located about two miles east of the present plant of The Federal Gas Company. This natural gas, while of an exceptionally high quality, was never sufficient in quantity to meet the demands of the consumers, and a small water gas plant was installed for the purpose of augmenting the natural gas supply. The natural gas well failed on November 20, 1914, and since that time the consumers have been supplied

entirely with water gas. The Federal Gas Company, the present owner of the property, was organized in 1904 and operates under a franchise granted to one Peter English on June 18, 1902. Presumably gas was supplied in Boulder by English and his associates prior to the organization of the present company.

At the hearings in this case an inventory and appraisal of this property based on cost of reproduction under normal conditions was submitted by the engineering staff of the Commission. This appraisal did not include any allowances for going-concern value, cost of money or promoter's remuneration, and is summarized as follows:

Account No.	Classification of Property.	Normal Reproduction Cost
101	Organization	$ 2,750.00
102	Franchises	200.00
105	Land and right of way	3,180.00
106	Buildings and structures	6,240.00
109	Water gas apparatus	42,181.00
111	Boilers and boiler plant equipment	3,232.00
121	Mains	49,071.00
122	Service connections	17,325.00
123	Consumers' meters	12,476.00
124	Consumers' installations	1,522.00
140	General office equipment	1,107.00
142	Utility equipment	552.00
143	Miscellaneous equipment	745.00
	Working capital	6,500.00
	Total used and useful property	$147,081.00
121	Mains not in use	3,263.00
	Total	$150,344.00

No serious objections to this appraisal were raised by either the city or the company and the only other evidence before the Commission bearing on the value of this property is the amount carried on the books of the company which was reported by the statistician of the Commission to be $211,788.55 as of December 31, 1917. The book accounts include $85,000.00 under the head of Intangible Capital, and as a whole are in no way comparable with the appraisal submitted by the engineering staff. The company made no claim at the hearing in this case that the amount carried on the books should be considered as the value of the property for rate-making purposes.

Revenues and Expenses.

The revenues and expenses for the calendar years 1915, 1916 and 1917, as compiled from the books of the company by the statistician of the Commission are set out in Statement No. 1.

STATEMENT NO. 1.

REVENUES AND EXPENSES.

	1915	1916	1917
Operating Revenues—			
Commercial Earnings	$38,582.51	$42,906.80	$46,503.13
Earnings from Residuals		73.94	699.02
Profit Merchandise Sales		*115.84	110.97
Profit Piping and Connections	120.60	118.38	*383.71
Total Operating Revenue	$38,703.11	$42,983.28	$46,929.41
Operating Expenses—			
Water Gas Production	$22,068.12	$22,451.46	$24,964.80
Distribution Expense	2,978.50	1,950.66	3,052.47
Commercial Expense	984.37	859.89	869.80
New Business Expense	49.80	124.29	314.34
General Expense	4,734.76	5,938.78	5,899.48
Depreciation	5,558.15	5,597.06	5,721.14
Taxes	2,043.70	2,181.25	2,819.01
Total Operating Expense	$38,417.40	$39,103.39	$43,641.04
Gross Income	285.71	3,879.89	3,288.37

*Deficit.

From this statement it is apparent that the amounts available for accruing depreciation and for a return on the investment in the property for the years under consideration were as follows:

1915	$5,843.86
1916	9,476.95
1917	9,187.85

The portion of the above amounts to be set aside annually as a depreciation requirement will be discussed later in this opinion.

Report of Engineering Staff.

The report of the engineering staff submitted in this case dealt with the value of the property of the respondent, the quality of service being rendered, the development of the business, operating conditions and operating expenses under present conditions, and with the matter of rates and rate schedules in general. This report was in substance as follows:

Quality of Service.

The average heating value of the gas supplied in the city of Boulder for the year 1917 was 700 B. t. u. per cubic foot, whereas the average heating value required by rules of the Commission governing the service of gas utilities is 575 B. t. u. per cubic foot. This high heating value is maintained for the reason that natural gas of a comparatively high heating value was formerly available and the consumers of the company are accustomed to the use of gas of a high heating value. The heating value tests, however, disclose that the heating value is by no means uniform, and it is likely that on this account the consumers utilize the gas very inefficiently and that they would be better served by gas of a uniform heating value of approximately 600 B. t. u. per cubic foot.

Ample purification equipment is provided for the renewal of sulphur, so that the gas is reasonably pure and free from such impurities as are required to be removed by the rules established by the Commission.

Development of Business.

The business of The Federal Gas Company is more nearly saturated than that of any gas utility in the state, with the possible exception of Denver. This development is accounted for by the facts that the gas supplied in Boulder always has been of a very high quality, the service has been good and the rates comparatively low. The fact that natural gas was supplied in Boulder for a number of years is also to some extent responsible for the present high development of the gas business, for the reason that this gas was high in heating value and the rates at the time it was available were lower than at the present time. The development of the business of the respondent as compared with that of other gas utilities operating in the state of Colorado is shown iin Statement No. 2, which is taken from the report of the engineering staff.

Operating Conditions and Operating Expenses.

The principal items entering into the cost of manufacturing water gas are oil, coke, coal and labor. Of the total production cost, oil, coal and coke comprise at least 75 per cent, and as a result the manufacturing cost fluctuates sharply with fluctuations in the price of these materials.

Coke is essential as a generator fuel in the manufacture of water gas and the only available supply is from The Denver Gas & Electric Light Company. Up to a few months ago this coke was

purchased at $3.00 per ton f. o. b. Denver. At the present time the price is $6.00 per ton f. o. b. Denver, with no prospects of a lower price in the immediate future. The freight on coke to Boulder is $1.00 per ton, and unloading and hauling to the gas works cost 60 cents per ton, so that the present cost per ton of coke at the works is $7.60. The war tax and miscellaneous items bring the total cost of coke to $7.65 per ton at the works. Approximately 1,200 tons per year are required for the operation of this property.

Coal is necessary as a boiler fuel for the production of steam to be used in the manufacture of water gas and for the operation of pumps, blowers and other auxiliary equipment. For the year 1917 two and one-half inch steam coal delivered to the gas works cost $2.86 per ton, 50 cents of this amount being for freight and 50 cents for drayage. Approximately 650 tons per year are required and under the present market conditions this coal will cost $2.75 per ton at the works.

Oil for enriching water gas is now purchased under contract from a few small producing wells in the vicinity of Boulder. The company under these contracts agrees to take the entire output of the wells in question, the excess over the requirements for the manufacture of water gas being sold for other purposes. The average cost to the company for oil under these contracts will be approximately 7 cents per gallon for the year 1918. The present market price of an inferior grade of oil is 9 cents per gallon at the works. For the year 1917 3.6 gallons of oil per M cubic feet of gas manufactured were used. By reducing this oil to 3 gallons per M cubic feet of send-out the oil required for the year 1918 will be 174,000 gallons.

The company has never installed a station meter so that the gas send-out has been estimated on the basis of gas sales, an unaccounted for loss of 15 per cent being assumed. It is probable that the unaccounted for loss is less than 15 per cent and that the oil used per M cubic feet of gas made is slightly in excess of the estimate of 3.6 gallons.

Annual Depreciation Requirement.

The annual depreciation requirement was estimated by the engineering staff at $2,824.00 when set aside on the 5 per cent sinking fund basis. This requirement when set aside on the straight line basis was estimated at $5,235.00.

STATEMENT NO. 2.

Department.

COLORADO GAS UTILITIES.

DEVELOPMENT OF BUSINESS.

1916.

Year	City	Population 1915 Est.	Gas Sales M cu. ft.	Miles of Main	Meters in Service	Annual Sales per Mile of Main cu. ft.	Annual Sales per Meter cu. ft.	Annual Sales per Capita cu. ft.	Meters per 100 Population	Meters per Mile of Main
1916	Canon City	6,000	7,102.7	7.5	646	945,000	11,000	1,184	10.8	86
1916	Colorado Springs ..	40,000	95,677.0	59.5	4,767	1,605,000	20,100	2,400	11.9	80
1916	Denver	250,000	1,272,056.0	368.6	43,356	3,450,000	29,400	5,100	17.4	118
1916	Fort Collins	10,000	18,244.3	15.4	1,018	1,185,000	17,900	1,825	10.2	66
1916	Greeley	10,000	26,077.3	22.5	1,411	1,160,000	18,500	2,608	14.1	63
1916	Grand Junction	7,000	12,564.8	12.0	827	1,045,000	15,200	1,800	11.8	69
1916	Pueblo	50,000	104,450.5	77.8	4,775	1,345,000	21,900	2,100	9.6	61
1916	La Junta*	8,830	9,203.0	31.7	675	270,000	13,600	1,040	7.7	21
1916	Trinidad	14,500	14,033.0	11.1	817	968,000	17,100	965	5.6	74
1916	Boulder	12,000	49,470.8	22.5	1,482	2,200,000	33,400	4,100	12.3	66

*Includes Rocky Ford and Swink.
Derived figures are from slide rule readings.
Data compiled from Annual Reports.

Cost of Service.

The engineering staff estimated the cost of supplying gas service, based on conditions prevailing at this time, to be as shown in Statement No. 3.

STATEMENT NO. 3.

COST OF SERVICE.

Based on gas having an average heating value of 600 B. t. u. per cu. ft. when tested at a temperature of 60 degrees Fahrenheit and under a pressure of 30 inches of mercury.

M cubic feet of send-out 58,000.

M cubic feet of sales 49,000.

	Amount	Per M cu. ft. Sales
Superintendence, water gas manufacture	$ 134.00	0.0027
Water gas labor	2,244.81	.0456
Steam—coal at $2.75 per ton	3,830.12	.0783
Generator fuel—1,225 tons at $7.65	9,371.25	.1914
Oil—174,000 gallons at $0.07	12,180.00	.2487
Purifying material	211.34	.0043
Miscellaneous production supplies	238.47	.0048
Maintenance and repairs—water gas equipment	1,217.27	.0248
Total Production Cost	$29,427.26	0.6006
Distribution expense	$ 3,052.47	.0623
Commercial expense	869.80	.0177
New business expense	314.34	.0064
General expense	5,899.48	.1202
Taxes*	3,100.00	.0633
Depreciation	2,824.00	.0578
	$45,487.35	0.9283
Return—8 per cent on $147,000.00	11,760.00	.2400
Total Cost of Service	$57,247.35	1.1683
Revenue under present rates—gas sales and residual earnings	47,202.15	.9633
Additional Revenue Necessary	$10,045.20	0.2050

*Estimate includes 1½ per cent of gross revenue, payable to the city of Boulder as a franchise requirement.

Rates.

The present and proposed rates of the respondent were discussed at length in the report of the engineering staff, while various forms of schedules designed to give the revenue required were submitted for the consideration of the Commission. Of these various schedules the following appears to be best adapted to the local conditions and possesses the further advantage of being of the form to which the consumers have been accustomed for a number of years:

Rate.

$1.25 net per M cubic feet for the first 10,000 cubic feet of monthly consumption,
$1.00 net per M cubic feet for the next 15,000 cubic feet of monthly consumption,
$0.75 net per M cubic feet for all consumption during the month in excess of 25,000 cubic feet.

Minimum Monthly Guarantee.

50 cents net per consumer or per meter.

A net rate of $1.30 per M for gas sold through prepay meters was recommended.

An analysis of the gas sales of the respondent for the calendar year 1917 gave the following classification:

	M Cu. Ft. Sales	Per Cent of Total
Gas included in minimum bills	286.7	.6
Sales through prepay meters	1,657.3	3.4
First 10 M cubic feet per month	38,643.5	79.5
Next 15 M cubic feet per month	4,822.3	9.9
Sales in excess of 25 M cubic feet per month	3,224.8	6.6
Total	48,634.6	100.0

The above rates are applied to the sales for the year 1917 as follows:

First 10 M cubic feet per month	38,643.5 M	@	$1.25 net	$48,304.37
Next 15 M cubic feet per month	4,822.3 M	@	1.00 net	4,822.30
Consumption exceeding 25 M cubic feet per month	3,224.8 M	@	.75 net	2,418.60
Minimum bills	286.7 M		...	608.00
Sales through prepay meters	1,657.3 M	@	1.30 net	2,154.49
Total	48,634.6 M			$58,307.76

From a careful consideration of the record in this case, the Commission finds:

(1) That the rate-making value of the used and useful property of The Federal Gas Company as of December 31, 1917, was not less than $145,000.00,

(2) That a proper annual depreciation requirement at this time to be set aside on the 5 per cent sinking fund basis is the sum of $2,824.00,

(3) That a fair return to the owners of the property is 8 per cent on the above rate-making value.

(4) That the annual cost to the company of furnishing service under the conditions prevailing at this time is as follows:

Water gas production	$29,426.00
Distribution expense	3,052.00
Commercial expense	870.00
New business expense	314.00
General expense	5,899.00
Taxes	3,100.00
Depreciation	2,824.00
Return—8 per cent on $145,000.00	11,600.00
Total	$57,085.00

(5) That the gross revenue from the sale of gas and residuals under the rates now in effect and on file with the Commission will not exceed $47,000.00 per annum.

(6) That the following rates are fair and reasonable under conditions prevailing at this time and should be substituted for the rates now in effect and on file with the Commission:

Credit Meters.

Rate.

$1.20 net or $1.30 gross per M cubic feet for the first 10,000 cubic feet of monthly consumption,

$1.00 net per M cubic feet for the next 15,000 cubic feet of monthly consumption,

$0.80 net per M cubic feet for all consumption during the month in excess of 25,000 cubic feet.

Prompt Payment Discount.

Bills will be rendered at the gross rate and discounted to the net rate, if paid within the discount period.

Minimum Monthly Guarantee.

50 cents net per consumer or per meter.

Prepay Meters.

Rate.

$1.30 net per M cubic feet.

Order.

IT IS THEREFORE ORDERED, That the rates filed by The Federal Gas Company on January 31, 1918, suspended by an order of this Commission until June 29, 1918, be, and the same are hereby, permanently suspended.

IT IS FURTHER ORDERED, That The Federal Gas Company be, and it is hereby, permitted to file schedules effective as of May 1, 1918, providing for the following rates and charges to apply to all service rendered on and after that date:

Credit Meters.

Rate.

$1.20 net or $1.30 gross per M cubic feet for the first 10,000 cubic feet of monthly consumption,

$1.00 net per M cubic feet for the next 15,000 cubic feet of monthly consumption,

$0.80 net per M cubic feet for all consumption during the month in excess of 25,000 cubic feet.

Prompt Payment Discount.

Bills will be rendered at the gross rate and discounted to the net rate, if paid within the discount period.

Minimum Monthly Guarantee.

50 cents net per consumer or per meter.

Prepay Meters.

Rate.

$1.30 net per M cubic feet.

IT IS FURTHER ORDERED, That The Federal Gas Company shall file the foregoing rates in accordance with Section 16 of the Public Utilities Act.

The Commission as a part of this order expressly reserves the right either upon its own motion or upon complaint to further investigate the rates authorized by this order, make findings, amend or annul any of the terms or provisions of the said new schedule of rates as above set forth, and to make any other or further order as may be necessary in the premises and for that purpose retains jurisdiction of the matter herein.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 30th day of April, 1918.

DECISION No. 173.

THE GOLDEN CYCLE MINING & REDUCTION COMPANY,

v.

THE COLORADO SPRINGS LIGHT, HEAT & POWER COMPANY.

Case No. 147.

May 1, 1918.

APPEARANCES: H. McGarry, for the complainant. R. L. Holland, for the defendant.

STATEMENT.

By the Commission:

Complaint was filed by The Golden Cycle Mining & Reduction Company on December 20, 1917, alleging in substance: That on June 30, 1914, The Colorado Springs Light, Heat & Power Company, hereinafter called the Power Company, made a written contract with complainant, hereinafter called the Reduction Company, whereby the Power Company was to supply the Reduction Company with all the electrical energy for the period commencing March 1, 1915, and ending March 1, 1920, for its use in the operation of its ore reduction plant near Colorado Springs, for which the Reduction Company agreed to pay certain rates named in the contract; that on December 15, 1915, this Commission, after due consideration of said contract in connection with its investigation of the reasonableness of all rates of the Power Company, by its order then made, approved the rate being charged by the Power Company to the Reduction Company under the terms in said contract, and permitted such contracts at said rates for five-year periods thereafter

to customers of that class; that on March 1, 1916, after rehearing, this Commission affirmed its order of December 15, 1915, above described; that on July 31, 1917, this Commission, after another hearing on its own motion concerning the reasonableness of rates charged by the Power Company, made another order purporting to authorize the Power Company to charge the Reduction Company a rate for the same service theretofore given, in excess of the rate provided by said contract, notwithstanding the contract rate had theretofore been approved and permitted by this Commission on December 15, 1915, and March 1, 1916; that the excess charge in the order of July 31, 1917, is at least $10,000.00 more per annum than the amount provided by the terms of said contract; that the Power Company has billed the Reduction Company at this excess rate since August 1, 1917, and intends to continue so doing unless otherwise ordered by this Commission, and threatens to enforce the collection of same by legal proceedings in the courts unless this Commission vacates said order.

The complaint further states that this Commission exceeded its power under the law in making its order of July 31, 1917, in so far as same purports to increase the rate charged the Reduction Company because such order violates said contract and such order violates the orders of this Commission made December 15, 1915, and March 1, 1916, contrary to law and rules of equity applicable thereto; that the order complained of discriminates against the Reduction Company in its relations to other customers of the Power Company, because such order is designed to increase the profits of the Power Company $16,000.00 per annum and the Reduction Company is burdened with at least $10,000.00 of such sum, while it engages about one-fifth of the generating equipment of the Power Company; that the Power Company's electric plants and service installation were primarily created to serve only the requirements of inhabitants of Colorado Springs, Colorado City and Manitou, under its franchises from those municipalities; that the Reduction Company's ore reduction plant was constructed and placed in operation in 1907, long after the Power Company's plant and installation was placed in operation, and the service to the Reduction Company became a secondary service as distinguished from the primary purpose of the Power Company's plant.

The complaint further states that when the Reduction Company constructed its plant it intended to supply its own power requirements, but was induced to forego and postpone the same by the offer of the Power Company to furnish such service at whole-

sale prices, and a contract was made between the Power Company and the Reduction Company on August 30, 1906, for such service to become effective when the Reduction Company's plant was ready to operate and for three years thereafter; that in June, 1909, another contract was made between said parties, effective March 1, 1910, to expire March 1, 1916, for such service, at a less rate than the first contract, and for that reason only the Reduction Company further postponed the construction of its own plant; that on June 30, 1914, the Power Company and Reduction Company made the contract now relied upon by the Reduction Company; that had that contract not been made by the invitation of the Power Company the Reduction Company would then have constructed its own electric plant; that at all the times the Reduction Company was operating its reduction plant it owned a coal mine near said plant, from which coal could have been utilized for such electric plant, and the services of the Reduction Company's employees could have been used for the electric plant, all at a cost to the Reduction Company of about one-half the amount paid to the Power Company, and the Reduction Company would have constructed such plant except for the said contracts; that by careful estimates the Reduction Company can construct its own electric plant for $200,000.00 and the cost of operating the same would be much less than the amounts it is required to pay under the order of July 31, 1917, that the Reduction Company would be justified in constructing its own plant; that the profits of the Power Company on the Reduction Company's business have been more than 60 per cent of the $75,000.00 a year paid for the same, whereby the Power Company has imposed much lower rates to the general public.

The Reduction Company then prayed that, upon hearing, the order of July 31, 1917, increasing the rate of the Reduction Company be vacated.

The Power Company filed its answer stating, in substance, that it admitted the making of the contract of June 30, 1914, and that the orders of this Commission were made as alleged by the Reduction Company; that the rate fixed by this Commission on June 31, 1917, increased the cost of electric energy to the Reduction Company by about $10,000.00 per annum over the rates theretofore in effect; that the Power Company has billed the Reduction Company on the new rate since August 1, 1917, and has threatened to collect the same by legal proceediings; that the Power Company is advised it must take legal steps to collect such bills and has so notified the Reduction Company. The Power Company further answered that

practically one-fifth of its equipment is engaged in furnishing the Reduction Company with electricity; that the new rates were designed to increase the Power Company's profits about $16,000.00 per annum; admits that the Power Company was, prior to the orders of this Commission, unable to impose a lower rate for services to the general public by reason of its contract to the Reduction Company, but alleges this was not due to a large profit on the Reduction Company's current; that by reason of the desirable load factor of the Reduction Company's requirements the Power Company was able to generate current cheaper than it otherwise would be able to do. The Power Company denies that its profit on the Reduction Company's business has been 60 per cent of $75,000.00, but, on the contrary, states its annual profit thereon has been less than 8 per cent on the total annual charge therefor. The Power Company denies the other matters in the complaint, and alleges in substance that by reason of increased operating costs since July 31, 1917, it has not earned the estimates made by this Commission computed on the rates ordered on that date; that there will be a deficiency of $18,000.00 per annum in operations since July 31, 1917, under the rates then established; that in order that the Power Company may earn a fair return, as determined in said order of July 31, 1917, it is necessary that the rates established in said order be increased, and alleges that if the contention of the Reduction Company is sustained herein the loss to the Power Company must be made up by increasing the rates to other customers.

The answer then prays an inquiry into the matters of law and fact in the complaint, and an adequate protection to the interests of the Power Company.

The cause came on for hearing at the hearing room of the Commission in the state capitol building, Denver, Colorado, on February 1, and March 4th and 5th, 1918.

The contract of June 30, 1914, contained the following:

> "In no event shall the Mining Company pay the Power Company less than $1,437.50 for the current demanded and received by it in any calendar month, this charge to be considered as a monthly demand guarantee and to be subject to the provisions of Article 10 hereof. * * * The calendar month commencing March 1, 1915, and each successive calendar month during the term of this agreement, respectively, shall be deemed and considered as maximum demand periods within the meaning of this agreement. For any maximum

demand period the Mining Company shall pay the Power Company $1.25 per Kw. of demand as a fixed primary charge for the electrical service herein contracted for, reckoned upon the number of Kw. which the Power Company shall have supplied under the provisions hereof to the Mining Company during each such maximum demand period. * * * provided, however, that such maximum demand in no event shall be less than 1150 Kw. * * * In addition to the primary charge to be paid by the Mining Company, as aforesaid, the Mining Company also shall pay to the Power Company 5 mills net per Kw. hr. for all energy drawn and consumed by the Mining Company under this agreement. * * * The Mining Company agrees and guarantees that its total consumption of electrical energy during each maximum demand period shall be not less than 9660 Kw. hr. times the number of days in such period."

The rate for this service, ordered by this Commission on December 15, 1915, was as follows:

Alternating Current, Untransformed.

Rate.

$1.25 per month per Kw. of maximum demand, plus an

Energy Charge of.

5-10c per Kw. hr. for all energy used.

Minimum Charge.

The Consumer must guarantee a minimum maximum demand of 1,000 Kw. and a minimum demand charge of $1,250 per month.

Terms of Contract.

Five years, and thereafter until 30 days after the receipt by the Company of a written notice from the consumer to discontinue service.

The effective date of this order was January 1, 1916, and this was thereafter changed to February 1, 1916. On January 31, 1916, an application for rehearing was filed by the Power Company. The same was carefully considered by the Commission, and, on March 1, 1916, an amended order was made wherein the rate for this service was specified as follows:

Schedule G.

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 per month.

Terms 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.

This was to be in force for one year beginning March 1, 1916, and it was provided that on February 20, 1917, or in ten days thereafter, the Power Company should make a showing of the results under such order to the end that the Commission might further adjust the schedules in accordance with the showing then made. On April 14, 1917, the Commission permitted the Power Company to make such showing, and on July 31, 1917, the order was made which is objected to by the Reduction Company, viz.: changing the rate of 5-10ths cents to 6-10ths cent per Kw. hr. for all energy used.

It appears from the order of March 1, 1916, that the Commission retained jurisdiction of the Power Company's rates in Case No. 24 to

> "* * * further adjust its schedules 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.
>
> "The respondent shall adopt the following schedule of reasonable rates and charges for the sale of electricity, together with the rules and regulations surrounding the same, which 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: * * *"

"Schedule G" must be read in connection with the statement just quoted.

The Reduction Company recognizes the general and well-established rule set forth in 12 Corpus Juris, 1036:

> "In like manner, all rates fixed by contract between public service corporations and third persons are subject to be superseded by rates subsequently established by the state in the exercise of its police power."

It has been held in Denver & S. P. R. R. Co. v. Englewood, 62 Colo. 229, 161 Pac. 151, P. U. R. 1916E, 134, 4 Colo. P. U. C. 497:

> "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."

The Reduction Company contends that this rule does not apply to this contract, and this contract rate was not subject to regulation under the police powers, because:

> "The Commission is not exercising a police power of the state but, as an agency of the state is attempting to regulate a business relation between a private corporation, which is not a public utility, and a quasi-public corporation where it is transacting a matter of business in which the public has no concern."

The Reduction Company relies upon the authority of State ex rel. v. Spokane & I. Emp. R. C., — Wash. —, 164 Pac. 1110, P. U. R. 1916D, 469, to support its position.

The Commission finds the present case clearly distinguishable from the Spokane case, because the Power Company is engaged in the business of selling power to the public generally and the selling of power by it to the Reduction Company is not a mere incident to the business in which the Power Company is engaged.

The schedules of the Power Company, as established by the Commission in the orders above referred to, give the right to any other reduction mill, whose service comes within "Schedule G, mill power," to require and receive from the Power Company a like service to that of the Reduction at like prices.

Furthermore, the evidence produced in this case shows a very different state of facts than existed in the Spokane case.

The Reduction Company contends that the Commission cannot change the contract rate over the objection of the Reduction Company, it not being a public utility. This contention is not well taken, and the cases cited in support thereof involve franchise contracts of municipalities and do not relate to contracts between a utility and a consumer.

The Reduction Company further contends that the Commission, by its order of July 31, 1917, had no right to change the contract rate because it had, in effect, approved the contract of June 30, 1914, by its orders of December 15, 1915, and March 1, 1916. As stated above no new contract was made in pursuance of any of these orders.

There is a considerable difference between the minimum monthly guarantee required under the contract of June 30, 1914, and the rate schedules of December 15, 1915, and March 1, 1916. Under the contract the Reduction Company was required to pay to the Power Company a minimum guarantee of $1,437.50 per month, which is, as stated therein, a maximum demand of 1150 Kw. at $1.25 per Kw. In addition thereto the contract provides, as above stated, that the Reduction Company shall consume not less than 9660 Kw. hr. per day for each maximum demand period, which is fixed at one month. Thus, under the contract, the Reduction Company agreed to use for a month of thirty days 289,800 Kw. hr., which, at 5 mills per Kw. hr., amounts to $1,499.00, and this amount for energy used is added to $1,437.50, making the total minimum monthly guarantee under the contract $2,886.50; while, under the schedule fixed by the Commission the minimum monthly guarantee is only $1,250.00.

The orders of December 15, 1915, and March 1, 1916, thus provided an entirely different amount of minimum monthly guarantee than was provided in the contract. The order of March 1, 1916, thus provided an entirely different amount of minimum monthly guarantee than was provided in the contract. The order of March 1, 1916, clearly left the matter of rates open for further adjustment after March 1, 1917. Neither order was an approval of the contract rate, and, in fact, provided a different rate. The contention of the Reduction Company that the Commission had, in effect, approved the rate set out in the contract, prior to its order of July 31, 1917, is not sustained by the records.

As was stated in the case of Minneapolis, St. Paul & S. M. Ry. Co. v. Menasha Wooden Ware Co., 159 Wis. 130; 150 N. W. 411:

> "Every contract made as to such rates with a corporation authorized to contract in reference thereto, is made with the knowledge of and subject to the right of the state at any time to resume the exercise of such sovereign power. The legislative right to supersede it is as clear as though it were written into the contract itself, for the law implies it."

This contract, even though valid when made, must be taken to have been entered into in view of the continuing power of the state to cotnrol rates to be charged by public utility corporations.

Mullen v. D. & R. G. R. Co., 2 Colo. P. U. R. 156, at 159, 160, and cases cited.

Ratner v. Denver G. & E. L. Co., 3 Colo. P. U. R. 379, at 388, 389.

The right of the state to exercise its police power cannot be limited by private contract.

> "The presumption is that when such contracts are entered into it is with the knowledge that parties cannot, by making agreements on subjects involviing the rights of the public, withdraw such subjects from the police power of the legislature."

C., B. & Q. R. Co. v. Nebraska, 170 U. S. 57, 42 L. E. 948.

The Commission is of the opinion that notwithstanding the contract of June 30, 1914, and its orders of December 15, 1915, and March 1, 1916, it had the right to establish the new rate contained in "Schedule G, mill power," in its order of July 31, 1917.

The remaining question raised in this case is whether the increase in the order of July 31, 1917, was an unjust discrimination as against the Reduction Company and in favor of the other consumers of the Power Company. Evidence was produced by the Reduction Company to show that the Reduction Company's plant was built a considerable time later than the Power Company's plant; that a contract was made between said companies on August 30, 1906, for power to be furnished the Reduction Company, and other contracts were subsequently made, including the last, dated June 30, 1914; that the Reduction Company refrained from building its own electric plant solely on account of the low rate it

obtained by such contracts; that the Power Company has billed the Reduction Company since August 1, 1917, upon the new rate ordered by the Commission on July 31, 1917; that the Reduction Company owns all the stock, except director shares, of a producing coal company operating about six miles from its plant. A large amount of testimony was introduced by the Reduction Company to show that it could at this time erect its own electric plant at said mine and produce its own power for less than 5 mills per Kw. hr. as against the present charge of 6 mills per Kw. hr.; that in addition to estimates from its own engineers it had employed an electrical engineer, whose report was in evidence, showing that a single installation consisting of one 1500 Kw. unit could be made for $206,800.00, or a duplicate installation for $323,500.00; that an installation consisting of one 2000 Kw. machine could be made for $229,900.00, or that this installation could be made in duplicate for $364,100.00.

The report of the Reduction Company's engineer was criticised by the Power Company's electrical engineer, and by F. J. Rankin, electrical engineer for the Commission, and in substance they stated that by none of the methods suggested by the Reduction Company's engineer can that company obtain the same service it is now receiving from the Power Company at a rate as low as that fixed by the Commission. These engineers also estimated the cost of building such a plant at a considerably higher amount than that claimed by the engineer for the Reduction Company. Mr. Rankin testified that upon the valuation heretofore placed upon the electric property of the Power Company the investment in generating stations and transmission lines is approximately $240.00 per kilowatt of demand, and that this amount is exclusive of intangible values or organization expense. He further testified that a proper rate at this time for this service should be made to consist of fixed charges and output charges; that a proper fixed charge on the basis of an investment of $240.00 per kilowatt of demand would consist of

Interest	8 per cent.
Depreciation	3 per cent.
Taxes	2 per cent.
Total fixed charges	13 per cent. per year;

that this, applied to $240.00, gives a fixed charge of $31.20 per year kilowatt of demand, or $2.60 per month; that the Power Company uses an average of three pounds of coal per Kw. hr. generated by its combined plants; that at $2.00 per ton for coal the fuel cost

alone would amount to 3 mills per Kw. hr., and that the cost of labor and maintenance would not be less than 1 mill per Kk. hr. Summing up, a proper rate for this business would be $2.60 per month per kilowatt of maximum demand, plus an energy charge of 4 mills per Kw. hr. for all energy used. This rate applied to the consumption of the Reduction Company for the year 1917 would result in a total charge of $88,800.00 per year for the service rendered, whereas the rate established by the Commission would result in a total charge of only $85,500.00 per year for this service.

Mr. Rankin further testified that the rate established by the Commission was of proper form, but that the demand charge was lower and the energy charge higher than they would be in a rate more scientifically correct; that the Commission by its order of July 31, 1917, had placed no unfair portion of the necessary increase on the Reduction Company, which uses 50 per cent of the Power Company's output. Witness further testified that the maximum demand placed by the Reduction Company on the system of the Power Company at the time of the maximum load is 1500 Kw.; that the maximum demand of the entire business of the Power Company, including the load of the Reducttion Company, is 4500 Kw.; so that one-third of the generating equipment and transmission lines of the Power Company is used by the Reduction Company and is properly chargeable thereto.

This Commission stated in its order of July 31, 1917,

> "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 whole record in Case No. 24, being In the Matter of an Investigation, etc., of The Colorado Springs Light, Heat & Power Company, was introduced in evidence in this case by the Reduction Company. The analysis given above by Mr. Rankin, and a consideration of the record in Case No. 24, shows that the Reduction Company rate of July 31, 1917, based both upon fixed charges and operating expenses, is and was fair and reasonable, and not discriminatory as against the Reduction Company and in favor of the other consumers. Considering cost of the service, value of the service, and the rules applicable to fixing rates for a large consumer, the Commission regards the schedules of July 31, 1917, as fair and properly balanced on that date between the Reduction Company and other consumers.

The Commission realizes the serious situation faced by the Power Company should it lose the Reduction Company business, and recognizes the ability of the Reduction Company to build its own plant should it decide to do so, but the Commission is of the opinion, from the evidence, that the Reduction Company cannot produce its electric requirements at a less rate than it is now paying. It was stated in Peck v. Indianapolis L. & H. Co., Indiana Public Service Commission, P. U. R. 1916B, 467,

> "In order to maintain this utility in the most economical way, it is necessary to give consideration to large users of light and power. The ability of such users to install private plants for the production of electricity for their own use creates a competitive condition that must be reckoned with. * * * A very small margin of profit on each kilowatt of consumption adds much to the revenues of the company. As the plant must be in continuous operation the testimony shows that the general experience of all operators has been that it is better for small consumers to serve large users at a low rate than not to serve them at all."

The rate prescribed by the Commission's order of July 31, 1917, is a low rate for wholesale business.

It is stated in Public Service Commission v. Pacific P. & L. Co., Washington Public Service Commission, P. U. R. 1916B, 96:

"While electrical energy may be sold at wholesale lower than in small quantities, yet we can see no justification for selling such energy at rates that do not produce a sufficient return, as the testimony shows must have been done in this case."

The evidence is that the rate of July 31, 1917, has not produced more than a fair return, and it is doubtful, under present coal prices, if it will produce more than such a return in the future. The Reduction Company's claim that it has been discriminated against is not sustained.

ORDER.

IT IS THEREFORE ORDERED, That the complaint herein be and is hereby dismissed.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 1st day of May, 1918.

DECISION No. 174.

IN RE ADVANCE OF 10 AND 15 CENTS PER TON IN COAL, COKE AND COKE BREEZE RATES IN COLORADO.

Investigation and Suspension Docket No. 11.

(Denial of Rehearing.)

May 2, 1918.

By the Commission:

On the 19th day of April, 1918, the Public Utilities Commission of the state of Colorado entered an order requiring the carriers respondents in this cause to cancel, on or before April 24, 1918, schedules of rates contained in tariffs filed by the carriers proposing increases of 10 cents per ton in rates of 75 cents or less, and 15 cents in rates of more than 75 cents, on coal, coke and coke breeze transported in the state of Colorado, which schedules had been suspended by orders of the Commission until the 24th day of April, 1918.

On the 23rd day of April, 1918, the carriers applied to the Commission for an extension of the effective date of the order of the Commission and a further suspension of the tariffs and schedules involved, the desired extension being 15 days. This additional time was requested in order that the carriers might perfect an application for rehearing, and to allow the Commission further time in which to consider such application which the carriers contemplated filing. Pursuant to this request the Commission, on April 23, 1918, issued an order postponing the effective date of its order of April 19, 1918, until May 10, 1918, and further suspending the schedules and deferring the use of the rates and charges therein until May 10, 1918.

On April 23, 1918, a petition for rehearing was filed with the Commission by The Atchison, Topeka & Santa Fe Railway Company and a joint petition for rehearing filed by the following carriers: Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island & Pacific Railway Company, The Colorado & Southern Railway Company, The Colorado Midland Railroad Company, The Denver & Inter-Mountain Railroad Company, The Denver & Rio Grande Railroad Company, The Denver & Salt Lake Railroad Company, Missouri Pacific Railroad Company, The Rio Grande Southern Railroad Company, and the Union Pacific Railroad Company. The petitions denied the jurisdiction of the Commission and alleged error on the part of the Commission.

The Commission now being fully advised in the premises is of the opinion that the petitions of the respondent carriers for a rehearing should be denied.

ORDER.

IT IS THEREFORE ORDERED, That the petitions for rehearing, filed with the Commission by the respondent carriers, be denied, and that the order of the Commission in the above cause, entered on the 19th day of April, 1918, shall become effective May 10, 1918.

GEO. T. BRADLEY,
(SEAL) LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 2nd day of May, 1918.

DECISION NO. 175.

IN RE ADVANCE IN DENVER & INTERURBAN RAILROAD FARES.

Investigation and Suspension Docket No. 17.

May 4, 1918.

APPEARANCES: E. E. Whitted, for the respondent; Frank L. Moorhead, city attorney, and E. O. Heinrich, city manager, for the city of Boulder; Edward Affolter, and Geo. Kennedy, mayor, for the town of Louisville; Grant E. Halderman, for the Boulder Commercial Association.

OPINION.

By the Commission:

By tariff, Colo. P. U. C. No. 36, filed with the Commission effective March 15, 1918, the respondents propose changes in the fares and rules and regulations affecting the fares between points on the Denver & Interurban Railroad, and also between such points and Denver in connection with the Denver Tramway. Protests were filed with the Commission against the proposed schedules contained in the tariff, and the Commission thereupon issued an order entering upon an investigation and hearing concerning the propriety of the schedules, and deferring the use of the rates and rules until the 14th day of July, 1918. Hearings were held before the Commission on April 2, 1918, and April 8, 1918.

The principal respondent herein, The Denver & Interurban Railroad Company, is a common carrier under the Public Utilities Act and was organized September 10, 1904, under the laws of the state of Colorado. It owns and operates an electric interurban line between Globeville and Boulder and an urban line in the city of Fort Collins. Passengers to and from Denver are handled over the tracks of The Denver Tramway Company from a loop at 14th and

Arapahoe Streets, in Denver, to Globeville. The following statement shows the owned and operated mileage of this respondent:

Line owned:	Miles of road	Other track	Total
Globeville to Semper	8.07	.28	8.35
City of Boulder	1.78	.11	1.89
City of Denver	...	.42	.42
City of Fort Collins	7.28	.94	8.22
Marshall to Eldorado Springs	3.03	.53	3.56
	20.16	2.28	22.44
Line operated under lease:			
Semper to Louisville Junction	7.39	..	7.39
D. & I. Junction to Sunnyside Mine	.79	..	.79
	8.18	..	8.18
Line operated under trackage rights:			
Sunnyside Mine to Boulder	10.56	..	10.56
Louisville Junction to Boulder	12.87	..	12.87
	23.43	..	23.43
Total operated mileage	51.77	2.28	54.05

In brief, the tariff provides for: An increase in the one-way fares from two and one-half to three cents per mile; increase in 25-ride family commutation tickets from one and one-half cents to two cents per mile; elimination of the 10-ride individual commutation tickets, now based on rate of one and three-fourths cents per mile, elimination of 50-ride family commutation tickets, now based on rate of one and one-fourth cents per mile; 15-day limit on round-trip tickets instead of 3-day limit; interchangeable use of all forms of tickets upon either the Denver & Interurban Railroad or the Colorado & Southern Railway between Denver and Boulder; honoring of tickets to or from Denver by Denver Tramway between Globeville and Denver and issuance of transfer thereon to any point on tramway system in Denver; checking of baggage of Denver & Interurban passengers free upon trains of the Colorado & Southern Railway.

There are no joint through fares named in the present tariff to or from Denver, all terminal fares being named to or from Globeville, and the passenger being required to pay a fare of five cents between points in Denver and Globeville. The proposed tariff names The Denver Tramway Company and The Colorado & Southern Railway Company as participating carriers. Proposed fares

to or from Denver are made by adding to the Globeville fare the local fare of the Denver Tramway.

The respondent's investment in road and equipment on December 31, 1916, as shown by the annual report on file with the Commission, was $1,336,991.97. The unmatured funded debt outstanding amounts to $1,079,000.00 in first mortgage bonds held by The Colorado & Southern Railway Company, and the capital stock outstanding amounts to $101,500.00, seven shares being held by the directors and the balance, 1,008 shares, held by The Colorado & Southern Railway Company.

The following financial statement shows the results of the operations of the respondent's line, being taken from the annual reports on file with the Commission:

FINANCIAL STATEMENT.

	Fiscal year ended June 30th,			From July 1, 1910, to
	1914	1915	1916	June 30, 1916
Operating revenues	$219,095	$219,104	$239,210	$1,354,538.96
Operating expenses	195 229	201,0?8	193,970	1,158,554.02
Net operating revenue	$ 23,866	$ 18,066	$ 45,240	$ 195,984.94
Operating ratio (per cent)	89.10	91.75	81.09	85.50
Taxes	$ 7,842	$ 12,240	$ 14,883	$ 59,890.50
Operating income	16,024	5,826	30,357	136,094.44
Non-operating income	1,418	424	588	8,891.35
Gross income	$ 17,442	$ 6,250	$ 30,945	$ 144,985.79
Deductions:				
Miscellaneous rents	$ 12,150	$ 12,150	$ 12,150	$ 73,553.84
Interest on funded debt	64,740	64,740	64,740	388,440.00
Interest on unfunded debt	23,399	26,370	27,871	132,232.91
Other deductions	.....	.....	.....	9,999.96
Total deductions	$102,289	$103,260	$104,761	$ 604,226.71
Net corporate income	$*84,847	$*97,010	$*73,816	$* 459,240.92

*Deficit.

This statement shows that the respondent has not earned sufficient to pay operating expenses, taxes, and interest on bonded indebtedness, to say nothing of a dividend on any investment represented by stock issues. It will be seen that the average gross

income per year during the period of 1911 to 1916 amounts to only $24,164.30.

Testimony was introduced by the respondents and the protestants having reference to the valuation of the respondent's line between Denver and Boulder. Witness for the respondent stated that, with the exception of a part of the overhead electrical equipment, the original cash cost of the line between Denver and Boulder was $729,206.94; that the portion of the overhead electrical construction paid for from 1908 to 1917 amounted to $109,295.14; that the Boulder sub-station addition cost $17,121.74; and that other additions and betterments amounted to $49,990.43, which amount had not been segregated as between the Denver-Boulder and the Fort Collins lines. The foregoing figures are based upon the Interstate Commerce Commission uniform system of accounting for electric carriers, which is that adopted for use by this Commission.

It was testified by the respondent's witness that the bonds were issued during 1907-1908, when money was difficult to obtain, and consequently it was necessary to issue the bonds at 80, so that the par value of the bonds represented about 25 per cent more than the actual cash cost of the road. The item of the discount on bonds has been included in the investment account of the respondent under miscellaneous general expenditures, which totals $237,886.60. It was admitted by the witness that the item of discount on bonds is not allowed by the Interstate Commerce Commission as a construction account. This Commission has always refused to allow discount on bonds as a construction account (In re Colorado Springs Light, Heat & Power Company, 4 Colo. P. U. C. 199; In re Western Colorado Power Co., 5 Colo. P. U. C. —), and is of the opinion that it is improperly charged to construction in the respondent's accounts.

No valuation of the property of the Denver & Interurban has been made by this respondent, or by the Commission, and the Commission is of the opinion that it is unessential in this cause. As has been shown, the average gross income amounts to only $24,164.30 per year, which is equivalent to 6 per cent return on $402,738.00, an amount less than one-third of the respondent's book value. In re Gas Rates at Pueblo, 5 Colo. P. U. C. —, decided January 31, 1918, the Commission held that it would not be necessary to determine the value of the property of the utility, inasmuch as it was clearly evident that an appraisal would show a valuation more than double the amount upon which the company earned 8 per cent, and that the expense of making a complete inventory and

appraisal should be saved to the utility and to the Commission. In the instant case, the average annual income of $24,164.30 is a return of only 3.6 per cent on one-half of the respondent's investment in road and equipment. The respondent has never paid any interest whatsoever on its funded debt, and the accrued debit balance on December 31, 1917, since the commencement of operations, was $734,992.45.

The witness for the respondent testified with respect to the results of operations on the Denver-Boulder line for 1916 and 1917, as follows:

	Calendar year	
	1916	1917
Operating revenues	$227,040.52	$214,012.54
Operating expenses	155,707.90	177,446.96
Net operating revenues	$ 71,332.62	$ 36,565.58
Taxes	6,930.72	8,541.76
Operating income	$ 64,401.90	$ 28,023.82

In addition, like statistics for the five-month periods ended February 28, 1917, and February 28, 1918, were submitted:

	Oct. 1, 1916, to Feb. 28, 1917	Oct. 1, 1917, to Feb. 28, 1918
Operating revenue	$ 80,517.46	$ 82,052.22
Operating expenses	63,021.31	78,439.85
Net operating revenue	$ 17,496.15	$ 3,562.37
Taxes	3,843.82	3,401.84
Operating income	$ 13,652.33	$ 160.53

It is the opinion of the Commission that evidence in this cause clearly shows that the respondent is not earning sufficient revenue and that increases should be granted in its fares. It is not of the opinion, however, that the increases should be granted to the full extent proposed by the respondent in its tariff. The respondent proposes cancellation of 50-ride family commutation tickets, which, to the Commission, seems unjustified. The Commission is of opinion that no increase is warranted in the one-way fare or round-trip fares, but that the cancellation of the 10-ride individual commutation tickets is warranted, that 25-ride family commutation tickets may be increased to 2 cents per mile, and the 50-ride family commutation books increased to 1¾ cents per mile. An order will be

entered in conformity with these findings, permanently suspending the proposed schedules, and permitting the respondents to file new schedules providing for the changes allowed by the Commission herein. The respondents shall submit for approval a revised tariff incorporating therein the authorized changes and the rules and regulations necessarily revised to correspond to the adjustment allowed by the Commission.

ORDER.

IT IS THEREFORE ORDERED, That the carriers respondents herein be, and they are hereby, notified and required to cancel, on or before June 1, 1918, the local and joint passenger tariff Colo. P. U. C. No. 36, issued by The Denver & Interurban Railroad Company;

IT IS FURTHER ORDERED, That the respondent, The Denver & Interurban Railroad Company, be, and it is hereby, allowed and permitted to establish, on not less than five days' notice to the Commission and to the public by filing and posting in the manner prescribed in the Act, fares for 25-ride family commutation tickets between points on the respondent's line upon a basis of two cents per mile, and fares for 50-ride family commutation tickets upon a basis of one and three-fourths cents per mile.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 4th day of May, 1918.

DECISION No. 176.

IN THE MATTER OF THE APPLICATION OF THE CANON GAS COMPANY, A CORPORATION, FOR PERMISSION TO INCREASE ITS RATES AND CHARGES FOR GAS SERVICE IN THE CITY OF CANON CITY.

Application No. 15.

May 21, 1918.

APPEARANCES: Messrs. Adams and Gast, for the applicant company.

STATEMENT.

By the Commission:

On the 2nd day of March, 1918, The Canon Gas Company, by H. A. Black, its president, and Adams and Gast, its attorneys, filed with the Commission an application for permission to make certain changes and increases in its rates and charges for gas service in the city of Canon City. In its petition the applicant states that it is a Colorado corporation engaged in the manufacture and sale of gas in Canon City; that its rates and charges for such service are now on file with the Public Utilities Commission of the state of Colorado, and alleges among other reasons why the prayer of its petition should be granted that its present rates and charges are unscientific in that they provide different rates for gas consumed for illuminating than for fuel purposes, and therefore require a dual system of meters, which system operates improperly to burden the business and as a discrimination against the consumers most in need of low rates; that the rates prayed for will reduce the charges made to consumers for gas for illuminating purposes and slightly increase the charges for gas used for fuel purposes; will

somewhat reduce the petitioner's expenses on account of meters and finally result in a moderate increase in its net earnings; that the assessed valuation of the applicant's properties as fixed by the Colorado State Tax Commission is $20,000.00, and that the rates prayed for will produce no more than a fair return upon this amount.

The petition of the applicant further alleges that its net earnings from the sale of gas for the year 1917 were $164.82, and from pipe and fittings $388.03, making a total of $552.86, but that during the year the company suffered a loss of $103.33 in the sale of lamps and appliances, so that its operations for the year 1917 produced net earnings of but $449.53, no charge or allowance whatever being made for depreciation; that such net earnings are insufficient to meet the interest charges on the outstanding bonds of the applicant amounting to $15,000.00, or on its floating debt which aggregates $10,472.00; that neither the present operating company nor its predecessor in interest has ever paid a dividend, while the earnings for many years have never been sufficient to meet the interest charges.

It is further alleged that the plant of the applicant is of the type known as a water gas plant, in the operation of which a large amount of gas oil is required; that about two years ago such oil could be obtained for 4 to 4¼ cents per gallon f. o. b. Canon City; that during the year 1917 the average price of such oil f. o. b. Canon City was 7 cents per gallon, and that at the time of filing this application the best price obtainable on such oil was 9 cents per gallon at the refinery; that prior to 1914 a superior grade of coke-oven coke could be purchased at $2.00 per ton; that thereafter and until the early part of 1916 such coke was bought for $3.00 to $3.25 per ton; that at the present time $4.00 per ton is being paid for gas coke f. o. b. Pueblo; that a contract cannot be obtained at this price; and that steam coal, which until two years ago cost 75 cents per ton at the mine, during the year 1917 cost an average of $1.75 per ton at the mine. The applicant further alleges that although a very small amount of labor is required in the operation of its plant, nevertheless it has been necessary to increase its salary account by $912.00 per year. The application prays the Commission to authorize The Canon Gas Company to establish and put into force and effect the rates and charges set forth therein.

Pursuant to notice duly given to all parties in interest this cause came on for hearing in the City Hall at Canon City at the

hour of 9 o'clock a. m., on the 7th day of May, 1918. Messrs. Adams and Gast appeared for The Canon Gas Company, but no appearance was entered by the city of Canon City or other parties at interest. At this hearing Fred W. Herbert, statistician for the Commission, appeared in behalf of the Commission's statistical staff and testified in support of an audit which he had prepared of the books and accounts of the applicant. Fred J. Rankin, engineer for the Commission, appeared in behalf of the Commission's engineering staff and testified in support of a report prepared under his supervision relative to the operating conditions, rates and service of the applicant company. Herbert A. Black, president of the applicant company, appeared in its behalf and testified as to increases in operating expenses and as to the general conditions surrounding the operation of the property.

From the record in this cause it appears that gas service has been supplied in Canon City since the early part of 1903, at which time a gas plant was constructed and placed in operation by The Canon City Gas Company. On March 24, 1904, this company went into the hands of a receiver and was operated under a receivership until about July 1, 1907, when the property was taken over by The Canon Gas Company, the present operating company. This company now operates under a franchise granted to H. A. Black on the 15th day of December, 1902, and extending for a period of 20 years. The franchise provides that the charges for gas service shall not exceed $1.25 per thousand cubic feet for gas used for fuel purposes and $2.00 per thousand cubic feet for gas used for illuminating purposes.

The principal rates of The Canon Gas Company now in force and effect and on file with the Commission are as follows:

Commercial Lighting.

Rate.

$2.00 gross or $1.90 net per M cubic feet for all gas used for illuminating purposes.

Commercial and Domestic Fuel.

Rate.

$1.35 gross or $1.25 net per M cubic feet for all gas used for fuel purposes.

Minimum Monthly Guarantee.

The minimum monthly guarantee is 50 cents net for all consumers.

In its petition the applicant asks that the rate for commercial lighting or illuminating gas be abolished; that the rate for all gas used for fuel and illuminating purposes be fixed at $1.55 net per thousand cubic feet, and that the minimum monthly guarantee be placed at 75 cents net per consumer instead of 50 cents net per consumer as at the present time.

The income statement of the applicant for the years 1915, 1916 and 1917 as reported by the Commission's statistician is produced herewith as Statement No. 1. The net operating revenue as shown by this statement is not in agreement with that set out in the petition of the applicant or as testified to by the witness Black at the hearing, but the difference is not material. In fact the company's records have been kept in such a manner as to be of little assistance to the Commission in this case. For example, the records show that in 1915 generator fuel cost $1,136.62 and in 1916, $512.72, whereas in 1915 the consumption of generator fuel was less and the price lower than in 1916. In the same way the records show that water gas oil used in water gas production cost approximately $400.00 more in 1915 than in 1916 when the reverse should have been the case. Again, the cost of fuel for steam is reported at $815.15 in 1916 and $413.83 in 1917, when as a matter of fact both the quantity of such fuel used and the price paid therefor were much higher in 1917 than in 1916. These discrepancies were accounted for by the Commission's statistician by the fact that the company had not been able to pay its bills promptly, but that when money was available bills had been paid and the amounts so paid had been charged to the operation of the plant without regard to the time when such materials were actually used. For these reasons the Commission is of the opinion that the income statements cannot be taken as representative of actual conditions except for the purpose of determining operating revenues. As will be seen from this statement the total operating revenue for the year 1917 was $9,924.62.

STATEMENT NO. 1.

THE CANON GAS COMPANY.

INCOME STATEMENT.

1915—1916—1917.

	1915	1916	1917
Operating Revenues—			
Commercial Earnings	$9,064.27	$8,886.38	$9,703.79
Earnings from Residuals	.....	42.00	89.32
Profits on Merchandise Sales	.....	179.39	134.14
Profit on Piping and Connections	112.23	92.67	*2.63
Total Operating Revenue	$9,176.50	$9,200.44	$9,924.62
Operating Expenses—			
Water Gas Production	$5,242.53	$4,447.05	$4,924.58
Distribution	1,090.12	574.03	715.51
Commercial	70.65	60.17	165.31
New Business	679.76	518.48	131.36
General Expense	1,882.55	2,124.01	2,694.19
Total above items	$8,965.61	$7,723.74	$8,630.95
Depreciation	.....	.....	.....
Taxes	745.54	564.00	600.76
Total Operating Expenses	$9,711.15	$8,287.74	$9,231.71
Net Operating Revenue	$ *534.65	$ 912.70	$ 692.91
Deductions from Income—			
Interest on Funded Debt	$ 900.00	$ 900.00	$ 900.00
Interest on Unfunded Debt	349.11	292.00	121.60
Total Deductions	$1,249.11	$1,192.00	$1,021.60
Surplus or Deficit	*$1,783.76	*$ 279.30	*$ 328.69

*Indicates Deficit.

The engineering staff of the Commission made a study of the operating conditions, rates and service of the company and a report thereon was submitted at the hearing in this cause. This report shows that under the present methods of operation the plant is very inefficiently operated, a large portion of the steam coal and generator fuel being wasted and the gas oil not efficiently used. Several recommendations were made which can be complied with at slight expense and which should materially reduce the applicant's expenditures for gas-making materials, such as coke, coal and oil. The company has indicated its willingness to comply with such recommendations as soon as possible.

The report of the engineering staff deals with the present market prices of gas-making supplies as compared with the prices paid for such supplies prior to the present abnormal conditions, and an estimate of the cost of producing water gas based on the present market conditions and quantity of materials required was submitted for the consideration of the Commission.

No inventory and appraisal of the property of the applicant was submitted to the Commission in this cause either by the applicant or by the engineering staff of the Commission. The Commission's engineer testified at the hearing that the population of the community served is approximately 6,000, that the annual sales at this time are in the neighborhood of 7,500,000 cubic feet, and that on account of the small volume of business available and the relatively low price of competitive fuels the company could not under any rates that it might be permitted to establish earn, in addition to its operating expenses and annual depreciation requirement, a fair return on the fair value of its property used in the supplying of gas service. This witness further stated that, in his opinion, the property could not be reproduced under normal condition for less than $70,000.00, that a fair allowance for interest and depreciation on this amount would be 10 per cent or $7,000.00 per annum, and that even if the present consumers would continue to use the service it would be necessary to practically double the present rates in order to permit the company to earn a fair return. Inasmuch as only a nominal increase in the present rates was asked for it was thought that an inventory and appraisal of the property would be of no assistance to the Commission in determining whether such increase should be granted.

Based on the record before it the Commission is of the opinion that the yearly operating expenses for this property, under con-

ditions prevailing at this time, assuming that a reasonable amount of attention is given to the operation of the plant, should not exceed the following:

Water Gas Production—		
Superintendence	$ 100.00	
Water Gas Labor	1,140.00	
Steam	460.00	
Generator Fuel	1,275.00	
Water Gas Oil	2,450.00	
Water	50.00	
Miscellaneous Supplies and Expense	75.00	
Repairs—Water Gas Apparatus	400.00	
Repairs—Buildings and Fixtures	25.00	
Total Production Expense	$5,975.00	$5,975.00
Distribution Expense—		
Superintendence	$ 200.00	
Labor and Miscellaneous Supplies	635.00	
Maintenance and Repairs	225.00	
Total Distribution Expense	$1,060.00	1,060.00
Commercial Expense	$ 175.00	175.00
New Business Expense	$ 130.00	130.00
General Expense—		
Salaries of Office Clerks	$ 720.00	
Printing and Stationery	120.00	
General Office Expense	270.00	
Expense—General	15.00	
Insurance	10.00	
Rent	480.00	
Uncollectable Bills	25.00	
Total General Expense	$1,640.00	1,640.00
Taxes	$ 600.00	600.00
Total Operating Expense		$9,580.00

Since under the present rates and on the volume of sales for the year 1917, the operating revenue cannot be expected to exceed $9,925.00, the net earnings of the applicant available for interest and depreciation would be only $345.00. This amount is not even sufficient to meet the interest on the applicant's funded debt—much less to provide for depreciation and a return to the holders of the equities in the property.

An analysis of the gas sales of the applicant for the year 1917 was made for the purpose of applying the rates petitioned for and the following classification resulted:

	M Cu. Ft.	Per Cent of Total
Sales included in minimum bills and on flat rates....	258.7	3.5
Sales included in bills exceeding the minimum	6,559.5	87.4
Sales through prepay meters	681.8	9.1
Total	7,500.00	100.00

The rates set out in the petition are applied to the sales for the year 1917 as follows:

	M. Cu. Ft.	Net Rate	Amount
Minimum bills and flat rates	258.7	$ ...	$ 1,023.75
Bills exceeding the minimum	6,559.5	1.55	10,167.23
Sales through prepay meters	681.8	1.55	1,056.79
Total	7,500		$12,247.77

Since the earnings from the sale of gas in 1917 amounted to $9,703.79, the rates set out in the petition of the applicant would apparently increase the earnings from gas sales by $2,544.00 per year. It is very doubtful, however, whether such increase in earnings would ever materialize. Some of the smaller consumers undoubtedly would discontinue service on account of the increase in the minimum monthly guarantee and some of the larger and more profitable consumers might be expected to abandon the service entirely or use it only as a standby. The applicant is fully as much in need of more consumers and an additional volume of business as it is in need of additional revenue, and while there does not appear to be a great deal more of gas business available in Canon City, any modification in the present rates which will reduce the present gas sales should not be attempted. It is generally recognized in all classes of business that consumers purchasing in larger quantities are entitled to lower prices or rates and this principle must be recognized in the gas business if it is to be developed to the fullest extent. The following rate was suggested by the engineering staff of the Commission as being more desirable under the conditions existing in Canon City than the one requested by the applicant and the opinion was expressed that under such a rate the consumers of the company could be retained, and as a result the net earnings of the company would be greater than under the rate proposed:

Credit Meters.

Rate.

$1.55 net, or $1.65 gross, per M cubic feet for the first 1,000 cubic feet of monthly consumption.

$1.40 net per M cubic feet for the next 2,000 cubic feet of monthly consumption.

$1.25 net per M cubic feet for all consumption during the month in excess of 3,000 cubic feet.

Minimum Monthly Guarantee.

50 cents net, or 60 cents gross, per consumer or per meter.

Prompt Payment Discount.

Bills to be rendered at the gross rate and discounted to the net rate, if paid within the usual discount period.

Prepay Meters.

Rate.

$1.60 net per M cubic feet.

An analysis of the sales for the year 1917 was likewise made for the purpose of determining the revenue that could be expected from the application of the foregoing schedule. This study resulted in the following classification:

	M Cu. Ft.	Per Cent of Total
Consumption included in minimum bills and on flat rates	258.7	3.5
First 1,000 cubic feet per month per consumer	3,728.7	49.7
Next 2,000 cubic feet per month per consumer	1,998.5	26.6
Sales in excess of 3,000 cubic feet per month per consumer	832.3	11.1
Sales through prepay meters	681.8	9.1
Total	7,500.00	100.0

The rates suggested are applied to the business of the company for the year 1917 as follows:

	M Cu. Ft.	Net Rate	Amount
Minimum bills and flat rates	258.7	$ ...	$ 682.50
First 1,000 cubic feet per month per consumer	3,728.7	1.55	5,779.48
Next 2,000 cubic feet per month per consumer	1,998.5	1.40	2,797.90
Consumption in excess of 3,000 cu. ft. per consumer	832.3	1.25	1,040.38
Sales through prepay meters	681.8	1.60	1,090.88
Total	7,500.0		$11,391.14

This statement shows that under such schedule the earnings of the company from gas sales would exceed the earnings for the year 1917 by $1,687.00. In the opinion of the Commission the showing of the applicant would be more satisfactory at the end of the coming year under this form of rate than under the one proposed in its petition. Taking into account the earnings from residuals and profit of merchandise sales, the operating revenues under such a schedule of rates should amount to $11,615.00 per year. Since it has been found that the operating expenses should not exceed $9,580.00, the net earnings of the company under this schedule and under the present conditions should be in the neighborhood of $2,000.00 per year, which will be available for depreciation and interest. This is not a fair return to the applicant for the service rendered, but it is considerably in excess of the net earnings during the past three years and is believed to be as much as can be expected from the operation of this property under the present conditions.

After hearing and considering the evidence in this cause, both oral and documentary, together with the arguments of counsel thereon, and being fully advised in the premises, the Commission finds:

(1) That the operating revenue of the applicant herein, for the year 1917, including the sale of gas, sale of residuals, profit on merchandise and profit on piping and connections, was the sum of $9,924.62.

(2) That the operating expenses of the applicant, including taxes but excluding interest and depreciation, under conditions prevailing at this time and based on the volume of business for the year 1917, will not be less than the sum of $9,580.00.

(3) That the rates and charges now in effect and on file with the Commission and applying to the sale of gas by the applicant in Canon City are inadequate and will not produce revenue sufficient to enable the applicant to meet its operating expenses and fixed charges.

(4) That the following rates and charges to apply to the sale of gas by the applicant herein in the city of Canon City are reasonable, and that such rates should be substituted for those now on file with the Commission.

Credit Meters.

Rate.

$1.55 net or $1.65 gross per M cubic feet for the first 1,000 cubic feet of monthly consumption.

$1.40 net per M cubic feet for the next 2,000 cubic feet of monthly con-
consumption.
$1.25 net per M cubic feet for all consumption during the month in excess of 3,000 cubic feet.

Minimum Monthly Guarantee.

50 cents net, or 60 cents gross, per consumer or per meter.

Prompt Payment Discount.

Bills to be rendered at the gross rate and discounted to the net rate, if paid within the discount period.

Prepay Meters.

Rate.

$1,.60 net per M cubic feet.

ORDER.

IT IS THEREFORE ORDERED, That the applicant herein, The Canon Gas Company, be permitted to establish by filing and posting in the manner provided in Section 16 of the Public Utilities Act the following rates and charges for gas service:

Credit Meters.

Rate.

$1.55 net, or $1.65 gross, per M cubic feet for the first 1,000 cubic feet of monthly consumption.
$1.40 net per M cubic feet for the next 2,000 cubic feet of monthly consumption.
$1.25 net per M cubic feet for all consumption during the month in excess of 3,000 cubic feet.

Minimum Monthly Guarantee.

50 cents net, or 60 cents gross, per consumer or per meter.

Prompt Payment Discount.

Bills to be rendered at the gross rate and discounted to the net rate, if paid within the usual discount period.

Prepay Meters.

Rate.

$1.60 net per M cubic feet.

IT IS FURTHER ORDERED, That the foregoing rates and charges shall apply to all service rendered by the applicant on and after June 1, 1918.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 21st day of May, 1918.

DECISION No. 177.

IN RE ADVANCES IN THE RATES AND CHARGES FOR GAS AND ELECTRIC SERVICE OF THE COLORADO SPRINGS LIGHT, HEAT & POWER COMPANY, AT COLORADO SPRINGS, COLORADO.

Investigation and Suspension Docket No. 15.

May 25, 1918.

APPEARANCES: R. L. Holland, Esq., for the applicant company. J. L. Bennett, Esq., for the city of Colorado Springs.

STATEMENT.

By the Commission:

The matter of the reasonableness of the rates and charges for gas and electric service of the respondent herein, The Colorado Springs Light, Heat & Power Company, has been before the Commission on previous occasions. On December 15, 1915, the Commission entered an order fixing the rate-making values of the gas and electric properties of the respondent and establishing rates and charges to apply to consumers of such service. (1 Colo. P. U. C. 159.) The effective date of said order was January 1, 1916, but was thereafter changed to February 1, 1916. On January 31, 1916, the respondent filed with the Commission an application for a rehearing on the issues involved in the original order. After consideration of such application, it was denied by the Commission, and an amended order was issued on March 1, 1916, in which amended rates for electric service were established. This amended order provided that such rates should remain in effect for a period of one year, beginning March 1, 1916, and until modified or amended by the Commission, and that on February 20, 1917, or

within 10 days thereafter, the respondent should appear before the Commission and make a showing of the results under such order to the end that, if deemed advisable, the Commission might further adjust the rates in accordance with the showing then made. No modifications in the rates and charges for gas service were made in either of the orders above referred to, and on the 10th day of April, 1916, the Commission received a petition from the respondent praying for an increase in its rates and charges for gas service. After hearing, the Commission entered its order on the 7th day of August, 1916, permitting certain increases to be made in the gas rates then in effect. (2 Colo. P. U. C. 204.) On the 4th day of April, 1917, the respondent was permitted to appear before the Commission in accordance with the order of March 1, 1916, and on the basis of the showing then made, on July 31, 1917, an order was issued establishing the present rates and charges for gas and electric service. (4 Colo. P. U. C. 199.)

On January 24, 1918, the respondent herein filed with the Commission schedules providing for increases in the rates and charges established by the order of July 31, 1917, such revised rates to become effective on February 25, 1918. The Commission entered upon an investigation and hearing concerning the propriety of the proposed rates, and pending such investigation and hearing and decision thereon the proposed rates were suspended until June 26, 1918, by an order of the Commission dated February 16, 1918.

Subsequent to the suspension of these rates the respondent on February 25, 1918, filed with the Commission a petition alleging that under the rates now in effect it has earned much less than a fair return and much less than this Commission has held it is entitled to earn on the value of its plants and properties; that this deficiency in earnings obtains both in its electric and gas departments and that the deficiency is of such proportions as not only to menace the service rendered to the city of Colorado Springs and to its other consumers, but also to menace the continuation of its operations; that the schedules of rates established by this Commission in its order of July 31, 1917, have failed to yield the return which this Commission held in such order the respondent is entitled to earn; that this situation obtains both in the electric and gas departments; that the deficiency in the electric department since the rates established by such order became effective aggregates approximately $2,000.00 per month, and that the deficiency in the gas department aggregates approximately $3,500.00 per month.

It is further alleged in the petition that such deficiency is in part due to an increased wage scale, which the company in fairness to its employees has been compelled to pay, and in part to increased cost of operation due to advances in the cost of all materials and supplies used by the company, and especially to advances in the cost of steam and gas coal; that this deficiency in earnings is not due in whole or in part to extravagant expenditures, but that on the contrary the company has effected economies in its payroll and salary accounts aggregating approximately $1,000.00 per month, some of which economies are only temporary and were effected by discharging employees during the winter months whose services illy could be dispensed with even temporarily, but will be absolutely necessary to the efficient operation of the company during the coming spring and summer and thereafter; that there is no indication that operating costs will be reduced in the near future, but on the contrary that they reasonably may be expected to increase. The respondent then prayed that the Commission speedily act on its order regarding an investigation as to the reasonableness of the rates as filed.

On April 18, 1918, the respondent filed with the Commission a supplemental petition alleging that since the filing of the increased rate schedules on January 24, 1918, and since the filing of the original petition above referred to, there have been further increases in operating expenses, particularly in the cost of steam coal for the electric department, and that the net increase in such expenses is approximately $8,000.00 per year more than the amount set out in the original petition and provided for in the schedules originally filed; that since the filing of such increased rate schedules and of the petition herein and on, to-wit, April 1, 1918, The Portland Gold Mining Company, one of the largest consumers of the company, permanently discontinued the treating of ore at its mill in Colorado Springs; that the consumption of such mining company has been in excess of 4,000,000 kilowatt hours per annum and that the resultant net loss to the respondent on account of the loss of such business will be in the neighborhood of $20,000.00 per year.

It is further alleged in this supplemental petition that on account of insufficient rates, increased operating expenses, and the loss of business, the total deficit in the electric department of the respondent would be in excess of $44,000.00 for the coming year; that the schedules of rates for electric service filed with the Commission on January 24, 1918, provide for an increase of revenue

of but approximately $19,000.00 per year; that such rates should be further increased, and that certain other rates of the respondent should be modified in order to produce the revenue required.

It was then prayed that the Commission investigate the representations made in the original petition in this matter, as well as the representations contained in the supplemental petition, and that modifications in the present rates and charges of the respondent be made to the end that the company thereby be permitted to offset the increases in operating expenses therein alleged.

This cause came on for hearing in the city of Colorado Springs on the 23rd day of April, 1918, appearances being entered by J. L. Bennett, Esq., for the city of Colorado Springs, and by Rush L. Holland, Esq., for The Colorado Springs Light, Heat & Power Company.

There is only one point raised in these proceedings, and that is, the adequacy of the present rates to the respondent as now on file for gas and electric service. The order of the Commission dated July 31, 1917, fixed the fair value of the electric property at $1,900,000.00, the depreciation requirement at $30,000.00 per annum and the rate of return at 8 per cent. This order likewise fixed the fair value of the gas property at $850,000.00, the annual depreciation requirement at $7,500.00 and the permissible return on this property at 8 per cent. Since the above order was entered, additions have been made to the electric property of approximately $12,000.00 and to the gas property of more than $35,000.00. The operations of the company for the year 1917 produced a net return of $161,491.00 in the electric department and $15,325.00 in the gas department. These amounts were available for a return on the investment in these properties. The net return was, therefore, approximately 8½ per cent for the electric property and 1.8 per cent for the gas property.

While the company generates from 40 to 80 per cent of its output by means of water power, a large amount of coal is required and the increase in the price of this commodity has been considerable. For the year 1917 the average price per net ton at the plants of the company was $1.73. On the basis of the prices prevailing at this time, the average price per net ton for coal delivered to the plants of the company will be not less than $2.50. This increase applied to the tonnage used for the year 1917 will result in an increase in the cost of coal alone of approximately $29,000.00 per year. Necessary increases in salaries and wages will increase the

operating expenses $12,500.00 per year, and the increase in taxes was estimated by witnesses for both the respondent and the Commission at approximately $3,000.00 per year.

Testimony was submitted on behalf of the company to show that one of the large consumers of the company has permanently suspended operations and that the loss of this business would result in a reduction of net earnings of $20,000.00 per year. Based on the testimony submitted and the cross-examination of this witness the Commission is of the opinion that this loss of business will result in a reduction in the net earnings of the company of not to exceed $10,000.00 per year.

The items having a bearing on the future net earnings in the electric department of the respondent may be summarized as follows:

Increase in the cost of fuel	$29,000.00
Increase in salaries and wages	12,500.00
Increase in taxes	3,000.00
Reduction in net revenue on account of loss of business	10,000.00
Total	$54,500.00

The above amount deducted from the net earnings for the year 1917 of $161,491.00 leaves a net return of $106,991.00, which might be expected to result from the operation of the electric department for a period of one year under the present abnormal conditions. The actual showing would be somewhat better than this for the reason that the present rates for electric service originally designed to produce some additional revenues were in effect for only five months of the year ending December 31, 1917. Since the present rates were designed to increase the earnings of the company by more than $15,000.00 per year, it is believed that the net earnings of the company under the present rates and present conditions would amount to $115,000.00 per year. As a return of 8 per cent on the fair value of the electric property at this time is $152,960.00, the present rates should be so modified as to produce additional revenues of $38,000.00 per year if a return of 8 per cent is to be earned in the future.

It is fully recognized by the Commission that the rates for gas service cannot be made sufficiently high to enable the respondent to earn a fair return on the money actually invested in its gas property, but under the present conditions some additional revenue must be provided if the operating expenses in this department,

including taxes and depreciation, are to be met. The value, rather than cost of service, must govern in establishing gas rates in this particular locality. Gas is strictly a competitive fuel and if the price is made excessive the consumer will abandon its use in favor of some other form of fuel that may be had at a lower price. So long, however, as a reduction in the number of gas consumers and in the volume of gas sales does not follow an increase in rates, the value of the service to the consumers has not been exceeded. What the result of a further increase in the rates for gas service will be cannot be determined without a trial, but the Commission is of the opinion that under the present conditions the experiment should be made and an adjustment in the present rates designed to offset in part the increase in operating expenses will be ordered.

The Commission is of the opinion that such increases as are necessary at this time should be borne uniformly by the majority of the consumers of the company. Increases made in a prior order in this case were confined entirely to the large power consumers. While an increase in the rates to the small consumers will be made, the Commission desires to call attention to the fact that even under the present war conditions such increased rates are lower than those paid by such consumers prior to the first order affecting the rates of this company. In the opinion of the Commission no change should be made in the present rates for street lighting, sign and display lighting or electric heating.

An appropriate order will be entered in accordance with the findings herein.

ORDER.

IT IS THEREFORE ORDERED, That the rates filed by The Colorado Light, Heat & Power Company on January 24, 1918, and which were temporarily suspended by an order of this Commission on the 16th day of February, 1918, be and the same are hereby, permanently suspended.

IT IS FURTHER ORDERED, That the rates and charges for electric service which are hereafter to be observed and enforced by The Colorado Springs Light, Heat & Power Company shall be as follows:

Schedule "A."

Commercial Lighting Service.

Rate.

9½ cents net, or 10 cents gross, per kilowatt hour for the first 60 hours' average use per month of maximum demand.

6 cents net per kilowatt hour for the next 120 hours' average use per month of maximum demand.

3 cents net per kilowatt hour for all current consumed in excess of 180 hours' average use per month of maximum demand.

Determination of Maximum Demand.

The maximum demand shall be taken at 90 per cent of the total connected load 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.

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 Monthly 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 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 "B."

Residence Lighting Service.

Rate.

9½ cents net, or 10 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 "C."

Commercial Power Service.

Rate.

8 cents per kilowatt hour for the first 30 kilowatt hours consumed per month per horsepower of demand.

4 cents per kilowatt hour for the next 60 kilowatt hours consumed per month per horsepower of demand.

2 cents per kilowatt hour for all current consumed in excess of 90 kilowatt hours per month per horsepower of demand.

Determination of Maximum Demand.

The horsepower demand shall be considered as the manufacturers' rating of the motors as indicated in horsepower on the name plate of such motors. 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 less than 2 horsepower.

Prompt Payment Discount.

A discount of 1 cent per kilowatt hour on the consumption billed at the 8 cent rate will be allowed on monthly bills if paid within the 10-day discount period, as indicated thereon.

Minimum Monthly Guarantee.

The consumer shall guarantee a minimum monthly charge of $1.00 net, or $1.10 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 consisting of more than 2 motors, the minimum guarantee shall be based on 75 per cent of the connected horsepower.

Direct Current.

If direct current is furnished hereunder, the first 30 kilowatt hours of monthly consumption per horsepower of demand shall be billed at 9 cents gross per kilowatt hour and discounted to 8 cents per kilowatt hour, if paid within the discount period.

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.

Availability.

This schedule shall be available to all power consumers.

Schedule "D."

Large Light and Power Service.

Rate.

Demand Charge.

$4.00 net, or $4.50 gross, per month per kilowatt for the first 10 kilowatts of maximum demand.

$3.00 net per month per kilowatt for the next 15 kilowatts of maximum demand.

$2.00 net per month per kilowatt for the next 25 kilowatts of maximum demand.

$1.00 net per month per kilowatt of maximum demand in excess of the first 50 kilowatts of maximum demand.

Energy Charge—Base Rates.

Alternating Current—Low Tension.

1.2 cents per kilowatt for the first 20,000 kilowatt hours of monthly consumption.

1.0 cent per kilowatt hour for the next 40,000 kilowatt hours of monthly consumption.

0.7 cents per kilowatt hour for all consumption during the month in excess of 60,000 kilowatt hours.

Direct Current.

1.4 cents per kilowatt hour for all energy used.

Alternating Current Untransformed.

1.2 cents per kilowatt hour for the first 20,000 kilowatt hours of monthly consumption.

0.9 cents per kilowatt hour for the next 40,000 kilowatt hours of monthly consumption.

0.6 cents per kilowatt hour for all consumption during the month in excess of 60,000 kilowatt hours.

Fuel Clause.

The energy charges herein provided are based on coal costing not less than $2.00 nor more than $2.50 per ton delivered at the main steam plant of the company. When such coal cost is in excess of $2.50 per ton as shown by the records of the company for the previous calendar month, the above base rates shall be increased 0.15 mills, ($0.00015) per kilowatt hour for each increase of 10 cents per

ton, and when such coal cost is less than $2.00 per ton, the above base rates shall be decreased 0.15 mills ($0.00015) per kilowatt hour for each 10 cents per ton decrease in the cost of coal, provided that this fuel clause shall not apply to the first 20,000 kilowatt hours of monthly consumption.

Determination of Maximum Demand.

The demand to be considered and paid for hereunder shall be the highest 15-minute peak recorded by demand meter or as indicated by suitable indicating instruments during the 12-month period immediately preceding, such period to include the month for which bill is rendered; or if service has not been rendered for a full 12-month period the demand shall be based on the highest such peak established during the period for which service has been rendered. The company may at its option and in lieu of a measured or tested demand base the demand hereunder on 75 per cent of the total installation of motors and lighting equipment. In the case of extraordinary or abnormal demands, the company may at its option not consider such demands.

Power Factor.

The consumers shall at all times take 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 less than 80 per cent 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 cent of the total connected load, but in no event shall such guaranteed demand be less than 10 kilowatts.

Availability.

This schedule shall be available to all consumers using the company's standard service for light and power.

Schedule "E."

Municipal Street Lighting Service.

Rate, All-Night Schedule.

400 c. p., 7.5 ampere, type C, series incandescent lamps .....$61.50 per year

250 c. p., 7.5 ampere, type C, series incandescent lamps .....$45.00 per year

100 c. p., 7.5 ampere, type C, series incandescent lamps .....$24.00 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

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 "F."

Sign and Display Lighting Service.

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."

Electric Heating and Cooking Service.

Rate.

4 cents per kilowatt hour for all energy used.

Minimum Guarantee.

The minimum monthly bill under this schedule shall be $2.50 net per month per consumer.

Prompt Payment Discount.

½ cent per kilowatt hour.

IT IS FURTHER ORDERED, That the rates and charges for gas service which are hereafter to be observed and enforced by The Colorado Springs Light, Heat & Power Company shall be as follows:

Gas Service.

Rate.

$1.35 net, or $1.45 gross, per M cubic feet for the first 5 M cubic feet of consumption per month.

$1.15 net per M cubic feet for the next 15 M cubic feet of consumption per month.

$1.00 net per M cubic feet for the next 30 M cubic feet of consumption per month.

$0.90 net per M cubic feet for all consumption during the month in excess of 50 M cubic feet.

Minimum Guarantee.

The consumer shall guarantee a minimum monthly bill of 50 cents net, or 60 cents gross, per meter installed.

Prompt Payment Discount.

Bills will be rendered at the gross rate of $1.45 per M cubic feet for the first 5 M cubic feet, or at the minimum and discounted to the net rate, if paid within the discount period indicated on the bill.

Prepay Meters.

$1.40 net per M cubic feet for all gas sold through prepay meters.

Availability.

This schedule shall be available to all consumers using the company's gas service.

IT IS FURTHER ORDERED, That the foregoing rates and charges for gas and electric service shall be effective on and after June 1, 1918, and shall apply to all service rendered on and after that date.

IT IS FURTHER ORDERED, That The Colorado Springs Light, Heat & Power Company shall file and post the foregoing rates in accordance with Section 16 of the Public Utilities Act.

The Commission as a part of this order expressly reserves the right, either upon its own motion or upon complaint, to further investigate the rates authorized herein, make findings, amend or annul any of the terms or provisions of the said new schedules of rates as above set forth, and to make any other or future order as may be necessary in the premises, and for that purpose retains jurisdiction of the matter herein.

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

(SEAL)

Dated at Denver, Colorado, this 25th day of May, 1918.

DECISION No. 178.

THE GREAT WESTERN ALFALFA MILLING COMPANY,

v.

THE FARMERS ELECTRIC & POWER COMPANY.

Case No. 151.

May 28, 1918.

APPEARANCES: Charles F. Morris, for the complainant. H. E. Churchill, for the defendant.

STATEMENT.

By the Commission:

On or about the 23rd day of January, 1918, the complainant herein, The Great Western Alfalfa Milling Company, filed a complaint with the Commission alleging in substance that it is a corporation duly organized and existing under and by virtue of the laws of the State of Colorado for the purpose of manufacturing alfalfa meal; that The Farmers Electric & Power Company is a public utility corporation organized and existing under and by virtue of the laws of the State of Colorado and is engaged in the business of furnishing electric light and power service to the public in the territory served by it; that on or about the 16th day of January, 1918, the complainant tendered to the defendant a deposit for the furnishing of electric light for the complainant's mill located at Ault, Colorado, at which time a demand was made that the defendant furnish electric service to be used for lighting such mill, and that further the complainant offered to pay such rates as

are in effect in that community for lighting service; that the defendant at that time refused, failed and neglected, and has continued to fail, refuse and neglect to furnish the complainant with the lighting service demanded. The complaint further alleges that the power company seeks to require the complainant to sign a contract for a period of five years with a minimum guarantee, and that such demand is contrary to law.

On the 9th day of February, 1918, The Farmers Electric & Power Company, defendant herein, filed with the Commission its answer to the foregoing complaint. The allegations set out in this answer are in substance as follows: That on or about the 3rd day of December, 1917, a letter was received by the defendant from the complainant company requesting that service for electric lighting purposes for the complainant's alfalfa mill at Ault be made available as soon as possible; that on or about the 5th day of December, 1917, the defendant replied thereto informing the complainant in substance that electric lighting service could not be furnished until such time as the necessary material could be obtained and a transmission line of about one-half mile in length constructed; that thereafter and on the 6th day of December, 1917, a further letter was received from the complainant company by the defendant in which letter the complainant in substance demanded that service for electric lighting be provided immediately as previously requested; that thereafter and on the 8th day of December, 1917, the defendant company advised the complainant by letter that on account of the distance of the nearest existing transformer from the premises of the complainant it would be impossible to furnish the service requested until certain high voltage lines could be extended to the alfalfa mill, and that such extension could not be made immediately for the reason that the necessary material was not at that time available; that thereafter and on the 7th day of January, 1918, the complainant company again wrote to the defendant demanding that service for lighting purposes for the premises in question be supplied without delay; that on or about the 14th day of January, 1918, the defendant replied to this demand, stating in substance that the necessary extension of the present distribution system could not be made for the small amount of lighting available and that unless the complainant would enter into a contract for a term of years at the regular published rates of the defendant for this class of service, providing for a guaranteed annual minimum consumption, such extension would not be profitable and would not be made by the power company.

Further answering the complaint, the defendant alleges that in order to furnish the service desired it would be necessary to construct an entire new line of over 2,000 feet in length at a cost of $550.00; that there is no other consumer which could be served by such extension of the present lines, and that the only revenue which would be received from the construction of such line is the income from furnishing service for lighting purposes to the mill of the complainant; that on the 7th day of January, 1918, the defendant was informed by the complainant that the entire need for lighting service at such mill was about one hour per day during the months of December and January of each year, and that at the same time the defendant was informed by the complainant that the service was desired exclusively for lighting and had no bearing on service for power purposes. The defendant further avers in its answer that the revenue from such a trivial amount of electrical energy for lighting purposes would be inadequate and insufficient to justify the necessary expenditure therefor unless the complainant should enter into a contract for a term of years specifying a guaranteed annual minimum charge for such service; that the amount of revenue to be obtained from furnishing such service as specified and requested by the complainant would be wholly insufficient to pay a fair return or any return whatever upon the capital which would necessarily be invested. The defendant in its answer denies that its request that the complainant sign a contract for a number of years with a minimum guarantee is contrary to law.

Upon a motion being filed to strike certain portions of the replication made by the complainant to the answer of the defendant, permission was granted to the complainant to file an amended complaint embodying the allegations set out in such replication. Such amended complaint was filed with the Commission on the 19th day of April, 1918, and, in addition to the allegations contained in the original complaint, alleges that the defendant company has on file with the Commission a certain rate for power service for alfalfa meal mills, that such rate has never been approved by the Commission, and that it is not a fair, just or equitable rate for the purposes therein set forth. The complainant asks (1) that the defendant be ordered by the Commission to furnish electric lighting service for its mill at Ault under the same rates and conditions as applied to all other lighting consumers served by the defendant; and (2) that the Commission make and promulgate a fair and just rate for electric power for alfalfa meal mills.

Answer to such amended complaint was filed with the Commission by the defendant on April 22, 1918. This answer in so far as it pertains to the furnishing of electric lighting service at the mill of the defendant is in substance the same as its answer to the original complaint. In further answer to the allegation in the amended complaint to the effect that the rate now on file with the Commission covering power service for alfalfa meal mills is not a fair, just or equitable rate for such service, the defendant admits that it has on file with the Commission a rate for power service for such mills and that such rate is 3½ cents per kilowatt hour, plus 50 cents per month per connected horsepower, but denies that such rate is not a fair, just or equitable rate for such purposes. Defendant alleges the fact to be that such rate is not only a fair and just rate for such service, but that it is lower than it should be in order to insure a fair return or a reasonable compensation to the defendant for furnishing such service.

Pursuant to notice duly given to all parties in interest, the above cause came on for hearing before the Commission at its hearing room in the State Capitol Building, Denver, Colorado, at the hour of 10 o'clock a. m., May 3, 1918, at which time testimony was submitted in behalf of both the defendant and the complainant herein.

The matters to be decided by the Commission in this case are (1) the reasonableness of the conditions under which the defendant proposed to furnish electric service for lighting purposes only to the alfalfa meal mill of the complainant in the town of Ault; and (2) the reasonableness of the present rate of the defendant for power service to alfalfa meal mills located in the territory which it serves.

At the hearing testimony was submitted in behalf of the complainant to the effect that the defendant had refused to comply with its demands for service for lighting purposes at its alfalfa mill in the town of Ault until such time as the complainant would sign a contract agreeing to take such service for a number of years and making a stipulated yearly guarantee.

The testimony submitted by the defendant shows that the point from which it would be necessary to extend such service is more than 2,200 feet from the point at which it would be used and that the cost of making such extension would be approximately $550.00. Witnesses for the defendant further testified that no other consumers are available in the territory through which such extension

would pass; that at one time service had been available in a portion of such territory, but that it had been abandoned for the reason that no use was made thereof.

In the opinion of the Commission the demand of the complainant that the defendant make an expenditure of $550.00 for the purpose of providing lighting service without any guarantee as to the revenue to be received or the length of time that such service would be used is unreasonable. According to the testimony submitted by the complainant, the actual use of such service might be considerable or at times it might be very slight. This extension should not be made unless the complainant will guarantee revenue sufficient to pay a reasonable return on the cost thereof.

The only evidence submitted bearing upon the reasonableness of the present rate of the defendant for alfalfa mill service was that a lower rate is now being paid by the complainant for like service from The Western Light & Power Company. There is no more justification for assuming that the charge of the defendant for this class of service is too high than there is for assuming that the charge made by The Western Light & Power Company is too low, but, considering the conditions under which these two utilities operate, The Western Light & Power Company should be able to furnish such service at a lower rate than the defendant herein. The record shows that the defendant purchases its entire energy requirements at wholesale from The Western Light & Power Company and that the rate paid therefor is only slightly lower than that quoted by such company to alfalfa mill users in the territory which it serves. Considering the price paid for purchased power, the losses in transmission and transformation, the fixed charges on the investment necessary to serve power consumers in the territory of the defendant, and the conditions under which the property of the defendant is necessarily operated, the charges made to alfalfa mill users must necessarily be higher than those made by The Western Light & Power Company to like users. The contention that the alfalfa mill rate of the defendant is excessive is therefore not sustained.

At the close of the hearing in this case the defendant was requested to submit to the Commission a written statement covering the conditions under which the necessary extension for furnishing power and lighting service to the complainant's mill at Ault would be made. This proposition has been submitted to the Commission, but inasmuch as counsel for the complainant stated at the hearing

that it could not and would not take power service unless the present rate is reduced, it is unnecessary for the Commission to pass upon the reasonableness of such proposition.

ORDER.

IT IS THEREFORE ORDERED, That the foregoing complaint be, and the same is hereby, dismissed.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 28th day of May, 1918.

DECISION No. 179.

IN RE ADVANCE IN DENVER & SOUTH PLATTE RAILWAY FARES.

Investigation and Suspension Docket No. 23.

June 4, 1918.

APPEARANCES: Fred Farrar, for the respondent. Luke J. Kavanaugh, attorney for the city of Englewood. J. E. Mitchell, attorney for the town of Littleton.

STATEMENT.

By the Commission:

The respondent herein filed its schedule, Colo. P. U. C. No. 3, with the Commission on April 12, 1918, effective May 12, 1918, proposing certain increases in the fares for transportation between points on its line. Following the filing of this schedule a protest was received from the city of Englewood alleging that the proposed rates were exorbitant and unreasonable. The Commission thereupon issued its order of suspension on May 1, 1918, deferring the use of the rates and charges contained in the schedule until September 9, 1918, in order that an investigation and hearing might be held with respect to the propriety of the increases and lawfulness of the schedule.

The respondent is an electric interurban railway owning 4.25 miles of main line track and road extending from Englewood to Littleton. The following will show the principal communities on respondent's line and the distance of such points from Englewood.

	Miles from Englewood
Cherrylyn	1.0
Belleview	2.0
Prescott	2.125
Woodlawn	2.875
Lincoln Avenue	3.625
Leyners	3.75
Littleton	4.25

Cherrylyn is the largest of the communities located between Englewood and Littleton, having approximately 350 people tributary to that stopping point. In addition to the above points, stops are made by the respondent's cars at any point where passengers may desire to alight or board.

The present schedule of the respondent provides for a 5-cent adult fare between any two points on the line, while the proposed schedule provides for a 5-cent fare between Englewood and Prescott, 10 cents between Englewood and Littleton, and commutation fares between Englewood and Littleton of 25 fares limited to 60 days at a rate of $1.50, which is based on a 6-cent fare. Fares for children between the ages of 6 and 12 in both the present and the proposed schedule are based upon one-half of the above mentioned fares.

A hearing was held on May 22, 1918, at which appearances were entered by the respondent, the city of Englewood and the town of Littleton. At the hearing the attorney for the town of Littleton stated that the town had no objection to the proposed fares and believed the same to be reasonable and just. Objection was entered, however, with reference to the time limit upon the commutation books which the respondent proposed in its schedule to be 60 days. The request was made for the extension of this time to 90 days, to which the respondent willingly assented, thus removing all objection upon the part of the town of Littleton.

The original protest filed by the city of Englewood was against the entire schedule proposed by the respondent, and it was urged that the matter should be held in abeyance owing to the fact that the question of the company's franchise and rates thereunder is now in the United States Supreme Court for interpretation. At the hearing, however, the only protest made by this protestant was against the fares between Englewood and Cherrylyn. There is no increase proposed in the fares between these points and the remain-

ing question at issue involves the reasonableness of the advanced rates.

The respondent does not own any passenger equipment, but rents two combination closed and open passenger cars from The Denver Tramway Company, the respondent having connection with the Tramway Company at Englewood. The schedule of operation is upon an hourly basis in each direction, from 6:30 a. m. to 11:30 p. m. The following table shows the number of passengers, and the operating revenues and expenses of the respondent from 1911 to 1917, inclusive:

	Passengers					
	Revenue		Free	Operat'g	Operat'g	Net Operat'g
	Adult	Children	Transfer	Revenue	Expenses	Revenue
1911	390,000	16,600	122,176	$19,273	$16,561	$2,712
1912	350,898	16,307	125,708	18,015	16,237	1,778
1913	328,034	15,684	109,950	16,951	15,661	1,290
1914	308,501	15,882	99,917	16,156	14,733	1,423
1915	295,988	15,850	104,915	15,639	14,976	663
1916	276,613	17,254	97,607	14,739	15,035	*296
1917	304,404	14,929	(a) 34,423	16,038	15,577	461

*Deficit.

(a) Handling of free transfer passengers discontinued May 3, 1917.

The interest on funded debt has not been paid during any portion of the period shown above, and the net deficit after the payment of taxes for the year 1916 amounted to $902.12, and in 1917 to $151.77. The debit balance of the respondent on December 31, 1917, was $86,856.81.

By referring to the statement of passengers transported, it is noted that the respondent was required to handle as many as 125,000 passengers in a single year under the free transfer privilege. The witness for the respondent testified that since the elimination of this privilege the number of passengers riding at the regular fare between points formerly covered by the free transfer privilege amounts to approximately 60 per day.

During the hearing it developed that the president of the company receives a yearly salary of $2,400.00. To the Commission it clearly appears that, as an operating expense, a yearly salary of $2,400.00 for the president of this company is excessive when measured by the service which he renders in connection with the operation of the property. The respondent therefore should arrange for a readjustment of this salary which will more properly represent in the operating expense account the actual services rendered.

The proposed schedule of the respondent does not provide for fares between points from Prescott to Littleton. The Commission is of the opinion that the proposed fares are reasonable and should be allowed to become effective, provided, however, that the commutation fares shall be limited to 90 days from date of sale, and a fare of 5 cents established between Prescott and Littleton. An order will be issued requiring the cancellation of the schedule herein suspended and permitting the respondent to issue a revised schedule provided for the changes herein suggested.

ORDER.

IT APPEARING, That by order dated May 1, 1918, the Commission entered upon a hearing and investigation concerning the propriety of the increases and the lawfulness of the rates, rules and regulations stated in schedule enumerated and described as Denver & South Platte Railway Company, Colo. P. U. C. No. 3, and ordered that the operation of said schedule be suspended until September 9, 1918;

IT FURTHER APPEARING, That an investigation of the matters and things involved has been had and the Commission on the date hereof has made its finding of facts and conclusions thereon;

IT IS ORDERED, That the respondent herein be, and it is hereby, notified and required to cancel on or before June 15, 1918, its Colo. P. U. C. No. 3.

IT IS FURTHER ORDERED, That the respondent be, and it is hereby, allowed and permitted to establish on not less than three days' notice to the Commission and to the public by filing and posting in the manner prescribed in the Act, a fare of 5 cents between Englewood and Prescott, 5 cents between Prescott and Littleton, and 10 cents between Englewood and Littleton; also commutation fare books between Englewood and Littleton containing 25 single fare tickets limited to 90 days from date of sale at $1.50 per book, and fares for children between the ages of 6 and 12 at one-half the foregoing rates.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 4th day of June, 1918.

DECISION No. 180.

IN THE MATTER OF AN INVESTIGATION AND HEARING, ON MOTION OF THE COMMISSION, INTO THE REASONABLENESS OF THE RATES AND CHARGES OF THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY WITHIN THE STATE OF COLORADO, AND INTO THE SERVICE OF THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY WITHIN THE STATE OF COLORADO, AND THE RULES, REGULATIONS AND PRACTICES AFFECTING THE SAME.

Case No. 22.

June 14, 1918.

STATEMENT AND ORDER.

By the Commission:

On June 4, 1915, the Commission decided to investigate into the reasonableness of the rates and charges, and rules, regulations and practices surrounding the same, and adequacy of service of The Mountain States Telephone & Telegraph Company, hereinafter called the Telephone Company. Such investigation and hearing was subsequently had and on January 5, 1917, the Commission issued its order finding valuations in this case, In re Mountain States Telephone & Telegraph Company, 3 Colo. P. U. C. 122, P. U. R. 1917B, 198. In said decision the Commission ascertained and determined the value for rate-making purposes of the property in use and useful of this utility to be, as of August 31, 1915, the sum of $14,698,414.00. The Commission found that the revenues from all sources for 1915 were insufficient by $484,921.37 to meet all the operating expenses, provide for depreciation and pay a return of eight per cent on the fair value of the property, and therefore held that the Telephone Company was not earning in

excess of a reasonable rate of return, and it found that a fair rate of return upon the properties of this utility in use and useful was eight per cent per annum.

The Commission held that the methods of charging for telephone service, the adequacy of the service, and the rules, regulations and practices of the company were before the Commission for future adjustment, as well as the reasonableness of one or more rates in one or more communities for any one or more classes of telephone service.

After said decision was made the Commission proceeded to take evidence on the matters then remaining undetermined, and now makes its findings and order as to the rates, methods of charges, and rules, regulations and practices of the Telephone Company

The engineers, rate experts and telephone experts of the Telephone Company and the Commission have given a vast amount of testimony relative to rules, regulations, practices and contracts of the Telephone Company, and as to rates. The Commission's expert recommended a tariff which, in substance and effect, is a complete set of rules and regulations governing the practices and affairs of the Telephone Company and its relation to the public in rendering service. To the recommendations of this expert the Telephone Company has in the main agreed, and there are modifications in his tariff which have been suggested by the Telephone Company.

The testimony upon the fundamental and underlying principles of rate-making has been very full and complete; a thorough study has been made of the rates in every exchange and section of the state, and evidence has been introduced showing exactly what the present rates are, the nature and character of the exchange, the class of business done in the town or locality in which the exchange is located, and an analysis made of conditions which affect telephone rates in each of these exchanges and towns or cities or other locality. The company has presented in evidence considerable testimony showing why a rate schedule proposed by it should be adopted by this Commission. The telephone or rate expert has reviewed most carefully all of the evidence presented by the Telephone Company and has given his testimony upon the same subjects. This has involved a great deal of labor, because the subject of rate-making is a most important one, and to obtain a full understanding of it requires an investigation into so many varying and underlying circumstances, facts and conditions that a great deal of

time and care has been spent and exercised, not only by the Commission and its representatives, but also by the Telephone Company.

The Commission now comes to a determination of the changes to be made in the schedules of rates in the state of Colorado. Before setting forth the conclusions of the Commission upon this subject it is advisable to review to some extent the financial condition, affairs and business of this utility.

The Telephone Company has in the state of Colorado 152 exchanges. Of these the Denver exchange is the largest, followed by Pueblo and Colorado Springs in the order named. On August 31, 1915, there were 92,219 stations in the state. Of these 41,773 were located in Denver, 5,576 in Pueblo, and 5,891 in Colorado Springs. Of the 152 exchanges only fourteen have more than 1,000 stations, thirteen have between 500 and 999 stations, twenty have between 300 and 499 stations, sixty-three have between 100 and 300 stations, and forty-two have less than 100 stations. From this statement it will be seen that the telephone reaches practically every town and locality in the state and the development of the telephone in the state of Colorado is good. The majority of exchanges are located far apart and the distances between them are great. The connecting up of these localities with each other and with the principal centers in the state requires a large amount of telephone property and equipment. The exchange business in the smaller localities would not be sufficient to warrant the construction of a system in many of them, but the telephone is for universal use and the people in the larger communities must have access to and communication with the people in the smaller communities. Therefore the extension of the telephone into the smaller places is for the mutual benefit of the inhabitants of the smaller as well as the larger places. These facts must be considered in determining what a rate schedule should be in any particular locality, and must be considered in arriving at the conclusion that in the larger centers, where the people desire to communicate with the smaller places, the patrons of the Telephone Company should bear a portion of the burden of the expense of reaching the smaller centers. The revenues to be derived from the smaller localities in many cases would not, by themselves, sustain a telephone exchange in those places nor warrant its being installed there, nor could the Telephone Company derive a fair return upon its investment in such localities.

It follows, therefore, that due consideration must be given to the revenues and expenses of the company in the entire state, and

that a rate schedule must be adopted which will enable the company to provide service in all parts of the state, because the benefits derived are for all the people in the state, and not merely in any one locality.

For the same reasons the revenues must be commensurate with the entire expense of the Telephone Company in the state, and the Commission must exercise its best judgment in so fixing or adjusting rates as to do justice to every community in the state, bearing in mind that the Telephone Company, being under regulation and compelled to give adequate and satisfactory service, must be placed in a position where it can earn sufficient revenue to give adequate and satisfactory service and be enabled to meet the requirements of the business.

A most important problem before the Commission is to insure good service. The evidence in this case shows that good service has been and is being rendered to the telephone-using public in Colorado. The necessity of insuring a continuance of this service brings the Commission to the problem of adopting a schedule or system of rates which will enable the Telephone Company to give this efficient service, which means that the company must have competent employees, adequately paid; must buy standard equipment and use and maintain it in such condition that it will render good service, and, in addition thereto, the company must have such earnings as will enable it to accumulate and maintain a depreciation fund sufficient to replace plant which becomes worn out, inadequate or obsolete in service, and pay a fair return on its investment in its property and business. Such a condition, properly maintained, will enable the Telephone Company to secure new money from the investing public for extensions.

In the opinion heretofore rendered in this case the Commission fixed the valuation of the Telephone Company's property used and useful in the state of Colorado, approved of the expenditures made by the company, and found its statements as to revenues and expenses to be correct and in harmony with the evidence of the statistician of the Commission. The Commission found that the company had paid dividends of approximately six per cent per annum during the life of the company and its predecessor, The Colorado Telephone Company; that it had not built extensions out of earnings, but that all extensions had been built out of new capital; that the depreciation reserve was insufficient; that the earnings of the company were insufficient by $484,921.37 to procure the

required amount of revenue, based upon the findings of the Commission and the revenues and expenses for the year 1915, and that the depreciation reserve at that time was inadequate and insufficient in the state of Colorado to the extent of $1,365,000.00. The Commission enumerates here, in substance, certain contentions made by the Telephone Company in support of its claims as to the amount of actual deficits:

(1) The company contends that there should be added to the deficit found by the Commission for 1915 the sum of $30,749.86 for occupation and other taxes paid in Denver, Florence, La Junta, Grand Junction and Victor, which payments were not shown in the evidence.

(2) The company further contends that the amount of $42,895.61, which the Commission took out of expense account and put into the investment account in arriving at the deficit for 1915, should be restored to the expense account.

(3) The company further contends that the deficit for 1917, based upon exactly the same figures as to investment, etc., which the Commission used in arriving at the deficit in 1915, is $706,007.75.

(4) The company further contends that the additional sum of $136,500.00 should have been added to the 1915 deficit, as found by the Commission, had a rate schedule been adopted in 1915, because of the necessity for immediately installing plant throughout the state, and particularly in Denver; and that there should have been added to said deficit of 1917, $204,750.00 in case a new rate schedule had been put into effect in 1917, making the sum of $910,757.75.

(5) The company further contends that the engineers at the time of the appraisal as of August 31, 1915, could only value the physical property in place; that they did not advise the Commission as to plant conditions which existed in certain parts of the state, and particularly in Denver; that Denver was then in need of additional plant and the necessity therefor has constantly grown, and spare plant has been largely utilized in the giving of service; that "spare plant" is reserve plant in excess of the amount which may be considered to be used in the direct sense at any time; that on August 31, 1915, additional plant should have been installed in Denver in the amount of $825,000.00, and in the remaining portion of the state in the amount of at least $1,000,000.00, and that on January 1, 1917, the spare plant requirements for the state had

increased to $1,500,000.00. The Telephone Company explains that the reason for the unusual plant conditions at these respective times was that there was uncertainty as to the amount of earnings the company could make in the state, and particularly in Denver, owing to past controversies in Denver which had resulted in materially reduced rates effective as of April 1, 1914, and the company having passed under the regulation of this Commission, followed by the institution of this proceeding on the motion of the Commission and the ordering of an inventory and appraisal of the entire property of the company within the state. The position is taken by the company that it was therefore unable to determine its status as to earnings and refrained from installing new plant during those years, which ordinarily it would have installed, to maintain the proper percentage of spare plant to plant in place; that the result was, as more service was required in the state, and particularly in Denver, the Telephone Company used up its spare plant by drawing largely upon the same; that new plant must be installed at once to restore the normal percentage of spare plant to plant in use, and that the company should be allowed a return upon such additional investment as is necessary.

The company asserts that it does not seek to change appraisal value, but desires the Commission to consider not only the amount of property actually used in the business as of a given date, but also the amount of property which under normal conditions and on the average must be used to provide continuously the same amount of telephone service; that the company's physical property on August 31, 1915, did not truly represent what the investment should have been, considering the telephone development that was going on and the rapidity with which spare plant was being used for that development. The Telephone Company's contention is that, to restore the normal condition and to safeguard adequate and satisfactory service, additional plant should have been installed in Denver and the state outside of Denver to the extent heretofore set forth under this fifth paragraph, and that upon these additions annual charges should be taken into consideration in making the rate schedule.

(6) The Telephone Company further contends that if rates for 1915 had been so revised as to result in the increase claimed necessary in the net revenue, they must have been revisd to produce a considerably larger increase in the gross revenue, for the reason that occupation and income taxes and certain other ex-

penses depend either directly or indirectly upon the amount of gross revenue, and any stated amount of increase in gross revenue is subject to certain deductions prior to such increases becoming increases in net revenue; that the findings of the Commission as of August 31, 1915, ought only to be applied in the revision of rates in event conditions are the same at the time the rates are made as they were at the time of the findings. The company argues that war conditions have caused an enormous increase in the prices of materials used, operators' wages and the wages of all other employes, and that even in normal times the trend of material and labor costs has been upwards; that every operation of the company since 1915 has increased in cost and that the Commission should not ignore these increases in its findings as to rates; that the company estimates the cost of telephone plant per station will be $184.00 in 1918, as against $162.00 in 1915 and $136.00 in 1910; that considering all of these matters its deficits are increasing each year.

(7) The company further contends that for the company to be in a sound business condition and for adequate and satisfactory service to be continuously given, its net earnings should be a very considerable amount in excess of its present net earnings; that while a rate schedule to produce the full sum to which it is entitled under the Commission's findings as to rate of return and depreciation reserve would not be justified considering the best interests of the company and the public, there should be rates provided producing an increase in the net earnings of approximately $500,000.00.

This concludes the statements of the Telephone Company as to annual deficits in net earnings, and the amount necessary to be provided.

Some of these contentions have been disposed of by the decision of the Commission as to valuation; others have reference to matters not in the evidence. As to the first claim it is conceded that these tax payments were not in evidence, and therefore the contention is not considered. The second claim is disposed of by the decision heretofore made as to valuation; the third to seventh contentions, inclusive, involve largely matters relating to deficits occurring and plant installation contemplated since the valuation decision was rendered, but as these additions to plant were not then in existence, the Commission will consider the situation only as it existed at the time of the appraisal and valuation as disclosed by the record.

The Commission realizes that conditions have changed since 1915, and that the statements of the company as to increases in the price of labor and materials and the cost of inside and outside construction, and an increase in the expense of handling traffic and all expenses generally, are true. The trend of labor and material costs during the last several years even under normal conditions has been upward, and is especially so at the present time, and the telephone business has been obliged to meet these increases in the expenditures necessary to conduct it. There has been a considerable increase also in state, county, city, school district and other taxes, including income and war taxes. The deficit in the replacement fund was found by the Commission to exist in 1915. This is a situation that must be met, so far as possible, and while it is not deemed desirable to revise the rates in such a way as to entirely eliminate this deficit, the record shows that the Commission should prescribe such rates as it believes will enable the company to reduce such deficit and provide an adequate return on the investment, and the facts show that there should be additional earnings and revenue for the Telephone Company.

Sources of Increase in Revenue.

The problem of securing increases in revenue for telephone service in this state is a perplexing one. Charges should never exceed the value of the service, but they must support the service. They must be sufficient to enable the company to give the particular kind of service demanded by the public. Telephone service which is not universal and not adequate to meet the demands of the public is not good service. The people of Colorado demand and are entitled to good telephone service; the charges must be sufficient to enable the company to continuously maintain and operate its plant to give such service, and the patrons must provide the revenue necessary for that purpose.

As stated above, many exchanges are small and far apart, with a large investment per station, due partly to sparcity of settlement. As heretofore stated, the company concedes that business conditions generally do not permit of an increase in revenue to meet the full needs of the Telephone Company. The Commission considers that the company in this connection must bear some of the excessive increases caused by war conditions, and rates must be provided for the best interests of both the public and the company. The limitations of each locality as to class,

character and extent of business, and other matters, enter into the question of an increase of rates in respective localities. No change should be made in rates which involves a material decrease in the value, usefulness or adequacy of the service now enjoyed by the public, or which would result in restricting development and thereby decrease the value of the service to the public as a whole. There are certain classes of business of the Telephone Company which are sufficiently large in amount and of such a character as to constitute sources of increase in revenue. They are:

(1) Exchange service outside of Denver,
(2) Toll rates.
(3) Service connection and moving charges,
(4) Miscellaneous charges,
    (a) Joint user charges,
    (b) Private branch exchanges (P. B. X.) outside of Denver,
(5) Denver rates.

This opinion will make clear how increases in revenue may be obtained from these sources, and from them the Commission is able to work out schedules which will effect a reasonable increase. Schedules will be so arranged that each person shall pay as nearly as possible the value of the particular service he obtains, and so that no person shall bear an unjust proportion of the charges for the service rendered to any other person or class of persons. No rate schedule can be created without a classification of exchanges and an assignment of rates to each class. It is necessary, therefore, to discuss the defects in the present system of rates and classification of exchanges.

Defects in Present Rate System.

A rate schedule or system of rates is far-reaching and affects not only the revenues which the company receives and charges which the patrons pay, but creates fair or unfair relations as between the different classes of patrons. An equitable distribution of charges, proper conduct of the business, equity between subscribers and protection of the service, are all related to the rate schedule. The rate schedule has a bearing upon practically every relation which exists between the utility and the public. As heretofore stated, the chief objection to the present rate schedule is the failure to produce sufficient revenue to permit the con-

tinued maintenance of adequate and satisfactory telephone service. In addition, there are a number of other important defects, as follows:

The giving of district service where conditions do not warrant it;

An incorrect adjustment or improper differential in charges between certain classes of private branch exchange rates;

A wrong type of business rate schedule in Denver, producing discriminations and an improper bearing of the burdens of cost of service among different classes of users;

A faulty practice as to termination charges;

Failure to employ special toll rates in some cases where warranted, and the use of block toll rates for short haul toll service.

It is believed that all of these defects will be largely eliminated by this order of the Commission.

While it was found that the Telephone Company's exchange rates were divided into a number of groups of schedules, there were many schedules in which were found minor differences, so that the exchange rates could not readily be classified into a few major groups. Likewise, the application of the various groups of schedules to the many exchanges was found to be less consistent than is desirable. Due to lack of proper arrangement of exchange rates, discrimination now exists between the rates in various exchanges to a considerable degree, as there are small exchanges with high rates and large exchanges with low rates.

The Commission's telephone expert in his testimony, page 6239 of the record, stated, in connection with a lengthy criticism of the Telephone Company's lack of classification, that

> "At the present time approximately one hundred different combinations of exchange rates are in effect among the company's Colorado exchanges as the result of the application of the twenty-nine principal schedules shown in Table 3, or modifications of these schedules."

One hundred different combinations of exchange rates applied to 150 exchanges is ample evidence of the fact that some sort of classification is necessary. Such a classification was offered in evidence by the Telephone Company. The Commission, however, did not entirely agree with the provisions of this classification, and, accordingly, changes, which seemed desirable, have been made.

In the tables included in the testimony the Commission's expert pointed out that there are thirteen principal groups of urban schedules, twenty-one of rural and three of service stations, but that in all of these groups there are still exceptional rates. On page 6298 of the record he states that

> "It is apparent * * * that the present distribution of schedules could be considerably improved in certain respects. For instance, it is noticeable that among the exchanges operating under Group 1 urban schedules there are included several exchanges which are very much larger in population and telephones in service than the majority of the exchanges operating under Group 1 urban schedules. For example, most of the exchanges in this group have less than 200 telephones in service and range in size from a few hundred to 2,000 population. In contrast with these exchanges, the exchange at Arvada, with 6,000 population and 527 telephones in service, and the exchange at Steamboat Springs, with 3,000 population and 420 telephones in service, obviously do not belong in this group. If the rates now charged in the majority of exchanges operating under Group 1 urban schedules are correct, then the application of Group 1 urban schedules to such exchanges as Arvada and Steamboat Springs is incorrect."

Referring to Table 5, page 6276, Comparison of Exchange Characteristics, with Group 1, Urban Schedules, it will be found that the exchanges in this group, all of which have the same or practically the same urban schedules, range in size from fifteen to 527 telephones. Out of the thirty-three exchanges included in this group fifteen have less than 100 stations, twelve from 100 to 200, two from 200 to 300, two from 300 to 400, one from 400 to 500, and one over 500. It will thus be seen that in this group alone there is a wide range in the number of telephones served, without any corresponding differentiation in the prices of the service. Such exchanges as Fowler, Steamboat Springs and Windsor, located in fair-sized and well-established communities, and which serve from 35 to 500 subscribers, ought not to be in the same class with exchanges of only thirty, forty or fifty stations.

The same criticism may be made of the Telephone Company's administration of its rates in Group 2, 2A, 2B and 2C, contained at pages 6278 and 6279 of the record. The exchanges included in

these groups range from less than twenty-five stations to nearly 1,200, and yet the rates, although varying, are reasonably comparative. The same situation exists in Group 3, page 6287, which range from eighty-one subscribers in the exchange at Aguilar, to 2,500-3,000 in the exchanges at Boulder, Fort Collins and Greeley-Evans.

There is likewise an inconsistency in the areas within which such rates are quoted. Urban service, as the name implies, ought to be quoted only in such areas as are strictly urban in character, yet, in the majority of cases, the base rate area—that is, the area within which urban rates are quoted—extends to a distance of one mile radius from the central office. This is manifestly inconsistent because no two communities are the same in size and the density of settlement varies in general with the number of inhabitants of the city or town. The Commission will therefore order the Telephone Company, when it files the tariff containing the new rates authorized, to include within its filing, descriptions by maps or otherwise of the areas within which the urban rates will be quoted, and such areas must be consistent

Passing on to the schedules for rural service, the Commission's expert stated, on page 6303 of the record:

> "In the application of the seven principal schedules of rural rates, the company apparently has experienced considerable difficulty in the classification of Colorado exchanges for rural rate purposes, and although it appears that the rural rate system of the company in Colorado originally contemplated a consistent segregation of the various exchanges, competitive influences, district service controversies and other factors have resulted in considerable irregularity in the application of the rural schedules, as will be seen from Table 5. For example, exchanges operating under the lower groups of rural schedules are frequently very large, as in the case of the exchanges at Fort Collins, Greeley-Evans and other points, while the exchanges operating under the higher groups of rural schedules include such small exchanges as Gilcrest and Bayfield. * * *
>
> "A general reclassification of the company's Colorado exchanges for the purpose of more consistently applying rural rates appears desirable."

The Commission finds that in addition to the defects of the rate schedules, their application as to areas is faulty. Where

exchanges are close together there has been an overlapping of exchange areas so that in many places telephones will be found in the same community served by lines which are part of the exchange plant of two or sometimes three separate exchanges. Another defect in the rural rate schedules is that where they are established on the zone system the zones are too narrow to allow of satisfactory or equitable administration. In many cases the rate increases on rural lines within certain distances at periods of every quarter-mile. This results in neighbors in rural territories, although separated in distance by less than a mile, paying two, three or four different rates for what amounts to the same class of service.

The Commission will correct this defect when it establishes rural rates, by cutting down the number of zones and widening the territory served by each zone.

In regard to service station rates—that is, where the subscriber furnishes the line and telephone instrument—there are also inconsistencies, hereafter referred to. The same is true of the district service question. In some cases of exchanges local service extends over two or more exchange areas, no charge being made for the use of the toll or trunk lines between the two or more exchanges involved. This has resulted in dissatisfaction to the Telephone Company and the subscribers in general in that it is in the nature of a special privilege to a certain proportion of the subscribers, to the exclusion of the other subscribers. The district service question is so important and offers so many complications that the Commission has decided to defer consideration of it pending further study.

A further defect is that there are at present a considerable number of subscribers who are being furnished service at rates which were once quoted but which have been superseded by other rates, and are therefore obsolete. There are approximately 3,000 such subscribers at the present time. In addition there are certain special reduced rates for exchange service, which are somewhat similar to obsolete rates in that they differ from published rates and are not quoted to the general public. The Commission here refers to rates being charged to irrigation companies in northern Colorado, and to the Colorado Fuel & Iron Company at Pueblo. The quoting of such rates is discriminatory and the Telephone Company is hereby ordered to discontinue this practice. Such other free service and concession rates as are not authorized by law are ordered discontinued. Sufficient has been

said to show that the present situation is unsatisfactory and a classification of exchange rates by the Commission is desirable.

Commission's Classification of Exchanges and Exchange Rates.

The Commission will now proceed with the classification of exchanges for rate-making purposes. The object of the classification is to so arrange the exchange rates in the various communities that they will be equitable as between communities and individual subscribers and at the same time produce adequate revenues. The re-classification, therefore, involves not simply a listing of exchanges where rates can be increased or changed, or where additional revenue can be secured, but it includes an entire re-classification of all exchanges so that there will be an equitable distribution of the charges for service throughout the state in accordance with the many factors which control the sale of telephone service. It must be made because proper operation of the business sometimes renders necessary the assignment of rates and rate classification without direct reference to revenue necessities. The Commission here has reference to the limitations in rate-making in Colorado, which are no different in principle than those effective in other states, and also taking into consideration the physical conditions in this state.

One very necessary consideration in rate-making is that service cannot be sold for more than it is worth, and rates should not be established which are in excess of the value of telephone service. An increase in rates not justified by service value would result in the loss of subscribers, particularly in the residence classes; the consequence of such an increase would be not only a loss of revenue due to loss in the number of subscribers, but also a reduction in the service value to those who remain, notwithstanding that they would be obliged to pay the increased rates. In making its classification, therefore, the Commission, while authorizing some increases of rates, in view of the inadequacy of the telephone company's revenues, also classified the exchanges so that in no individual case will the rate increase be so great as to result in refusal to take telephone service by any considerable number of the present subscribers.

The classification which the Commission will order the Telephone Company to adopt is not based entirely or even largely upon the proposition that rates for telephone service will be increased. There will be decreases also, made in most cases for the express purpose of increasing the service value by the attraction to the company's system of new subscribers who here-

tofore have not been able to take service at prevailing prices. This is particularly true in the very small exchanges where the rates—generally lower than those now quoted—will be introduced for residence service for the purpose of increasing the development and the service value in these exchanges. The classification of exchanges in Colorado involves many small and a few large exchanges. Colorado is not a state of large cities, and its urban population is in general gathered into a considerable number of relatively small communities. There are, however, a few large cities, and a few more which, although not large, are substantial places. This classification has been evolved under the conception that each exchange, regardless of its size, is a part of the general system. The Commission considers that the very large number of small exchanges operated by the company—and which if they had to be operated as individual business ventures would not be in existence at all—are parts of the general system, and are necessary to the system as a whole. In each of these small exchanges the number of subscribers is limited both by the lack of population and the limited service value. This being the case, no matter what the usual individual rates might be, they could not be considered as material sources of revenue, nor can they be made self-supporting in many cases. The costs incurred locally for the operation of these exchanges, which do not include the cost of general supervision, are not met by the charges for exchange service which are collected. The deficits incurred in their operation are equivalent to the cost of providing a valuable service to the subscribers of other exchanges and the entire system. This being the case it is recognized that service must be furnished in the small exchanges at rates which are low in comparison with those quoted elsewhere, but this is not an excuse for the quoting of excessively low rates, and the Commission in its classification has arranged that each exchange shall produce the revenue which may reasonably be expected of it. The rates assigned for these small exchanges, while they are the minimum quoted in any of the exchanges, are commensurate with the service value. In such small exchanges few opportunities are offered for development, as there are not many business houses and few possibilities for the sale of business service. Residences are close together and telephone service, if taken, is merely a matter of convenience. On the other hand the expense of establishing and operating a telephone plant in exchanges of this kind cannot be varied as the number of subscribers increases or decreases. The

investment in switchboard, pole lines, the service of the minimum number of operators, and such items, remains the same whether the number of stations served is fifty or one hundred. In these towns, if rates are too high, subscribers will not take service, so that there would be no revenue. It is therefore necessary to make rates at a figure to attract as many subscribers as possible in order that the minimum expense may be offset by the greatest amount of revenue, which in turn depends upon the total number of subscribers which can be secured. On the other hand, if rates are too low there will be an unnecessary loss of revenue which cannot be regained by new development because there are no more potential subscribers to be attracted to the taking of telephone service. This situation leads up to the position which the Commission will take, that in the class of exchanges where generally fewer numbers of subscribers are served and rates are lower and the service value is less, the existence of these exchanges is not justified if service cannot be sold to a considerable number of subscribers at the minimum rates which the Commission will establish for such exchanges. In the smaller exchanges also the classification has been so arranged that a considerable number of decreases will be granted, particularly in residence rates, where it is likely that the minimum amount of expense would not be increased even with the addition of more subscribers to the present plant as explained above. In these cases the decrease in rates is expected to attract new subscribers, hence increasing the gross revenue without materially increasing the expense. Revenue possibilities in these smaller exchanges are not great, and the Commission has endeavored to secure a fair classification resulting in a proper and equitable allotment of the revenues to be secured.

In the larger exchanges the problem bears a different aspect. A large city cannot justly expect to enjoy unwarranted low telephone rates at the expense of other large cities. The service must be furnished, expense must be met, and if the larger exchanges fail to furnish their full share of the revenue there is no other source from which it can be obtained, and in the case of the larger exchanges, when the minimum investment required has been passed, every addition to revenue requires a corresponding addition to expense.

The development of telephone service in the larger exchanges is generally quite satisfactory in that the rates at present quoted are not so high as to preclude a considerable proportion of tele-

phone users to the total population. This being the case, a moderate increase in rates, such as will be ordered, will not curtail the use of the service. In a few of the large cities present revenues are adequate or nearly so, and no changes in those rates will be ordered. In Denver, after full investigation of the situation, the Commission has concluded that revenues are inadequate, that some rates are exceptionally low and increases in some cases must therefore be authorized.

Urban Classification.

The matter of classifying the exchanges in the state of Colorado for rate-making purposes will now be considered, and three classifications will be made—one for the purpose of establishing rates for urban service, one for rural service, and one for service station service.

The classification for the purpose of making rates for urban service is more complex than either of the other two and requires some explanation in detail. There is no set rule by which exchanges can be separated into blocks for rate-making purposes, particularly in the state of Colorado where conditions vary to a large extent, so that the basis for the entire classification is necessarily one of judgment. In establishing the classification rates have had to be applied over a wide range of differing conditions affecting the sale of telephone service. Without going into detail, some of the factors which have been considered are the value of the service, the geography and topography of the country, the size of the community, its prosperity, the influence which the rates in one exchange may have over rates in neighboring exchanges, and to some extent—though not controlling—the cost factors involved in the rendering of the service. While the discussion here concerns only the grouping of exchanges for rate-making purposes and not the actual rates, the Commission has considered in this grouping the rates which will be assigned and the differences between present and new rates.

In its testimony—pages 6085 et seq.—the Telephone Company has proposed a classification which will be considered in the Commission's decision. The rates which the company proposed in conjunction with this classification are in the majority of cases higher than those which will be allowed, and the Commission does not agree with the classification of some of the individual exchanges. Exchanges will be arranged in seven classes, lettered

from A to G, inclusive, those taking the lowest rates being included in Class A, and those taking the highest in Class F. Class G will consist of miscellaneous exchanges which, through peculiar conditions, are not susceptible of classification in the general plan. In some of the classes are exchanges where there are now quoted two schedules of rates, one for local and one for district service. Where this condition occurs the classification in general will be effective for local rates, but the rates for district service will not be disturbed at present, pending a more complete investigation of the district service situation.

Class A.

The exchanges included in Class A are in general those affording the least market for telephone service. This class includes small towns and cities surrounded by agricultural territories located in the eastern or plains portion of the state. It includes approximately those exchanges so located which have less than one hundred stations at the present time. It also includes a few exchanges with slightly more than one hundred stations, where local conditions are such that the demand for telephone service is small. Such exchanges require low rates, particularly as to residence service, because, as already pointed out, there is an irreducible minimum cost involved in the establishment and operation of any telephone exchange plant. It makes no difference in such exchanges whether there are fifty or one hundred subscribers, because after a switchboard is installed it can take care of either number equally well, and its cost is the same. If the low rate attracts additional residence subscribers there is no increase in the cost of handling them, but the revenue is increased. It is for this reason that in Class A exchanges rates for residence service will be fixed at a low rate. These exchanges also require low business rates, the number of subscribers necessarily being limited by the small number of possible users. The exchanges included in Class A are the following:

Akron	Bristol	Burlington
Calhan	Elizabeth	Erie
Flagler	Fountain	Frederick
Gilcrest	Hudson	Hugo
Iliff	Johnstown	Lafayette
Limon	Louisville	Merino
Milliken	Otis	Palmer Lake
Pierce	Platteville	Sedgwick
Stratton	Sugar City	Wellington

Class B.

This class includes (1) small towns and cities similar in character to those included in Class A, but which are not included in that class because, being located in the western or mountainous section of the state, it is necessary to take into account certain cost factors involved in higher freight rates, more expensive maintenance, and sometimes questionable permanency; and (2) towns in general which afford somewhat better telephone markets than those included in Class A. In general the communities in Class B are larger than those in Class A. In Class B are included those exchanges located as described above containing less than one hundred stations, and communities in the plains sections of the state containing approximately from 100 to 300 stations. There are also included a few communities in which are more than 300 telephones, or where the conditions as to the sale of telephone service are not now such that there can be assigned to them higher rates which would normally apply to exchanges containing over 300 stations. This class contains most of the communities which, though small in size, have reached a point where something more than the minimum cost is required for their operation. Rates in Class B exchanges will be such that many reductions, particularly in residence rates, will be effected. The exchanges included in Class B are the following:

Aguilar	Antonito	Ault
Bayfield	Berthoud	Brighton
Buena Vista	Castle Rock	Center
Craig	Del Norte	Fairplay
Eaton	Monte Vista	Fort Lupton
Fowler	Fraser	Fruita
Glenwood Springs	Grand Valley	Hayden
Holly	Howard	Julesburg
Kremmling	La Jara	La Veta
Mancos	Manzanola	Meeker
Morrison	Norwood	Oak Creek
Ordway	Palisade	Rifle
Saguache	San Acacio	Steamboat Springs
Sulphur Springs	Walden	Westcliffe
Wiley	Windsor	Yampa

Class C.

Exchanges in this class are generally larger than those in Class B, and in most cases are commercial centers of considerable importance for the surrounding areas. This class is intended to con-

tain in general those exchanges which have from 300 to 600 stations. The Commission has included a number of exchanges which are larger than this, but which for the present should not take rates higher than those assigned for Class C. As these larger towns develop and more telephones are connected, it is likely that some of them will be included in Class D. In most of the exchanges in Class C a reduction of the minimum residence rate is ordered. Exchanges included in this class are the following:

Alamosa	Canon City	Florence
Grand Junction	Golden	Gunnison
La Junta	Lamar	Las Animas
Longmont	Loveland	Rocky Ford
Sterling	Walsenburg	

Class D.

This class is intended to include cities of substantial size with good telephone development. As a class they should be prosperous communities where the inhabitants can afford to pay substantial rates for a valuable telephone service. No exchanges have been included in this class at present. The classification is made because it is considered that eventually those exchanges now included in Class C, which contain over 600 stations, will have to be included in a class by themselves.

Class E.

This class includes exchanges in metal mining towns and exchanges depending wholly or in part upon the activities of the metal mining industry, and also exchanges located where satisfactory telephone markets exist or where important cost factors have to be considered. These cost factors include, among others, high cost of materials, labor and transportation, and doubtful conditions of permanency. For telephone purposes these exchanges may be classed as among the best in the state, their development is adequate to the needs of these communities, and service is now being secured at rates commensurate with the cost involved and higher than those which can be employed in Classes A, B, C and D. The exchanges included in this class are the following:

Central City	Durango	Georgetown
Idaho Springs	Lake City	Salida
Silverton	Telluride	

Class F.

This class includes some of the larger, more prosperous and better developed exchanges in the state, outside of those located in Denver, Colorado Springs and Pueblo. The exchanges which eventually will be included in this class should afford excellent markets for the sale of telephone service because a better development can be secured in them than in Class A, B and C exchanges, and the service being worth more calls for higher rates. A higher standard is required for such cities, and this is met by the installation of systems affording modern, common battery operation, cable plants, underground systems, and other adjuncts of a thoroughly up-to-date and efficient telephone service. The exchanges which naturally belong in this classification if placed there at this time would require an increase in rates in many instances which the Commission is not prepared to grant, hence for the present there will be no exchanges assigned to Class F.

Class G.

This class includes a number of exchanges which, on account of peculiarities and conditions, are not included in any of the classes heretofore mentioned, except as hereafter stated. The exchanges listed in Class G-1 are those where district service in some form is being afforded at the present time. In most of them additional district and local service schedules are quoted and in some the service schedules are for district service only. As heretofore stated the district service problem requires further investigation and for this reason consideration of the rates of these exchanges will be deferred until later. As an exception, however, those exchanges which are marked with an asterisk are susceptible of classification in one of the larger classes for local service rates. They have therefore been included with their proper classes and the rates ordered for these classes will be ordered for local service in these exchanges, no change, however, being made in the present rates for district service. In most cases this classification involves a reduction in local residence rates.

Class G-2 consists of a number of cities and towns depending upon the mining industry. While these exchanges might properly be included in Class E, such classification would in most cases involve increases in rates which the Commission will not order for the reason that there is not a great development in telephone service in any of them and the increase would secure but small amounts

of increased revenue. If, in those places, a revival of mining industries caused a considerable increase in development, necessitating an investment by the company in additional plant, some revision of the present rates would be considered. For the present, it is ordered that no change be made in rates for exchanges in this list.

Class G-3 includes the seven largest cities in the state. As such they are distinct from the other cities and cannot properly be included in any classification which deals largely with smaller cities. Each of these exchanges must have separate consideration in the assignment of rates. In Denver, Pueblo and Colorado Springs, this consideration has been given, with the results as set forth in the discussion of specific exchanges later on in this decision. In the case of Boulder, Fort Collins, Greeley-Evans and Trinidad, such consideration has not been completed and they shall continue in the unclassified list with no changes in rates.

Class G-4 includes miscellaneous exchanges which cannot be included elsewhere on account of peculiar local conditions.

Rate changes for Class G exchanges, if any, will be discussed in connection with these specific exchanges. The list of Class G exchanges is as follows:

G-1	Arvada	Aurora	Basalt
	Brush	Carbondale	Cedaredge
	Center*	Clifton	Collbran
	Colona	De Beque	Del Norte*
	Delta	Englewood	Fort Morgan
	Edgewater	Fruita*	Glenwood Springs*
	Grand Junction*	Hazeltine	Hillrose
	Lakewood	Littleton	Longmont*
	Lyons	Mead	Monte Vista*
	Montrose	New Castle	Olathe
	Ouray	Palisade*	Ridgway
	Sullivan	Weldona	Whitewater
G-2	Aspen	Breckenridge	Creede
	Crested Butte	Dillon	Garfield
	Nederland	Pitkin	Red Cliff
	Ward	Colorado Springs-Manitou	Trinidad
G-3	Boulder	Fort Collins	Greeley-Evans
	Denver	Paradox	
	Pueblo	Cheraw	Clifton House
G-4	Broomfield	Keota	Estes Park
	Cripple Creek Victor	Manassa	Leadville
	Evergreen	Livermore	Paonia

Rural Service Classification.

A classification of exchanges for the purpose of establishing rates for rural service is next to be considered. The company proposed to make but few changes in rural rates, involving minor points. One of the changes proposed was, in certain exchanges where there is little rural service at present, to abandon this method of furnishing service to rural subscribers and to quote rates only for service station service. The other change proposed was that in a few classes there should be increases in the present rates. However, rates for rural service, so far as classifications are concerned, are in better condition than those for urban service, and the company's proposal to leave them materially as at present would not relieve the situation either as to discrimination between the rates quoted in the various exchanges or as to the faulty structure of the schedules. Even if reductions were not necessary in the interest of the classification, the Commission would grant them for the reason that it follows that, in a great many cases, the present rates paid by the rural subscribers are too high. This service must be furnished at a reasonable rate and at such a rate as will encourage agricultural development and, at the same time, the development of the telephone in those districts. Furthermore, in rural territory, the service must necessarily be upon a multi-party basis, since difficulties attendant upon construction cost are so great that one and two-party service cannot be furnished, although this form of service is not so satisfactory as the smaller party basis. Rural rates are ordered for all exchanges except seven.

With regard to the specific question of classification the Commission's expert, in his testimony, page 6304 of the record, stated:

> "A general reclassification of the company's Colorado exchanges for the purpose of more consistently applying rural rates appears desirable."

Again on page 6400:

> "Aside from the fact that the company's proposed readjustments of exchange rates in Colorado are, as explained above, somewhat inconsistent and irregular in certain instances, the readjustments proposed are particularly incomplete in that no provision is made for securing a more consistent and equitable distribution of rural and rural switching rates than is now apparent. It is evident that a very considerable improve-

ment could be effected in the present classification of Colorado exchanges for rural and rural switching rate purposes, and some adjustment in rural rates should be effected to secure for the less prosperous sections of the state more advantageous rates than are now charged."

And again at page 6401:

"It is highly necessary that the company's task of furnishing service in the rural sections of the state should not be made more difficult than it is at present, but it is not unlikely that a careful revision of the present rural and rural switching rates charged in the various Colorado exchanges, while it would probably not increase revenues at this time, would, through the application of a more uniform and equitable system of charges, relieve much of the dissatisfaction of rural subscribers in certain sections, and thus tend toward a more widespread use of the company's rural facilities, and a consequent betterment of the rural situation."

The rural classification has not been made to fit in with the urban classification because the conditions in the making of rural rates differ from those which control the making of urban rates, and because the classification of rural rates has been made principally with a view to reductions, and the new rural rates to some extent must be made in view of present schedules and the effect of the rates established in one exchange upon those established in neighboring exchanges.

Exchanges will be classified for rural rate-making purposes into five schedules, designated K, L, M, N and P. The rates definitely assigned to each class will be discussed in detail. It is sufficient to say here that in all classes, except Class P, the rural rates for business service will be $42.00 per annum for all distances within six miles of each exchange, and the rates for rural residence service will vary from $18.00 per annum for the first six miles in Class K, to $36.00 per annum in Class N. The lists of exchanges and the classes to which they have been assigned follow:

Class K:

Akron	Berthoud	Erie
Frederick	Gilcrest	Hudson
Johnstown	Lafayette	Louisville
Merino	Milliken	Paonia
Pierce	Platteville	Sedgwick
Wellington	Wiley	

Class L:

Alamosa	Antonito	Ault
Bayfield	Brighton	Bristol
Canon City	Eaton	Elizabeth
Florence	Fort Collins	Fort Lupton
Fountain	Fowler	Greeley-Evans
Holly	Iliff	Julesburg
La Jara	La Junta	Lamar
Las Animas	Loveland	Mancos
Manzanola	Ordway	Rocky Ford
Saguache	San Acacio	Sterling
Sugar City	Windsor	

Class M:

Boulder	Broomfield	Buena Vista
Castle Rock	Clifton House	Craig
Durango	Estes Park	Fairplay
Fraser	Golden	Grand Valley
Gunnison	Hayden	Howard
Kremmling	La Veta	Livermore
Meeker	Morrison	Oak Creek
Palmer Lake	Rifle	Salida
Steamboat Springs	Sulphur Springs	Walden
Westcliffe	Yampa	

Class N:

Colorado Springs- Manitou	Pueblo

Class P-1:

Edgewater	Arvada	Aurora
Basalt	Brush	Carbondale
Cedaredge	Clifton	Collbran
Colona	Englewood	Fort Morgan
De Beque	Delta	Del Norte
Fruita	Glenwood Springs	Grand Junction
Hazeltine	Hillrose	Lakewood
Littleton	Longmont	Lyons
Mead	Mesa	Monte Vista
Montrose	New Castle	Olathe
Ouray	Palisade	Ridgway
Sullivan	Weldona	Whitewater

Class P-2:

Burlington	Calhan	Cheraw
Evergreen	Flagler	Garfield
Hugo	Limon	Otis
Paradox	Stratton	

Class P-3:

Aguilar	Aspen	Boulder
Breckenridge	Central City	Creede
Crested Butte	Cripple Creek - Victor	Georgetown
Dillon	Fort Collins	Lake City
Greeley	Idaho Springs	Norwood
Leadville	Nederland	Silverton
Pitkin	Red Cliffe	Walsenburg
Telluride	Trinidad	
Ward		

Class P-4:

Center	Manassa

Classification for Service Station Purposes.

Little need be said as to the classification of exchanges for the purpose of assigning rates for service station purposes. The same considerations are involved as in connection with rates for rural service. One defect in the Telephone Company's present rate schedules is that service station rates are not quoted for all exchanges. A rate ought to be assigned for every exchange in the state, except Denver, and this will be done. In exchanges where district service questions are involved the assignment of new rates or exchanges in existing rates will be deferred.

In the higher class of exchanges, while rates are quoted, service station service is not desirable as a general rule, and in this class of exchanges the Telephone Company has developed a rural territory with its own lines. The rates quoted are therefore somewhat higher than those which will be in general use and are intended to be used only by an occasional subscriber so situated that it is more advantageous that he be served by means of the service station method. In the classification of exchanges for the assignment of service station rates classes will be designated R to V, inclusive. The rates which will be assigned will be given later. The classification follows:

Class R:

Akron	Burlington	Flagler
Grand Valley	Otis	Stratton

Class S:

Alamosa	Antonito	Aspen
Ault	Bayfield	Brighton
Bristol	Calhan	Buena Vista
Canon City	Castle Rock	Central City
Clifton House	Craig	Creede
Crested Butte	Dillon	Durango
Eaton	Elizabeth	Estes Park
Fairplay	Fort Lupton	Fountain
Fowler	Fraser	Frederick
Garfield	Georgetown	Gilcrest
Golden	Gunnison	Hayden
Holly	Howard	Hudson
Hugo	Idaho Springs	Iliff
Julesburg	Keota	Kremmling
La Jara	La Junta	Lake City
Lamar	Las Animas	La Veta
Limon	Livermore	Loveland
Mancos	Manzanola	Meeker
Merino	Morrison	Nederland
Norwood	Oak Creek	Ordway
Palmer Lake	Paonia	Pierce
Pitkin	Platteville	Rifle
Rocky Ford	Saguache	Salida
San Acacio	Sedgwick	Steamboat Springs
Sterling	Sugar City	Sulphur Springs
Walden	Ward	Wellington
Westcliffe	Wiley	Windsor
Yampa		

Class T:

Berthoud	Breckenridge	Broomfield
Erie	Florence	Johnstown
Lafayette	Leadville	Louisville
Milliken	Red Cliff	Silverton
Telluride	Manassa	

Class U:

Aguilar	Greeley-Evans	Fort Collins
Colorado Springs-Manitou	Pueblo	
	Boulder	Walsenburg
Cripple Creek-Victor	Trinidad	

Class V-1:

Edgewater	Arvada	Aurora
Basalt	Brush	Carbondale
Cedaredge	Clifton	Collbran
Colona	De Beque	Del Norte
Delta	Englewood	Fort Morgan
Fruita	Glenwood Springs	Grand Junction
Hazeltine	Hillrose	Lakewood
Littleton	Longmont	Lyons
Mead	Mesa	Monte Vista
New Castle	Olathe	Ouray
Palisade	Ridgway	Sullivan
Weldona	Whitewater	

Class V-2:

Cheraw	Evergreen	Paradox
Center	La Junta	

Assignment of Rates to Each Class—Urban.

The rates for Class A exchanges shall be $36.00 and $30.00 per annum for one and two-party business service, respectively, and $21.00, $18.00 and $15.00 for one, two and four-party residence service, respectively.

In proposing rates for exchanges of this class the Telephone Company did not offer to make any changes in them, although a casual study shows that there are at present four different combinations of residence rates in effect. The Commission sees no reason why these rates should not be consistent. Those ordered involve increases in a few business rates and reductions in nearly all residence rates. The Telephone Company stated that if these rates were standardized at all they should be increased instead of decreased, but with this view the Commission cannot agree. The Telephone Company has, with one exception, offered but one and two-party residence service in Class A exchanges. The introduction of a new four-party rate should have the effect of securing some proportion of the total stations on four-party service, and the result will be that less equipment will be necessary to handle the same number of subscribers and an economy in plant will be effected.

Class B: The rates for Class B exchanges shall be $36.00 and $30.00 per annum for one and two-party business service, respectively, and $24.00, $21.00 and $18.00 per annum for one, two and

four-party residence service, respectively. Business rates for Class B exchanges are the same as for Class A, but residence rates are slightly higher.

Exchanges included in Class B are generally somewhat larger than in Class A and the territory to be served is consequently increased. This involves greater investment in plant, and so increases the number of subscribers connected, so that the service value is increased. The effect of this classification is to reduce residence rates at present in effect in many of the exchanges.

Class C: The rates for Class C exchanges shall be $42.00 and $36.00 per annum for one and two-party business service, respectively, and $24.00, $21.00 and $18.00 per annum for one, two and four-party residence service, respectively.

The rates proposed by the Telephone Company were not consistent and the company's rate suggestions as to this class have been disregarded. A number of the exchanges where the rates are higher than those established will secure the benefit of a reduction.

Class D: The rates for Class D exchanges shall be $48.00 and $42.00 per annum for one and two-party business service, respectively, and $24.00, $21.00 and $18.00 per annum for one, two and four-party residence service, respectively.

The Commission has not placed any exchanges in this class for the present.

Class E: The rates for Class E exchanges shall be $60.00 and $48.00 per annum for one and two-party business service, respectively, and $27.00, $24.00 and $21.00 for one, two and four-party residence service, respectively.

Sufficient has been said as to these exchanges to show that reasonably high rates are justifiable because of the commercial risks, the cost factors and the value of the service.

Class F: The rates for Class F exchanges shall be $60.00 and $48.00 per annum for one and two-party business service, respectively, and $30.00, $27.00 and $24.00 per annum for one, two and four-party residence service, respectively. The Commission will not assign any exchanges to this class at present.

Class G: This class includes all exchanges which, due to peculiar local conditions, cannot be included in any of the regular classes. The rate treatment in each of these exchanges is neces-

sarily special and will be found in the discussion of the principles of the classification. In general rates in this class are not changed.

Assignment of Rates to Each Class—Rural.

In the assignment of rural rates to the various exchanges the Commission has considered that rates for rural service should be made attractive to both present and future rural subscribers and encourage attraction of the rural population to the use of telephone service and the development of agricultural districts. There is a dissatisfaction with the present zone system of the Telephone Company. While a zone system is correct for the establishment of rural rates, misunderstanding can be almost entirely eliminated if the zones are made sufficiently wide that differences in rates occur only occasionally. The proper rural rate system should contain as a first zone, where minimum rates are quoted, all or most of that territory which is or will be most densely settled. With this point in mind the minimum rate which will hereafter be called the prevailing rate for rural line service shall be effective in all territory outside of the base rate area of an exchange and within its exchange area, which is within six miles air line of the central office—all measurements for rural line rates to be measured on an air line basis from the central office. Beyond six miles the zones shall be in successive steps of three miles each to the boundary of the exchange area, wherever it may be located. Except in Class P it has been considered that rates for rural business service should be uniform and lower than at present. The prevailing rates for rural business services includes K, L, M and N, and therefore shall be $42.00 per annum.

Class K: The rates for business service shall be $42.00 per annum for the first six miles, with an addition of $3.00 for each additional three miles. The rates for residence service shall be $18.00 per annum for the first six miles, with an addition of $3.00 for each additional three miles. There are seventeen exchanges included in the list where Class K rates will be ordered.

Class L: The rates for business service shall be $42.00 per annum for the first six miles, with an addition of $3.00 for each additional three miles. The rates for residence service shall be $21.00 per annum for the first six miles, with an addition of $3.00 for each additional three miles. This class contains thirty-two exchanges.

Class M: The rates for business service shall be $42.00 per annum for the first six miles, with an addition of $3.00 for each additional three miles. The rates for residence service shall be $24.00 per annum for the first six miles, with an addition of $3.00 for each additional three miles.

Class N: The rates for business service shall be $42.00 per annum for the first six miles, with an addition of $3.00 for each additional three miles. The rates for residence service shall be $36.00 per annum for the first six miles, with an addition of $3.00 for each additional three miles.

Class P: The exchanges listed in Class P are those which cannot be classified in any of the regular classes heretofore mentioned.

Class P-1 includes those exchanges where district service problems are involved, and, as heretofore stated, a consideration of the district service situation will be deferred. No change shall be made in the rural rates now in existence in exchanges included in list P-1.

Class P-2 includes those exchanges where the Telephone Company does not at the present time furnish service in the country by means of its own pole lines and circuits, such service being furnished under the service station method. It does not seem desirable to require the company to increase its rural investment, and it is believed that the service station method (where the subscriber owns and maintains the lines and instruments) is the cheapest and most satisfactory for these exchanges.

Class P-3 includes those exchanges which, on account of particular local conditions, make it possible for them to be regularly classified, and also larger exchanges where consideration of rate changes has been postponed until further study can be given. Most of the exchanges in this list are exchanges where coal or metal mining is the principal industry, and in the case of most of them, the rural lines are located in rugged, mountainous country where costs of construction and maintenance are great and permanency of demand for service is questionable.

Class P-4 consists of the exchange at Center and the locality of Manassa. At Center the company does not furnish rural line service, this service being furnished by a separate connecting company; hence, no rates are quoted for rural line service. At Manassa there is no exchange, but certain special rural rates are quoted which shall be continued without change.

Service Station Service.

The classification of exchanges for the establishment of service station rates requires little discussion, since the same reasons which have actuated the Commission in its efforts to make rural line telephones attractive to subscribers applies to this class of service. In many cases at the present time, however, the Telephone Company does not quote rates for service stations and the Commission believes that such rates should be quoted for every exchange except Denver and has therefore provided such rates generally. All exchanges have been classified for the establishment of service station rates into Classes R, S, T, U and V. Rates quoted are in all classes for local service, the subscriber furnishing and maintaining line and instrument. Rates for service station service are not controlled by distance from the central office, and the rate quoted is to be applied for all subscribers regardless of location. However, except in those exchanges included in Class P-2 for rural rate purposes, where no rural rates are to be quoted, service on lines owned by subscribers shall not be accepted within a distance of three miles air line from the central office. This is for the reason that within this distance, except as to the exchanges mentioned, the Telephone Company has, or should have, existing pole lines upon which subscribers can be served by the rural line method. The rates quoted apply for each station connected, but the minimum charge per circuit is the individual line business or residence rate of the exchange with which a circuit is connected. If the majority of stations on the service station line are at business locations, the individual line business rate applies as the minimum, otherwise the individual line residence rate.

Class R: Rates for service stations in Class R shall be $8.40 per annum for business service and $4.20 per annum for residence service. This class contains a few exchanges where farming operations are difficult and where rates lower than the average should be quoted.

Class S: Rates for service stations in Class S shall be $12.00 per annum for business service and $6.00 per annum for residence service. This includes the majority of the exchanges in the state and these rates are considered to be the average service station rates.

Class T: Rates for service stations in Class T shall be $18.00 per annum for business service and $9.00 per annum for residence service. This class includes fourteen exchanges.

Class U: Rates for service stations in Class U shall be $24.00 per annum for business service and $12.00 per annum for residence service. This class includes principally the larger exchanges where it is not desirable that a considerable number of service stations be connected on account of the serious influence on service standards, and where the Telephone Company itself has amply covered the surrounding territory by its own pole lines, and where, consequently, rural line service is expected to be sold.

Class V: Class V is divided into two sections—*V-1,* which includes exchanges which no change will be made pending further study of the district service problem, and *V-2,* in which all subscribers are served by the service station method except at La Junta. Present rates differ from those set up in the classification. These exchanges are not easily classified, and since present rates are not excessive no changes will be ordered.

District Service Exchanges.

There are a considerable number of exchanges in which schedules of exchange rates provide for additional district or local service. In these exchanges one schedule of exchange rates is for service within a local service area, usually comprising one exchange, but an additional district service rate is quoted which is higher than the local service rate and which entitles the subscriber to unlimited use of the toll lines between two or more neighboring exchanges. In a few groups of exchanges no local rates are quoted and all rates for exchange service include service to two or more exchanges.

The district service problem has produced so many complications that it cannot be dealt with in a satisfactory manner without further study on the part of the Commission. The establishment of new rates for these exchanges will therefore be deferred. Present rates and service areas shall remain in effect until changed. However, where it has been possible to effect a reduction in present local rates by including certain exchanges in the new classification it has been done, and the names of these exchanges appear in the various lists. In these cases the new local rates shall remain effective with this order, but no change will be made in the service areas or in rates for district service. The exchanges here referred to are those which are marked with asterisks in the list of exchanges included in Class G for the assignment of urban rates.

Rates for Specific Exchanges.

Aguilar: Aguilar is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Aguilar is included in Class P-3 for rural rates, and in Class U for service station rates. The Class U service station rates are $24.00 per annum for business service and $12.00 per annum for residence service.

Akron: Akron is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. All service shall be metallic. Akron is included in Class K for rural rates, which shall be $42.00 per annum for rural business service, and $18.00 per annum for rural residence service. It is included in Class R for service station rates, which shall be $8.40 per annum for business and $4.20 per annum for residence service.

Alamosa: Alamosa is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Alamosa is included in Class L for rural rates, which shall be $42.00 per annum for business and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business and $6.00 per annum for residence service.

Antonito: Antonito is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Antonito is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. No change is made from present service station rates, Antonito being included in Class S.

Arvada: Arvada is included in Class G-1. Possible changes in rates at Arvada involve a study of the district service situation. The Commission has not yet finished its consideration of this problem, hence any rate changes in district service will be deferred. There are some stations in the Arvada exchange area being served

from the Denver exchange at obsolete rates. The requirements of these subscribers are met by a class of service designated "Foreign Exchange Service," the rates for which are specified in the general tariff which the Commission will order the Telephone Company to place in effect. It is ordered that the company present to such subscribers as do not now have the Denver service a statement of its rates for such service on a foreign exchange basis, and in the case of those subscribers now enjoying this service at rates less than those specified in the general tariff the Telephone Company shall readjust these rates or ascertain from the subscribers affected if they desire to change to some other grade of service.

Aspen: Aspen is included in Class G-2, rates remaining unchanged. No change will be made in the rural rates of $48.00 per annum for business service and $24.00 per annum for residence service, the exchange being included in Class P-3. Aspen is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Ault: Ault is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Ault is included in Class L for rural rates, which shall be $42.00 per annum for business service, and $21.00 per annum for residence service. Ault is included in Class S for service station rates, which shall be $12.00 per annum for business and $6.00 per annum for residence service.

Aurora: Aurora is included in Class G-1. The situation here is identical with that at Arvada and what has been said of that exchange applies also to Aurora.

Basalt: Basalt is included in Class G-1. Any changes in rates would involve a consideration of the district service problem. Rate changes for this exchange will therefore be deferred.

Bayfield: Bayfield is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Bayfield is included in Class L for rural rates, which shall be $42.00 per annum for business service, and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Berthoud: Berthoud is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Berthoud is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

Boulder: This is one of the larger exchanges which has been included in Class G-3 because further consideration will be necessary before rate changes can be ordered, and present rates therefore shall be maintained. Boulder is included in Class U for service station rates, which shall be $24.00 per annum for business service and $12.00 per annum for residence service.

Breckenridge: Breckenridge is included in Class G-2. Present rates shall be maintained. It will be included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

Brighton: Brighton is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Brighton is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Bristol: Bristol is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Bristol is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station service rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Broomfield: Broomfield is included in Class G-4, and is assigned to Class B rates, which shall be $36.00 and $30.00 per annum for one and two-party business service, respectively, and

$24.00, $21.00 and $18.00 per annum for one, two and four-party residence service, respectively, plus the mileage charges applicable in each case. It is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. Broomfield is included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

Brush: Brush is included in Class G-1. Present rates are $42.00 and $36.00 per annum for one and two-party business service, respectively, and $24.00, $21.00 and $12.00 per annum for one, two and four-party residence service, respectively, which rates shall be maintained. The present rural rates are $48.00 per annum for business service and $18.00 per annum for residence service, and these rates shall be maintained. The local service area at these rates includes the exchanges at Brush, Fort Morgan, Weldona and Hillrose. The question of district service is involved here and full consideration is deferred.

Buena Vista: Buena Vista is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Buena Vista is included in Class M for rural rates, which shall be $42.00 per annum for business service, and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business and $6.00 per annum for residence service.

Burlington: Burlington is included in Class A. The rates at present in effect shall be maintained. Rural rates have not been quoted, as it is probable that the surrounding country can best be served on the service station plan. Burlington is included in Class R for service station rates, which shall be $8.40 per annum for business service and $4.20 per annum for residence service.

Calhan: Calhan is included in Class A and present rates shall be maintained. Rural rates have not been quoted, as it is probable that the surrounding territory can best be served on the service station plan. Calhan is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Canon City: Canon City is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party

service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party residence service, respectively. Canon City is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Carbondale: Carbondale is included in Class G-1. Consideration of rates in this exchange has been deferred on account of district service problem.

Castle Rock: Castle Rock is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Castle Rock is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for district service and $6.00 per annum for residence service.

Cedaredge: Cedaredge is included in Class G-1. Consideration of the rates for this exchange is deferred on account of district service problem.

Center: Center is included in Class G-1. Consideration of rates for Center is deferred on account of district service problem. The local rates at present in effect of $36.00 and $30.00 per annum for one and two-party business service, respectively, and $24.00 and $21.00 per annum for one and two-party residence service, respectively, shall be maintained. A four-party local residence rate will be $18.00 per annum, and this will properly place Center in Class B for local rates. No other changes will be made.

Central City: Central City is included in Class E. Business rates shall be $60.00 and $48.00 per annum for one and two-party business service, respectively. Residence rates shall be $27.00, $24.00 and $21.00 per annum for one, two and four-party service, respectively. Rural rates will be $48.00 per annum for business service and $30.00 per annum for residence service. Central City is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Cheraw: Cheraw is included in Class G-4. The company owns only the switchboard in this exchange and does the operating, furnishing the trunks to La Junta. Practically all of the outside equipment is owned and maintained by the subscribers. This situation seems to be satisfactory and the Commission will make no changes.

Clifton: Clifton is included in Class G-1. On account of the district service problem, consideration of the rates at Clifton will be deferred.

Clifton House: Clifton House is included in Class G-4. There is no reason for urban service of any kind being furnished in this exchange. It is unlikely there will be a demand for such service and if there is the cost of furnishing wires for the use of an individual subscriber in the mountain territory of this exchange would cause an unwarranted increase in the investment. Clifton House is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Collbran: Collbran is included in Class G-1. Consideration of rates in this exchange has been deferred on account of district service problem.

Colona: Colona is included in Class G-1. No changes will be made in present rates because of district service problem.

Colorado Springs-Manitou: Colorado Springs-Manitou is included in Class G-3. The present rates are $72.00 and $60.00 per annum for one and two-party business service, respectively, and $36.00, $30.00 and $24.00 per annum for one, two and four-party residence service, respectively. There is a business coin box service of $36.50 per annum and residence coin box service of $18.25 per annum. These rates shall be maintained. Class N rural rates have been assigned, which shall be $42.00 per annum for business service and $36.00 per annum for residence service. Class U rates have been assigned for service station service, which shall be $24.00 per annum for business service, and $12.00 per annum for residence service.

Craig: Craig is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respect-

ively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Craig is included in Class M for rural rates, which shall be $42.00 per annum for business service, and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Creede: Creede is included in Class G-2. Present rates shall be maintained for all services.

Crested Butte: Crested Butte is included in Class G-2. Present rates shall be maintained except as herein stated. Class S will be assigned for rural rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Cripple Creek-Victor: Cripple Creek-Victor is included in Class G-4. Business rates shall remain as at present. Residence rates shall be $36.00, $30.00 and $24.00 per annum for one, two and four-party service, respectively, and the rate for ten-party coin box service shall be $18.25 per annum. Present rural rates are $54.00 per annum for business service and $36.00 per annum for residence service. No changes shall be ordered in these rates. Class U service station rates will be assigned, which shall be $24.00 per annum for business service and $12.00 per annum for residence service.

DeBeque: DeBeque is included in Class G-1. No changes are made in present rates for this exchange due to existing district service conditions.

Del Norte: The district service problem appears also at Del Norte, hence it becomes necessary to defer consideration of rate changes. For urban rates Del Norte is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party residence service, respectively.

Delta: Delta is included in Class G-1. Consideration of rates for Delta is deferred on account of the district service situation.

Denver: Denver is included in Class G-3 for urban rates. There are no rural or service station lines served by the Denver exchange because the territory surrounding the city is served by other exchanges and only urban rates will be ordered.

In considering rate changes for Denver it must be considered that the Commission has already determined that the revenues of the company are insufficient to meet the legitimate expenses of the business. Denver has reached the point where telephones added to the system result in direct and substantial increases in cost, both from the standpoint of investment and the costs of rendering service. This is due to the fact that with the increase in the number of telephones new central offices must be added, and this is particularly true at the present time. The increase in the number of central offices results in an increase in the number of inter-office calls, so that the number of calls originated and handled through two central offices requires for each call a proportionate increase in the use of two switchboards and two operators. This increases the switchboard and central office plant requirements in the new central offices and in those which at present exist; and it is also true that the cost per message in handling messages increases in like manner. At least one new central office is at present being planned for Denver on this account.

The very low rates which became effective in Denver in 1914 brought a large increase of business, and this new business has filled the plant to its ultimate capacity. The 1915 revenues were not sufficient at that time, as heretofore found. Costs have constantly increased and it therefore devolves upon the Commission to arrange and order increases in rates in Denver so that additional revenues may be secured.

Telephone service to Denver subscribers is not rendered exclusively through that portion of the Telephone Company's plant located in Denver, but is also furnished by means of the toll system and by the plant established in other cities and towns in the state. It is true of Denver that its commercial activities and industrial importance depend upon the existence of a large tributary or supporting territory, containing smaller cities and rural, manufacturing, mining and other industries, and the maintenance of relations permitting the development and growth of Denver depends upon the existence of rapid, direct and convenient means of transportation and communication between Denver and the rest of the state. The user of toll service is benefited by the establishment of a statewide telephone system, and the residents of Denver derive directly and indirectly substantial benefits from the operation of the telephone system throughout the state. It follows that the revenue from the telephone service rendered in Denver must be considered

in the light of necessities of the system as a whole. The increase allowed has been moderate, however, and is hardly more than sufficient to meet the needs of operating the Denver exchange, as determined for the year 1915. Furthermore, Denver service as directly and locally furnished is of far greater importance than any other single class of service rendered in the state, representing as it does almost one-half of the total investment and expense. The people of Denver demand and are entitled to service of the best type, but to maintain such efficiency requires additional revenues.

Denver Business Rates.

The making of rates for business service in Denver involves a schedule which includes more classes of service than are necessary in the smaller exchanges. These classes of service and rates are necessary to meet the wide variation in demand and to secure an equitable distribution of the charges. It has been pointed out by the Telephone Company that in the smaller exchanges the difference in demand is not great as between the various subscribers. In Denver, however, there are business subscribers whose demands and needs for telephone service are as limited as those of the small subscribers in the small exchanges, while there are also subscribers in Denver whose needs and demands for service exceed the requirements of whole communities outside of Denver. Any schedule of business rates must therefore make it possible for considerable numbers of Denver subscribers to choose the class of service best suited to their needs. This principle has application to any schedule which might be proposed containing normal rates for flat or unlimited service. The rate schedule which the Commission has established contains a flat rate class. Since such a class has been maintained for business rates it seems just and desirable to continue such a schedule, with certain changes and modifications.

The present business rates in Denver are seriously at fault because while they provide message or measured service at low rates for small users, who are far in the majority, they do not provide for commensurate charges against the large users, due to the fact that the maximum rate is $8.00 per month for the one-party flat business service. The Telephone Company has claimed that a schedule of business rates for Denver should not include a flat rate class of service, but the Commission considers that since flat rate service for business use is established in Denver an immediate change from the present rate of $8.00 per month to any reasonable

schedule not providing for a flat rate class would increase the charges to the large users a very considerable amount. The schedule which the Commission will order will contain a flat rate class, but the rate will be increased somewhat over the present amount. The schedule of business rates in Denver which will be allowed follows:

Class of Service	Rate per annum	Message Allowance	Excess Rate
One-party unlimited	$120.00	Unlimited	..
One-party measured	48.00	1200	2½c
One-party coin box*	54.75	1095	3c
Two-party coin box*	36.50	730	4c
Flat rate extension	12.00	...	..
Measured rate extension	9.00	...	..

*No change from present rates.

For all measured service the annual message allowance set out in the above schedule shall be divided into monthly allowances, each equal to one-twelfth of the annual message allowance. When a full one-twelfth part of the annual message allowance is not used during any one month the remaining unused portion of the monthly allowance shall not be carried over into the following month. When messages in excess of one-twelfth of the annual message allowance are used during any one month, the number of messages used during that month in excess of one-twelfth part of the annual message allowance shall be charged at the excess rate per message provided for the class of service in question.

The one-party flat business rate is made $10.00 per month instead of $8.00. The Telephone Company pointed out in its testimony that in 1915 the average message use of flat rate subscribers was from three to ten times the average message use of any other class of business subscribers in Denver.

With regard to the new one-party measured rate no change has been made in the initial rate, which is $48.00 per annum. This will make it possible for the many subscribers who make less than 1,200 calls per annum to retain their present service without any increase in price.

The flat rate service is for the special benefit of the very large users, and so long as a flat rate is offered, the relation between a measured and a flat rate should be such that heavy users will be inclined to take flat rate service and relieve the company of the added burden of operating and accounting for calls which are

charged for by the message. This is an additional reason for reducing the initial allowances of messages and increasing the rate per message for excess messages.

The Commission will discontinue the present two-party measured rate. There are about six hundred subscribers at present in this class of service. The rate is substantially the same as for two-party coin box service.

Fifty-five per cent of the present subscribers to the two-party measured rate can change to the two-party coin box service with substantially no difference in price. Of the remaining forty-five per cent it may be said that these are the larger users who may either change to the two-party coin box service or, if they desire to remain on the measured service basis, may take the one-party measured service. No changes are ordered in the present coin service rates for business use. Inasmuch as thirty per cent of the present Denver business subscribers are on this class of service no change in their present payments will be effected.

The only other changes in business rates are in extension station service. The rate for extensions on the flat rate service shall be $12.00 per annum, and on message rate service $9.00 per annum. Present rates for these classes of service in Denver are somewhat lower than similar rates in most other cities.

Denver Residence Rates.

The rates which are ordered for residence service in Denver are as follows:

Class of Service	Rate per annum	Message Allowance	Excess Rate
One-party unlimited	$42.00	...	..
Two-party unlimited	36.00	...	..
One-party measured	30.00	600	3c
Two-party measured	24.00	480	4c
Two-party coin box*	25.55	511	5c
Extension stations	6.00	...	..

*No change from present rates.

For all measured service the annual message allowance set out in the above schedule shall be divided into monthly allowances, each equal to one-twelfth of the annual message allowance. When a full one-twelfth part of the annual message allowance is not used during any one month the remaining unused portion of the monthly allowance shall not be carried over into the following month. When

messages in excess of one-twelfth of the annual messages allowance are used during any one month, the number of messages used during that month in excess of one-twelfth part of the annual message allowance shall be charged at the excess rate per message provided for the class of service in question.

The new rates for six-party coin box service will be $21.90 per annum or a guarantee of six cents per day. Messages will be five cents each. In the case of most of the classes of service offered the new rate is an increase of fifty cents per month over the present rate. An exception has been made in the two-party residence coin box service. The one-party coin box service is discontinued for the reason that there is apparently no demand for it, there being less than fifty subscribers on this class of service.

Denver has an extremely high development of residence stations. Under the present rate schedule about fifty per cent of the residence subscribers in Denver are paying $18.00 or less for telephone service, yet $18.00 is less than the average cost of operation per station. While some classes of service must necessarily be furnished at less than cost, such a proposition could not possibly be applied to so large a proportion as fifty per cent of the Denver residence subscribers without resulting in serious financial difficulties for the Telephone Company. As bearing on this condition it appears from the Telephone Company's testimony, page 6186 of the record:

> "A general consideration in connection with residence rates deserves special mention at the present time. The telephone situation in Denver and the telephone-equipment situation throughout the country is, at the present time, such that it is impossible for this company to meet the demands for telephone connection which are made upon it, and it has been necessary with respect to residence service to restrict the classes of service which are available, and practically to declare an embargo upon any telephone service, under some conditions. This condition is to a large extent the result of the present low residence rates in Denver, which have produced so much development at unremunerative rates that the facilities have been completely used up, so that persons having an urgent demand for the service are prevented from receiving service at any rates, in order that subscribers who can afford or are willing to pay only very low rates may receive service."

The Commission believes that the present rate for residence telephones is insufficient. Rates for extension station service should not be based upon mere cost of physical equipment, but even if this were the only basis the present rate of $3.00 per annum would be less than the physical cost involved. The extension station is desired for greater facility in calling or answering, so that often where a main station may be considered a necessity an extension station becomes a matter of convenience.

Traffic per line originated on main lines with which extensions are connected, is greater than the traffic per line where only main stations are connected, and a main station with two extensions will originate more traffic than a main station with one extension, and so on. This added traffic creates added operating cost which should also be assessed against the extension station class.

Denver Branch Exchange Rates.

There are three kinds of branch exchange service afforded by the Telephone Company, the No. 1 cord switchboard system, the No. 1 cordless switchboard system, and the No. 2 intercommunicating system. The present relation between schedules is incorrect for the reason that it induces a considerable number of branch exchange subscribers to take the No. 2 systems instead of the No. 1 cordless system. This undue development of the No. 2 system is improper because the use of such systems not only involves a more expensive method of providing service than the cordless, but also that the No. 2 systems are distinctly objectionable as interfering with proper operation of the telephone system. The cordless system meets the needs of such subscribers as well as the No. 2. It is thought to be equally satisfactory to the subscriber, less objectionable from an operating standpoint, and less costly from the Telephone Company's standpoint. In special cases, where subscribers have a peculiar need for the No. 2 system, or a personal preference therefor, they should be allowed to continue its use at prices commensurate with the cost, and considering that it is furnished to satisfy a peculiar demand of individual subscribers. The No. 1 cord or cordless systems are much more desirable, and for small users such as now use the No. 2 system the cordless is considered to be a more proper system. A correct rate schedule directs subscribers to the use of cordless systems by making it to their financial advantage, and the changes ordered in the schedules, while involving necessary increases in rates to all subscribers, will make

the rate for cordless systems cheaper than that for No. 2 systems under the new rates.

Branch exchange service represents the highest type of telephone service. Branch exchange subscribers as a class are the larger business houses, which require an intercommunicating system for the rapid and economical conduct of their affairs, and require a very large number of messages. Moreover, branch exchange subscribers as a class are those that make the heaviest demands upon telephone service with respect to equipment, and derive the greatest advantage from the existence and maintenance of an efficient telephone system. Increases in rates for this class of subscribers are therefore justified. Schedules of branch exchange rates for Denver, which the Commission orders, are as follows:

Class of Service	Rate per annum	Message Allowance	Rate per excess message
No. 1 cord P. Br. Exchanges			
Measured service systems			
Switchboard	$48.00	....	..
Additional positions	48.00	....	..
1st trunk 2-way	48.00	1200	2½c
Addl. trunk 2-way	24.00	....	3c
Stations	9.00	....	..
No. 1 cord P. Br. Exchanges			
Unlimited service systems			
Switchboard	$84.00	....	..
Additional positions	No change		
1st outgoing trunk	270.00	....	..
Add'l outgoing trunks	270.00	....	..
Incoming trunks	30.00	....	..
Stations	12.00	....	..

Class of Service	Rate per annum	Message Allowance	Rate per excess message
No. 1 cordless P. Br. Exchanges			
Measured service systems			
Switchboard	$24.00	....	..
Trunk 2-way	48.00	1200	2½c
Add'l trunks 2-way	24.00	....	3c
Stations	9.00	....	..
No. 1 cordless P. Br. Exchanges			
Unlimited service systems			
Switchboard	$36.00	....	..
Trunks outgoing	Service discontinued		
Trunks incoming	Service discontinued		
Trunks 2-way	150.00	....	..
Stations	12.00	....	..

No. 1 cord P. Br. Exchanges
Hotel Measured Service systems

Switchboard	No change
Trunks	No change
Stations	No change

No. 2 P. Br. Exchanges
Measured Service systems

Master Station	$18.00	....	..
Other stations	18.00	....	..
Trunks 2-way	48.00	1200	2½c
Add'l trunks 2-way	24.00	....	3c

No. 2 P. Br. Exchanges
Unlimited Service systems

Master station	$21.00	....	..
Other stations	21.00	....	..
Trunks 2-way	150.00	....	..

Dillon: Dillon is included in Class G-2, and the present rates shall be maintained except as herein stated. It is included in Class S for service station rates of $12.00 per annum for business service and $6.00 per annum for residence service.

Durango: Durango is included in Class E. Business rates shall be $60.00 and $48.00 per annum for one and two-party service, respectively. Residence rates shall be $27.00, $24.00 and $21.00 per annum for one, two and four-party service, respectively. Durango is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Eaton: Eaton is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Eaton is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Edgewater: Edgewater is included in Class G-1, and is a locality served from the Lakewood exchange. The district service problem is involved and no changes will be made on this account

except as to those subscribers served out of Denver at obsolete rates. The order as to such subscribers in Arvada is applied to Edgewater.

Elizabeth: Elizabeth is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Elizabeth is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Englewood: Englewood is included in Class G-1. The district service question is involved and consideration of rates will be deferred. The matter of subscribers in suburban exchanges who have Denver service, as included under Arvada, applies to similar subscribers in Englewood.

Erie: Erie is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21,00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Erie is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

Estes Park: Estes Park is included in Class G-4. Present rates of $42.00 and $36.00 per annum for one and two-party business service, and $24.00 and $21.00 per annum for one and two-party residence service shall be maintained, together with a four-party rate of $18.00. These rates are for permanent subscribers. In addition there are at present seasonal rates as follows: $60.00 and $48.00 per annum for one and two-party business service and $36.00 and and $33.00 per annum for one and two-party residence service. Contracts are taken at these rates for terms of three months with standard installation charges for terms of like length. This practice shall be discontinued. Rural rates shall be $42.00 per annum during the entire year for business service and $24.00 per annum for residence service, with the exception that the rate shall be $48.00 per annum for business rural subscribers who are

not permanent. Contracts may be taken at this rate for terms of three months with standard installation charges. For residence rural subscribers special rates are now $12.00 per season where the subscriber furnishes and maintains the telephone, and $14.50 per season where the Telephone Company furnishes and maintains the telephone. No change shall be made in these rates. Estes Park is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Evans: This exchange has the same rates as Greeley and the local service area includes Greeley. The district service problem is involved.

Evergreen: Evergreen is included in Class G-4. This is a new exchange opened during 1917 on a service station basis, and is seasonal in character. It shall remain as a service station exchange with rates as at present of $18.00 per annum for business service and $12.00 per annum for residence service where the subscriber owns and maintains the line and telephone instrument. Where the subscriber makes use of certain existing pole lines and wire belonging to the company, charges in addition to those for switching service shall be made for the use of these poles and wire as follows:

½ to 2 miles	$ 6.00 per annum
2 to 3 miles	9.00 per annum
3 to 6 miles	12.00 per annum
6 to 9 miles	15.00 per annum

Where contracts are seasonal in character—that is, where the subscriber does not contract for service for a period of one year—the Telephone Company shall furnish service at the above rates for a minimum period of three months, plus a charge of $3.50. The company shall continue to furnish service at the rates at present in effect.

Fairplay: Fairplay is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Fairplay is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Flagler: Flagler is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. The country surrounding Flagler is now served on the service station basis and the Telephone Company has not developed this service by an extension of its own plant. The character of the country is such that the Commission finds it would be more satisfactory to both subscribers and the Telephone Company if the service station arrangement continue. Flagler is included in Class R for service station rates, which shall be $8.40 per annum for business service and $4.20 per annum for residence service.

Florence: Florence is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party service, respectfully. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Florence is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

Fort Collins: This is one of the larger exchanges which has been included in Class G-3, because further consideration will be necessary before rate changes can be ordered. Fort Collins is included in Class U for service station rates, which shall be $24.00 per annum for business service and $12.00 per annum for residence service.

Fort Lupton: Fort Lupton is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Fort Lupton is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Fort Morgan: Fort Morgan is included in Class G-1. The Commission will make no changes in present rates at Fort Morgan as the question of district service is involved.

Fountain: Fourtain is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Fountain is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Fowler: Fowler is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Fowler is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Fraser: Fraser is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Fraser is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Frederick: Frederick is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Frederick is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Fruita: Fruita is included in Class G-1. The district service problem is involved. It is also included in Class B for urban service by the addition of a new urban four-party residence rate of $18.00 per annum. Present rates of $36.00 and $30.00 per annum

for one and two-party business service, respectively, and $24.00 and $21.00 per annum for one and two-party residence service, respectively, shall be maintained. All other rates shall remain unchanged.

Garfield: Garfield is included in Class G-2. Business rates will be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00 and $18.00 per annum for one and two party service, respectively. The Telephone Company does not quote rates for rural service in Garfield at present and there are no stations of this class. The possibilities of rural development around Garfield are very small and are confined to an occasional station which probably can be served on a service station basis. Garfield is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Georgetown: Georgetown is included in Class E. Business rates shall be $60.00 and $48.00 per annum for one and two-party service, respectively. Residence rates shall be $27.00, $24.00 and $21.00 per annum for one, two and four-party service, respectively. Georgetown is included in Class P-3 for rural rates, which shall be $48.00 per annum for business service and $30.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Gilcrest: Gilcrest is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Gilcrest is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Glenwood Springs: Glenwood Springs is included in Class G-1. A consideration of rates involves the district service problem. Present urban rates are $36.00 and $30.00 per annum for one and two-party business service, respectively, and $24.00 and $21.00 per annum for one and two-party residence service, respectively. A new four-party local residence rate of $18.00 per annum shall be

added and the Class B schedule becomes effective for urban service. No other changes will be made.

Golden: Golden is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Golden is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Grand Junction: Grand Junction is included in Class G-1. Consideration of rates for this exchange will be deferred on account of the district service problem. One change will be ordered at present. Urban rates are $42.00 and $36.00 per annum for one and two-party business service, respectively, and $24.00 and $21.00 per annum for one and two-party residence service, respectively. A new four-party local residence rate of $18.00 per annum shall be added and Class C schedule will be effective for local rates.

Grand Valley: Grand Valley is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. The local service area combining the two exchanges of Grand Valley and Rifle shall be allowed to remain as at present. Grand Valley is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class R for service station rates, which shall be $8.40 per annum for business service and $4.20 per annum for residence service.

Greeley-Evans: This is one of the larger exchanges which has been included in Class G-3. No rate changes will be ordered. Greeley-Evans is included in Class U for service station rates, which shall be $24.00 per annum for business service and $12.00 per annum for residence service.

Gunnison: Gunnison is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Gun-

nison is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Hayden: Hayden is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Hayden is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for resi dence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Hazeltine: Hazeltine is included in Class G-1. The situation is identical with that at Arvada and what has been said of the Arvada exchange applies to Hazeltine.

Hillrose: Hillrose is included in Class G-1. District service is now in effect at Hillrose and no changes shall be made.

Holly: Holly is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Holly is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Howard: Howard is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Howard is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Hudson: Hudson is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service,

respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Hudson is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Hugo: Hugo is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Those subscribers in the country around Hugo who now have service are securing it on a service station basis and this the Commission believes to be proper. Service station rates shall therefore be quoted for the Hugo rural territory. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Idaho Springs: Idaho Springs is included in Class E. Business rates shall be $60.00 and $48.00 per annum for one and two-party service, respectively. Residence rates shall be $27.00, $24.00 and $21.00 per annum for one, two and four-party service, respectively. Idaho Springs is included in Class P-3 for rural rates, which shall be $48.00 per annum for business service and $30.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Iliff: Iliff is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Iliff is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Johnstown: Johnstown is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Johns-

town is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

Julesburg: Julesburg is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Julesburg is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Keota: This is an exchange recently opened and the subscribers are served entirely on service station, business rates being $12.00 per annum and residence rates $6.00 per annum. The exchange is included in Class S and such rates shall be continued.

Kremmling: Kremmling is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Kremmling is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Lafayette: Lafayette is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Lafayette is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

La Jara: La Jara is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00

per annum for one, two and four-party service, respectively. La Jara is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

La Junta: La Junta is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. La Junta is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. Service station rates shall be $18.00 per annum for business service and $12.00 per annum for residence service. These are the rates for Cheraw, which is a service station exchange having local service area including La Junta. On this account La Junta is specially classified as V-2 for service station rates and no change shall be made.

Lake City: Lake City is included in Class E. Business rates shall be $60.00 and $48.00 per annum for one and two-party service, respectively. Residence rates shall be $27.00, $24.00 and $21.00 per annum for one, two and four-party service, respectively. Lake City is included in Class P-3 for rural rates, and no change shall be made in present rates. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Lakewood: Lakewood is included in Class G-1. The situation is identical with that at Arvada and what has been said of the Arvada exchange applies to Lakewood.

Lamar: Lamar is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Lamar is included in Class L for rural service rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence rates. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Las Animas: Las Animas is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party

service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Las Animas is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence rates. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

La Veta: La Veta is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. La Veta is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Leadville: Leadville is included in Class G-4. No rates shall be changed except that, since no service station rates are now quoted, Leadville shall be placed in Class T with rates of $18.00 per annum for business service and $9.00 per annum for residence service.

Limon: Limon is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Inasmuch as the territory about Limon is entirely served on a service station basis at the present time this policy will be continued. Service station rates only are quoted for the surrounding country. These rates shall be Class S rates—$12.00 per annum for business service and $6.00 per annum for residence service.

Littleton: Littleton is included in Class G-1. The question of district service is involved, and consideration of rate changes therefore will be deferred.

Livermore: Livermore has no urban subscribers for the reason that the exchange is not situated in a city or town. It serves rural subscribers only, some of whom are on an owned station basis, and some on a service station basis. No urban rates will be quoted. It is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence

service. Livermore is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Longmont: Longmont is included in Class G-1. Consideration of rate changes is deferred on account of the district service problem. Longmont is, however, included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. It is included in Class P-1 for rural rates and Class V-1 for service station rates.

Louisville: Louisville is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Louisville is included in Class K rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

Loveland: Loveland is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Loveland is included in Class L rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Lyons: Lyons is included in Classes G-1, P-1 and V-1. Consideration of rate changes for this exchange will be deferred on account of the district service problem.

Manassa: Manassa is not an exchange but has service at locality rates of $42.00 per annum for two-party business service and $30.00 and $18.00 per annum for two and multi-party residence service, respectively. Rural rates are $48.00 per annum for business service and $24.00 per annum for residence service. Service station rates are $9.00 per annum for residence service. These rates are satisfactory and since there are only a few telephones affected no change is necessary.

Mancos: Mancos is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Mancos is included in Class L rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Manzanola: Manzanola is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Manzanola is included in Class L for rural rates, which shall be $42.00 per annum for business service, and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Mead: Mead is included in Classes G-1, P-1 and V-1. The district service problem is involved and no change in rates will be made.

Meeker: Meeker is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Meeker is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Merino: Merino is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Merino is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Mesa: The district service problem is involved and no changes in rates will be made.

Milliken: Milliken is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Milliken is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

Monte Vista: Monte Vista is included in Classes G-1, P-1 and V-1. The district service problem is involved and with one exception no changes will be made. Present local rates are $36.00 and $30.00 per annum for one and two-party business service, respectively, and $24.00 and $21.00 per annum for one and two-party residence service, respectively. A new urban four-party residence rate of $18.00 per annum shall be added and rates will be those assigned for Class B.

Montrose: Montrose is included in Classes G-1 and P-1. The question of district service is involved and no rate changes will be made.

Morrison: Morrison is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Morrison is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Mountain View: This is a locality served by the Arvada exchange. The district service problem is involved and no change in rates will be made. What has been said under Arvada concerning subscribers in that territory served by the Denver exchange at obsolete rates applies to Mountain View.

Nederland: Nederland is included in Class G-2. The present rates of $36.00 and $30.00 per annum for one and two-party business service, respectively, and $24.00 and $18.00 per annum for one

and two-party residence service, respectively, shall be maintained. It is included in Class S for service station rates, which shall be $12.00 per annum for business service. and $6.00 per annum for residence service.

New Castle: New Castle is included in Classes G-1, P-1 and V-1. The district service question is involved and no change in present rates will be made.

Norwood: Norwood is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Norwood is included in Class P-3 for rural rates, which shall be $48.00 per annum for business service and $30.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Oak Creek: Oak Creek is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Oak Creek is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Olathe: Olathe is included in Classes G-1, P-1 and V-1. The consideration of rates for this exchange will be deferred on account of the district service problem.

Ordway: Ordway is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Ordway is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Otis: The present rates are $30.00 for one-party business service and $15.00 for one-party residence service. No other urban

service is furnished. This is a grounded line plant and undoubtedly a modern metallic plant will have to be installed in order to give a reasonably good grade of service. The Telephone Company is planning to install such a plant in the near future and when installed Class A rates will become effective in order that Otis may conform with other smaller exchanges of this class. At such time Class A rates—$36.00 and $30.00 per annum for one and two-party business service, respectively, and $21.00, $18.00 and $15.00 per annum for one, two and four-party residence service, respectively, shall apply. No rural rates are quoted as the territory surrounding the exchange is served on the service station basis. This method shall be continued and no rural rates will be assigned. Otis is included in Class R for service station rates, which shall be $8.40 per annum for business service and $4.20 per annum for residence service.

Ouray: Ouray is included in Classes G-1, P-1 and V-1. The district service problem is involved and no changes in the present rates will be made.

Palisade: Palisade is included in Classes B, G-1, P-1 and V-1. The district service problem is involved and no changes will be made, with the exception that Class B rates shall become effective for urban service, including the local four-party residence rate of $18.00 per annum added to the present local schedule. The present urban schedule is $36.00 and $30.00 per annum for one and two-party business service, respectively, and $24.00 and $21.00 per annum for one and two-party residence service, respectively.

Palmer Lake: Palmer Lake is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Palmer Lake is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Paonia: Paonia is included in Class G-4. The present rates of $36.00 and $30.00 per annum for one and two-party business service, respectively, and $24.00 and $18.00 per annum for one and two-party residence service, respectively, shall be maintained. Paonia is included in Class K for rural rates, which shall be $42.00

per annum for business service and $18.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Paradox. All stations connected with this exchange are on a service station basis. Rates are not classified and as the present rates are reasonable no change will be made.

Pierce: Pierce is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Pierce is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Pitkin: Pitkin is included in Classes G-2 and P-3. Present rates are $48.00 per annum for one-party business service and $24.00 per annum for one-party residence service, and shall be maintained. Pitkin is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Platteville: Platteville is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Platteville is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Pueblo: Pueblo is included in Class G-3. The present rates of $72.00 and $54.00 per annum for one and two-party business service, respectively, and $36.00, $30.00 and $24.00 per annum for one, two and four-party residence service, respectively, shall all be maintained; also the underlying coin box rate of ten cents per day (the sale of which is confined to rooming and boarding houses). While the Commission as a rule has not taken into account in the reclassifying of rates those stations in the various exchanges which are at obsolete rates and lower than present quoted rates, there are

at Pueblo approximately one thousand telephones at a six-party flat rate of $18.00 per annum. This is a considerable class and it probably would work a material hardship, if all these obsolete stations were to be eliminated at once and the subscribers compelled to take the present minimum of $24.00 per annum or discontinue service. This service should be changed by the introduction of measured rates and the Telephone Company is ordered to furnish this service on a four-party basis instead of a six-party basis, a change which will give better service. The rate shall be $18.00 per annum for the initial allowance of 360 messages. The message allowance will be divided into a monthly allowance of thirty messages. Where the full allowance of thirty messages is not used during any one month the unused portion of the monthly allowance shall not be carried over into the following month. Where messages in excess of thirty in any month are used the rate for the excess messages will be 3 cents each.

Pueblo is included in Class N for rural rates, which shall be $42.00 per annum for business service and $36.00 per annum for residence service. It is included in Class U for service station rates, which shall be $24.00 per annum for business service and $12.00 per annum for residence service.

Red Cliff: Red Cliff is included in Class G-2. The present rates of $48.00 and $36.00 per annum for one and two-party business service, respectively, and $30.00 and $24.00 per annum for one and two-party residence service, respectively, shall be maintained. Red Cliff is included in Class P-3 for rural rates, which shall be $48.00 per annum for business service and $30.00 per annum for residence service. It is included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

Ridgway: Ridgway is included in Classes G-1, P-1 and V-1. No changes will be made in rates on account of the district service situation.

Rifle: Rifle is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Rifle is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which

shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Rocky Ford: Rocky Ford is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Rocky Ford is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Saguache: Saguache is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Saguache is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Salida: Salida is included in Class E. Business rates shall be $60.00 and $48.00 per annum for one and two-party service, respectively. Residence rates shall be $27.00, $24.00 and $21.00 per annum for one, two and four-party service, respectively. Salida is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

San Acacio: San Acacio is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. San Acacio is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Sedgwick: Sedgwick is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party serv-

ice, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Sedgwick is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Silverton: Silverton is included in Class E. Business rates shall be $60.00 and $48.00 per annum for one and two-party service, respectively. Residence rates shall be $27.00, $24.00 and $21.00 per annum for one, two and four-party service, respectively. Silverton is included in Class P-3 for rural rates. No change will be made in such rates, as the difficulties attendant upon mountain construction and maintenance justify the present schedules. It is included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

Steamboat Springs: Steamboat Springs is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Steamboat Springs is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. There are also a few grounded lines running out of this exchange upon which rural service is furnished at $21.00 per annum, but no suggestion has been made as to what should be done with these lines, and as the present arrangement appears satisfactory to both the subscribers and the Telephone Company the Commission will order this arrangement continued. No more lines of this nature, however, shall be established, and the rate of $21.00 per annum shall be for service on existing lines only. Steamboat Springs is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Sterling: Sterling is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party service, respectively. Residence service rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Sterling is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence

service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Stratton: Stratton is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. The rural territory about Stratton is now served on a service station basis, and this arrangement will not be changed. Stratton is included in Class R for service station rates, which shall be $8.40 per annum for business service and $4.20 per annum for residence service.

Sugar City: Sugar City is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Sugar City is included in Class L for rural rates, which shall be $42.00 per annum for business service, and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Sullivan: The situation here is identical with that at Arvada, and what has been said of the Arvada exchange applies to Sullivan.

Sulphur Springs: Sulphur Springs is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Sulphur Springs is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Telluride: Telluride is included in Class E. Business rates shall be $60.00 and $48.00 per annum for one and two party service, respectively. Residence rates shall be $27.00, $24.00 and $21.00 per annum for one, two and four-party service, respectively. Rural rates in Telluride are not subject to classification, due to the difficulties of mountain construction and maintenance. Present rates appear satisfactory and the Commission will order no changes.

Telluride is included in Class T for service station rates, which shall be $18.00 per annum for business service and $9.00 per annum for residence service.

Trinidad: Trinidad is included in Classes G-3, P-3 and U. No changes will be ordered.

Walden: Walden is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Walden is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Walsenburg: Walsenburg is included in Class C. Business rates shall be $42.00 and $36.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Present rural rates in Walsenburg shall be maintained. Walsenburg is included in Class P-3. It is included in Class U for service station rates, which shall be $24.00 per annum for business service and $12.00 per annum for residence service.

Ward: Ward is included in Class G-2. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00 and $18.00 for one and two-party service, respectively. Ward is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Weldona: The district service problem is involved at Weldona and no change will be made.

Wellington: Wellington is included in Class A. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $21.00, $18.00 and $15.00 per annum for one, two and four-party service, respectively. Wellington is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Westcliffe: Westcliffe is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Westcliffe is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Whitewater: No changes will be ordered in rates for Whitewater as the district service problem is involved.

Wiley: Wiley is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Wiley is included in Class K for rural rates, which shall be $42.00 per annum for business service and $18.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Windsor: Windsor is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Windsor is included in Class L for rural rates, which shall be $42.00 per annum for business service and $21.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Yampa: Yampa is included in Class B. Business rates shall be $36.00 and $30.00 per annum for one and two-party service, respectively. Residence rates shall be $24.00, $21.00 and $18.00 per annum for one, two and four-party service, respectively. Yampa is included in Class M for rural rates, which shall be $42.00 per annum for business service and $24.00 per annum for residence service. It is included in Class S for service station rates, which shall be $12.00 per annum for business service and $6.00 per annum for residence service.

Toll Rates.

The Telephone Company's proposals as to changes in initial particular-person toll rates were as follows:

0 to 20 miles	No change.
20 to 30 miles	5 cents increase.
30 to 45 miles	10 cents increase.
45 to 65 miles	10 cents to 15 cents increase.
Over 65 miles	15 cents increase.

The Telephone Company proposed that for distances of less than forty miles the rates be quoted on an air-line basis instead of the block mileage basis to avoid a defect which it pointed out, and which is criticized in the testimony of the Commission's expert, a quotation from whose testimony is given below. No change was proposed in the present schedule of two-number rates, although some special particular-person toll rates were suggested for the shorter distances, particularly where district service situations are involved. The company also proposed to establish special toll rates which would be ten cents higher than would normally apply in the application of the schedule proposed, in certain mountainous territory, where it considered that increased costs and increased values justified the quoting of such special rates. There are certain objections to the schedule suggested by the Telephone Company and the Commission has devised a schedule of toll rates as hereinafter stated, which it considers reasonable. Attention is called to the testimony of the Commission's telephone expert, page 6404 of the record:

> "* * * the application of block-to-block measurements in the computation of toll rates in Colorado for conversations between points less than 35 or 40 miles apart necessarily results in a certain amount of discrimination due to the difference between air-line measurements between centers of rate blocks and direct air-line measurements between actual points of conversation. * * * it appears advisable, * * * to apply direct air-line measurements to short-haul toll traffic and restrict block air-line measurements to toll traffic over distances greater than 35 or 40 miles. * * *
>
> "The application of the 15c minimum particular-party toll rate to toll conversations between points in Colorado less than eight miles apart does not appear warranted. Such a rate for very short hauls has a tendency to restrict the normal

use of the toll lines by subscribers, and necessitates a two-number rate higher than is generally practical over short distances. In a number of instances in Colorado, the Company has already introduced a 10c minimum toll rate and proposes to introduce other similar rates in connection with the modification of district service. The adoption of a standard 10c minimum toll rate for conversation over distances not exceeding eight miles seems advisable under the circumstances."

The Commission has established a minimum particular-person toll rate of ten cents, this rate to apply for all distances from zero to ten miles; and in the schedule which it will order has also corrected the discrimination brought about by the quoting of block rates for short distances, by providing that all rates for distances up to forty miles shall be quoted on an air-line basis. The Commission further disagrees with the Telephone Company in regard to increases amounting to fifteen cents over the present rates for certain distances between forty-five and sixty-five miles, and for all distances over sixty-five miles. An increase of fifteen cents on any one toll message is a considerable advance, and the Commission has decided that no increases in excess of ten cents over the present rates shall be allowed.

A further point of difference between the Telephone Company's and the Commission's schedules is that the number of cases where increases of ten cents over the present rate will be allowed are considerably less under the Commission's schedule than under the Telephone Company's. The maximum increase allowed is reduced from fifteen cents to ten cents, and in many instances to five cents. The following table shows the changes from present rates which will be effected by the Commission's schedule:

0—10 miles	5 cents reduction.
10—20 miles	No change.
20—30 miles	5 cents increase.
30—35 miles	10 cents increase.
35—36 miles	5 cents increase.
36—41 miles	10 cents increase.
41—42 miles	5 cents increase.
42—47 miles	10 cents increase.
47—48 miles	5 cents increase.
48—53 miles	10 cents increase.
53—54 miles	5 cents increase.
54—59 miles	10 cents increase.
59—60 miles	5 cents increase.
60—65 miles	10 cents increase.
65—66 miles	5 cents increase.

And so on to 240 miles. Beyond 240 miles ten cents is added for all distances.

The following particular-person toll rates are ordered and the schedule is applied for all exchanges in the state:

Mileage Steps Air Line Miles	Initial Rate Three Minutes	Overtime Rate One Minute
0 to 10 miles, inclusive	$ .10	$ .05
Over 10 miles up to and incl. 15 miles	.15	.05
Over 15 miles up to and incl. 20 miles	.20	.05
Over 20 miles up to and incl. 25 miles	.25	.05
Over 25 miles up to and incl. 30 miles	.30	.10
Over 30 miles up to and incl. 36 miles	.35	.10
Over 36 miles up to and incl. 40 miles	.40	.10

Mileage Steps Block Miles	Initial Rate Three Minutes	Overtime Rate One Minute
Over 36 miles up to and incl. 42 miles	$ .40	$ .10
Over 42 miles up to and incl. 48 miles	.45	.15
Over 48 miles up to and incl. 54 miles	.50	.15
Over 54 miles up to and incl. 60 miles	.55	.15
Over 60 miles up to and incl. 66 miles	.60	.20
Over 66 miles up to and incl. 72 miles	.65	.20
Over 72 miles up to and incl. 78 miles	.70	.20
Over 78 miles up to and incl. 84 miles	.75	.25
Over 84 miles up to and incl. 90 miles	.80	.25
Over 90 miles up to and incl. 96 miles	.85	.25
Over 96 miles up to and incl. 102 miles	.90	.30
Over 102 miles up to and incl. 108 miles	.95	.30
Over 108 miles up to and incl. 114 miles	1.00	.30
Over 114 miles up to and incl. 120 miles	1.05	.35
Over 120 miles up to and incl. 126 miles	1.10	.35

Etc. 5 cents for each additional six miles up to and including 240 miles; over 240 miles, 5 cents for each additional five miles; overtime rates to be figured at one-third of the initial rate except that where this amount is not divisible by five the next lower multiple of five shall be taken.

Due to the change from block to air-line measurement, and the reduction of the minimum rate from fifteen cents to ten cents, the Commission has effected reductions in 8.49 per cent of the rates. Taking into consideration the number of messages which will be made at these rates, however, subscribers will secure reductions considerably in excess of 8.49 per cent, and this is because the reductions apply to short haul messages where the traffic is much greater than on long haul messages.

An "A-B" rate is the term applied to a call for a number between exchanges as distinguished from a call for a particular person. Certain modifications in "A-B" rates will be made necessary by the proposed toll rate schedule. With the use of this schedule the "A-B" rate will be five cents less than particular-person rate in every case. The present schedule is seven and one-half miles for five cents, and seven and one-half to fifteen miles for ten cents, and thereafter five cents less than the particular-person rate. However, in a large majority of cases, forty-six in number, where numbered service is now being given under an "A-B" rate of five cents or ten cents,—and there is an appreciable amount of traffic, or where community of interest exists—no change will be made in the existing "A-B" rate, and it shall be continued as at present. The rates to be discontinued constitute those cases where there is not developed sufficient traffic under this special method to warrant their continuance. Whatever amount of traffic there is will be handled under an indicated particular-person rate and method of operation. The forty-six cases where no changes in "A-B" rates are ordered are as follows:

BETWEEN		
Denver	and	Arvada
Denver	and	Aurora
Denver	and	Broomfield
Denver	and	Englewood
Denver	and	Evergreen
Denver	and	Golden
Denver	and	Hazeltine
Denver	and	Lakewood
Denver	and	Littleton
Denver	and	Morrison
Denver	and	Sullivan
Arvada	and	Lakewood
Central City	and	Idaho Springs
Fort Lupton	and	Brighton
Fort Lupton	and	Platteville
Georgetown	and	Idaho Springs
Boulder	and	Nederland
Fort Collins	and	Loveland
Johnstown	and	Milliken
Lafayette	and	Louisville
Longmont	and	Mead
Colorado Springs	and	Fountain
Grand Junction	and	Clifton
Grand Junction	and	Fruita
Grand Junction	and	Palisade

BETWEEN		
Montrose	and	Olathe
Palisade	and	Clifton
Ault	and	Eaton
Ault	and	Greeley
Ault	and	Pierce
Ault	and	Windsor
Eaton	and	Greeley
Eaton	and	Windsor
Greeley	and	Windsor
Julesburg	and	Sedgwick
Sterling	and	Merino
Sterling	and	Iliff
Bristol	and	Holly
Canon City	and	Florence
Hartman	and	Holly
La Junta	and	Rocky Ford
Lamar	and	Wiley
Ordway	and	Sugar City
Monte Vista	and	Center
Monte Vista	and	Del Norte
Durango	and	Bayfield

In the following cases there is not sufficient traffic at present to warrant the quoting of "A-B" rates, and they will be discontinued.

BETWEEN		
Denver	and	Parker
Arvada	and	Littleton
Arvada	and	Aurora
Arvada	and	Englewood
Arvada	and	Hazeltine
Aurora	and	Sullivan
Broomfield	and	Hazeltine
Englewood	and	Morrison
Englewood	and	Sullivan
Evergreen	and	Morrison
Golden	and	Lakewood
Central City	and	Georgetown
Fort Lupton	and	Frederick
Lafayette	and	Erie
De Beque	and	Collbran
Delta	and	Cedaredge
Fruita	and	Clifton
Fruita	and	Whitewater
Glenwood	and	Carbondale
Glenwood	and	New Castle
Mesa	and	Collbran

BETWEEN

Palisade	and	Whitewater
Whitewater	and	Clifton
Eaton	and	Evans
Fowler	and	Manzanola
Hartman	and	Bristol
Rocky Ford	and	Cheraw
Arvada	and	Broomfield
Arvada	and	Golden
Aurora	and	Englewood
Aurora	and	Hazeltine
Englewood	and	Lakewood
Golden	and	Morrison
Lakewood	and	Littleton
Lakewood	and	Morrison
Littleton	and	Morrison
Littleton	and	Sullivan
Littleton	and	Louviers
Brighton	and	Hazeltine
Fort Lupton	and	Hudson
Berthoud	and	Loveland
Berthoud	and	Johnstown
Fort Collins	and	Wellington
Johnstown	and	Loveland
Louisville	and	Erie
Carbondale	and	Basalt
Delta	and	Olathe
Grand Junction	and	Whitewater
Mesa	and	De Beque
Ouray	and	Ridgway
Rocky Ford	and	Manzanola
Denver	and	Salem
Aurora	and	Salem
Brighton	and	Platteville
Berthoud	and	Fort Collins
Delta	and	Paonia
Fruita	and	Palisade
Glenwood	and	Basalt
New Castle	and	Basalt
New Castle	and	Carbondale
Rifle	and	Grand Valley
Alamosa	and	Antonito
Center	and	Del Norte
Center	and	Saguache
Romeo (La Jara)	and	Antonito

A reasonable increase in toll rates does not restrict development because of the fact that exchange service rates are not thereby affected. Where toll rates are increased some subscribers may be

obliged to economize in their use of the toll system, but no subscriber is obliged to give up exchange service by reason of the increase in toll rates. Many subscribers make little or no use of the toll system, and the Telephone Company in its testimony stated that only about forty per cent of the subscribers make use of the toll system, in any one month, and that of those who do make use of it a very large majority use ten messages per month or less. The bulk of the toll business is between exchanges which are short distances apart, and, inasmuch as the Commission's schedule provides for decreases in rates for many short distances, and no changes in present rates for many others, the net effect to a considerable number of toll users will be a decrease or no change in their toll bills.

Service Connection and Moving Charges.

The Telephone Company in its testimony referred at some length to the faulty practice at the present time with regard to making charges for termination of contracts. It has been apparent to the Commission that there are certain costs directly associated with the installation of telephones and the establishment of service. These costs must be met by some method through the rate system, and as they amount to considerable sums the subject requires serious consideration.

There are two extreme methods of assessing these costs. One method is to assess against each subscriber the costs involved in the installation of his station and the establishment of service for him. Under this method the entire cost would be charged against each individual subscriber, and in consequence the rates charged each month would cover only the remaining expense incurred on account of the rendering of service. The other method would be to charge all of the costs involved in rendering service as a part of the scheduled monthly rates. This means that the monthly rates charged would include not only an amount sufficient for the current rendering of service, but also an additional sum sufficient to cover the cost of all installations indiscriminately. This would require a general level of prices for monthly service considerably higher than would obtain under the first plan, and, carried to extremes, would impose upon the long-term subscribers a considerable amount of the expense incurred as the result of serving short-term subscribers, and might raise the general level of prices to a point where the effect on development might be injurious.

The Telephone Company's present practice is to make no charge other than for actual service rendered, provided the sub-

scriber continues his service a period of one year or longer. Where the contract is terminated in less than one year a charge of $2.50 is made in the form of a termination charge, added to the charges for the actual period during which service has been rendered. In addition, if the contract is cancelled within a period of three months, the minimum period of service charged for is the full three months. Viewed from the Telephone Company's standpoint, the amount is insufficient because the actual cost of installation of service is claimed to be from one to five times the amount of the termination charge. Present practice would therefore seem to be unsatisfactory to the subscribers generally and to the Telephone Company, and some change should be made. There is a further source of dissatisfaction with this practice which the Telephone Company has pointed out, which is that termination charges where applied are necessarily billed after the service has been discontinued. So long as a subscriber desires service it is likely that he will pay for it with reasonable promptness, and if he does not the Telephone Company is in a position to oblige him to do so by temporarily suspending his service, and this is common practice throughout the country. However, no such action is possible after the subscriber has terminated his contract and ceased to be a subscriber, but the amounts involved are too small to warrant the company taking legal action against such subscriber. The Telephone Company pointed out in its testimony that sixty per cent of the subscribers against whom termination charges are assessed fail to pay them. This means a considerable loss of revenue to the company in the aggregate, even though the individual amounts are small, and results in a discrimination against the remaining forty per cent of the subscribers who pay their termination charges. Two extreme methods of collection for service connections have been pointed out, but the Commission is of the opinion that neither method can be successfully employed. The Telephone Company proposed a method in the nature of a compromise between the two described, which is as follows:

(1) The taking of annual contracts for base rate service to be discontinued, excepting branch exchange, rural and miscellaneous service.

(2) Contracts for base rate service, excepting the classes mentioned above, to be for a minimum period of one month.

(3) In all cases where service is established for any subscriber at any location, whether for a new subscriber or for one moving

from one location to another in the same exchange, a service connection charge of $3.50 be made before the establishment of service.

(4) Service connection charge of $3.50 not to be made in cases where there was already a telephone in place at the premises where service connection was desired, except that where the subscriber desired a change in the location of the instrument in the building, an inside moving charge of $1.00 be made.

(5) The practice of assessing termination charges to be discontinued except as to branch exchange, rural and miscellaneous service.

(6) Moving of telephone instruments from one location to another within the same building to be charged for at the rate of $1.00 per move. It may be stated in connection with this suggestion that the present practice is to make no charges for inside moves in Denver, but that a fifty-cent charge is effective in the exchanges in the state, outside of Denver, except in a very few of the larger ones where the rate is $1.00.

On this subject the company's testimony, page 6065, is as follows:

> "It would unquestionably be sound and strictly equitable to make service-connection charges against all applicants for service, whether receiving service at a location at which a telephone is already installed or not. The general opposition of the public, however, to the payment of such charges in those cases where service is established at premises where telephones are already in place, is such as to make it desirable not to impose a service-connection charge in those cases where telephones are already in place. This opposition on the part of subscribers, under such conditions, to the payment of a service-connection charge, is not sufficient reason and justification directly for the Company not to propose making such a charge for such cases. The reason that the Company does not propose making it is that, due to this opposition, the costs involved and disputes with subscribers, and in other ways on account of the opposition, are likely to exceed the amount of the charge which ought to be made. It is for this reason that the Company proposes to make a service-connection charge only in those cases where telephones are not in place on the premises at which the applicant is located."

The Commission finds that the plan proposed by the company is fair to all patrons and orders that service-connection charge practice be esetablished pursuant thereto.

Miscellaneous Charges.

Under miscellaneous charges have been considered branch exchange service outside of Denver and various minor services, such as extension bells, extra listings, etc. All of these services are minor in character and not productive of any considerable amount of revenue, and no change has been made therein.

Branch Exchange Rates Outside of Denver.

While some readjustments in branch exchange rates outside of Denver have been suggested, the object was a readjustment in the use of facilities rather than an increase in revenue. There are at present two types of branch exchange systems in use outside of Denver. One is known as the No. 2 intercommunicating system and the other is the No. 1 cord switchboard system. The new schedules which the Commission will order will introduce a new type of branch switchboard known as the cordless switchboard system. The rates for this cordless system will be lower than those for the No. 2 intercommunicating system, so that it will be to the financial advantage of the subscriber to this class of service to take the cordless system. While the Telephone Company evinced some disinclination to continue furnishing the No. 2 systems, it was willing to do so for the benefit of the occasional subscriber who might desire it. The Commission believes this should be done and will order that rates for No. 2 systems be quoted.

The present rates for these systems will be increased so that they will be somewhat higher than the rates for the cordless system, which is more desirable. There are a few No. 1 cord switchboard systems at present in use in exchanges outside of Denver. The rates for switchboards on these systems are $60.00 per annum, except in some of the larger cities and in the mining town exchanges, where the present rate is $84.00 per annum. The list of such exchanges is as follows:

Colorado Springs-Manitou	Pueblo
Trinidad	Boulder
Creede	Central City
Georgetown	Idaho Springs
Cripple Creek-Victor	Breckenridge
Dillon	Red Cliff
Salida	Leadville
Durango	Silverton
Aspen	Crested Butte
Lake City	Ouray
Telluride	

The present schedule appears to be a satisfactory arrangement and it is ordered continued.

The present system for No. 1 cord switchboard is to charge the individual line business rates, plus $12.00 per annum, and this the Commission orders continued.

No change is ordered in the rates for branch exchange stations in connection with this type of system.

The No. 1 cordless system has been offered in exchanges outside of Denver heretofore, but at rates which were the same as those for the No. 1 cord system, and, inasmuch as the rates for the No. 2 intercommunicating were considerably less, no No. 1 cordless systems are at present in use. The rates for No. 1 cordless systems will be reduced in order to make this type more attractive than the No. 2. The new rates will be as follows:

Switchboard, including operator's telephone, $42.00 per annum; trunk lines, individual line business rate of the exchange plus $12.00 per annum; stations, $12.00 each per annum.

No. 2 Intercommunicating Systems.

In accordance with the policy of confining the use of the No. 2 system to those who have a particular desire for it, and who are willing therefore to pay a price commensurate with the increased cost of operation and installation, the new rates for the No. 2 system will be increased. The rate for stations on the No. 2 system shall be increased in all exchanges outside of Denver from $15.00 per annum to $21.00 per annum, and the rate for trunks shall be the individual line business rate of the exchange where the system is located plus $12.00 per annum.

Miscellaneous Services.

The only changes which will be made in rates for miscellaneous services are in the case of what is known as "joint user service." There are approximately 600 contracts of this kind in the state and the rates in some cases are not changed. This class of service is offered where two or more persons, who would ordinarily be subscribers for telephone service, desire joint use of one service. While some increases are involved, the maximum increases over present rates amount to only fifty cents per month, and a considerable saving is still effected in comparison with the cost of two or more separate main station services.

The following table shows the rates which shall be in effect for joint user service in the various exchanges:

Denver, flat rate service	$30.000 per annum
Denver, other classes	18.00 per annum
Colorado Springs, flat rate service	18.00 per annum
Colorado Springs, coin box service	18.00 per annum
Pueblo, all classes	18.00 per annum
Other exchanges, all classes	18.00 per annum

Obsolete, Concession and Special Rates.

The evidence showed that there are in Colorado approximately 3,000 subscribers receiving service at rates which were once effective, but are no longer quoted. These subscribers are now receiving service under obsolete rates in accordance with contracts which were in effect prior to the adoption of the present authorized schedules. In most cases the obsolete rates are lower than those at present effective. Prior to public utility regulation it was a custom among utilities, when increases in rates were made, to permit patrons with the older and more favorable contracts then in effect to continue the same as long as they retained service, and to avoid opposition on the part of their subscribers to increases in rates. As applied to the present situation this method of discrimination simply means that the subscribers at obsolete rates are enjoying service at a more favorable price than those who are obliged to subscribe at authorized rates, and under the present statute it is a discrimination to accord more favorable treatment to one subscriber than to another by reason of a prior contractual relation.

A list of the obsolete rates was given by the Commission's expert on page 6346 of the record, and since these rates constitute discriminations, the Commission hereby orders the Telephone Company to eliminate such rates.

There are also a number of subscribers who are securing exchange or toll service at rates less than those authorized. This class differs from the obsolete class in that in this case the rates for which the service is actually sold have never been part of an authorized schedule. In some cases service is furnished free, and in other cases at discounts. The Telephone Company is ordered to cease furnishing service at obsolete, discounted and discriminatory rates, and any other such unlawful free service.

General Tariff.

A general tariff contains the rules, regulations and practices to be observed in the relations between the Telephone Company and the public in contracting for the giving and terminating of service and the collection of payments therefor. The telephone expert of the Commission made a very exhaustive examination of all the rules, regulations, practices and contracts which the Telephone Company now has, or which it has had in effect in recent years. From the documents and papers on file and an examination at the various exchanges throughout the state, he ascertained the rules, regulations and practices of the company in these respects. He has testified at length the result of his findings and offered a general tariff (Rec. p. 5292). This brought to the attention of the Commission inconsistencies or improper practices which exist, and recommended the method and manner of rectifying the same. The expert made it clear that many of the miscellaneous rates and rate regulations of this company have never been officially sanctioned by the Telephone Company or the Commission, and that there are many irregularities which should be corrected.

The Commission will not discuss the object or purpose of each of these rules and regulations, or practices, nor give reasons for an approval or disapproval of existing rules, regulations and practices of the Telephone Company and the ordering of changes therein. The Telephone Company has presented in evidence certain modifications to this general tariff as recommended by the Commission's expert. The general tariff as recommended by the Commission's expert was based upon the prevailing practices at the time he prepared the general tariff, and did not contain all the corrections which he recommended. He studied the changes suggested by the Telephone Company with the view of making them harmonious with the general tariff recommended by him.

The Commission has given careful consideration to this question and in many respects the practices of the Telephone Company

have been changed and standardized, with the result that discriminations have been eliminated. The proposed amended general tariff therefore is approved.

IT IS THEREFORE ORDERED, That the general tariff prepared by the Commission's expert, as modified and amended, and with the service connection charge and moving charge practice changed to conform to the Commission's ruling in this order, be now approved, and become effective for all exchanges in the state of Colorado on the 14th day of June, 1918.

IT IS FURTHER ORDERED, That the tariff as thus approved be printed, and within twenty days from the date hereof filed with the Commission, and that copies of it be filed in the various exchanges and offices of The Mountain States Telephone & Telegraph Company throughout the state as required by Sec. 15 of the Public Utilities Act.

IT IS FURTHER ORDERED, That the schedule of toll rates approved in this opinion shall become effective on the 14th day of June, 1918, and that the classifications, charges for services in the various exchanges, and the charges for all classes of service in the different exchanges, as ordered in this opinion, and all other orders herein made as to rates or affecting rates, shall be and become effective on the 14th day of June, 1918, and within twenty days from the date hereof there shall be filed with this Commission by The Mountain States Telephone & Telegraph Company a complete printed toll rate schedule and a printed schedule showing the classification of exchanges and of services and the rates for all classes of service rendered in the state of Colorado.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 14th day of June, 1918.

DECISION No. 181.

IN THE MATTER OF AN INVESTIGATION AND HEARING, ON MOTION OF THE COMMISSION, INTO THE REASONABLENESS OF THE RATES AND CHARGES OF THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY WITHIN THE STATE OF COLORADO, AND INTO THE SERVICE OF THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY WITHIN THE STATE OF COLOARDO, AND THE RULES, REGULATIONS AND PRACTICES AFFECTING THE SAME.

Case No. 22.

June 14, 1918.

APPEARANCES: Milton Smith for The Mountain States Telephone & Telegraph Company; George A. Krause for The Antlers Hotel Company, Colorado Springs; Gus J. Johnson for the Farmers' Union of Fruitvale; J. P. Epperson for The Brush Cooperative Telephone Co.; R. E. MacCracken, Estes Park; D. C. Armitage for City of Fort Collins; Fred Ault for The Bergen Ditch & Water Co.; H. W. Allen for City of La Junta; J. A. Collins for farmers of Weld County; E. R. Bliss, Greeley; Mrs. L. A. Fox, Jefferson County; D. A. Strong, Platteville.

ORDER ON COMPLAINTS.

By the Commission:

On January 5, 1917, the Commission made its order as to the valuation of the properties of The Mountain States Telephone & Telegraph Company, hereinafter called the Telephone Company, 3 Colo. P. U. R. 122. As stated in that order the case was initiated by the Commission on account of numerous complaints filed with

the Commission, and it appeared that it would be necessary to investigate all phases of the property and management of the Telephone Company. This investigation has been concluded and a valuation fixed as of August 31, 1915, and an order made respecting the rates, charges, rules, regulations and practices of the Telephone Company. It now remains to decide the complaints filed in this case.

Prior to the hearing upon complaints the public was informed that complaints would be heard, and certain days were set apart for that purpose. Notices were sent to the Commercial bodies in the various cities and towns of the state, and notice of such hearings was given in the press. The hearings began on February 16, 1917, and at that time some of the complainants appeared in person and presented evidence, and certain complaints were submitted in writing. The total number of complaints, including those on file at the time this proceeding was instituted, down to the time the hearings were completed, was thirty-seven. As to all of them the Telephone Company and the telephone expert of this Commission made a complete and thorough investigation, going upon the ground in many instances and examining into the facts. The Telephone Company presented evidence also respecting these complaints, and the expert of the Commission and representative of the company have presented their views on each of the complaints. To give in detail many of the reasons which controlled the decision of the Commission in these cases would extend this order to unnecessary length. Sufficient will be said to make clear the grounds of the decision.

As heretofore stated the Commission has ordered the adoption of certain rules, regulations and practices, including rules to be followed relative to service connection, moving and other similar charges, and has approved all rate schedules and fixed the rates which shall be charged in the exchanges. In doing so most of these complaints have been disposed of, but it will be necessary to refer to each of them specifically. The comparatively small number of complaints presented seems to justify the Commission's statement previously expressed that the service of the Telephone Company has been adequate.

Complaint of George A. Krause, President of the Antlers Hotel, Colorado Springs.

This complaint is that the charges for branch exchange service in the Antlers hotel, in Colorado Springs, are too high, and that

the expenses of the system installed in the hotel should be borne by the Telephone Company because it is little if anything more than a public telephone system.

The report of the Commission's telephone expert and the evidence of Mr. Krause, taken before the Commission, was that the telephone system installed in the Antlers hotel is similar to the telephone systems installed in hotels throughout this and other states and in large business enterprises. There is installed in the Antlers hotel a branch exchange connecting the various rooms and apartments of the hotel for hotel inter-communication and for communication with the Colorado Springs exchange and the long distance lines of the Telephone Company. Under this system the hotel company took over the operation of the system in the hotel and acted for the Telephone Company in collecting and distributing incoming and outgoing message charges. It was paid a commission of fifty per cent on local messages based on a ten-cent message charge, and ten per cent on toll messages. This payment has been and is the usual payment made for such services at such hotels charging ten cents for local messages, except that at the Antlers Hotel and in other hotels in Colorado Springs there was allowed a free local telephone for the hotel's use in addition to the commission paid. In the Antlers hotel contract the hotel was permitted to charge, if it desired, ten cents per local message and to keep fifty per cent as a commission, but should it elect to charge five cents per local message it should pay the Telephone Company three and three--fourths cents for each local message. Ordinarily, throughout the state, the charge is five cents per local message with a commission of twenty-five per cent to agents and no free telephones are furnished. As stated the system provides an intercommunicating system between the guest rooms and from the various guest rooms to the different departments of the hotel. In this respect it is independent of the general telephone system of the Telephone Company; it likewise serves the guests of the hotel in both outgoing and incoming messages, thereby enabling the guests to talk from their rooms without going to the public telephone in the lobby, and the employes of the hotel can transact their business without leaving their desks. It adds to efficiency in the conduct of the hotel company's business, results in a saving of labor, reduces the number of bell-boys and other employes required.

The commissions paid the Antlers hotel are substantially the same as are paid the other hotels in Colorado Springs. The method of computation varied in the different months, but the gross result

was the same. No free service of the nature disclosed by the evidence should be permitted in the Antlers hotel or other hotels of Colorado Springs. The Commission finds that the system in existence at the Antlers hotel is generally used in large hotels and has considerable value to the hotel and its management, enabling it to give efficient service to its guests. The schedule of rates now being charged for this class of service is reasonable and will be continued. The complaint is therefore dismissed.

Complaints of

Mrs. L. A. Fox, 3809 Sheridan Blvd., Jefferson County.
Charles E. Friend, appearing on behalf of citizens of Wheatridge.
M. J. Spaulding, 3917 Sheridan Blvd., Jefferson County.
Written complaint of several subscribers in Edgewater.

These complaints involve more or less directly the question of furnishing exchange telephone service to persons located outside of an exchange area, or, in other words, it involves the Telephone Company's practice of establishing boundaries of exchange areas for the purpose of equitably and economically furnishing telephone service. The center of Sheridan boulevard marks the limits of the city of Denver. It also is the boundary between the Denver exchange and the country westerly. The complaints in substance are as follows:

Mrs. L. A. Fox, residing on the west side of Sheridan boulevard, in Jefferson County, desired service at Denver rates. The Telephone Company offered her the choice of Arvada service at Arvada rates, or Denver service at foreign exchange rates.

Mr. Chas. E. Friend complained that persons west of Sheridan boulevard are obliged to take Arvada service and pay a toll charge for conversations with Denver, and that this arrangement is unjust to the subscribers west of Sheridan boulevard, and that they should be allowed to subscribe for Denver service at Denver rates. The Telephone Company contended that this statement of Mr. Friend is not correct for the reason that subscribers west of Sheridan boulevard have the option of taking either the Arvada local service, the Arvada district service, which permits of conversations with Denver, or taking Denver service at foreign exchange rates.

Mr. West made the same contentions as Mr. Friend, and, in addition thereto, claimed that he was charged $2.50 for the same

service that is rendered to a Mr. Davis and Mr. Holly at $2.10 and $2.15, respectively. The evidence disclosed that no such subscriber as Mr. Davis appeared in the Telephone Company's records; that Mr. West pays $2.50 per month for a two-party line, residence, Arvada service, that Mr. Holly pays $2.15 per month, and that this is due to the fact that Mr. West is located three-quarters of a mile beyond the boundary of the Arvada base rate area, and consequently pays $1.50, the monthly charge, plus $1.00 per month for the three-quarters of a mile excess exchange line mileage at $16.00 per mile per annum, while Mr. Holly is located one-quarter of a mile nearer the boundary of the Arvada base rate area, and consequently pays $1.50 per month for a two-party line residence service plus sixty-five cents for the one-half mile excess exchange line mileage at $16.00 per mile per annum, which is the approved schedule rate for excess exchange line mileage.

Mr. R. T. Davis, Jr., contended that the business relations of persons located in the section west of Sheridan boulevard warrant the serving of this section from the Denver exchange at Denver rates. Mr. M. J. Spaulding contends that the Telephone Company charges persons located on the east side of Sheridan boulevard $2.00 per month for one-party line Denver residence service, with an allowance of sixty calls per month, while persons located on the west side of Sheridan boulevard are charged $4.00 per month for the same service, and the difference in distance from the central office does not warrant the difference in rates.

It appears from the evidence that the $2.00 rate is the established rate for individual line measured residence service within the Denver city limits, and that the $4.00 rate cited is the established foreign exchange rate for Denver individual line, measured, residence service within one-half a mile outside of the Denver city limits. These charges are in accordance with the established method of extending the exchange service of one exchange into the prescribed area of another exchange on the foreign exchange mileage basis.

The subscribers at Edgewater complain of the location of the boundary line between the Denver and Lakewood exchange areas, and stated that this boundary line should not exclude from the Denver area subscribers located within the incorporated town of Edgewater, which is now served from the Lakewood exchange, because, by being so excluded from the Denver area and served from the Lakewood exchange, the subscribers in Edgewater are

required to pay a toll charge to talk to Denver subscribers, and vice versa. Similar questions to those involved in the Fox and other complaints above mentioned are herein involved. All of these complaints are directed to the proposition of controlling the boundaries of exchange areas which the Telephone Company may establish for the giving of service. Telephone exchanges and the boundaries thereof are established in the first instance by the Telephone Company. The office buildings are located therein to best serve construction and operating purposes. This results from the experience and study of the Telephone Company's officials and engineers. It is a question of business management and it is necessary that a telephone line shall not extend too far from the central office if the best class of service is to be furnished with economical operation. These questions are of such importance in the management of the Telephone Company that courts and commissions do not interfere with the determination of telephone companies in this respect, unless there is an abuse or unjust and discriminatory action. In making rates for any particular exchange or exchange area consideration is given to the distance of the telephones from the central office and rates are fixed upon the basis of what is best for the large majority of subscribers, rather than to fit unusual cases. In other words, rates are established in the manner to satisfy the needs of individual patrons, even though such needs are unusual, but it is done without permitting or encouraging the general elimination of boundaries which are required as a matter of general necessity. In applying exchange rates to any area there must be a definition of the boundaries within which the rate will be offered. It is clear from the evidence that these boundaries must be established in accordance with experience, and that the boundaries in this particular case could not readily be extended westward, and that even if extended westward and the limits fixed, people residing westerly of that boundary line would desire to have service at the same rates as those within the boundary. If the base rate area is too extended, it adds to the cost of service, and it would be inequitable to include such areas in the Denver exchange and establish a schedule of rates high enough to meet the costs involved. Denver subscribers generally would be compelled to pay a higher rate for the benefit of the few subscribers located in such locality. It is proper, therefore, to give the Denver subscribers as low a rate as can be done consistent with good service, and to give the person occupying the unusual position an

opportunity to have exchange service in his own area, and also to give him the option of having exchange service with Denver at reasonable rates, by paying the cost thereof, which is done by means of the foreign exchange basis.

As was held in the case of Scribner v. Bell Telephone Co. of Pennsylvania, P. U. R. 1917E, 525, by the Pennsylvania Commission, the most effective way of conducting telephone business is to divide the territory into local exchanges or zones, which divisions should be made by the judgment and experience of the telephone company, and only when the same was unreasonable should the Commission attempt to modify such divisions. It was further held that in making such zones it is unavoidable that neighbors just beyond the boundary line shall suffer an inconvenience, which, however, does not justify a different division of the territory. The Commission stated in that case:

> "We recognized in the Bonner case that the most effective way of conducting the telephone business was to divide the territory into local exchanges or zones. How and where these divisions should be made must be left primarily to the judgment and experience of the telephone company, and only when any division which it makes affects disadvantageously and unreasonably the service to the public should we attempt to modify or correct it. * * *
>
> "If the contention of the complainant should be sustained, and that portion of the Melrose territory referred to by her should, for the reason which she advances, be connected with the Oak Lane zone, the residents in the territory adjoining the Melrose area would have as much reason to ask the Commission at some future time to connect that territory with the Melrose and Oak Lane zones, so that against the judgment of the telephone company additional territory would be continually added to its Philadelphia exchange. In any division of territory the inconvenience suffered by the complainant would be borne by some subscribers in different exchanges."

It is an equitable and fair method of distributing the cost of telephone service to cause a person, whose situation is such as to give rise to unusual conditions, to pay the additional cost of rendering him service. The rates covering this locality are included in the Arvada schedule and in the Denver schedule, it

being optional with the people living in this territory whether they shall take Arvada local rates, Arvada district service rates, or Denver foreign exchange rates. The evidence shows that there are a few subscribers in this locality who are being served at obsolete rates as the result of some litigation prior to the creation of the Public Utilities Commission, and perhaps others. The Commission finds that such service is discriminatory and the same is ordered discontinued. The Telephone Company shall offer such persons such service as they may elect to take under the options above stated, at the rates contained in the schedules filed with this Commission. The complaints are therefore dismissed.

Complaint of D. A. Strong, Mead.

The Telephone Company stated some time prior to the oral hearing upon complaints that it would eliminate district service between Longmont, Lyons, and Mead. At the suggestion of the Commission the Telephone Company deferred action and permitted district service between Longmont and Mead to continue. Mr. Strong appeared before the Commission and urged that such practice be continued. Action on this complaint will be deferred until the Commission is in a position to take up and dispose of the district service question generally. No change will therefore be made in the present service.

Complaints of H. W. Allen, La Junta, The Kintner-Potter Mercantile Co., and Hanagan Brothers, of Swink.

H. W. Allen's complaint involves a controversy between the city of La Junta and the Telephone Company over a franchise, the payment by the Telephone Company for the right to the use of the streets, and the payment by the city to the company for service, and raised the question of the boundary line between the exchanges of La Junta and Rocky Ford in relation to the business at Swink and vicinity. At the hearing the Commission held that it would not go into the matter of the granting of franchises by the city of La Junta, or the payment by the Telephone Company to the city of a certain percentage of its receipts for the right to use the streets, except that if payments were made by the company they would be considered in fixing rates; that as to free service being rendered to the city of La Junta by the Telephone Company such practice was discriminatory, contrary to law, and would not be allowed. The Commission adheres to these rulings in this decision.

The complaints of the Kintner-Potter Mercantile Company and Hanagan Brothers are identical. They contended that in order to secure an adequate telephone service in the community of Swink, the people are required to subscribe for telephone service with both the La Junta and Rocky Ford exchanges. It appears from the evidence that no exchange is now located at Swink and that the subscribers at Swink have the option of being connected with the La Junta or Rocky Ford exchange. Formerly the Telephone Company installed an exchange at Swink, a small town located about midway between La Junta and Rocky Ford, between five and six miles from each of those places, but sufficient business could not be secured to permit the continuance of the operation of the exchange. If an exchange were re-established at Swink it would be necessary to make toll charges to both La Junta and Rocky Ford, whereas now the patrons at Swink have the choice of being conected with the La Junta or Rocky Ford exchange as their business may prompt them to choose, and simply pay a toll to the other exchange. The two-number toll rate is now in effect between La Junta and Rocky Ford and applies to all subscribers in Swink or vicinity who do not have telephones in both exchanges, and is ten cents for the first five minutes and five cents for each additional three minutes or fraction thereof. At the time of the hearing there were twenty-four stations in Swink having local service with Rocky Ford, and sixteen having local service with La Junta. The re-establishment of an exchange at Swink would result in the subscribers in and about Swink paying more for their service with the three communities than they do at present, by reason of the fact that the toll charge would be established between the three exchanges, whereas now it exists between the two exchanges—Rocky Ford and La Junta. There is a boundary line established between La Junta and Rocky Ford, except as to the town of Swink, but Swink is the one place where subscribers have their choice as to which exchange shall serve them. This situation is exceptional because nowhere else is it necessary to have the boundary line between two exchanges pass through a town, as it does at Swink. Boundaries must be established within which quoted rates shall apply, and the making of the optional zone to the subscribers in Swink results substantially in a waiving of the foreign exchange mileage charge, which would operate if a definite boundary were set up at Swink.

The Kintner-Potter Company and Hanagan Brothers desire an area of local service much larger than could be offered generally at the local service rates. They could afford to pay more for the enlarged area, but the large majority of subscribers having no use for such a service area would be compelled to pay more than would be required to give them service over the lesser area sufficient for their needs. This is a case where two subscribers have unusual needs and the rate system is so set up that these unusual needs may be met, but the subscriber for whom they are met pays a part of the extra cost involved, while the majority of the subscribers are paying an amount commensurate with their requirements. It would be unfair to place the La Junta exchange rates on a district service basis, and thereby raise the rates of eighty-three per cent of the La Junta subscribers in order to enable seventeen per cent of the La Junta subscribers to talk to an adjacent point. The same is true as to Rocky Ford, except that the percentages would be different.

The proper plan is to leave it optional with the people of Swink, and along this boundary line between the exchanges of La Junta and Rocky Ford, as to whether they desire connection with the Rocky Ford or La Junta exchange, or with both. It is necessary to view the situation from the standpoint of the entire district, and not simply that of the subscribers at Swink, and along the boundary line. The Commission's telephone expert recommended that all subscribers within a quarter of a mile on each side of the boundary line between the two exchange areas of Rocky Ford and La Junta have the option of being connected with either the La Junta or Rocky Ford exchange, thereby making an optional zone along this boundary line one-half a mile wide, and to so fix the rates that no injustice to other subscribers would arise or result in the subscribers of the Telephone Company as a whole being burdened in the interests of the subscribers within this optional zone. The Commission adopts this recommendation and it is ordered that the Telephone Company establish a zone one-half mile wide, being one-quarter of a mile wide on each side of the boundary line between the La Junta and Rocky Ford exchanges, within which any subscriber shall have his choice of taking local service either with the La Junta or Rocky Ford exchanges at the regular quoted rates.

Complaint of

Gus J. Johnson, of Grand Junction, representing the Farmers Union of his neighborhood.
E. R. Bliss, of Greeley.
J. M. Collins, of Eaton, representing the Weld County Farmers Union.
D. C. Armitage, on behalf of the citizens of Fort Collins.
Olathe Grange No. 243 of Olathe.
A. De Armon, of Montrose.

These complaints have to do with rural service and are along the lines, generally, that the rates are too high or that there are too many subscribers on the rural lines, or that the lines are congested by reason of subscribers holding the line too long.

Mr. Johnson complained that the parties whom he represents are paying $10.00 per month on a ten-party line. An investigation shows that there are six parties in all, including Mr. Johnson, on his line, and that each paid $2.00 per month, which was the schedule rate in force at that time, and which was not excessive. Upon this general question the Commission has in this proceeding fully discussed rural rate service in its order respecting rates, and has ordered filed and has approved a schedule of rates for rural service.

An examination of the schedules so approved will show that the schedules answer the complaints made upon the question of rates for rural service. Rural lines are operated as a part of the general system and could not generally be operated separately at a profit. As appears in the evidence the rural lines are operated more for the purpose of making the exchange service valuable than they are for the revenues derived directly from rural subscribers. With this principle in view the Commission has had prepared and approved a schedule which has reduced the rural rates in many parts of the state, and in some instances has increased them in order to make them non-discriminatory. The rates which these complainants will be called upon to pay under the new schedule are reasonable.

As to the character of the rural service, complaint is made of the delays in "getting central" and that, when connected, there are too many parties on the line. An investigation has shown that Mr. Johnson is one of six parties on his line; that as to Mr. Bliss there are six others on the line; that as to Mr. Collins there

are eight others on the line. The only reason that numbers on the line cause delay in "getting central" is the length of conversations. That is a matter wholly within the control of the subscribers themselves and it is not possible for the Telephone Company to limit the length of conversations held over rural lines or any multi-party lines. It would be economically impossible to time the duration of conversations and to interrupt the patron in the midst of a conversation. As to toll messages this can be done, the charge therefor being much greater. To do so in the case of rural service would render the cost of rural service prohibitive and would soon result in a curtailment of it. It appears from the evidence that practically all of the complaints respecting service on rural lines are due to the excessive length of the conversations or to the desire of several subscribers to talk at certain times. The only way to overcome these difficulties is for the subscribers upon a multi-party or rural line to take the matter in hand themselves and curtail the length of their conversations as much as possible.

An examination of the records of telephone companies throughout the country by the Commission's telephone expert shows that from ten to fifteen subscribers can, as a rule, be served from a standard rural party line, and that in most cases that number of subscribers are connected with one line. To reduce the number of subscribers per rural line at the rural rates now charged, or to install four-party or two-party service in a rural community, means an investment so great as to practically make rural service prohibitive.

Mr. Armitage, on behalf of the city of Fort Collins, attributed the congestion on the multi-party rural lines to the subscribers and not to the company, but suggested that perhaps better service could be secured if a time limit were placed on conversations transmitted over lines of this character. This, as has been shown, would be impossible to do.

What has been said about rural service or rates therefor, and the practices in connection therewith, applies to the complaint of The Olathe Grange. This grange suggests that a physical connection be made between the Delta County Co-operative Telephone Company's plant and that of The Mountain States Telephone & Telegraph Company. These companies are in competition at various places in Delta County and under the circumstances a physical connection cannot be required. This subject will be fully discussed in connection with the application

of The Brush Co-operative Telephone Company for a physical connection.

Mr. De Armon's complaints are similar to those of The Olathe Grange and others above mentioned. In addition thereto he complains that wrong rings occur on his line and contends that the operator makes frequent mistakes. This may be true, or it may be due to the raising of the hook by other subscribers on the multi-party or rural lines before the ring is finally completed, which would cause a wrong number of rings. All the Commission can do in such a matter is to direct the Telephone Company to instruct the different operators to use the greatest amount of care, and the Commission directs that the Telephone Company further comply with this order in this respect.

All of the above complaints are dismissed as having been satisfied by the general rate schedule filed and approved in this case.

Complaint of R. E. MacCracken, of Denver.

Mr. MacCracken's complaints are three in number. First, that he was required to pay an installation charge on account of excessive cost of reaching his place in Estes Park, which charge he contends should be returned. Second, that there are too many subscribers on his line. This matter has already been discussed under preceding complaints. The evidence shows that Mr. MacCracken and five others are the parties on this line. Third, he complains that the Loveland-Estes Park line of poles crosses his property.

The evidence as developed at the hearing, and from an inspection and investigation by the Commission's telephone expert, and the evidence introduced by the company, are as follows: that Mr. MacCracken's son, Mr. R. T. MacCracken, while residing temporarily in Estes Park, desired a telephone installed in the summer home of Mr. R. E. MacCracken, and made application to the Telephone Company therefor, and a telephone connected with the Estes Park exchange was installed as required. The cost of furnishing and setting the necessary poles was estimated by the subscriber at about $30.00. The subscriber furnished and set the poles between the main line and his house, and the Telephone Company in return furnished service at its regular rate, maintained the line in proper condition for satisfactory service, and when the line must be replaced, the Telephone Company will be obliged to replace it. The Telephone Company

at its own expense furnished and strung the wire necessary to make the connection, and furnished the telephone instrument, as is usually done. It appears that the regular rule of the Telephone Company as to construction for rural subscribers is to make an expenditure up to $35.00, and for the subscriber to pay the balance. Unusual conditions exist at Estes Park, which is a seasonal resort, and it has been the Telephone Company's practice to furnish and install a telephone wire, insulators, etc., and to require the subscriber to furnish and set any poles required to connect the subscriber with the company's main line. It is a community where the distance between subscribers is great and where an unusual amount of investment is involved. A majority of the subscribers are not permanent, being summer residents. The revenues derived from most of them is for practically one-quarter of a year. There is a slight difference in the expense of operation between the summer and winter seasons and considerable losses occur through the maintenance of this exchange during the winter months. Consequently a considerable part of the burden of maintaining the investment in, and the expense of the Estes Park exchange must be paid by the general body of subscribers, and it appears to be fair to require that the subscribers at Estes Park, who are not located on existing lines, and whose conditions are unusual, assume a portion of the expense, such as furnishing and setting poles.

While the utility is required to fulfill its oblgations to the public, it is not incomubent upon the utility to construct isolated lines for the service of one patron where the cost of construction is great and the revenue is small. To do so would mean that the regular patrons must pay for the construction of the line to render service which it is not the duty of the utility to render. It will be noted that under this plan Mr. MacCracken, on account of his unusual situation, and in order to obtain this service, assumed a portion of the initial investment. The maintenance, operating and replacement are all taken care of by the company. The regular rate was charged for service and the subscriber was called upon to pay in part for the service under the unusual conditions. The subscriber contended that he had paid for his telephone service the year round. He could, if he desired, under the Telephone Company's rule, cancel his contract after three months by the payment of cancellation charge of $2.50. The subscriber is charged $2.00 per month for telephone service; he complained that other persons in Estes Park were receiving two-party service as low as

$1.50 per month. An investigation by the Commission's telephone expert shows this to be a mistake. It was found that the two-party rate in Estes Park in the base rate area is $1.75 per month for residence service, and outside of the base rate area it is $1.75 per month plus twenty-five cents for each quarter mile or fraction thereof beyond the base rate area boundary; that under Mr. MacCracken's contract if he desires to discontinue service at any time he could do so by paying a charge of $2.50, and the service would be reinstated the following summer, and in this way he could secure service at a figure considerably less than $24.00, the rate which he would be required to pay for twelve months' service. The evidence also disclosed that the Telephone Company had a right of way agreement with Mr. MacCracken for its Loveland-Estes Park toll line, but this is a matter not within the Commission's jurisdiction. It appears that the complaint is not sustained, and it is hereby dismissed.

Complaint of Mrs. Peter G. Miller, 3774 Sheridan Boulevard, Denver.

Mrs. Miller requested the Commisison to require the Telephone Company to use the designation "hoisting engineer" in the directory after her husband's name, for the reason that his telephone number had been changed after he had distributed a number of business cards with the former telephone number printed upon them.

Changes in telephone numbers at times are necessary. The printing of telephone numbers on business stationery, afterwards followed by changes in the number, interferes with the service by keeping the wrong telephone numbers in circulation, resulting in wrong calls and dissatisfaction to subscribers. The Telephone Company, in endeavoring to prevent such a condition, for service reasons as well as to advise the public, prints in its directory a rule as follows:

> "Subscribers are cautioned against using the number of their stations in advertising matter as these numbers, from the necessities of the business, are liable to be changed from time to time. Party line numbers are liable to be changed at any time upon very short notice; but to avoid confusion such changes will be made as near as possible to the time of the distribution of a new telephone directory."

Investigation by the Commission's Telephone expert showed that Mr. Miller, since March 5, 1916, changed his service from six-party line residence coin service to a two-party line service, and then to an individual line residence service, and that the changes in the numbers of Mr. Miller's telephone were almost entirely due to the changes which he made in his class of service. The special designation which Mrs. Miller requests be placed after her husband's name in the directory is a business designation, and, as such, is included in the directory listings of business telephones only. Mr. Miller's telephone is a residence telephone and the Telephone Company could not, without discrimination, give him a business directory listing. The complaint will therefore be dismissed.

Complaint of R. A. Druley, of The Western Collection Agency, Pueblo.

Mr. Druley complained that his telephone number had been changed after he had received a new supply of stationery bearing the number of the telephone which had been changed. He also complained of the condition of the telephone instrument. The facts seem to be as follows: Mr. Druley had a two-party line and the other party gave up his telephone, leaving Mr. Druley the only subscriber on a two-party line. He was accordingly changed to another line and his line released for individual line purposes. Changes of this character are unavoidable, as subscribers are constantly discontinuing service or being transferred to some other line on account of the location or class of service, and only by continually re-distributing subscribers in this manner is it possible to maintain a proper distinction between subscribers for rate purposes. It is shown, from the evidence of the Commission's telephone expert, that the difficulties experienced in connection with the change of numbers are due to the fact that telephone subscribers are not aware that telephone numbers are a fixture of the telephone switchboard. The number assigned to a particular line, and which is borne by a telephone connected to that particular line, is the number of the switchboard jack or terminal where the line terminates on the switchboard. These jacks are permanently arranged -on- the switchboard, and numbered in series, and the location of a particular jack is fixed with respect to the location of the other jacks on the board. It is not these jacks that are changed about when subscribers' numbers are changed, but the subscribers' lines terminating at the jacks or at the cable termi-

nals or other distributing points. If, for example, a subscriber's line terminating at jack No. 1234 is changed to jack No. 1342, the number of the line and the telephone number which appears after the subscriber's name in the directory must be changed. This shifting of subscriber's lines on a telephone switchboard are at cable terminals and distributing points are occasionally necessary to relieve over-loaded cables and lines, maintain party line service, provide service for subscribers moving from one location to another, and for a variety of similar reasons. On account of the foregoing the complaint is therefore dismissed.

Complaint of M. S. Grupp, 1642 Zenobia Street, Denver.

This complaint had been before the Commission previous to the present hearing, and on August 26, 1916, the secretary of the Commission advised Mr. F. H. Reid, assistant general manager of the Telephone Company, that Mr. Grupp had complained that the company refused to install a telephone in his residence except upon the payment of $25.00 deposit. Mr. Reid replied on August 29, 1916, in substance, that Mr. Grupp had applied to the company for service on March 22, 1915; that to install a telephone at the residence, 1642 Zenobia St., would require construction costing about $45.00 in addition to the cost of installing a telephone; that Mr. Grupp had been advised that the Telephone Company would install the telephone upon the payment of one year's rental in advance, $24.00, if he subscribed for one-party service, or $18.00 if he subscribed for two-party service. The company asked no installation charge due to the fact that the prospective telephone is not located within a rural area, but is within the limits of the city of Denver, and therefore simply asked Mr. Grupp for the advance payment. Under such conditions if the advance payment is made it will be credited upon his bill, and the company will not request further payments until he had service up to this amount.

The Commission finds that the Telephone Company was ready to observe this rule and to install the telephone upon payment of either $24.00 or $18.00 as above stated. Mr. Grupp not having further requested the installation of a telephone, the complaint is dismissed.

Complaint of Mr. Fred Ault, representing The Burgen Ditch & Reservoir Company.

Mr. Ault contended that the service furnished by the Telephone Company to users of the water of The Burgen Ditch & Reservoir Company is inadequate, and that the rates charged are excessive, due largely to the restricted local service area. The Burgen reservoir is located three and one-half miles southeast of Morrison, about eight miles southwest of Littleton, and is in the Morrison exchange. Some of the farmers served by The Burgen Ditch with water from the reservoir are in the Littleton exchange. There is a toll rate of ten cents for two-number service between Morrison and Littleton, and farmers who live in Littleton are required to pay this charge for calls to the reservoir, which is located in the Morrison exchange area. It appears from the evidence of the Commission's telephone expert that this matter had been brought before the Commission in January, 1915, by Mr. Ault and nine other farmers under the Burgen ditch, because they, being residents in the Littleton exchange area and the head-gate of their ditch being located in the Morrison exchange, were compelled to pay a toll charge to talk to their head-gate man. The Telephone Company endeavored to meet this situation, and as there seemed to be a local or community need for a Littleton telephone at the reservoir, the reservoir was considered located in an optional territory, so that a telephone could be secured connected with the Littleton exchange or with the Morrision exchange as desired, the charge to be $2.25 per month. This proposition was refused by The Burgen Ditch & Reservoir Company and its patrons for the reason that the Littleton rate would be $2.25 as against $2.00 for the Morrison service. Its acceptance would have resulted in an economical solution of the difficulty for the farmers, and would have given them service with the head-gate and vice versa, at a flat cost of $2.25 per month without payment of toll charge. If they lived in the Morrison exchange they get service with the head-gate at $2.00 per month.

The extension of service for the Littleton farmers into the Morrison exchange area amounts to a concession on the part of the Telephone Company which is somewhat discriminatory, but it is rather similar to the situation in the neighborhood of Swink and the discrimination is not so great as to warrant the Commission in disapproving such an arrangement should Mr. Ault and his associates desire to acept it.

As to Mr. Ault's complaint that the $24.00 rate charged for rural service in the Morrison exchange area is too high, it appears that his complaint is not really one of charge but rather of extent of area, in that he thinks for this rate he should be provided with telephone service from Burgen reservoir to the Littleton exchange and to Denver. The Morrison exchange area contains approximately seventy square miles, and it would be inadvisable to extend this area. The cost of such service with Denver would be wholly out of proportion to the payments and such a service could only be furnished at a considerable increase in rates over $24.00 per annum.

The Commission therefore will dismiss the complaint, but holds that if Mr. Ault and his associates desire to have the optional zone established so that the Burgen reservoir may be connected with either the Littleton or Morrison exchange, service may be rendered through the Morrison exchange at $2.25 per month.

Complaint of W. H. Elliott, 814 Summit Street, Pueblo.

Mr. Elliott complained that the Telephone Company charges him $2.00 per month for telephone service in Pueblo while other subscribers having "private telephones" are charged only $1.50 per month. The evidence disclosed that Mr. Elliott is connected with a four-party residence line, with two other subscribers, the fourth subscriber either having disconnected or not having been obtained in that locality. Each of those subscribers is paying $2.00 per month. The schedule rate filed with the Commission for a four-party line residence service in the Pueblo exchange is $24.00 per annum, which is the charge being made Mr. Elliott. The use of the term "private telephones" by Mr. Elliott is confusing. If he means individual line residence service then the established rate is $3.00 per month and not $1.50 per month as Mr. Elliott states. What Mr. Elliott probably had in mind was an obsolete rate of $1.50 per month for which subscribers received six-party residence service. The evidence discloses that there are a number of patrons being rendered service under these obsolete rates. This is discriminatory and will not be permitted. The Commisison has in this case ordered the company to abandon such obsolete rates and not to give service thereunder.

Written Complaint of Certain Citizens of Hooper and Vicinity.

These citizens, fifty-eight in number, desire that a telephone be installed in the depot of The Denver & Rio Grande Railroad Company at Hooper. The Mountain States Telephone & Telegraph Company does not operate in Hooper, and service is being rendered there by The Interurban Telephone Company, consequently no order can be made in this case on this subject and the complaint is dismissed.

Complaint of A. L. Matlack, of Grand Junction.

Mr. Matlack's complaint is based largely on hearsay. He had heard indirectly that the Telephone Company charged fifty cents per month extra for a desk telephone connected to a rural line, and in view of the fact that he desired a desk type of telephone rather than a wall telephone he wished to know if the fifty cents per month was the correct rate to pay. It appears that he is located on a service station line, the subscribers of which furnish the poles and wire and the Telephone Company furnishes the instruments. Mr. Matlack seems to be misinformed as to the price, and the Commission on February 1, 1917, advised him that the charge for a desk telephone is twenty-five cents per month additional and not fifty cents per month as he had been advised.

The practice of charging twenty-five cents per month more for a desk set than a wall set was presented to the Commission by the Commission's telephone expert, and also by the Telephone Company, and the Commission approved of this difference in charge as being a reasonable and proper charge under the circumstances.

Complaint of 15 Denver Subscribers of The Telephone Company.

These fifteen subscribers would have the Telephone Company place on their toll bills the names of the "parties called." At the present time the Telephone Company's toll bills issued in Colorado indicate for each particular party toll message the name of the party calling, the name of the place called, the date, and the amount of the charge, and for two-number messages the number of calls at intervals during the month for each place called, and the total charge for such messages. Formerly the Telephone Company inserted on the bills the name of the particular parties called. Furnishing this information was not only an item of expense in the preparation of the subscribers' bills, but was seldom required by

the subscriber in identifying toll messages, as the names of the places called are usually sufficient for this purpose. Consequently the practice was abandoned, and experience demonstrated that very few complaints were made because of the lack of the name of the party called being on the bills. All subscribers have access, upon request, to the Telephone Company's toll tickets, which show the name of the party called. If the subscriber desires to see his toll ticket he may do so, or the information may be given him over the telephone upon his request.

It appears to the Commission that such additional information on the bills is an unnecessary expense, and therefore it will not order the names inserted, and the complaint is dismissed.

Complaint of John S. Worthington, of The John S. Worthington Company, Denver.

Mr. Worthington complained of the practice of the Telephone Company of charging in Denver twenty-five cents per month rental for a cam lever or cut-out key used frequently in connection with extension telephones while talking over the main telephone; he further complains of a charge for extension telephones for business and residence service, without bell attachments, of fifty cents and twenty-five cents per month rental, respectively, and also claims that such equipment is inexpensive and costs nothing for its upkeep, and that the Telephone Company should accordingly bill the subscriber for the initial cost only of such equipment.

It appears from the evidence of the Commission's telephone expert that the cost of this sort of equipment is not the controlling factor in the charges for it, although this term "cost" would include not only the cash value of the equipment, that is, the cut-out key, but also the cost of installing, removing, maintaining, and accounting for it. The use of this key is to enable a subscriber to cut off an extension ordinarly connected with the main station, and the purpose is to prevent anyone at the extension from listening in on the conversation with the main station.

It appears further that an extension telephone is valued as a means of utilizing service, the physical equipment is an incidental or minor consideration in extension station rates, as the factor of cost is only one of several important factors entering into the making of rates for auxiliary equipment; consideration must be given to these other matters in making extension rates and fixing the charge for such extension equipment.

The Commission finds that the complaint of Mr. Worthington must therefore be dismissed.

Complaint of Charles L. Sauer, of The Idaho Springs Lumber Company.

Mr. Sauer complained that the present charges for telephone service in Gilpin and Clear Creek counties are higher as compared with the charges for service in effect prior to 1914, at which time free district telephone service between Georgetown, Idaho Springs and Central City was discontinued. The evidence shows that even under present rates the business in this locality is not remunerative and there are no immediate prospects of the localities growing or the telephone business increasing. The monthly rate of $6.90 charged The Idaho Springs Lumber Company is made up of the regular monthly rate of $5.00 for individual line business service, the regular monthly rate of fifty cents for the two extension bells, the regular monthly rate of $1.00 for an extension telephone, and an obsolete monthly rate of forty cents for the one-quarter mile excess radius on the extension telephone. These are the regular scheduled rates except as to the excess radius, which is corrected in the schedules ordered by this Commisison.

As to Mr. Sauer's complaint that the equipment at Idaho Springs and vicinity is in bad condition, the inspection by the Commission's telephone expert shows that the condition is good, as there has recently been installed at Idaho Springs an entirely new, complete, central office equipment.

Complaint of Mr. George Fechter, of Colorado Springs.

Mr. Fechter complains that the Telephone Company had been charging subscribers, who had been temporarily disconnected on account of non-payment of their current accounts, for the time during which service was withheld. The Commission finds this complaint well taken. The rules, regulations and practices prepared on this subject, and the charges for re-connection of such telephones, which have received the approval of the Commission, and are now in effect, cover this case completely.

Complaint of H. A. Keeley, Principal of the Trinidad School.

Mr. Keeley objected to the rule of the Telephone Company which requires bills to be paid monthly in advance. This, of

course, can only refer to charges for exchange service, since other charges, such as tolls and, in measured service exchanges, for excess local messages, are made after the service has been rendered, for the reason that collection cannot be made until the charges are known. This practice of billing in advance for exchange service is generally approved throughout the country. The telephone companies are public agencies and they are charged with certain public duties which they must perform. Their obligations must be met from revenues derived from the public, and the rule requiring payment in advance for exchange service is a reasonable one, and enables the company to promptly collect its bills.

It was held in the cast of *Hare v. N. Y. Telephone Co.*, 164 N. Y. Supp. 732, as follows:

> "To exact payment in advance is only a reasonable exercise of the power vested within the province of the company. *Southwestern Telegraph & Telephone Co. v. Danaher*, 238 U. S. 482, 35 Sup. Ct. 886, 59 L. Ed. 1419, L. R. A. 1916A, 1208. Mr. Justice Van Devanter, in delivering his opinion in this case, said:
>
> " 'It also was strongly supported in reason, for not only are telephone rates fixed and regulated in the expectation that they will be paid, but the company's ability properly to serve the public largely depends upon their prompt payment. They usually are only a few dollars per month, and the expense incident to collecting them by legal process would be almost prohibitive. It uniformly is held that a regulation requiring payment in advance, or a fair deposit to secure payment, is reasonable, and this is recognized in the brief for the plaintiff, where it is said that, to protect themselves against loss, telephone companies "can demand payment in advance." ' "
>
> The complaint is therefore dismissed.

Complaint of Benjamin Griffith, Grand Junction.

Mr. Griffith desired that the Telephone Company be compelled to allow a discount of five to ten per cent on its current accounts when paid in advance, and that the company be not permitted to collect in advance for its service unless a discount is made. It is true that utilities, such as gas, water and electric light companies, allow discounts for advance payments, but in such instances the discounted rates constitute the normal rates and what are ordi-

narily considered by the consumer as the normal rates are essentially penalty rates for deferred payment. The amount of the discount is in no sense a deduction from the average rate of service. The utility, in order to earn the required revenue, must have a fixed rate, regardless of whether it is called a normal rate or a discounted rate. Consequently, telephone companies throughout the country have been allowed to fix their normal rates to meet the required revenue and to require that they be paid in advance, where the amount is known in advance. The complaint is therefore dismissed.

Complaint of R. M. Wetzbarger, of Brush.

This complaint relates to the methods of furnishing service, and the rates in Morgan county, Colorado. The Commission has treated this service in full under the complaint of Mr. J. P. Epperson in relation to The Brush Co-operative Telephone Company.

Complaint of R. E. Farley of Idaho Springs.

Mr. Farley complained of the condition of one of the Telephone Company's exchange rural lines in the locality known as Chicago Creek, near Idaho Springs, and that the Telephone Company refused to give him connection with the Idaho Springs exchange at what he calls a reasonable rate. The evidence disclosed that the line referred to by Mr. Farley as being in bad condition is a branch from one of the multi-party rural lines served from the Idaho Springs exchange, running to a sawmill located near where Mr. Farley resides; that the telephone connected with this branch line was discontinued some two years previous to Mr. Farley's complaint, and there being no use for the line it has not been maintained. Mr. Farley desired to build a line from his residence to the end of the Telephone Company's branch line at the sawmill, the Telephone Company to repair and restore its branch line, and then to furnish Mr. Farley service over his line and the company's line from the sawmill to Idaho Springs, involving the use of the Telephone Company's line for a distance of twelve miles. Mr. Farley offered to pay $1.50 per month for this service and to maintain his portion of the line and telephone.

The regular rate quoted for rural lines is $2.50 per month. If Mr. Farley's proposition had been accepted it would give him telephone service at the sawmill, twelve miles from the central office, at a reduced or discriminatory rate of $1.50 per month. The

Telephone Company offered to furnish him service on a standard rural line basis at $2.50 per month, or on a service station basis at fifty cents a month, with a minimum of five telephones on the line, which is in accordance with the rates and practices established by the Telephone Company and filed with the Commission, and any deviation from such a plan would be discriminatory and unlawful. The Commission's telephone expert recommended that this practice be not departed from, and the Commission holds that such practice be maintained. The complaint is therefore dismissed.

Complaint of Stephen A. Stafford, of Cardinal.

Mr. Stafford complained of the quality of the toll service furnished by the Telephone Company in upper Boulder county, and of the rates which the company charged for toll service in that section, and, in addition thereto, says there was lack of necessary equipment, and that the character of the equipment installed was not good.

The evidence discloses that in the year 1916 there developed a tungsten "boom" at Nederland and other points in Boulder county, and there was immediately an unusual demand for telephone service. Prior to this, the switchboard at Nederland was a one-position board, requiring one operator, and was entirely sufficient for the demands upon it. Immediately after the "boom" began, toll traffic between Nederland and Boulder greatly increased, and for a while the toll service was slow. The evidence further shows that the Telephone Company undertook to meet the situation as promptly as possible; extra circuits to Boulder were installed; four switchboard sections were added to the one which was originally sufficient; extra operators were employed at Nederland and vicinity, and the company built an addition to its office at an expense of $1,000.00 in which to accommodate its operators. The appraisal filed in this case shows the value of the Nederland exchange to be about $12,000.00. During this "boom" the company added $15,000.00 more in plant to take care of the increase in business. No increase in rates were made and the money invested in the additional plant would become a considerable loss as soon as the "boom" was over. The extra business has largely disappeared, revenues have been reduced, and a considerable portion of the plant is standing idle. It would seem that the company had reasonably met the demand for additional telephone service at Nederland and vicinity.

With reference to Mr. Stafford's complaint that the company charges twenty-one cents for three-minute talks for a distance of nine miles, neither the Commission's telephone expert nor the Telephone Company has been able to understand what he refers to, unless it was the federal revenue tax on messages then in effect. The Telephone Company's rates for toll service are in amounts always divisible by five, the rates from Cardinal to Ward, Caribou, Eldora, Rollinsville and Central City are fifteen cents for three minutes, while the rate from Cardinal to Boulder is twenty cents for three minutes, and it is possible that Mr. Stafford was referring to a talk from Cardinal to Boulder for three minutes, twenty cents, plus one cent federal revenue tax.

The complaints will therefore be dismissed.

Complaint of F. D. Stackhouse, Denver.

This complaint involves a charge of thirty-five cents a month additional for listing two names in the directory where two persons make use of one telephone, if the two persons are associated in business or if the two persons are not associated in business, the Telephone Company charges $1.00 a month additional for listing both names. Mr. Stackhouse also complained of the practice of the Telephone Company in allowing a subscriber, whose service has been temporarily suspended on acount of non-payment, to enjoy outward service while inward service is denied.

This complaint involves the subject of an ordinary extra listing and the service furnished a joint user subscriber. The rules and regulations recommended by the Commission's telephone expert, and which have been approved and are contained in the general tariff ordered by the Commission, cover all of the propositions involved in Mr. Stackhouse's complaint and answer it fully.

With reference to the subscribers, whose service has been suspended for non-payment, being able to enjoy outward service while inward service is denied, it may be said that under the practices approved by this Comission such condition is no longer permitted, as after notice is given of non-payment the telephone is removed.

Complaint of W. A. Page, of Fort Collins.

Mr. Page complained of installation and other charges made against him by the Telephone Company on account of the removal of his business and residence from place to place. The evidence shows that on August 15, 1914, Mr. Page had a telephone installed

at Longmont and the Telephone Company, being of the opinion that he would not keep the telephone for a year, the time contracted for, collected $2.50 for the cancellation charge, in case he did not keep it for a year, which it was authorized to do under its practices. Mr. Page did not keep the telephone a year and the company credited his deposit to his account to cover the cancellation charge necessary by reason thereof. Mr. Page removed to Fort Collins and on June 10, 1915, demanded telephone service. The Telephone Company required a deposit of $2.50 to cover the cancellation charge in case he did not keep the service at Fort Collins for one year. This $2.50 cancellation charge is in accordance with the general practice of telephone companies in quoting service on an annual basis, and making such charge in lieu of requiring service charges for twelve months to be paid in case the subscriber fails to keep the service. Certain items of expense are involved in installing telephone service and removing the instrument when service is discontinued by the subscriber. The particular subscriber must bear this charge or it must be borne by the subscribers generally, by including such charges in the rates for telephone service. Notwithstanding the cost of connecting and disconnecting a telephone is considerably in excess of $2.50, this charge was made against those subscribers only who failed to keep their service for a year, and the balance paid for through revenue accruing through the furnishing of telephone service in general to all subscribers. In the rules and regulations approved by the Commission a service connection charge is made in connection with all contracts for services and the practice is thereby changed. The complaint will therefore be dismissed.

Complaint as to Service at Silverton.

The Commission's telephone expert examined into the question of the character of service at Silverton and found it generally satisfactory, and came to the conclusion that complaints against the service were due to the fact that the people of Silverton desired a common-battery system installed, rather than a magneto system. A common-battery system would be uneconomical for an exchange of this size, but the evidence discloses that the Telephone Company has ordered a new switchboard of the proper type for Silverton, which will be installed as soon as it can be received from the manufacturer. The installation of the new switchboard will satisfy this complaint.

Complaint of James H. Clarke.

Mr. Clarke called on the Commission's telephone expert and contended that in view of the fact that he had been a permanent subscriber for a number of years and paid his bills promptly, the Telephone Company should make an exception in his case and permit him to pay for his service at the close of the month, instead of at the beginning of the month. He was advised that no such exception could be made, and that regular practices had been established to the contrary. The Commission finds that no such exception can be made and the complaint is dismissed.

Complaint of Mrs. Bell, Denver. Tel. So. 1968.

On April 20, 1917, Mrs. Bell telephoned the Commission's expert and complained of the service she had received in connection with a certain long-distance call for a Mr. McGilvray at Red 39 J 2, Boulder. Upon being connected with that telephone, according to her complaint, she had found it impossible to converse with Mr. McGilvray over the line, and was advised by the operator that Mr. McGilvray's telephone was out of order and that he would go to a neighboring telephone; that when Mr. McGilvray attempted to call Mrs. Bell over the neighboring telephone, that also proved to be out of order, whereupon Mrs. Bell, after some argument with the operator, reported the matter to the Commission. The facts are that Boulder Red 39 J 2 was reported out of order at 6 a. m. on April 20, 1917, and again at 2. p. m. on the same date. Boulder Red 60 J. 1, the second telephone used by Mr. McGilvray, was reported out of order at 2 p. m. April 20. Boulder Red 39 J 2 was tested on April 20 and the line was not in good order. On May 9, 1917, however, it was found that an unused branch of the line connecting Boulder Red 39 J 2 paralleled a high tension power circuit and this branch line was accordingly disconnected from the main line. The trouble on Boulder 60 J 1 was cleared on April 20 at 4:20 p. m. by replacing the batteries. Such incidents happen, and it would seem that the Telephone Company had used at least reasonable diligence in repairing the defects.

Complaint of The Brush Co-operative Telephone Company, Through J. P. Epperson.

The Brush Co-operative Telephone Company, hereinafter called the Co-operative Company, complained that The Mountain

States Telephone & Telegraph Company has refused to make a physical connection of its toll lines with the lines of the Co-operative Company for toll purposes or any purpose in the town of Brush, Colorado. The evidence introduced discloses that for several years prior to August, 1913, the Mountain States Company had constructed and had in operation in Morgan county, Colorado, a telephone system with adequate and sufficient equipment, properly maintained, to furnish telephone service to the inhabitants of that county. The amount of the investment in Morgan county was in excess of $125,000. The lines of the Co-operative Company were thereafter built, parallel in practically every instance to the lines of the Mountain States Company, and it is admitted by the Co-operative Company that its system is in active competition with the Mountain States System. There is no claim by either side that the Mountain States Company had not fully developed the territory or was not in a postion to render adequate service. The Co-operative Company undertakes to serve Brush, Hillrose, Snyder and the surrounding territory from the one exchange which it has constructed, located at Brush, and as stated these lines parallel the Mountain States Company's lines in practically all cases.

Under Sec. 27 of the Public Utilities Act, Session Laws of Colorado 1913, page 477, the Commission is given power under certain conditions to order a physical connection between the lines of non-competitive telephone corporations. The evidence in this case is clear that these corporations are competitive, and no physical connection can, under the statute, be ordered. It was held in the case of Shafor v. P. U. Comm. of Ohio, 94 Ohio St. 230, 113 N. E. 809, P. U. R. 1916F, 432, under a statute giving the Public Utilities Commission of Ohio power under certain conditions, to order a physical connection between competing telephone companies, that the evidence was not sufficient to show a public necessity for the connection, and it was stated:

> "In the exercise of this authority the Commission must act pursuant to law. If conditions prerequisite to the making of the order asked for in the present case do not exist, the Commission is without power to act."

As stated, this Commission is without power under the statute to order this connection, and the complaint is therefore dismissed.

IT IS THEREFORE ORDERED, That the disposition of all of the complaints filed with the Commission in this cause shall be and is as hereinabove outlined for each specific complaint.

GEORGE T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 14th day of June, 1918.

DECISION No. 182.

THE DENVER & SALT LAKE RAILROAD COMPANY,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY AND UNION PACIFIC RAILROAD COMPANY,

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Cases Nos. 33, 34, 35.

June 19, 1918.

APPEARANCES: Charles R. Brock and Elmer L. Brock for The Denver & Salt Lake Railroad Company; W. V. Hodges and D. Edgar Wilson for The Chicago, Rock Island & Pacific Railway Company; E. E. Whitted and A. S. Brooks for Chicago, Burlington & Quincy Railroad Company; C. C. Dorsey and J. Q. Dier for Union Pacific Railroad Company.

STATEMENT AND ORDER.

By the Commission:

On February 10, 1916, the Commission made its orders in these cases, 2 Colo. P. U. C. 8, and fixed the divisions of certain joint rates. The Denver & Salt Lake Railroad Company obtained a review by the Supreme Court of Colorado of these orders of the Commission, and on February 4, 1918, the Supreme Court rendered its decision in Supreme Court Case No. 8938, reversing and setting aside the action of the Commission and remanding the causes for further proceedings not inconsistent with the views expressed in the opinion. Denver & S. L. Co. v. Chicago, B. & Q. R. Co., —— Colo. ——; 171 Pac. 74.

The Chicago, Rock Island & Pacific Railway Company also obtained a review of the said order of the Commission, and, on February 4, 1918, the Supreme Court of Colorado rendered its decision in such review, being Chicago, R. I. & P. Ry. Co. v. Public Utilities Commission, —— Colo. ——, 171 Pac. 86, Supreme Court case No. 8939. As stated in that opinion:

> "When before the Public Utilities Commission, this case was a part of Denver & S. L. R. Co. v. Chicago, B. & Q. R. Co., (No. 8938), 171 Pac. 74, decided at this term. Both roads were dissatisfied with the Commission's divisions and asked for reviews, the Moffat road in the other case, the Rock Island in this. We allowed one record for both."

The order of the Commission covered a division of rates effective of August 1, 1915. This order remained in force until December 27, 1917, on which date the Commission made its order in the case entitled: In re Advance of 25 cents per ton in coal rates from Oak Hills district. The latter order granted an increase of 25 cents per ton on all the rates involved in these present cases. The divisions of the present rates are not in dispute before the Commission.

On February 25, 1918, the remittitur of the Supreme Court was received by the Commission, remanding both cases, and, on March 29, 1918, C. Boettcher and W. R. Freeman, Receivers of The Denver & Salt Lake Railroad Company, by their attorneys, requested the Commission to set these cases for further hearing and determination. Thereupon the Commission caused notice of further hearing to be served upon all the parties hereto, and the cases were set for April 18, 1918. On that date the parties appeared at the hearing room of the Commission, Capital building, Denver, Colorado. The petitioner, The Denver & Salt Lake Railroad Company, stated its position in substance as follows:

> "The position of The Denver & Salt Lake Railroad Company is, in a word, this: The Denver & Salt Lake applied for and procured a review by the Supreme Court, without making any application for a supersedeas or stay of the judgment of the Commission. Accordingly, that judgment of the Commission became effective pending the review of the Supreme Court and we assumed the terms of the Commission were in all respects complied with by the parties in interest. The judgment has now been reversed and the case has been

remanded. In the meantime, and before the reversal, there has been a subsequent order of the Commission, as I understand which was made December 27, 1917. The Denver & Salt Lake Railroad, therefore, through its receivers, asks that an order be entered now as of the date of the original order of the Commission, covering the period of time which elapsed between the date of that order and this change made in December last, and we ask that the order be now entered so as to make the division for that period of time precisely as it would have been if the order now required by the Supreme Court had been entered as the original order."

The defendants, Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island & Pacific Railway Company and Union Pacific Railroad Company, interposed eight objections to the Commission proceeding further in these matters. Briefs were requested by the Commission from petitioner and defendants on certain of the objections, and such briefs were filed and considered. The Commission will now dispose of said objections in their order.

(1) The defendants above named contended that this Commission exceeded and acted outside of its jurisdiction when it attempted to review coal rates in Case No. 10, In Re Eastern Colorado Coal Rates, 1 Colo P. U. C. 48. This objection is overruled, as Section 50, Public Utilities Act, Session Laws Colorado 1913, page 496, provides—

"In all collateral actions or proceedings, the orders and decisions of the Commission which have become final shall be conclusive."

The decision of the Commission in Case No. 10, made May 10, 1915, has become final, and the question of the jurisdiction of the Commission to make that decision cannot be raised in these cases. The Commission finds further that the matter of jurisdiction raised in this objection should have been urged on the original hearing and appeal, and not having been raised at that time cannot now be considered.

"On a second appeal the court will not consider an objection that it had no jurisdiction on the first review."

4 C. J. 1108, Sec. 3089-B, and cases cited,
Washington B. Co. v. Stewart, 3 Howard, 413.

In Grand Central M. Co. v. Mammoth M. Co., 36 Utah 364, 104 Pac. 573, at page 576, the following is quoted from Clark v. Hoagland, 6 Calif. 685, where the court held: "For the purposes of the first trial in this court the jurisdiction was as much determined as though the point had been made and passed upon. Certain it is that, unless made, it cannot now be questioned."

(2) The defendants further objected that, in view of the first objection, the Commission acted outside of and exceeded its authority and jurisdiction in attempting to fix the divisions of the joint rates established in Case No. 10, upon the filing of the petitions in Cases Nos. 33, 34 and 35 before this Commission.

(3) The defendants further objected that under the provisions of the Public Utilities Act, Session Laws of Colorado 1913, page 464, and the Railroad Commission Act, Session Laws of Colorado, extra session 1910, page 45, the Commission has no jurisdiction or authority to establish through rates and joint rates.

(4) The defendants further objected that the Commission lacked authority and jusidiction to fix divisions of any such joint rates established in Case No. 10.

These objections, Nos. 2 to 4 inclusive, are overruled for the same reasons as set out in ruling upon the first objection.

(5) The defendants further objected that the prescribing of divisions is, like the establishment of rates, a legislative act applying only to the future.

(6) The defendants further objected that to inquire at this time as to whether the divisions made of former rates were reasonable, and, if found unreasonable, to order reparation, would be to perform a judicial function beyond the powers of the Commission.

(7) The defendants further objected that to order reparation now would result in depriving the defendants of property without due process of law, in violation of constitutional provisions; it was also urged that the statute of limitations included in the Public Utilities Act had run against the claims of the petitioner.

Under the decision of the Commission on the eighth objection it is unnecessary to pass upon any of the questions presented by the fifth, sixth and seventh objections.

(8) The defendants further objected that—

"The Denver & Salt Lake, upon its application to the Supreme Court for a writ of review, neither made an applica-

tion for nor filed an application for a suspension, nor filed any suspending bond, as provided by Section 53 of the Public Utilities Act. The order fixing divisions consequently was in effect all of the time the writ of review was pending, and furthermore during all of the time the writ of review was pending, the Moffat road voluntarily and without protest accepted the divisions ordered in by the order in the three cases at bar."

It is conceded on the record that no order was made the Supreme Court staying or suspending the orders of the Commission made in these cases on February 10, 1916. It is further conceded that the rates, of which divisions were theretofore made, were changed and new rates went into effect December 27, 1917, so that the period for which divisions are in dispute was from August 1, 1915, to December 27, 1917. It has been contended that these cases have become moot on account of the changes in the rates which were divided. A somewhat similar objection was urged in Boise Irrigation & Land Co. v. Clark, 131 Fed. 415, at 418 and 419, where the court held:

> "It is contended on the part of the appellees that, as the period for which the rate in question was fixed has expired, the case has become but little, if any, more than a moot case; but the courts have entertained and decided such cases heretofore, partly because the rate, once fixed, continues in force until changed as provided by law, and partly because of the necessity or propriety of deciding some question of law presented which might serve to guide the municipal body when again called upon to act in the matter."

The above rule appears to have been adopted in the following cases:

Southern P. Co. v. I. C. C., 219 U. S. 433, 55 L. Ed. 283, at 290;

Southern P. Co. v. I. C .C., 219 U. S. 498, at 515; 55 L. E. 310, at 315 and 316.

While the courts have thus disposed of cases on appeal, this Commission does not understand the rule to be that on reversal it must revise an order made by it, respecting divisions of rates, which rates have been changed, and where the period for which such divisions were in operation, has expired.

It now becomes necessary to consider the effect of Section 53(a), Public Utilities Act, Session Laws of Colorado 1913, page 498, and preceding legislation. Under Section 17, Railroad Commission Act, Session Laws Colorado extra session 1910, page 56, after a decision had been made by the State Railroad Commission any carrier affected thereby might appeal therefrom to the district court of the district in which the violation of the act was alleged to have occurred, which court might either sustain the decision, or set aside, suspend or annul all or any part thereof. That section further provided:

> "The taking and pendency of such appeal shall of itself stay or suspend the operation of the decision, order or requirement of the Commission and any and all penalties for failure to comply with the requirements thereof."

This section 17 was expressly repealed by the Public Utilities Act, Section 69, Session Laws Colorado 1913, page 508.

The Public Utilities Act, Section 53(a), Session Laws Colorado 1913, page 498, provided:

> "The pendency of writ of review shall not of itself stay or suspend the operation of the order or decision of the Commission, but during the pendency of such writ, the Supreme Court in its discretion may stay or suspend, in whole or in part, the operation of the Commission's order or decision."

Sub-divisions (b), (c) and (d) of Section 53 provide further for a suspending bond and other requirements to be complied with in obtaining a suspension.

The language of Section 53(a) is so positive and opposed to the language above quoted from the Railroad Commission Act that the Commission is of the opioion that the legislature intended thereby to make it imperative upon the person, desiring to have suspended an order of the Commission, that he proceed in the manner provided by law to obtain such suspension, otherwise an order shall become immediately operative. The above provision of the Railroad Commission Act practically nullified orders of the Railroad Commission, as it was a simple matter to temporarily stay and suspend them by an appeal to the district court. The Pennsylvania Public Service Commission held in the case of Citizens Electric I. Co. v. Consumers Electric Co., P. U. R. 1916D, 711, at page 714:

"No order of supersedeas upon said appeal was applied for by respondent, although respondent had the opportunity under the act of assembly to make such application, and therefore the determination of the Commission remains of record in full force and effect."

It remains to decide in these cases the effect of the failure of the complainant to obtain an order from the Supreme Court staying or suspending the Commission's order.

The Commission finds the effect of such failure to be that the divisions fixed by it in these cases were in operation for the period from August 1, 1915, to December 27, 1917, and that the Commission's order was never stayed or suspended; that the Commission is without power to change such divisions, as the rates under which these divisions were made are no longer in existence, and the Commission cannot now make divisions operative for the period from August 1, 1915, to December 27, 1917.

The eighth objection of the defendants is therefore sustained and these cases, Nos. 33, 34 and 35, are hereby dismissed.

GEORGE T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 19th day of June, 1918.

DECISION No. 183.

THE CONSUMERS' LEAGUE OF COLORADO,

vs.

THE COLORADO & SOUTHERN RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; UNION PACIFIC RAILROAD COMPANY; THE DENVER & SALT LAKE RAILROAD COMPANY; THE DENVER & RIO GRANDE RAILROAD COMPANY; THE DENVER & INTERMOUNTAIN RAILROAD COMPANY,

and

THE CONSUMERS' LEAGUE OF COLORADO,

v.

THE COLORADO & SOUTHERN RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, AND UNION PACIFIC RAILROAD COMPANY,

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Case No. 6.

June 20, 1918.

APPEARANCES: Carle Whitehead and A. L. Vogl for the complainants; E. E. Whitted and A. S. Brooks for The Colorado & Southern Railway Co., and Chicago, Burlington & Quincy Railroad Co.; C. C. Dorsey and J. Q. Dier for the Union Pacific Railroad Co., and The Denver & Inter-Mountain Railroad Co.; E. N. Clark and J. G. McMurry for The Denver & Rio Grande Railroad Co.

STATEMENT.

By the Commission:

This cause involves two complaints originally filed before the State Railroad Commission July 3, 1914, and numbered on the

docket as Cases 73 and 74; subsequently the cases were consolidated and numbered as Case No. 6 on the docket of the Public Utilities Commission. The complainants asked that the Commission enter an order determining and fixing just and reasonable rates for the transportation of lignite coal from the coal fields in Boulder and Weld counties, Colorado, known as the Northern Colorado coal fields, to Denver; and a further order determining and fixing a maximum rate for switching in the Denver terminals.

The cause was heard and the Commisison entered its order November 6, 1914. Public Utilities Commission 1st Ann. Rep. 163. The allegations and pleadings are fully set out in the opinion of the Commission. The Commission, in its order, established and prescribed a through route from all mines in the Northern Colorado coal fields to any industry in Denver located on the terminals of the originating carriers and their direct connections, and fixed a joint rate including switching. From the order of the Commission the complaint sued out a writ of review to the Supreme Court of Colorado. On May 6, 1918, the Supreme Court entered its opinion vacating and setting aside the order of the Commission, holding that the order as made was erroneous. On May 25, 1918, the remittitur of the Supreme Court was received by the Commission, remanding the cause for re-trial with direction to the Commission to fix separate rates for each service performed.

The cause came on for retrial on June 5, 1918, at the hearing room of the Commission at the Capitol Building in Denver, Colorado, all the parties herein excepting The Denver & Salt Lake Railroad Company being represented by counsel.

Terminal switching is one of the services for which the court has directed the Commission to determine reasonable rates. Since the order of the Commission of November 6, 1914, and prior to the reversal of the same by the Supreme Court as aforesaid, the Commission, on December 18, 1916, after an exhaustive hearing and careful consideration, determined and fixed rates for switching within the different zones in the city of Denver. Missouri Lumber & Supply Co. v. A., T. & S. F. R. Co., 3 Colo. P. U. C. 73. The switching rates having been heretofore determined by this Commission, the only remaining issue now before the Commission is the determination and fixing of reasonable rates from the Northern Colorado coal fields to Denver.

At the hearing in this case pursuant to the order of the Supreme Court, the complainant offered in evidence the record of the testimony presented at the former hearing and did not offer

any additional testimony. The said record was admitted by the Commission notwithstanding the objections of the defendants as to jurisdiction hereinafter stated. The defendants, at the hearing offered no testimony, protested against action on the part of the Commission changing rates existing on May 25, 1918, and filed with the Commission a communication from the general counsel of the United States Railroad Administration to R. B. Scott, general solicitor for Chicago, Burlington & Quincy Railroad Company, directing that all rates hereafter established for all roads under federal control shall be initiated from the office of the director general of railroads. The defendants also filed with the Commission General Order No. 28 of the director general of railroads, prescribing passenger and freight rates, including rates on coal of all railroads under federal control. The defendants contended therefore that at the time of the hearing they were forbidden to change or to participate in or to consent to any change in any railroad rates existing in Colorado on the date of May 25, 1918. The defendants further contended that at the time of the hearing all power to fix or change any rates had been taken from this Commission by the order of May 25, 1918, of the director general of railroads, acting under an act of congress, approved March 21, 1918.

It was ordered by the Supreme Court of Colorado in the opinion hereinabove referred to that this Commission proceed to ascertain and to fix reasonable rates for each separate service, and it is the duty of this Commission so to do. The Commission, as above stated, having heretofore fixed rates for switching, will now proceed to fix reasonable rates from the Northern Colorado coal fields to Denver.

The Commission has re-examined and re-considered all the testimony and exhibits in this case and after due consideration is of the opinion and so finds that rates of sixty-five, sixty and fifty-five cents per ton on lump, mine-run and slack coal, respectively, in carload lots, from the Northern Colorado coal fields to Denver, are just and reasonable rates for that service and the Commission will so order.

ORDER.

IT IS THEREFORE ORDERED, That the defendants, The Colorado & Southern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Union Pacific Railroad Company, be, and they are hereby, notified and required to cease and desist, on

or before June 24, 1918, and thereafter to abstain, from applying to the intrastate transportation of coal from the Northern Colorado coal district to Denver their present rates.

IT IS FURTHER ORDERED, That the defendants, The Colorado & Southern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Union Pacific Railroad Company, be, and they are hereby, notfied and required to establish, on or before June 24, 1918, and thereafter to maintain, rates of sixty-five, sixty and fifty-five cents per ton for the transportation of lump, mine-run and slack coal, respectively, from the mines located on the lines of the said defendants in Boulder and Weld counties, Colorado, in what is known as the Northern Colorado coal district, to Denver, Colorado.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 20th day of June, 1918.

DECISION NO. 184.

IN THE MATTER OF THE APPLICATION OF THE DENVER & RIO GRANDE RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT RAILROAD TRACKS ACROSS HUNT AVENUE IN THE CITY OF ALAMOSA, COLORADO.

Application No. 18.

June 27, 1918.

STATEMENT.

By the Commission:

This proceeding arises upon application from The Denver & Rio Grande Railroad Company in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for permission to construct trackage over and across Hunt Avenue, in the City of Alamosa, Colorado.

There appearing no reason why this application should not be granted and it appearing further that on June 5, 1918, the applicant obtained authority from the city of Alamosa to occupy the above named street, the Commission will issue an order permitting the construction of this trackage in conformity with the provisions of Section 29 of the Public Utilities Act, as amended April 16, 1917.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, The Denver & Rio Grande Railroad Company, be, and it is hereby,

permitted to construct a railroad track at grade across Hunt Avenue in the city of Alamosa as specifically set out and indicated upon plat filed with the Commission in this cause.

The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of this 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) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 27th day of June, 1918.

DECISION No. 185.

IN THE MATTER OF AN INVESTIGATION AND HEARING, ON MOTION OF THE COMMISSION, INTO THE REASONABLENESS OF THE RATES AND CHARGES OF THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY WITHIN THE STATE OF COLORADO, AND INTO THE SERVICE OF THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY WITHIN THE STATE OF COLRADO, AND THE RULES, REGULATIONS AND PRACTICES AFFECTING THE SAME.

Case No. 22.

July 2, 1918.

Opinion and Order on Application of the City and County of Denver for a Rehearing.

STATEMENT.

By the Commission:

A final order was entered in the above proceeding on June 14, 1918. On June 27, 1918, the City and County of Denver filed a petition for a rehearing challenging the jurisdiction of this Commission, insofar as its order affects the City and County of Denver, and averring generally that the order of the Commission is not supported by the evidence.

Section 3 of the Public Utilities Act of this state, Chapter 127, Session Laws 1913, defines the term "public utility" as including all telephone corporations, and Section 14 of the act makes it the duty of the Public Utilities Commission to regulate the rates, charges and practices of every public utility in the state.

The City and County of Denver contends, however, that this Commission has no jursdiction to regulate the rates of public utilities operating in the City and County of Denver, and particularly no jurisdiction to regulate the rates to be charged by The Mountain States Telephone and Telegraph Company within the City and County of Denver.

Denver is what is commonly known as a Home Rule city, operating under a charter form of government as provided in Article XX of the constitution of the State of Colorado and amendments thereto. The special charter adopted by the City and County of Denver purports to grant to such municipality the right to control its local and municipal affairs, and it is contended that in all such local and municipal matters the powers of the City and County of Denver, under its charter, supersede any law of the State of Colorado in conflict therewith.

That the powers of a municipality operating under Article XX of the constitution of the State of Colorado are limited to matters strictly local and municipal, has been declared by repeated decisions of the Supreme Court of the State of Colorado.

People v. Prevost, 55 Colo. 199.
Mauff v. People, 52 Colo. 562.
Hiltz v. Markey, 52 Colo. 382.
People v. Cassidy, 50 Colo. 502.

It is urged, however, that the regulation of telephone rates within the City and County of Denver is a strictly local and municipal matter. This is by no means a new question to this Commission. It has already been called upon in several cases to give this question its most careful consideration.

Castle Rock Mountain Railway & Park v. Denver Tramway Co., 1 Colo. P. U. C. 126.

Thorman v. Denver & Interurban R. R. Co., 2 Colo. P. U. C. 171.

In re Rates and Rules of The Colorado Springs Light, Heat & Power Co., 2 Colo. P. U. C. 23.

East Denver Business & Property Assn. v. Denver Tramway Co., 3 Colo. P. U. C. 333.

Ratner v. Denver Gas & Electric Light Co., 3 Colo. P. U. C. 379.

Campbell v. City of Grand Junction, 5 Colo. P. U. C. ——, decided November 27, 1917.

In all of the foregoing cases this Commission has held that its jurisdiction extends to all public utilities within the State of Colorado regardless of whether or not the utility operates within a charter city. As supporting the same doctrine see also:

Portland Railway, Light & Power Co. v. City of Portland, 210 Fed. 667.

City of Woodburn v. Public Service Commission of Oregon, 161 Pac. 391.

State v. M. & K. Tel. Co., 189 Mo. 83.

The Supreme Court of Ohio has within the last week or two adopted the same view with respect to the powers of the Ohio Public Utilities Commission in a case involving the regulation of telephone rates in the City of Cleveland. Specific consideration was given to the fact that Cleveland is a Home Rule city.

In the Portland case above mentioned, Judge Bean in his opinion said:

> "Now the right to regulate rates of public service corporations is a governmental power vested in the state in its soverign capacity. It may be exercised by the state directly or through a commission appointed by it, or may delegate such power to a municipality, but I do not understand that a municipality may assume to itself such power without the consent of the state where there is a general law on the subject emanating from the entire state. It is true that under the Oregon system the legal voters of every city or town are given power to enact or amend their municipal charter subject to the constitution and criminal laws of the state, but this does not authorize the people of a city to amend its charter so as to confer upon the municipality powers beyond what are purely municipal or are inconsistent with the general law of the state constitutionally enacted * * * all authority over the subject must emanate from the state. The effect of the amendment to the charter of the City of Portland is an attempt to ignore the state authority and to assume sovereign right superior and contrary to the expressed will of the state as manifested in its legislation. If the amendment is valid and takes the public utilities within the City of Portland out of the operation of the public utility act and the jurisdiction of the commission created by it, then every municipality of the state may amend its charter with like effect and the public utility

act will become a useless and emasculated piece of legislation; the will of the entire people as expressed therein be practically ignored, and the will of a part of the state become greater than the law."

In the Woodburn case, decided by the Supreme Court of Oregon, Mr. Justice Harris, speaking for the court said:

> "The power to fix rates by compulsion as distinguished from the power to fix rates by agreement, is not granted to cities or towns, nor is the right of the legislative assembly to legislate on that subject curbed by Section 2, Article XI of the state constitution because in its essence it is neither a municipal power nor incident to a pure municipal power."

Also,

> "The power to regulate rates does not appertain to the government of a city, is not municipal in character, nor is it even incident to a grant of authority to enact or amend a charter for a city or town."

Also,

> "The right of the state to regulate rates by compulsion is a police power and must not be confused with the right of a city to exercise its contractual power to agree with a public service company upon the terms of a franchise. The exercise of the power to fix rates by agreement does not include or embrace any portion of a power to fix rates by compulsion."

It is the opinion of this Commission that the regulation of the rates of the defendant telephone company can in no sense be regarded as a local or municipal matter. This is true not only with respect to the City and County of Denver, but also with respect to every other municipality within the State of Colorado. The operations of The Mountain States Telephone & Telegraph Company are state-wide. The Mountain States Company has in the State of Colorado one hundred and fifty-two (152) exchanges. On the 31st day of August, 1915, there were ninety-two thousand two hundred and nineteen stations in the state. Denver is only one of the exchanges. It will thus be seen that the telephone reaches practically every town and locality in the state. These exchanges are located far apart, and are all connected up with the

principal centers in the state, and with each other. The telephone is for a universal use. The smaller exchanges are connected with Denver, and Denver is connected with all of the smaller exchanges, and the whole system is for the use and convenience of the inhabitants of the entire state. Consequently the regulation and fixing of rates of the Telephone Company in the City and County of Denver, in the opinion of this Commission, can in no sense be regarded as a matter of strictly local or municipal concern, but must be taken as a comprehensive whole, applying to the whole state, and subject to the jurisdiction of the Public Utilities Commission, to the exclusion of any municipality or other body.

As said in Iowa Telephone Co. v. City of Keokuk, 226 Fed. 101:

> "There are reasons for withholding such power from municipalities, and retaining it in the state, at least so far as general telephone systems composed of long distance lines and local exchanges are concerned. The limit in rate making, whether by state or municipality, is that they must be reasonable and shall not be confiscatory. Where a corporation, as the complainant, owns an extensive system, it would be difficult, if the rate-making power existed in each separate municipality to fix rates for the service within the city, to have such uniformity in rates prescribed by the different cities as would insure a reasonable rate to all users of the telephone system, especially for long distance service."

As indicated by the decisions of this Commission above cited, a number of them have affected utilities operating in the City and County of Denver, and so far as this Commission is advised the City and County of Denver, until the present time, has never questioned this Commission's jurisdiction.

The present telephone case No. 22 was initiated by this Commission on June 4, 1915. Notices of the proceeding were published at the time in different newspapers in the state, and the proceeding given the widest publicity. Many hearings were held. Special notices were sent to the mayors of all municipalities within the State of Colorado, including the mayor of the City and County of Denver, advising them of the pendency of the proceeding, and of the time when the hearings would be held. Every opportunity was given to all parties in interest to attend and present such evidence as they desired to introduce. The Commission employed a special

telephone expert, who made an exhaustive inquiry and search into the operations, rules and practices of the Telephone Company, and who submitted his reports from time to time to the Commission in writing, which reports were read at the hearings and embodied in the record of the case. The Commission also had its own engineer make a thorough investigation and examination of the Telephone Company, and his reports were also received and considered by the Commission and made a part of the record in this case. The Commission's statistician also made a thorough examination of the accounts of the company, including the receipts and disbursements, and all operating revenues and conditions. Through its staff and employes the Commission made a thorough check of the inventory of all of the property of the Telephone Company, and on January 5, 1917, this Commission rendered an opinion, fixing the value of all of the property and business of the Mountain State Telephone & Telegraph Company in the State of Colorado for rate making purposes. The Commission's opinion and findings with respect to rate of return, annual requirements for depreciation, revenues and expenses, and many other matters, were fully set forth. (3 Colo. P. U. C. 122.)

Since that time engineers, rate experts and telephone experts of the Commission have given a vast amount of testimony relative to rules and regulations, practices, rates and contracts of the company. The Commission at all times has given the greatest publicity possible to its hearings and rulings, with the end in view that the public may at all times be informed as to this and every other proceeding before the Commission. The work and efforts of the Commission have covered many months, and involved a very considerable expense to the state. This Commission was of the opinion at the time said final order was entered, and is of the opinion now, that it has given its best efforts to the work, and that its findings are fair and just and in accordance with the law.

Moreover, in the course of the hearings of this proceeding a representative from the office of the attorney for the City and County of Denver was present, and although requested so to do by the Commission, declined to introduce any evidence or to examine witnesses.

The petition for rehearing filed in this cause does not set forth specifically any ground on which the applicant considers the decision and order of this Commission unlawful or unreasonable, except insofar as it questions the Commission's jurisdiction with respect to the City and County of Denver.

For the reasons above given, this Commission has no doubt as to its jurisdiction of this entire proceeding, and since there has been no showing in the application for a rehearing of any particular in which the order of the Commission is unsupported by the evidence, the application for a rehearing should be and is denied.

However, the Commission is willing, pursuant to Section 46 of the Public Utilities Act, and within the time prescribed by the act for the prosecution of writs of review, to enter into a proper stipulation with the City and County of Denver for the purpose of certifying to the Supreme Court of this state for its judgment the sole question of jurisdiction raised by the petition for a rehearing.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 2nd day of July, 1918.

DECISION No. 186.

IN THE MATTER OF AN INVESTIGATION AND HEARING, ON MOTION OF THE COMMISSION, INTO THE REASONABLENESS OF THE RATES AND CHARGES OF THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY WITHIN THE STATE OF COLORADO, AND INTO THE SERVICE OF THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY WITHIN THE STATE OF COLORADO, AND THE RULES, REGULATIONS AND PRACTICES AFFECTING THE SAME.

Case No. 22.

Order on Application of Interstate Business Exchange Corporation et al. for a Rehearing.

STATEMENT.

By the Commission:

The question of jurisdiction raised by this petition is disposed of adversely to the contention of the petitioners in the opinion rendered on this date on the application of the City and County of Denver for a rehearing. The other questions presented by the petition have been carefully considered, but we fail to find that any of the alleged errors mentioned in the petition have any support whatever in the record, and therefore the petition should be and is denied.

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

(SEAL)

Dated at Denver, Colorado, this 2nd day of July, 1918.

DECISION No. 187.

IN THE MATTER OF THE APPLICATION OF THE DENVER & INTERURBAN RAILROAD COMPANY, WM. H. EDMUNDS, RECEIVER, FOR PERMISSION TO ABANDON SERVICE UPON ITS FORT COLLINS STREET RAILWAY LINE.

Application No. 19.

July 9, 1918.

APPEARANCES: E. E. Whitted, for The Denver & Interurban Railroad Company, Wm. H. Edmunds, Receiver; F. J. Annis and Paul W. Lee, for the city of Fort Collins; Claude C. Coffin, for the Commercial Club of Fort Collins.

STATEMENT AND ORDER.

By the Commission:

On the 25th day of June, 1918, there was filed with the Commission a petition and application by Wm. H. Edmunds, Receiver of The Denver & Interurban Railroad Company (hereinafter called the Interurban Railroad) for an order of the Commission authorizing the Receiver to cease operation of the street railway in the city of Fort Collins, Colorado, on account of the losses incurred in operating the same. This street railway has 7.51 miles of main track and .73 miles of side track in Fort Collins, Colorado, and has five motor cars and one trailer car in service. The Interurban Railroad operates this line and also an electric interurban line between Denver and Boulder, these being the only properties owned or operated by this company.

The application states in substance that on June 11, 1918, in the case of the Guaranty Trust Company of New York against The Interurban Railroad, Wm. H. Edmunds was appointed re-

ceiver of the Interurban Railroad by the District Court of the United States for the District of Colorado; that such receiver filed his bond and is now in possession of and operating the properties pursuant to the orders of the court; that the Fort Collins street railway has never, since the completion of its construction, about January 1, 1908, at a cost of more than $250,000.00, earned in any one year a sufficient amount of money to pay its operating expenses and taxes; that there was a deficit amounting to $11,992.86 in its operation for the calendar year ended December 31, 1917, exclusive of taxes, and there were deficits for the year 1916 and for the four months ended April 30, 1918; that in the receiver's opinion it is not possible under present conditions for the Fort Collins street railway to earn its operating expenses and taxes; that its operation produces a heavy deficit and charges against the income in the hands of the receiver and that said street railway line should be abandoned; that the operation of the Interurban Railroad between Denver and Boulder for the period of four months ended April 30, 1918, showed a deficit after paying operating expenses and taxes and the earnings of the Denver-Boulder line will be insufficient to pay any deficit resulting from the operation of the street railway in Fort Collins; that the income from the Fort Collins line has never been sufficient to pay anything on the investment in said property. The applicant then prays for an order authorizing the receiver to cease the operation of the said street railway on account of the losses incurred in operating the same.

The city of Fort Collins and the Fort Collins Commercial Club filed their respective protests and answers to the petition, and prayed that the application be denied.

This case came on for hearing before the Commission in the District Court room at Fort Collins, Colorado, at the hour of 11 o'clock a. m., Monday, July 1, 1918. Evidence was introduced by the applicant and the protestants. The applicant showed that he had been ordered on June 22, 1918, by Hon. Robert E. Lewis, judge of the United States District Court for the District of Colorado, to apply to this Commission for an emergency order to abandon operation of the street railway line in Fort Collins. He also produced a statement of revenues, expenses, taxes, and operating income for the period from January 1, 1908, to December 31, 1917, as follows:

Year	Revenues	Expenses	Net Revenue	Taxes	Operating Income
1908	$25,399.35	$24,709.41	$ 689.94	$.....	$ 689.94
1909	24,644.46	27,777.00	**3,132.54**	1,237,34	**4,369.88**
1910	24,784.10	29,858.08	**5,073.98**	2,361,75	**7,435.73**
1912	23,788.80	32,553.53	**8,764.73**	2,467.84	**11,232.57**
1913	23,384.70	29,600.28	**6,215.58**	2,721.58	**8,937.16**
1914	22,858.73	31,518.10	**8,659.37**	2,582.97	**11,242.34**
1915	20,393.31	26,745.41	**6,352.10**	2,546.09	**8,898.19**
1916	21,260.72	28,014.36	**6,753.64**	2,546.33	**9,299.97**
1917	20,838.87	32,831.73	**11,992.86**	2,568.56	**14,561.42**

Bold type represents deficit.

It will be noted that this exhibit shows a constant yearly decrease in revenues, a large yearly increase in expenses and in the deficits of net revenue and operating income, and that the deficit for the year 1917 was $11,992.86 exclusive of taxes and $14,561.42 including taxes.

In re Denver, Laramie & Northern R. R. Co., 4 Colo. P. U. C. 316, the Commission examined the authorities respecting discontinuance of service and abandonment of railroads, and ruled that before a public utility operating within the state of Colorado will be permitted to withdraw entirely from public service, it must first show that after a fair trial its property is unable to earn its legitimate operating expenses, and increases in 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.

The applicant seeks to "cease the operation of said street railroad." This does not extend to removal of tracks, poles or wires, but the language used in the Laramie case applies to the discontinuance of service by the applicant requested in this case. See also: In re Crystal River & S. J. R. R. Co., 4 Colo. P. U. C. 469. The evidence shows that, after a fair trial for a period of ten years, the Fort Collins street railway property has been unable to earn its legitimate operating expenses and taxes. The matter of increased rates was gone into by witnesses for applicant and protestants. The evidence of applicant was to the effect that to produce sufficient revenue to meet these expenses a fare of about 10 cents would be required, providing the same number of passengers would be carried as at present. It was further shown that such number of passengers could not be expected and it seems to be conceded by both applicant and protestants that an in-

crease in fare would afford little if any relief, and rather would result in a decrease of patronage. The evidence is that during the last ten years the revenues of the Fort Collins street railway have shown a steady yearly decrease notwithstanding Fort Collins is a growing and prosperous community, which fact shows a considerable lack of public demand for the service.

As stated In re Crystal River & S. J. R. R. Co., supra:

> "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."

The Commission is of the opinion that the applicant ought not to be required to operate the Fort Collins line under conditions as they now exist and have existed. The discontinuance of service will unquestionably work a hardship upon some of the residents of Fort Collins, but the business is not sufficient to warrant the operation by the receiver, the applicant herein. The operation of this line is also found to be a burden upon the operation of the Denver-Boulder line of the Interurban Railroad, which, the evidence shows, is hardly able to pay its own operating expenses and taxes. It may be that upon a foreclosure sale in the Federal Court a purchaser will be found for the Fort Collins street railway property who will be able to operate it. The applicant may cease operations of the Fort Collins street railway until the further order of the Commission, but no portion of the line, tracks, poles, wires or equipment should be removed.

ORDER.

IT IS THEREFORE ORDERED, That Wm. H. Edmunds, receiver of The Denver & Interurban Railroad Company be, and he is hereby, permitted to discontinue the operation of the Fort Collins line of street railway until the further order of the Commission.

IT IS FURTHER ORDERED, That the line, tracks, poles, wires and equipment or any part thereof shall not be removed.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 9th day of July, 1918.

DECISION NO. 188.

IN RE ADVANCES IN RATES AND CHARGES OF THE AGUILAR LIGHT & POWER COMPANY FOR ELECTRIC SERVICE AT AGUILAR, COLORADO.

Investigation and Suspension Docket No. 16.

July 12, 1918.

APPEARANCES: A. E. Bent, for the respondent company; A. I Lindsey, mayor, for the town of Aguilar.

STATEMENT AND ORDER.

By the Commission:

On January 31, 1918, The Aguilar Light & Power Company filed with the Commission its rate schedule Colo. P. U. C. No. 3, cancelling Colo. P. U. C. No. 2, by which new schedule it was proposed to advance the rates for electric service in the town of Aguilar. It appeared that the Commission should enter upon an investigation and hearing as to the propriety of the proposed rates, and pending such investigation and hearing and decision thereon, the proposed rates were suspended on January 16, 1918, by order of the Commission, until June 29, 1918, and were subsequently suspended on June 28, 1918, until December 29, 1918.

Pursuant to notice duly given to all parties in interest, the above cause came on for hearing before the Commission at the town council chamber in Aguilar, Colorado, at the hour of 10 o'clock a. m., on the 30th day of April, 1918. At this hearing evidence was received by the Commission relative to the reasonableness of the present and proposed rates of the respondent company.

The present rates of the respondent company now on file with the Commission, and covering the rates for electric service in the town of Aguilar and vicinity, are as follows:

Residence Lighting.

Rate 12½c per Kw-hr.;
Prompt payment discount 10 per cent;
Minimum monthly guarantee $1.00 net.

Business Lighting.

Rate 10c per Kw-hr.;
Prompt payment discount 10 per cent;
Minimum monthly guarantee $1.00 net.

Street Lighting (All night service).

250 watts multiple Mazda lamps, $6.00 per month net;
40 watts multiple Mazda lamps, $1.75 per month net.

Municipal Water Pumping.

First 300,000 gals. pumped per month, 12c per M. gal. net;
Next 300,000 gals. pumped per month, 11c per M. gal. net;
All over 600,000 gals. pumped per month, 10c per M. gal net;
Minimum monthly guarantee $50.00 net.

The schedule filed on January 31, 1918, makes no change in the rates for municipal street lighting and municipal water pumping. The rates for business and residence service are sought to be cancelled and the following schedule substituted therefor, to apply to all commercial lighting, both residence and business:

Rate.

First 50 Kw-hr. of consumption per month, 15c per Kw-hr.;
Next 50 Kw-hr. of consumption per month, 14c per Kw-hr.;
Next 50 Kw-hr. of consumption per month, 13c per Kw-hr.;
For all consumption in excess of 150 Kw-hr. per month, 12c per Kw-hr.

Minimum Monthly Guarantee.

$1.50 gross per consumer.

Prompt Payment Discount.

10 per cent on all bills, including minimum bills, when paid on or before the 10th day of the month next succeeding that in which service is rendered.

On December 2, 1907, a franchise was granted by the town of Aguilar to the Hawkins & Barnett Machine Company for a

period of twenty years, authorizing the grantee "to construct, operate and maintain an electric light, heat and power plant within or near the corporate limits of the town of Aguilar * * * for the purpose of furnishing electric light, heat and power to the town of Aguilar and its inhabitants." In June, 1908, the plant and franchise of the Hawkins & Barnett Machine Company were transferred to The Aguilar Light & Power Company, the consideration being $12,500.00. The property has been operated by The Aguilar Light & Power Company since that date.

From the date of purchase up to December 31, 1917, additions to plant in the sum of $4,680.30 were made, and property in the sum of $2,648.37 was abandoned, making the net plant investment as of December 31, 1917, $14,531.93. When this property first began operations a steam power plant, consisting of boilers, engines and generators, was installed, and operated up to about March, 1912. At that time the generating plant was closed down and a contract entered into with The Trinidad Electric Transmission, Railway & Gas Company for the energy requirements at Aguilar. The generating plant has not been operated since this contract was entered into, and the electric generators and switchboards have been sold. The steam engines and boilers, however, have not been disposed of.

An inventory and appraisal of the property of the respondent was made by the engineering staff of the Commission and was submitted for the consideration of the Commission at the hearing in this cause. A summary of this appraisal is set out in Table No. 1, the amounts therein shown being exclusive of intangible values such as going concern value, cost of money, promoters' remuneration, etc.

The revenues and expenses of the respondent for the years 1913 to 1917, inclusive, as compiled from the books of the respondent company by the statistician of the Commission, are set out in Table No. 2.

TABLE NO. 1.

Acct. No.	Classification	Normal Reproduction Cost
101	Organization	$ 235.00
102	Franchises	200.00
105	Land	263.00
106	Buildings	1,306.00
140	Distribution system	4,324.00
141	Line Transformers	735.00
142	Consumers' Meters	1,385.00
160	Municipal Street Lighting System	922.00
162	Office Equipment	133.00
166	Customers' Installations	159.00
168	Miscellaneous Equipment	172.00
	Total of Fixed Capital Accounts	$ 9,834.00
	Working Capital	1,000.00
	Total	$10,834.00

Abandoned Property.

107	Steam Power Plant Equipment	$ 2,000.00
111	Boiler Plant Equipment	5,000.00
	Total	$ 5,000.00

TABLE NO. 2.

		1913	1914	1915	1916	1917
Operating Revenue—						
501	Commercial Lighting	$5,735.58	$3,226.56	$3,699.25	$3,511.00	$3,917.25
502	Municipal Street Lighting	.....	1,673.25	1,810.25	1,299.00	1,275.00
503	Commercial Power	.....	227.65	170.00	.....	.....
504	Municipal Power.	.....	.....	411.65	505.35	559.90
506	Elec. Mdse. & Jobbing	.....	328.99	384.89	247.19	336.87
507	Miscellaneous Earnings	.....	.....	96.05	.....	.....
	Total Operating Revenue	$5,735.58	$5,456.45	$6,572.09	$5,562.54	$6,089.02
Operating Expenses—						
657	Purch'd Power	$2,423.97	$1,845.00	$2,157.90	$1,884.45	$1,949.85
700	Distribution	639.27	905.69	626.87	575.26	781.22
720	Utilization	56.62	118.84	380.03	265.15	140.38
747	New Business	91.50	6.50	40.50	45.75	45.65
760	General Expense.	1,548.64	1,580.50	1,776.81	1,492.57	1,492.01
	Total Above Items	$4,760.00	$4,456.53	$4,982.11	$4,263.18	$4,409.11
775	Depreciation	.....	.....	.....	.....	400.00
779	Taxes	.....	346.52	145.50	95.62	220.18
	Total Operating Expense	$4,760.00	$4,803.05	$5,127.61	$4,358.80	$5,029.29
	Net Operating Income	$ 975.58	$ 653.40	$1,444.48	$1,203.74	$1,059.73

The general expense account includes an item of $600.00 as salaries of general officers and represents a management account of $50.00 per month paid to A. E. Bent for management and supervision of the property. The Commission is of the opinion that this amount, which is approximately 10 per cent of the annual gross revenue, is excessive, as the services actually rendered are small. According to the testimony of Mr. Bent, his general office force supervises the operation of seven properties, of which the total gross revenue is approximately $80,000.00 per year.

The service rendered to these properties consists in the main of auditing and accounting and requires the time of two employes, who perform other duties as well. If engineering service is rendered to one of these properties in connection with additions or extensions thereto the cost of such engineering should be charged to the capital accounts, and should not be treated as an operating expense. In the appraisal submitted by the engineering staff an allowance for engineering of 5 per cent on the principal capital accounts has been made, and the Commission is of the opinion that such allowance for engineering is ample to cover such engineering services as have been rendered to this property. The amount of engineering required in the operation of a small distribution system of this kind is almost negligible. The Commission is of the opinion that $300.00 per annum is a reasonable allowance for the services rendered by the general officers of the company. This is approximately 5 per cent of the present annual gross revenue.

The operating expenses for the year 1917 include the sum of $400.00 for depreciation. The engineering staff of the Commission estimated the annual depreciation requirement for this property at $358.00 when set aside on the straight line basis, and $211.00 when set aside on the sinking fund basis. In fixing the value of this property for rate-making purposes the Commission will, in line with previous decisions, not make a deduction on account of accrued depreciation, and will estimate the depreciation requirement on the sinking fund basis.

On account of some errors on the part of the county assessor and tax assessing bodies the taxes shown on the books of the respondent company are not correct, there being $700.99 still due for the five-year period under consideration. The sum of $346.52, shown as taxes for the year 1914, includes taxes for both 1913 and 1914. Taking into account the back taxes now due and unpaid, the actual taxes for this property for the period under consideration have averaged approximately $300.00 per year. On account of recent increases in taxes the Commission is of the opinion that in the future the taxes on this property will amount to approximately $400.00 per year. This is the rate at which the respondent is accruing taxes at the present time.

At the hearings in this case the respondent contended that full allowance should be made by the Commission for its abandoned steam plant, which was appraised by the engineering staff

at $5,000.00. The Commission is of the opinion that some consideration is to be given to this claim, but that it cannot be allowed in full. This plant was installed in good faith and was abandoned much before the end of its useful life for the purpose of improving the service and reducing the operating expenses. The electric generators have been disposd of, so that as the plant now stands it is of no value to the property even for standby service. The boilers and engines should, in the opinion of the Commission, also be disposed of, especially at this time when they are much in demand and will command a fair price. It cannot be assumed, as urged by the respondent, that the existence of this plant is of value for the purpose of securing a reasonable rate for energy at wholesale from The Trinidad Electric Transmission, Railway & Gas Company, since that company is entirely under the jurisdiction of this Commission and the present rate cannot be increased without the consent of the respondent unless a proper showing that such increase is necessary be made to the Commission.

After hearing and considering the evidence presented in this case, and being fully advised in the premises, the Commisison finds as follows:

1. That the rate-making value of the property of The Aguilar Light & Power Company as of December 31, 1917, including a reasonable allowance for abandoned property and working capital, and considering all elements of value both tangible and intangible, was $13,500.

2. That a proper annual depreciation requirement at this time to be set aside on the 5 per cent sinking fund basis is the sum of $211.00.

3. That a fair return to the owners of this property is 8 per cent on the above rate-making value.

4. That the average annual cost to the company of furnishing service under the conditions prevailing at this time is as follows:

Purchased power	$1,950.00
Distribution expense	980.00
Utilization expense	200.00
New business expense	50.00
General expense	1,300.00
Taxes	400.00
Depreciation	211.00
Return, 8 per cent on $13,500.00	1,080.00
Total	$6,171.00

5. That the annual gross revenue of the respondent company under the rates now in effect and on file with the Commission will not exceed $6,100.00 per annum.

6. That the rates of the respondent for municipal street lighting, municipal water pumping and commercial power are adequate and reasonable, and that for commercial lighting, including both residence and business lighting, the following rates are reasonable and should be substituted for the rates now on file with the Commission for these classes of service:

Commercial Lighting:
Rate.

First 25 Kw-hr. of consumption per month, 13c per Kw-hr.
Next 50 Kw-hr. of consumption per month, 11c per Kw-hr.
Next 100 Kw-hr. of consumption per month, 9c per Kw-hr.
For all consumption during the month in excess of 175 Kw-hr., 7c per Kw-hr.

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 Monthly Guarantee.

$1.00 net or $1.10 gross per consumer or per meter.

ORDER.

IT IS THEREFORE ORDERED, That the rates filed by The Aguilar Light & Power Company on January 31, 1918, suspended by an order of this Commission until June 29, 1918, and subsequently suspended until December 29, 1918, be and the same are hereby permanently suspended.

IT IS FURTHER ORDERED, That The Aguilar Light & Power Company be and it is hereby permitted to file, in accordance with Section 16 of the Public Utilities Act, schedules effective as of August 1, 1918, providing for the following rates and charges to apply to all service rendered on and after that date:

Commercial Lighting:
Rate.

First 25 Kw-hr. of consumption per month, 13c per Kw-hr.
Next 50 Kw-hr. of consumption per month, 11c per Kw-hr.
Next 100 Kw-hr. of consumption per month, 9c per Kw-hr.
For all consumption during the month in excess of 175 Kw-hr., 7c per Kw-hr.

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 Monthly Guarantee.

$1.00 net or $1.10 gross per consumer or per meter.

Commercial Power:

Rate.

$1.00 per month per horsepower of connected load, plus 5 cents per Kw-hr. for all energy consumed.

Minimum Monthly Guarantee.

$1.00 per horsepower of connected load.

Prompt Payment Discount.

The above rates are net.

Municipal Street Lighting: (All night service)

Rate.

250 watt multiple Mazda lamps, $6.00 per month, net.
40 watt multiple Mazda lamps, $175 per month, net.

Terms and Conditions:

The company will furnish and install all lamps, wires, poles, fixtures and other equipment required in rendering street lighting service, and will maintain and operate the same.

Municipal Water Pumping:

Rate.

For the first 300,000 gals. pumped per month, 12c per M. gals., net.
For the next 300,00 gals. pumped per month, 11c per M. gals., net.
For all over 600,000 gals. pumped per month, 10c per M. gals., net.

Minimum Monthly Guarantee.

$50.00 net.

Terms and Conditions:

The company will bear the entire expense of operating, maintaining, oiling, starting and stopping the motor-driven pumps operated hereunder.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 12th day of July, 1918.

DECISION No. 189.

IN THE MATTER OF THE APPLICATION OF THE DENVER & INTERURBAN RAILROAD COMPANY, WM. H. EDMUNDS, RECEIVER, FOR PERMISSION TO ABANDON SERVICE UPON ITS FORT COLLINS STREET RAILWAY LINE.

Application No. 19.

July 24, 1918.

STATEMENT.

By the Commission:

On July 9, 1918, the Commission issued its order in this cause permitting the receiver of The Denver & Interurban Railroad Company to discontinue service on its street railway line in the City of Fort Collins, but prohibiting the receiver from removing the line, tracks, poles, wire and equipment. On the 20th day of July, 1918 the City of Fort Collins, by F. J. Annis, its attorney; and Paul W. Lee, special counsel, filed a petition with the Commission praying for a rehearing of the above cause, and as grounds for such motion alleged error on the part of the Commission.

The Commission now being fully advised in the premises is of the opinion that the petition of the City of Fort Collins for a rehearing should be denied.

ORDER.

IT IS THEREFORE ORDERED, That the petition for rehearing, filed with the Commission July 20, 1918, by the City of Fort Collins, be, and it is hereby, denied.

GEO. T. BRADLEY,
(SEAL) LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 24th day of July, 1918.

DECISION No. 190.

IN RE ADVANCE IN COMMERCIAL POWER RATES OF THE WESTERN LIGHT & POWER COMPANY.

Investigation and Suspension Docket No. 19.

July 27, 1918.

STATEMENT.

By the Commission:

On the 29th day of January, 1918, there was filed with the Commission by The Western Light & Power Company 4th Revised Sheet No. 15 to Colo. P. U. C. No. 4, proposed to become effective March 1, 1918, and providing for certain increase in the commercial rates applicable to all cities and towns served by the company.

On the 23rd day of February, 1918, the Commission entered upon an investigation concerning the propriety of the increases contained in the said schedule, and issued an order deferring the operation of the rates until the 29th day of June, 1918. Subsequently on June 28, 1918, an order was issued further deferring the operation of the rates until December 29, 1918.

On July 22, 1918, an application was filed with the Commission by the respondent company to withdraw and cancel its schedules under suspension, which was granted by the Commission in its short notice authority No. 1214 of July 25, 1918. On July 25, 1918, a schedule was received by the Commission from the respondent, issued under the authority conferred upon it, withdrawing and cancelling the rates contained in 4th Revised Sheet No. 15 to Western Light & Power Company, Colo. P. U. C. No. 4.

It appears, therefore, that as the issues contained in this cause have been withdrawn by the respondent, the cause should be vacated and taken from the docket, and an order will therefore be issued dismissing the same.

ORDER.

IT IS THEREFORE ORDERED, That this cause be, and it is hereby dismissed.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 27th day of July, 1918.

DECISION No. 191.

IN RE ADVANCE IN ELECTRIC RATES OF THE WESTERN LIGHT & POWER COMPANY.

Investigation and Suspension Docket No. 22.

July 27, 1918.

STATEMENT.

By the Commission:

On the 28th day of February, 1918, there was filed with the Commission by The Western Light & Power Company, Colo. P. U. C. No. 5, proposed to become effective March 31, 1918, providing for certain increases in the rates for electric service applicable to all cities and towns served by the company.

On the 13th day of March, 1918, the Commission entered upon an investigation concerning the propriety of the increases contained in the said schedule, and issued an order deferring the operation of the rates until the 29th day of July, 1918.

On July 22, 1918, an application was filed with the Commission by the respondent company to withdraw and cancel its schedules under suspension, which was granted by the Commission in its short notice authority No. 1214 of July 25, 1918. On July 25, 1918, a schedule was received by the Commission from the respondent, issued under the authority conferred upon it, withdrawing and cancelling the rates contained in Western Light and Power Company Colo. P. U. C. No. 5.

It appears, therefore, that as the issues contained in this cause have been withdrawn by the respondent, the cause should be vacated and taken from the docket, and an order will therefore be issued dismissing the same.

ORDER.

IT IS THEREFORE ORDERED, That this cause be, and it is hereby, dismissed.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 27th day of July, 1918.

DECISION No. 192.

IN THE MATTER OF THE APPLICATION OF THE COLORADO POWER COMPANY FOR AN ORDER DECLARING THE PRESENT RATE FOR SMELTER SERVICE IN THE SALIDA DISTRICT DISCRIMINATORY AND PREFERENTIAL AND ESTABLISHING A REASONABLE RATE THEREFOR.

Application No. 16.

August 6, 1918.

APPEARANCES: Caldwell Yeaman and Kenaz Huffman, for The Ohio and Colorado Smelting & Refining Company; W. V. Hodges, for the applicant.

STATEMENT.

By the Commission:

On the 13th day of April, 1918, The Colorado Power Company filed with the Commission an application and petition alleging among other things that the Salida district of The Colorado Power Company, has no physical connection with the other districts served by that company; that the electrical energy sold in such district is generated by both hydro-electric and steam-electric generating plants; that in the Salida district the Colorado Power Company (hereinafter called the Power Company), is furnishing power to The Ohio & Colorado Smelting Company (hereinafter called the Smelting Company), under an agreement originally entered into by The Salida Light, Power & Utility Company, predecessor in interest to The Colorado Power Company, which agreement was dated October 10, 1907, to run until October 10, 1918, but which on January 21, 1913, was extended to run until October 10, 1923;

that this agreement, while nominally drawn to provide a rate of $50.00 per horsepower per annum average load, is, in reality, by definition of the term "average load" as set out in the agreement, a straight meter rate of 7.65 mills per kw-hr.

The Power Company alleges that the rates and charges named in the agreement with the Smelting Company are unjust, unreasonable, discriminatory and preferential; that while there was an increase of $10,612.00 in the gross operating revenue from the Salida district for the year 1917 over the previous year, the net operating revenue from the Salida district for the year 1917 was $6,196.00 less than for the preceding year, and that such reduction in net operating revenue for the year 1917 was caused by an increase of $16,808.00 in operating expenses for that year over the preceding year; that of such increase in operating expenses the sum of $9,263.00 was brought about by an increase in the cost of steam power generation, such increase being due both to an increased amount of steam power generation and to a general advance in the cost of fuel.

The Power Company alleges that the company's accounting does not charge the operating expenses of the Salida district with the expenses of general management, purchasing, engineering, treasurer's and main office accounting service, and similar items; that a fair and reasonable charge to the Salida district for such service is 2 per cent of the gross company expense therefor; that after making such charge to the Salida district for the year 1917 the net operating revenue amounted to only $32,224.00, and that this sum is not a fair return on the fair value of the property of the Power Company in the Salida district; that the fair value of the Salida property, upon which a fair return should be allowed, is considerably in excess of $500,000.00; that a fair return from the property would be a net amount in exces sof $40,000.00 per annum, and that the revenues from the Salida district should be increased by at least $8,000.00 per annum.

The applicant further alleges that the operating expenses of the Power Company in the Salida district in 1916 were 9.41 mills per kw-hr.; and that in 1917 such operating expenses amounted to 12.29 mills per kw-hr.; that the total output of the Salida district, amounting to 5,794,780 kw-hr. in 1916, 626,280 kw-hr. were generated by steam, and 3,403,037 kw-hr. were sold to The Ohio and Colorado Smelting & Refining Company; that for the year 1917 the total output of the Salida district was 6,069,620 kw-hrs.; that of

this output 1,174,670 kw-hrs. were generated by steam, and 3,369,900 kw-hrs. were sold to the Smelting Company.

It is further alleged that the inability of the applicant to derive a reasonable return under the increased cost of operation which has come about since 1914, is due principally to its adherence to the rate named in the agreement for service to the Smelting Company, which requires approximately 60 per cent of the entire output.

The applicant asks the Commission to establish a rate of 1 cent per kilowatt hour for service to smelters in the Salida district, such rate to apply to smelters requiring not less than 500 nor more than 1,000 horsepower of demand.

A motion to dismiss and the answer of the Smelting Company was filed with the Commission May 7, 1918. In its answer and motion to dismiss the Smelting Company alleges, among other things, that neither the applicant nor the Smelting Company is a public utility within the meaning of the act of the General Assembly of the State of Colorado creating a Pubilc Utility Commission; that as to the contract set forth in the application of the Power Company and the performance of the terms of said contract upon the part of the Power Company by supplying electrical energy to the Smelting Company, the said Power Company is not a public utility, nor is such transaction or any part thereof, or the act of the Power Company with reference thereto, impressed with a public service; that the contract set forth in the application and the extensions thereof, being legal and valid and having been entered into and concluded prior to the passage of the act creating the Public Utilities Commission, any order by the Commission changing the rates or charges therein provided, or fixing or establishing different rates or charges, would be in violation of the rights of the Smelting Company as guaranteed by the provisions of the constitutions of the United States and of the State of Colorado.

In further answer to the application of the Power Company the Smelting Company denies the allegations of the Power Company to the effect that the rate provided in the agreement is unduly low, preferential or discriminatory, and asserts that such rate affords reasonable compensation to the Power Company for the service rendered.

Brief was filed with the Commission on May 18, 1918, by the Smelting Company in support of its motion to dismiss, reply brief

being filed with the Commission on May 20, 1918, by the Power Company.

This cause came on for hearing before the Commission on May 23, 1918, at which time the motion to dismiss was overruled and testimony on behalf of the parties at interest was received by the Commission.

In general the testimony submitted on behalf of the Power Company was in support of the allegations contained in its application as to operating revenues, operating expenses, increases in such operating expenses on account of the present abnormal conditions, and the Power Company's contention as to the fair value of the property in the Salida district of the company. Testimony was further presented to show that the present rate of 7.65 mills enjoyed by the Smelting Company is preferential and discriminatory as regards other power consumers in the Salida district, and that, based on the increase in the cost of the Power Company of rendering such service as well as the increase in the value of such service to the Smelting Company, a rate of 1 cent per kw-hr. should be provided.

No competent testimony was submitted on behalf of the Smelting Company in contravention of the claims of the Power Company as to the value of the property in Salida district, or as to the reasonableness of either the present rate enjoyed by the Smelting Company or the rate asked for in the application of the Power Company.

Testimony submitted by the Power Company bearing on the value of the property in the Salida district was to the effect that the property was purchased in 1913 for $400,000.00, and that the net additions made since the purchase thereof, up to December 31, 1917, amounted to $113,000.00, making the cost of the property to the company as of the above date $513,000.00. Norman Read, vice-president and general manager of The Colorado Power Company, gave it as his opinion that an appraisal of this property would result in an amount in excess of $500,000.00, and that for the purpose of the present case a fair value of $500,000.00 could reasonably be assumed. The evidence before the Commission is not sufficient to permit of the finding of the rate-making value of the Salida property of the Power Company. The price paid therefor is not controlling, and the opinion of Mr. Read, while being that of a competent witness, is not sufficiently supported to justify the Commission in finding that $500,000.00, or any other amount, represents

the rate-making value of the Salida property. Any adjustment in the rate now being paid by the Smelting Company must therefore be made on a finding that such rate is preferential and discriminatory as regards other consumers.

The present rate of 7.65 mills per kw-hr. for service rendered to the Smelting Company was established by a contract entered into on October 10, 1907, with the then The Salida Light, Power & Utility Company. Such contract, as subsequently modified and extended, will expire on October 10, 1923. This contract has been made a part of the record in this case and shows that at the time it was entered into the Power Company was operating a small hydro-electric plant, consisting of two 200-kilowatt generators, and a steam plant, in the town of Salida, consisting of one 200-kilowatt single phase generator; that these two plants were interconnected and operated in parallel; that the plant of The Salida Light Power & Utility Company was at that time not considered adequate to carry the load of the Smelting Company and that it was then agreed that additional generating capacity should be provided both in the hydro-electric and steam plants. The terms of this contract leave no room for doubt that the steam plant in the town of Salida was considered desirable and necessary in connection with supplying service to the Smelting Company. Since the above mentioned contract was entered into the demands of the community for the service of the Power Company have continued to grow, and as a result further additions have been made to both the hydro-electric and steam plants. The present capacity of the hydro-electric plant is 1200 kilowatts, and of the steam plant in Salida 700 kilowatts, making the total installed capacity of the Salida property 1900 kilowatts. According to the testimony of Mr. Read, the Power Company is now making a further addition of 500 kilowatts to the Salida steam plant, investigation having shown that the water power has been developed to its economical limit.

It appears therefore that under the conditions under which the Salida property operates, if it is to be considered as a separate and distinct unit of the system of the Colorado Power Company, the operating expenses may be expected to gradually increase as the demands of the district increase, and that the greater portion of such increase in output will be required to be generated by steam power. That the present and future consumers in the Salida district should share to an equal extent in the benefits of the present water power development, in the opinion of the Commission, can-

not be controverted. This being true, it follows that the cost to the Power Company of supplying the load to the Smelting Company has increased both on account of the increase in the cost of fuel and labor for steam power plant generation and on account of the further necessary increase in the amount of energy generated by steam power.

In the year 1916 the combined steam and water power plants of the Salida property generated 5,794,780 kw-hr. and sold to the Smelting Company alone 3,403,037 kw-hr. In the year 1917 these combined plants generated 6,069,620 kw-hr., and sold to the Smelting Company 3,369,900 kw-hr. It appears, therefore, that the sales to the Smelting Company comprise approximately 60 per cent of the total amount of current generated by the Salida plants, and somewhat more than 60 per cent of the current sold or accounted for.

For the year 1917 the cost of steam power plant generation in the Salida plant showed an increase of $9,362.00 over the year 1916. Apportioning this increase to the Smelting Company on the basis of "use," 60 per cent of such increase in the cost of steam power generation, or $5,617.00, should be assigned to the Smelting Company. This is equivalent to an increase of 1.67 mills per kw-hr., which, if added to the present rate of 7.65 mills per kw-hr., would result in a rate of 9.32 mills per kw-hr., which appears to be justified on account of the increase in the cost of steam power generation.

There have been other increases in the operating expenses in connection with the Salida property, but these as a whole cannot be applied to the cost of serving the Smelting Company. They apply more generally as a whole to the other operations of the Power Company.

As to the contention of the Power Company that its Salida district should be considered as a unit for the purpose of rate adjustments, it is to be noted that the schedules of the Power Company as on file with the Commission applying to installations in excess of 200 horsepower, are identical for the entire territory served by the Colorado Power Company, and if any distinction should be made in the rates to large consumers in the Salida district on account of the higher operating expenses, this fact has not been recognized by the Power Company in the construction of its scedules applying to such consumers. It may be noted, however, that the standard power schedule of the Power Company now on file with the Commission, when applied to the load of the Smelting

Company, taking into account the demand and load factor of the smelter installation, results in a specific kilowatt hour rate of 11.4 mills, or approximately 14 per cent in excess of the rate asked for by the Power Company.

The Colorado Power Company, with the exception of some three or four consumers, has no rates or contracts in force and effect that may in any sense be considered as special. With the exception of the smelters served by the company, and one or two other cases in which conditions are very exceptional, all consumers are on the Power Company's so-called standard load factor rates, which are on file with the Commission. The power rates of the company are therefore in no sense discriminatory or preferential. It appears, however, that in establishing its rates the Power Company has found it to be either necessary or desirable to quote slightly preferential rates to smelter companies, especially to the smelters in Salida and at Louisville. The present rate to the smelter at Leadville is 7.5 mills per kw-hr., while the smelter at Salida enjoys a rate of 7.65 mills per kw-hr. It will not be the purpose of the Commission to disturb the classification created for smelters at this time, although it might be considered slightly preferential as regards other power consumers. Considering smelters as a class then it must be the purpose of the Commission, other things being equal, to see that one smelter is not granted a rate preferential or discriminatory over that enjoyed by another. As stated, the smelter at Leadville enjoys a rate of 7.5 mills per kw-hr., and counsel for the Salida smelter insisted that such a rate should be applied to that smelter also. It is clear from the record, however, that both the demand and the consumption of the Leadville smelter are approximately double that of the Salida smelter, that the load factor conditions are as good if not better than at Salida, so that under any proper form of rate the Leadville smelter would earn a lower specific rate per kw-hr. than the Salida smelter could ever hope to earn. Therefore, if specific kw-hr. rates are to be established for these two smelters the Commission must recognize that on account of the difference in conditions of service at these two smelters—a condition created entirely by the smelters themselves, and for which the Power Company is in no way responsible—that smelter furnishing the greater demand, greater consumption, and better load factor, is entitled to the lower rate. In this connection it should be noted that the standard load factor rate applying to the business of the Leadville smelter, will result in a rate of about 9.5 mills per

kw-hr., while this same rate when applied to the business of the Salida smelter, results in a specific rate of 11.4 mills per kw-hr. These specific kilowat hour rates are the result of the conditions created by the smelters themselves, and while the kw-hr. rate earned by the larger smelter is lower than that earned by the smaller one, it is by no means preferential or discriminatory as regards the smaller smelter.

Since the standard power rates for larger consumers in the Salida and Leadville districts are identical it might be reasoned that the Commisison should either order this standard rate applied to both the Leadville and Salida smelters—with the result that the Salida smelter would pay a rate of approximately 11.4 mills per kw-hr. and the Leadville smelter 9.5 mills per kw-hr.—or that slightly lower rates for smelters as a class should be established. To apply the standard power rate to the smelter business would afford the Power Company a measure of relief in excess of that asked for in its application, and inasmuch as no relief has been asked over the rate now being paid by the Leadville smelter, the rate paid by the Salida smelter will be adjusted very largely on the assumption that the Leadville smelter rate is a reasonable one for the conditions under which that smelter operates. The Commission is of the opinion, however, that some consideration must be given to the higher operating expenses in the Salida district in making such adjustments, and that under conditions prevailing at this time, a fair and reasonable rate to be charged by The Colorado Power Company to The Ohio and Colorado Smelting & Refining Company is 9.5 mills per kw-hr. for all energy furnished, and that the rate of 7.65 mills per kw-hr. as now charged to the Smelting Company by the Power Company should be cancelled.

ORDER.

IT IS THEREFORE ORDERED, That the rate of 7.65 mills per kw-hr., as filed with this Commission by The Colorado Power Company, to apply to all service rendered to The Ohio and Colorado Smelting & Refining Company at its plant at Salida, Colorado, be cancelled as of date of August 20, 1918.

IT IS FURTHER ORDERED, That The Colorado Power Company shall file with the Commission a rate of 9.5 mills per kw-hr. in lieu of said above cancelled rate, to apply to all service rendered to The Ohio and Colorado Smelting & Refining Company;

IT IS FURTHER ORDERED, That such rate of 9.5 mills per kw-hr. shall be filed with the Commission in acordance with the requirements of Section 16 of the Public Utilities Act, and that such rate shall apply to all service rendered to The Ohio and Colorado Smelting & Refining Comany on and after August 20, 1918.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 6th day of August, 1918.

DECISION No. 193.

IN RE APPLICATION OF THE WESTERN COLORADO POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN THE TOWN OF RIDGWAY.

Application No. 24.

August 6, 1918.

STATEMENT.

By the Commission:

This is the application of The Western Colorado Power Company for a certificate of public convenience and necessity to exercise the rights and privileges granted to it by the Town of Ridgway under Ordinance No. 91, passed and adopted March 4, 1918, by the mayor and board of trustees of the town of Ridgway.

On July 18, 1918, the applicant, The Western Colorado Power Company was duly notified that hearing in this case had been set for the 31st day of July, 1918, at 2:00 o'clock p. m. On the same date notice of said hearing was also served on the mayor and board of trustees of the town of Ridgway.

A public hearing in this cause was held before Commissioner Anderson in the hearing room of the Commission on July 31, 1918, at 2:00 o'clock p. m. Mr. Bulkeley Wells, president of The Western Colorado Power Company, appeared on behalf of the applicant company. There were no other appearances.

The testimony shows that The Western Colorado Power Company is engaged in furnishing electric current for lighting, heating and power purposes in the town of Ridgway; that there is no other company now engaged in the public service of supplying elec-

tricity for said purposes in said territory; that there are no other means by which the town of Ridgway or the surrounding country can be supplied with electricity for said purposes, except by the construction of a new plant; that the applicant, The Western Colorado Power Company, on March 4, 1918, obtained a franchise from the town of Ridgway granting it permission to engage in the business of supplying electricity for the purposes above stated; that the applicant company has been engaged in the supplying of electricity for said purposes in the town of Ridgway for some years past, but that the present franchise was obtained and granted for the purpose of curing certain defects in the passage of a previous ordinance under which the company had been doing business.

In filing its application herein the company also filed with the Commission a copy of the franchise granted to it by the town of Ridgway, and a copy of its articles of incorporation, as required by Section 35 of the Public Utilities Act.

The testimony shows that there is now a demand and necessity for a supply of electricity for lighting, heating and power purposes in the town of Ridgway.

ORDER.

The Western Colorado Power Company, having applied to this Commission for a certificate to exercise the rights granted to it by Ordinance No. 91 of the town of Ridgway, and a public hearing having been held thereon, and the Public Utilities Commission being fully advised in the premises—

IT IS HEREBY DECLARED that the present and future public convenience and necessity require and will require the exercise by The Western Colorado Power Company, its successors and assigns, of the rights and privileges conferred by Ordinance No. 91 of the town of Ridgway, adopted by the mayor and board of trustees on the 4th day of March, 1918.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 6th day of August, 1918.

DECISION NO. 194.

IN RE ADVANCE IN DENVER & INTERURBAN RAILROAD FARES.

Application No. 23.

August 7, 1918.

APPEARANCES: E. E. Whitted, for the applicant.

STATEMENT.

By the Commission:

This cause arises on application of The Denver & Interurban Railroad Company, by William H. Edmunds, Receiver, for permission to increase fares upon its lines between Denver and Boulder.

The applicant is a common carrier under the Public Utilities Act and was organized September 10, 1904, under the laws of the State of Colorado. It owns an interurban line extending from Globeville to Boulder and a street railway line in the City of Fort Collins. Operations were commenced upon its interurban line about July 1, 1908.

On May 4, 1918, the Commission issued an order in I. & S. Docket No. 17 in which the interurban fares of the applicant were passed upon. Tariffs had been filed providing for: An increase in the one-way fares from 2½ cents to 3 cents per mile; increase in 25-ride family commutation tickets from 1½ cents to 2 cents per mile; elimination of the 10-ride individual commutation tickets, which had been based on rate of 1¾ cents per mile; elimination of 50-ride family commutation books, based on rate of 1¼ cents per mile; a 15-day limit on round trip tickets instead of a 3-day limit,

and certain other rules and provisions not provided for by the tariffs theretofore on file with the Commission.

The Commisison found that the respondent was not earning sufficient revenue and that increases should be granted in its fares, and on May 4, 1918, issued its order increasing certain of the respondent's fares. It did not, however, grant the full amount of increases as provided by the tariff suspended. The Commission ordered that no change be made in the one-way or round trip fares, but ordered the elimination of the 10-ride individual commutation tickets, an increase in the 25-ride family commutation tickets to 2 cents per mile, and an increase in the 50-ride family commutation books to 1¾ cents per mile. A tariff was filed in conformity with the order of the Commission, effective May 26, 1918.

On June 11, 1918, in the case of Guaranty Trust Company of New York as Trustee v. Denver & Interurban Railroad Company, the Honorable Robert E. Lewis, judge of the United States District Court of the District of Colorado, appointed William H. Edmunds receiver of The Denver & Interurban Railroad Company. Subsequent thereto the Court ordered the receiver to apply to the Commission for permission to discontinue operations of the street railway line of the Denver & Interurban in the City of Fort Collins. On July 9, 1918, the Commission issued its order permitting the discontinuance of service upon said line.

Statements of the financial conditions of the applicant and of the mileage, etc., are set out in the Commission's order of May 4, 1918, In re Advance in Denver & Interurban Railroad Fares, 5 Colo. P. U. C. ——. In that case the evidence showed that the respondent had never paid interest on its funded debt, and that the accrued debit balance on December 31, 1917, was $734,992.45.

In the former cause protests were entered on behalf of the City of Boulder, the town of Louisville and The Boulder Commercial Association. At the hearing in the instant cause no protests were entered and no appearances were entered other than those of the applicant. On July 18, 1918, subsequent to the filing of the application, the Commission received a communication from the city manager of the City of Boulder advising that the City of Boulder would make no protest against the petition for increased rates.

Exhibits were filed by the applicant giving complete statistics of its operations upon the interurban line and also for the company as a whole. It appears from these exhibits that the net loss upon the Denver-to-Boulder line for the six months from January 1,

1918, to June 20, 1918, was $40,418.24, and that while the operating revenues are fairly constant, the operating expenses are continually increasing and without doubt will continue to do so. In addition to the exhibits filed in this cause it was stipulated that the evidence and testimony of the former cause be considered herein. The greater portion of the traffic on the applicant's interurban line is to and from Denver. An exhibit was filed by the applicant showing a statement of tickets sold from Denver to all stations on the interurban line during the month of March, 1918. A summary of this statement is as follows:

	Tickets	Revenues
One-way	5,251	$2,610.70
Round-trip	3,115	3,080.10
Commutation, 10 trip	12	36.40
Commutation, 25 trip	33	250.50
Commutation, 50 trip	31	197.50

Since the issuance of the Commission's order of May 4, 1918, the applicant has made an estimate of the increased revenue that would accrue by reason of the Commission's order of that date and found that upon the basis of the business of the year ended December 31, 1917, the increase in revenue would amount to approximately $8,000.00 per annum.

In the opinion of the Commission, it is clearly evident that the increases allowed in the Commission's order of May 4, 1918, are not sufficient to enable the company to pay its operating expenses and taxes and that, unless further relief is granted, it will become necessary to discontinue service upon the interurban line of the company.

The Commission is further of the opinion that the increases prayed for by the applicant should be granted and an order therefore will be entered authorizing the establishment of the rates hereinafter set forth in the Commission's order.

ORDER.

IT IS ORDERED, That the applicant, The Denver & Interurban Railroad Company, by William H. Edmunds, receiver, be, and it is hereby, allowed and permitted to establish on not less than 3 days' notice to the Commission and to the public by filing and posting in the manner prescribed in the Act, the following rates between points upon its line between Globeville and Boulder, Colorado:

1. Local one-way fare, between all points, 3 cents per mile; minimum fare in any one case 10 cents.

2. Round-trip, between all points, 10 per cent less than the double local one-way fare.

3. 25-ride commutation tickets, between all points, 2.20 cents per mile; minimum charge for any 25-ride book $2.00.

4. 50-ride commutation tickets, between all points, 1.925 cents per mile; minimum charge for any 50-ride book $4.00.

5. Special cars at regular round-trip rates, with a minimum guaranty of $50.00 per car.

Eldorado Springs During Summer Season.

6. Special Sunday excursion rates, Globeville to Eldorado Springs and return, round-trip $1.20. Week-day rate, Globeville to Eldorado Springs and return, round-trip, $1.40.
Special cars, Globeville to Eldorado Springs, round-trip, $1.20 per person; minimum guaranty of $50.00 per car.
Special Charge for Persons Not Holding Tickets.
An addition of 5 cents to the regular ticket fare will be made in all cases where passenger has failed to purchase a ticket at stations where agents are located and tickets are available.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 7th day of August, 1918.

DECISION NO. 195.

IN THE MATTER OF THE APPLICATION OF THE COLORADO POWER COMPANY FOR AN ORDER DECLARING THE PRESENT RATE FOR SMELTER SERVICE IN THE SALIDA DISTRICT DISCRIMINATORY AND PREFERENTIAL AND ESTABLISHING A REASONABLE RATE THEREFOR.

Application No. 16.

August 16, 1918.

STATEMENT.

By the Commission:

On the sixth day of August, 1918, the Commission issued its order in this cause prescribing a rate of 9.5 mills per kw-hr. for service furnished smelters for power at Salida, to become effective August 20, 1918. On the 9th day of August, 1918, an application was filed by The Ohio and Colorado Smelting & Refining Company for a rehearing and as grounds for such motion alleged error on the part of the Commission.

The Commission now being fully advised in the premises is of the opinion that the petition of The Ohio and Colorado Smelting & Refining Company for a rehearing should be denied.

ORDER.

IT IS THEREFORE ORDERED, That the petition for rehearing filed with the Commission August 9, 1918, by The Ohio & Colorado Smelting & Refining Company be, and it is hereby, denied.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 16th day of August, 1918.

DECISION No. 196.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTERURBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

(In re Supplemental Petition for Emergency Relief.)

September 12, 1918.

APPEARANCES: Messrs. Hughes and Dorsey and H. S. Robertson, for the applicant company; Messrs. A. L. Vogl and John A. Rush, for the Consumers' League of Denver, as to the question of the jurisdiction of the Commission only; C. W. Varnum, Esq., for himself and the Junior Order of United American Mechanics, Protestants; John A. Rush, Esq., for himself, Protestant.

STATEMENT.

By the Commission:

On May 3, 1918, The Denver Tramway Company, hereinafter called the Tramway Company, or the applicant, filed with this Commission its petition for the determination by the Commission of the just and reasonable rates, fares and charges to be hereafter

paid and enforced on its street and interurban railway lines, and also for authority to change its existing traffic schedule rates, fares and charges, and to make and collect such fares, rates and charges in accordance with the determination and ruling of this Commission.

The petition states in substance that the Tramway Company is a railway corporation organized under the laws of the state of Colorado, and now owns and operates all of the street railway lines in the city and county of Denver and adjacent territory, and also the interurban lines extending from the city and county of Denver to Leyden and Golden, Colorado; that through capital stock ownership it controls and operates the property of The Denver and Intermountain Railroad Company, which is engaged in the carriage of freight and passengers by electricity and steam between Denver and Golden, Colorado; that said street railway and interurban lines aggregate 253 miles in length and furnish said places with their only street railway and interurban railroad service.

It is further alleged that the present street railway system began in 1871 with a horse car line, succeeded by steam, cable and electricity; that the Tramway Company has extended its system and adopted new and important devices and power conducive to service, and is now operating its system entirely through electric power known as the overhead trolley system, and has at all times met the demands and requirements of the public for street car service; that the city and county of Denver is increasing in population and demands are being made for extensions and improved service which can be met only by additional capital expenditures and by permission to charge such rates and fares as will produce a revenue adequate to operate the property and furnish a reasonable return on the value of the property so used in the public service.

It is further alleged that a comparative annual statement of its earnings and expenses since its incorporation, and including estimated results for 1918, is set forth in Exhibit "A" attached to such petition; that the revenue received and charges and fares collected have been and are inadequate and insufficient to allow, after the deduction of necessary operating costs, a reasonable compensation for the services rendered, and that the increased cost of every item entering into operation has made a situation so critical that without immediate higher revenues it cannot continue to give the public the service to which it is entitled; that

the Tramway Company granted increased compensation to its employes in 1916 in the sum of $21,000.00 per year, and in 1917 in the sum of $161,000.00 per year; that the Tramway generates by steam at least 80 per cent of its own electric power and for that purpose operates its own power plant; that the cost per ton of coal used therein has increased since January 1, 1916, fully 100 per cent, and that increases in all other items of operating cost have been substantially proportional thereto. The petition alleges that for the calendar year 1917 the applicant carried 62,380,777 revenue passengers in the city service, but on account of free transfers, half fares, etc., the average flat rate of fare per passenger was 3.96 cents; that since April of 1914 applicant has met capital expenditures of $682,000.00 for the Colfax-Larimer and Twenty-third Street viaducts and others occasioned by municipal requirements, new machinery, installation of "pay-as-you-enter" service, and improvements to property; that during this time it has paid on account of sinking fund and maturities of its funded debt $806,115.00.

It is further alleged that since April 1, 1918, it has been impossible for the Tramway Company to obtain capital for such expenditures, or buyers and market for its salable bonds and securities; that the situation is a general one; that the margin between revenue and operating cost is not sufficient to meet the present sinking fund requirements, even without allowing anything for construction account, extensions or betterments, or the increasing costs of operation and adequate provision for depreciation and renewals; that there has been a great diversion of revenues by the largely increased use of the private automobile; that a higher charge is essential if applicant is to continue even its present service, much less take care of additional, necessary requirements of approximately $1,693,000.00, most of which is for capital account and the balance for essential renewals and replacements, but all of which is over and above current maintenance and the principal items of which are trackage, including Union Station loop $90,000.00, recuperation camp $140,000.00, and the balance—$310,000.00—replacements and renewals of existing and necessary additional trackage; rolling stock $638,000.00; for new passenger cars (motor and trailers), and other rolling stock requirements; car house facilities $75,000.00, substation machinery and copper $90,000.00, machinery—including shop and repair facilities—$350,000.00.

It is further alleged that a total capitalization of the Tramway Company outstanding in the hands of the public on January 1, 1918, is as follows:

Bonds	$18,715,800.00
Stock	6,156,300.00
Total	$24,872,100.00

that this is at the rate of $98,800.00 per mile of track, and that such capitalization is at a lower basis per mile than the valuations found in actual appraisals for other cities; that no dividends have been paid since July, 1915; that on the average capitalization since March 2, 1899, the rate of return to applicant's investors, including both bondholders and stockholders, has averaged 4.36 per cent, and to stockholders alone has averaged 2.61 per cent, without adequate or any provision having been made for depreciation and renewals.

It is further alleged that on April 1, 1919, $4,500,000.00 of funded debt of applicant will mature, and must be taken care of in addition to $1,355,082.00 for capital expenditures; that free capital can be obtained only by an increase in rates and fares to be charged by the Tramway Company; that the Tramway Company's operating ratio is 56 per cent.

The petition is accompanied by certain exhibits, and the prayer of the petition is that an order be made annulling existing schedules establishing present rates, fares and charges, and in lieu thereof fixing and determining such just rates, fares and charges as will yield applicant a just and reasonable return on the value of its property devoted to the public service, and to that end that such steps and proceedings be taken, including an inventory and valuation of all the property of the applicant used in such service, and that pending such proceedings applicant be given such relief, temporary or permanent, as may seem to the Commission just and proper, and that a hearing may be had and ordered upon the petition at the earliest possible time.

On May 6, 1918, the Commission ordered that a complete inventory and appraisal of all the property of the Tramway Company used and useful and necessary in the conduct of its business be made and submitted to the Commission, and that all books, vouchers, pay-rolls and records pertaining to the operations of the company, financial and otherwise, be submitted to the Commission for examination. Pursuant thereto a large part of the inventory has been furnished and is being checked by the engineering staff of the Commission, while the statisticians of the

Commission have been occupied since the date of said order with an investigation of the financial records of the applicant. Both the examination of the inventory and financial investigations are matters which have and will require a large amount of time to complete, and so far are not completed.

On August 28, 1918, the Tramway Company filed its supplemental petition for emergency relief, which alleged in substance the filing of the original petition and adopts same as a part of this supplemental petition. It is alleged therein that on May 6, 1918, the order of the Commission for inventory was made; that in accordance therewith applicant employed a consulting engineer to complete such inventory and submit same to the Commission, and that since said order and for some time prior thereto such inventory and valuation has been in constant process of completion, and the results thereof, as the same became available, and all books and records of the applicant, have been concurrently subject to the examination and checking of the Commission and its representatives, and that the Commission and its representatives are now and for some time past have been engaged in checking, appraising and valuation of the property of the applicant and an examination of its books and records.

It is further alleged that the Tramway Company has done everything possible to expedite such inventory and valuation; that owing to the extent, value and detailed character of the work involved in said inventory and valuation, and the inability to obtain and retain during present war conditions the aid and assistance of a sufficient number of efficient men, said inventory and valuation are not yet complete, although much progress has been made, but that after same is completed hearings must be held before the Commission involving the introduction of a considerable volume of testimony, and additional time must necessarily elapse before the Commission can have completed its own investigation and examination of the property of the Tramway Company, consider the evidence, and render a final decision fixing the valuation of said property and finally determine just and reasonable rates and fares to be charged by the Tramway Company.

It is further alleged that in addition to the wage increase set forth in the original petition, a wage increase of $225,000.00 per year has been granted by applicant effective August 15, 1918; that the trainmen of applicant have refused to accept the same and have petitioned the National War Labor Board requesting the fixing of a higher scale of wages; that the revenue of appli-

cant is not and will not be sufficient to take care of the additional wages being paid since August 15, 1918, to the 600 employes who have accepted the same, and the wage increase offered to the trainmen, as set forth in Exhibit "A" attached to said supplemental petition; and that unless applicant is granted the immediate emergency relief prayed for it will be without revenue to meet its operating expenses and fixed charges.

It is further alleged that Exhibit "B" thereto attached shows actual receipts and disbursements of the Tramway Company for the first 6 months of the calendar year 1918, with an estimate of receipts and expenditures for the remaining 6 months of the calendar year 1918 based upon the business done and results obtained in the first 6 months of 1918, and based on the assumption that a 6-cent fare will be granted; and Exhibit "C" shows the estimated result if relief is not granted; that in neither Exhibit "B" not Exhibit "C" has any allowance been made for just and reasonable depreciation; that in addition to the wage increase above described all other items of operating expenses either continue to be as high as set forth in the original petition, or have increased, including material and fuel; that by reason of the foregoing it will be impossible for the applicant to operate its service except at a tremendous loss, or to continue to render adequate and sufficient service to the public unless and pending final hearing of its original petition it is granted the emergency relief prayed for. Reference is again made to the maturity of $4,500,000.00 of funded debt early in 1919.

The supplemental petition prays that a hearing be forthwith had and applicant be permitted to charge and collect on all its lines, where a 5-cent fare now prevails, a 6-cent fare, with half-fares for children under 12 years of age, and to increase its rates on its interurban lines from Berkeley and County Line of the city and county of Denver to Golden, Arvada, Leyden and Leyden Junction and intermediate points to the extent authorized by General Order No. 28 of the Director General of Railroads of the United States. The case was set for hearing upon the supplemental petition at the hearing room of the Commission, State Capitol building, Denver, Colorado, on September 4, 1918.

Jurisdiction.

Protests and objections to the jurisdiction of the Commission were filed by the Whittier Welfare Improvement Association on May 11, 1918; by the Consumers' League of Denver on May 18,

1918; by W. R. Abbott on September 3, 1918, and by the city and county of Denver on September 4, 1918. All of the protests are directed to the question of the jurisdiction of the Commission over rates and fares within the city and county of Denver, no question being raised as to the authority of the Commission in this proceeding as to lines, rates and charges outside of the limits of the city. The questions raised by all of the protests are contained in that of the city and county of Denver, which is in substance that said city protests and objects to this Commission assuming jurisdiction or making any orders touching this application, so far as it affects the service rendered wholly within the boundaries of the city and county of Denver, because the said city is a muniicipal corporation, organized and existing under Article XX of the Constitution of the State of Colorado; that among the provisions of the charter of the said city is the following:

> "All power to regulate the charges for service by public utility corporations, is hereby reserved to the people, to be exercised by them in the manner herein provided for initiating an ordinance."

that by reason of said article of the Constitution of Colorado the power of fixing rates of public utilities for service rendered wholly within the city and county of Denver is exclusively with said city and county and this Commission has no jurisdiction over the same.

The question of the jurisdiction of the Commission over service rates of public utilities operating in municipalities existing under Article XX of the Constitution of Colorado has many times been before the Commission for consideration, most recently in the matter of the investigation of the rates and rules of the Mountain States Telephone & Telegraph Company. In four very important cases before the Commission the question has directly been involved. These cases were Castle Rock Mountain Ry. & Park v. Denver Tramway Company, (1 Colo. P. U. C. 126); East Denver Business & Property Association v. Denver Tramway Company, (3 Colo. P. U. C. 333 and 4 Colo. P. U. C. 276); Ratner v. Denver Gas & Electric Light Company (3 Colo. P. U. C. 379); and the Mountain States Telephone & Telegraph Company case above referred to. The holdings of the Commission in all these cases, as well as in the cases affecting "home-rule" in other cities in Colorado, have all been to the effect that the Commission has jurisdiction within such cities over rates and fares.

The Commission holds, as heretofore, that the regulation of fares to be charged by public service utilities is not a municipal matter, but is a sovereign right belonging to the state in its sovereign capacity. It is claimed that the effect of the amendment to the charter of the city and county of Denver is to give the city sovereign rights superior and contrary to the expressed will of the state in the Public Utilities Act, but the "home-rule" amendment does not confer any powers upon a municipality beyond what are purely municipal. The Supreme Court of Colorado has decided that the powers of a municipality operating under Article XX of the Constitution are limited to matters strictly local and municipal.

This ruling of the Commission is in accordance with the trend of court decisions throughout the country. In the decisions of the Commission referred to are cited many opinions holding to the same effect. Since the issuance of the Commission's previous decisions numerous cases have been decided by state courts, notably Cleveland Telephone Company v. City of Cleveland, Supreme Court of Ohio, decided June 21, 1918, 98 Ohio State —, — N. E. —, and City of Traverse City v. Michigan Railroad Commission, Supreme Court of Michigan, decided July 18, 1918, — Mich, —, — N. W. —. In both cases the court held that the regulation of rates in municipalities, although operating under constitutions giving the municipalities power to regulate all matters of local and municipal concern, was a matter of general concern and did not pertain to local or municipal affairs. The Supreme Court of Oregon, in Portland v. Public Service Commission, — Ore. —, — Pac. —, decided July 23, 1918, has held to like effect in its decision upholding the Public Service Commission in the Portland street railway fare case. In view of the repeated decisions of this Commission and courts above referred to it seems unnecessary to again discuss the question in detail.

Section 21 of the Public Utilities Act expressly provides:

> "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."

This certainly confers express jurisdiction upon the Commission.

In the case of Campbell v. The City of Grand Junction, Case No. 136 of this Commission, decided November 27, 1917, the Commission went into this question very fully, and numerous authorities are there cited, together with a discussion of Article XX of the Constitution of Colorado and the amendment of Section 6 thereof.

The Commission there held:

> "Certainly it is true that if the regulation of rates and service of public utilities are not matters of local and municipal concern, then an attempt by a city in framing its charter to grant to the municipal government additional powers, which are not local and municipal, is an enlargement of powers, and, therefore, in conflict with Article XX of the Constitution."

The Constitution of the state of Colorado, Section 8 of Article XV, provides:

> "* * * and the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state."

It is too well settled to require citation of authorities that the state will not be held divested of its police power except by clear and unmistakable language, and no such language is to be found vesting in the city and county of Denver the power of rate-making. On the contrary, this power has been vested in this Commission by the Public Utilities Act.

These protests are all overruled and the Commission finds it has jurisdiction of this application and petition and of the rates, charges and regulations of the Tramway Company, both within and without the limits of the city and county of Denver.

Application for Emergency Relief.

The hearing was begun on September 4, 1918, and, after argument on the question of jurisdiction, evidence was introduced by the Tramway Company in support of its application for emergency relief. The Tramway Company serves the city and county of Denver and adjacent territory with urban service, and from the county line to Golden via the Denver & Intermountain and from the county line to Golden, and to Leyden via Clear Creek Junction it furnishes interurban service. The company operates

a total of approximately 253 miles of single track, and has a total equipment of 619 passenger, utility and freight cars. During the calendar year 1917 it carried 62,380,777 revenue passengers in its urban service. The capitalization of the company outstanding in the hands of the public is as follows:

THE DENVER TRAMWAY COMPANY.

	Amount in the hands of Public.
The Denver Consolidated Tramway Company 5% First Consolidated Mortgage. Due October 1, 1933. Bankers Trust Company (New York), Trustee. Interest payable April and October, in Denver and New York	$ 1,167,000.00
The Denver City Tramway Company 5% First Mortgage. Due April 1, 1919. Central Trust Company (New York), Trustee. Interest payable April and October, in Denver and New York	2,000,000.00
The Denver and Northwestern Railway Company 5% 1st and Collateral Mortgage. Due May 1, 1932. Bankers Trust Company (New York), Trustee. Interest payable May and November in Denver and New York	509,100.00
The Denver Tramway Power Company. 5% 1st Improvement Mortgage. Due April 1, 1923. International Trust Co. (Denver), Trustee. Interest payable April and October at office of Trustee in Denver and at Guaranty Trust Company, New York	1,026,000.00
The Denver City Tramway Company. 5% 1st and Refunding Sinking Fund Mortgage. Due November 1, 1933. Bankers Trust Co. (New York), Trustee. Interest payable May and November, in Denver and New York	10,318,700.00
The Denver Tramway Terminals Company. 5% First Mortgage. Due Serially, $60,000 each year beginning September 1, 1916. Bankers Trust Company (New York), Trustee. Interest payable March and September, in Denver and New York	1,195,000.00
The Denver Tramway Company. 6% Convertible Gold Bonds. Due April 1, 1919. Columbia Trust Company (New York), Trustee. Interest payable April and October in Denver and New York	2,500,000.00
	$18,715,800.00
Stock	6,156,300.00
Total	$24,872,100.00

Of the above amount about $50,000.00 of the bonded indebtedness has been paid so far during 1918, and on April 1, 1919, $4,500,000.00 thereof will mature and must be met.

The Commission finds that the allegations of the supplemental petition have been substantially proven and are sustained by the evidence. While the Commission has not made a valuation, the same being now in progress, a sufficient showing has been made upon uncontradicted evidence to justify the Commission in granting temporary relief. The Commission is at this time chiefly interested in seeing that service is maintained, and that the public be not left without service through a failure of this Commission to provide sufficient revenue to meet operating expenses, reasonable depreciation and —keeping within reasonable limits—a return on the investment. While the evidence amply sustains the claim of a general increase in operating expenses, including fuel, material and supplies, a most serious matter is the rapid increase in labor costs which the applicant is called upon to meet. The evidence shows that an increase of $21,000.00 a year in wages was granted in 1916, a further increase of $161,000.00 was granted in 1917, and a schedule was made effective August 15, 1918, causing a further increase in wages of $225,000.00 per annum. It also appears that this last increase has not been acquiesced in by a portion of the employes, and the question is now pending before the National War Labor Board and it is possible that a scale may be awarded by that board in excess of that offered by the applicant above referred to as effective August 15, 1918.

The applicant has submitted Exhibits B and C as follows:

"EXHIBIT B."

DENVER TRAMWAY COMPANY. (SYSTEM.)

Earnings and Disbursements

Year 1918.

	January 1st—June 30th, Inclusive. ACTUAL.		July 1st—December 31st, Inclusive ESTIMATED. (Wage increase effective Aug. 15.) (6c fare effective Sept. 1st.)	
City Passenger Revenue	$1,618,389		Plus 10% (4 months)	$1,613,389
Other Revenue	150,312			107,892
				150,312
Total Gross Revenues	$1,768,701			$1,876,593
Less Operating Expenses.				
Maintenance	$223,447		$223,447	
Power	107,845		107,845	
Transportation	466,656		466,656	
Traffic, General and Misc.	186,582		186,582	
			Plus Wage Increase	88,875
		$ 984,530		$1,073,405
Net Revenue		$ 784,171		$ 803,188
Deductions.				
Taxes	$139,748		$139,748	
Franchise	30,000		30,000	
Interest	483,810	$ 653,558	483,810	653,558
Balance		$ 130,613		$ 149,630
Sinking Fund and Maturities		122,990		122,990
To meet still further increases in materials needed in operation, also renewals, replacements, depreciation and construction		$ 7,623		$ 26,640

DENVER TRAMWAY COMPANY (SYSTEM).

EXHIBIT "C."

Estimated funds available July 1st to December 31st, 1918, if rates of fare are NOT increased but with wage increase announced July 16th in effect.

JULY, 1918.			
Cash on Hand, July 1, 1918			$ *31,783
Net Earnings		$ 141,200	
Cash Outlay—			
Franchise Tax	$ 5,000		
Taxes—Second Half	141,466		
Construction	7,500		
Total Disbursements from Net Earnings		$ 153,966	
Net Deficit			$ *12,766
Balance, August 1, 1918			$ *44,549
AUGUST, 1918.			
Net Earnings		$ 143,000	
Cash Outlay—			
Franchise Tax	$ 5,000		
Construction	19,800		
Bond Interest—D. T. Co.	29,875		
Bonds Maturing—D. T. Co.	60,000		
Total Disbursements from Net Earnings		$ 114,675	
Net Income			$ 28,325
Balance September 1, 1918			$ *16,224
SEPTEMBER, 1918.			
Net Earnings		$ 114,000	
Cash Outlay—			
Franchise Tax	$ 5,000		
Construction	8,000		
Bond Interest—D. Con. T. Co.	29,175		
Bond Interest—D. City T. Co.	50,000		
Bond Interest—D. T. Co. Conv.	75,000		
Bond Interest—D. T. P. Co.	24,450		
Total Disbursements from Net Earnings		$ 191,625	
Net Deficit			$ *77,625
Balance, October 1, 1918			$ *93,849

OCTOBER, 1918.			
Net Earnings		$ 110,000	
Cash Outlay—			
Franchise Tax	$ 5,000		
Construction	5,500		
Bond Interest—F. & R. S. F.	257,900		
Bond Interest—D. & N. W. Ry. Co.	12,715		
Sinking Fund—F. & R. S. F.—Prin.	103,170		
Sinking Fund—F. & R. S. F.—Int.	32,800		
Total Disbursements from Net Earnings		$ 417,085	
Net Deficit			$ *307,085
Balance, November 1, 1918			$ *400,934
NOVEMBER, 1918.			
Net Earnings		$ 103,000	
Cash Outlay—			
Franchise Tax	$ 5,000		
Construction	3,000		
Total Disbursements from Net Earnings		$ 8,000	
Net Income			$ 95,000
Balance, December 1, 1918			$ *305,934
DECEMBER, 1918.			
Net Earnings		$ 128,000	
Cash Outlay—			
Franchise Tax	$ 5,000		
Construction	3,000		
Total Disbursements from Net Earnings		$ 8,000	
Net Income			$ 120,000
Balance, January 1, 1919			$ *185,934

*Indicates Deficit.

In neither exhibit has an allowance been made for depreciation. F. D. Stackhouse, auditor of the City and County of Denver, made an estimate of the last half of the year 1918 showing a balance of $188,614.00 as against the company's estimate of $26,640.00. He used an increased amount in his estimate of city passenger revenue, and a decreased amount in his estimate of wage increase, and based his estimate upon a 12½ per cent in-

crease as a result of a 6-cent fare, as against a 10 per cent increase used by the applicant. The evidence shows that while a 6-cent fare would yield a 20 per cent increase if the same number of passengers were carried as under the lower fare, experience in other cities is that this percentage of increase is not maintained.

The estimate of the city auditor did not contain any provision for depreciation, as was the case also in the Tramway Company's estimates. If a reasonable allowance for depreciation is included the balance of $26,640.00 in the company's exhibits would be entirely used up, and likewise the balance shown by the auditor of the City and County of Denver in his estimate would probably be exhausted for such purposes.

The applicant placed in evidence Exhibit A, attached to its original petition, showing its financial statement from April 1, 1914, to December 31, 1917, and an estimate of the result for 1918. In this statement a considerable item is included for depreciation and renewals, to which objection was made by parties appearing in this case. The Commission is not determining at this time the proper amount to be allowed the Tramway Company for depreciation, nor has evidence been adduced upon which to base a finding of the amount to be allowed for depreciation, and no finding is made at this time as to the correctness of the estimate submitted by the applicant for depreciation and renewals in the exhibit last referred to. There is no question, however, and this Commission has repeatedly held, that reasonable depreciation must be allowed, and it appears under the evidence that no excessive amount is likely to be realized by the company under this order for such a fund.

It also appears from the evidence that the Tramway Company has obligations in the sum of $4,500,000.00 maturing on April 1, 1919, and that unless emergency relief is granted at once it may be unable on account of its financial condition to refund this indebtedness. If relief is granted it will doubtless keep the Tramway Company solvent, prevent a receivership, and enable the Tramway Company to obtain relief from the War Finance Corporation, which has urged prompt action in cases of this kind. The War Finance Corporation has stated:

> "The directors of the War Finance Corporation do not feel that they have any authority under the law to make loans except upon adequate security as required by the act, and they are convinced that the inability of a utility to earn

a sum at least sufficient to pay its fixed charges, taxes, maintenance, and repairs is conclusive evidence of the inadequacy of its own obligation as security . . . It is urged, therefore, that the proper authorities give prompt consideration to applications made by public utilities for permission to increase rates, in order that the directors of the War Finance Corporation may know when applications for loans are presented by public utility corporations whether or not they will be able to give adequate security.''

While the Public Utilities Act clearly authorizes the making of valuations by the Commission, it nowhere makes the same a prerequisite in the making of rates, and it does not follow that elaborate and expensive valuations must be had before relief can be granted in a case of this kind. Commissions, generally throughout the country, have recently granted temporary relief in many cases without the requirement of a valuation. The large mass of the population is entirely dependent on the street car for service, and service must be preserved. The people are entitled to receive the present service, but it is plain from the evidence that such service cannot be maintained or improved without an increase in the revenue of the Tramway Company.

The record shows very substantial increases in fuel, material and labor costs, due to war-time conditions, and these increases have created a serious crisis in the affairs of the applicant company, similar to conditions developed in other cases heretofore heard by the Commission in which relief has been granted—such as that of The Denver & Interurban Railroad Company. The continuation of the service rendered by these utilities is a vital question to the state. In endeavoring to relieve and maintain these street and interurban railways the Commission is but responding to war-time policies announced by President Wilson, Secretary McAdoo and the comptroller of the currency, all speaking in behalf of the National Administration. The increase in freight rates initiated by the United States Railroad Administration is necessarily reflected into practically all material and fuel costs of the Tramway Company. The labor cost is admitted to be one of the largest items in the operating expenses. The Tramway Company admitted that higher rates of pay are necessary and justifiable under present conditions, and granted the increase of August 15, 1918, which, however, probably does not mark the extent of increase of such labor costs. The increased cost of living has un-

doubtedly justified such wage increase, and, while the Commission does not regulate the wage payments, it must necessarily consider them in connection with the regulation of rates. It is largely to meet these admittedly just demands upon the Tramway Company that the emergency relief is granted.

The evidence and the exhibits of the applicant company substantiate the claims that present passenger fares are unjust and unreasonable and insufficient to yield reasonable compensation for the services performed under existing war conditions and costs of operations.

The company will be permitted to hereafter charge, until the further order of this Commission, as just and reasonable maximum rates for the service performed, a fare of 6 cents for transporting adult passengers, and a fare of 3 cents for children over 6 years of age and under 12 years of age, within the limits of the City and County of Denver, and on all of the applicant's lines where a 5-cent fare now prevails.

The United States Railroad Administration, as a war measure, increased passenger fares June 10, 1918, between points on railroads under federal control. The interurban lines of the applicant compete with roads under federal control and the applicant asks to be permitted to increase its interurban fares to the basis of fares effective June 10, 1918, on federal controlled roads by order of the Director General of Railroads, as per his General Order No. 28, issued May 25, 1918, and amendments thereto. The most important changes in interurban fares as thus requested by the Tramway Company would be an increase of one-way fares to 3 cents per mile, cancellation of round-trip fares, and the increasing by 10 per cent of all commutation fares. The interurban lines of the Tramway Company are subject to many of the same increases in expenses as the steam railroads and for the purposes of emergency relief a schedule placing the interurban lines of the Tramway Company on a parity with the roads under federal control should be permitted.

The company will be required to issue tickets, coupon books, or metal discs, for the convenience of the public to avoid delay and confusion from making change. The Commission will require the Tramway Company to submit monthly statements setting forth full information as to the number of passengers carried, revenues and expenses during each month, in order that the Commission may have full cognizance of the financial situation of the company.

On the 5th day of July, 1918, the Tramway Company filed its Colo. P. U. C. No. 3, effective August 6, 1918, providing therein for increases in its interurban fares upon the basis of fares allowed by General Order No. 28 of the Director General of Railroads to roads under federal control. The Commission suspended the schedule until December 3, 1918, in Investigation and Suspension Docket No. 25. The Commission having permitted the applicant herein to establish fares on its interurban lines upon the basis of the fares and charges provided for by General Order No. 28 of the Director General of Railroads a vacating notice will be issued in I. & S. Docket No. 25.

An order will be entered herein in conformity with the foregoing findings of the Commission. The cause will be retained for further proceedings in the matter of valuation, rates and all other matters under the original petition herein.

ORDER.

IT IS THEREFORE ORDERED, That The Denver Tramway Company, the applicant herein, be, and it is hereby, allowed and permitted to establish effective September 15, 1918, on not less than one day's notice to the Commission and to the public by posting and filing in the manner provided in Section 16 of the Act, fares of 6 cents for transporting adult passengers, and 3 cents for children over 6 years of age and under 12 years of age, within the limits of the city and county of Denver, and on all of its lines where a 5-cent fare now prevails.

IT IS FURTHER ORDERED, That The Denver Tramway Company, the applicant herein, be, and it is hereby, allowed and permitted to establish effective September 15, 1918, on not less than one day's notice to the Commission and to the public by posting and filing in the manner provided in Section 16 of the Act, passenger fares between points on its interurban lines not in excess of those made effective June 10, 1918, on federal controlled railroads, as per General Order No. 28 of the Director General of Railroads of the United States Railroad Administration.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 12th day of September, 1918.

DECISION No. 197.

IN RE ADVANCE IN DENVER TRAMWAY INTERURBAN FARES.

Investigation and Suspension Docket No. 25.

September 12, 1918.

STATEMENT.

By the Commission:

On the 5th day of July, 1918, a tariff was filed with the Commission by The Denver Tramway Company, its Colo. P. U. C. No. 3, effective August 5, 1918, in which it was proposed to make effective changes in fares and charges on the interurban lines of The Denver Tramway Company between the City and County of Denver and Golden, Leyden and Leyden Junction upon the basis of the fares as initiated for railroads under federal control by General Order No. 28 of the Director General of Railroads of the United States Railroad Administration. On July 13, 1918, the Commission suspended the proposed schedules contained in the tariff referred to and deferred the operation of the schedule until the 3rd day of December, 1918.

In the matter of the application of The Denver Tramway Company for permission to increase its rates and fares, Application No. 17, the Commission has this date issued an order upon the supplemental petition for emergency relief permitting The Denver Tramway Company to increase its fares and charges upon its interurban lines to the basis of fares and charges in General Order No. 28 of the Director General of Railroads. Inasmuch as the only changes herein under suspension are those rates of The Denver Tramway Company proposed on the basis of the fares in General Order No. 28, this cause should be dismissed and the order of suspension of July 13, 1918, vacated.

ORDER.

IT APPEARING that, by order dated July 13, 1918, the Commission entered upon a hearing and investigation concerning the propriety of the increases and the lawfulness of the rates, rules, and regulations contained in Colo. P. U. C. No. 3 of The Denver Tramway Company, and ordered that the operation of the said schedules be suspended until the 3rd day of December, 1918.

IT IS ORDERED, That the order heretofore entered in this proceeding suspending the operation of said schedules be, and it is hereby, vacated and set aside as of September 15, 1918.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 12th day of September, 1918.

DECISION No. 198.

IN THE MATTER OF THE APPLICATION OF THE INTERMOUNTAIN RAILWAY, LIGHT & POWER COMPANY FOR PERMISSION TO INCREASE ITS RATES AND CHARGES FOR ELECTRIC SERVICE IN THE CITY OF LAMAR.

Application No. 22.

September 21, 1918.

APPEARANCES: Rush L. Holland for the applicant; W. E. Fee and Granby Hillyer for the city of Lamar.

STATEMENT.

By the Commission:

On the 11th day of May, 1918, The Intermountain Railway, Light & Power Company, through its attorney, R. L. Holland, filed with the Commission an application for permission to increase its rates and charges for electric service in the City of Lamar. The petition alleges that on September 25, 1916, the City of Lamar filed with the Commission a petition alleging that the rates and charges of the company then in effect were excessive and unreasonable; that the case arising on said petition was docketed by the Commission as Lamar v. Intermountain Railway, Light & Power Company, Case No. 100; that after a hearing the Commission fixed the reasonable value of the plants and properties of the company used and useful

in serving the territory supplied by the applicant at $139,500.00, and that rates for the company's service were established which the Commission considered reasonable under the then prevailing conditions. (4 Colo. P. U. C. 391.)

The petition further alleges that the fair value of the company's electric plants and properties as of December 31, 1917, is $160,386.58, on which sum it should be permitted to earn a fair return; that such valuation is arrived at by taking the Commission's valuation of $139,500.00 as of December 31, 1916, and adding thereto the additions subsequently made to the property. The petition further alleges that the gross revenues from the sale of electricity at Lamar for the calendar year 1917 was $38,450.29; that the operating expenses for that period were $37,146.45, resulting in a net operating revenue of $1,303.84; that the company paid taxes on its electric plants and properties for the same period in the sum of $2,714.00, and that after deducting this amount, together with a depreciation requirement of $2,619.18, the operations of the company for the year ended December 31, 1917, showed a deficit of $4,029.34. The petition further alleges that the company is entitled to earn 8 per cent on the fair value of its property, which would amount to the sum of $11,709.93, and that such fair return added to the deficit in net earnings for the year 1917 brings the total deficit for that year to $15,739.27. The petitioner prays that the Commission speedily investigate the representations made in its petition, and upon hearing being had an order be issued granting the company the relief to which it is fairly entitled.

Notices having been given to all parties at interest, this case came on for hearing in the City of Lamar on the 29th day of July, 1918. Testimony was submitted on behalf of the applicant company through witness E. C. van Diest. This testimony on the whole was unsatisfactory, mainly being taken from various memoranda in the possession of the witness. No exhibits or detailed statements of revenues and expenses were submitted, and generally speaking his testimony was not in agreement with the annual report of the company for the year 1917 on file with the Commission.

An examination of the accounts of the petitioner was made by the statistician of the Commission and a statement of revenues and expenses for the year 1917 was submitted in evidence, this statement being as follows:

Operating Revenues:	
Commercial Lighting	$24,405.39
Municipal Street Lighting	2,680.80
Commercial Power	9,060.63
Municipal Power	175.00
Electric Merchandise and Jobbing	2,128.47
Steam Heating Revenue	3,696.93
Total	$42,147.22
Operating Expenses:	
Steam Power Generation	$29,584.31
Transmission	334.64
Distribution	1,803.73
Utilization	1,315.12
Commercial	2,990.17
New Business	389.41
General Expense	2,469.06
Total above items	$38,886.44
Depreciation	2,619.18
Taxes	3,015.54
Total Operating Expenses	$44,521.16
Net Operating Deficit	2,373.94
Non-operating Revenue	5.76
Deficit	$ 2,368.18

It appears from the above statement that the operating revenues from all sources for the year 1917 were not sufficient to meet the operating expenses of the company and taxes, much less to provide for depreciation and pay a return on the fair value of the property. The allegations in the petition of the company to the effect that certain additions to the property had been made during the year 1917, subsequent to the inventory and appraisal by the Commission, and that after adding such additions to the valuation established by the Commission and depreciating the entire property by some peculiar method of the applicant, the fair value of the property as of December 31, 1917, was approximately $160,000.00, is not properly before the Commission. Some additions to the plant have been made, but what these are or what they will amount to in money does not appear in the record and were not given in detail by Mr. van Diest.

It is wholly unnecessary that the Commission make any further finding as to the fair value of this property. The annual depreciation requirement of $2,619.18 included in the financial state-

ment for the year 1917 was not calculated in accordance with the Commission's order in Case No. 100 and is an excessive amount. Considering that some additions to the property have been made since the order of the Commisison in Case No. 100 was issued, the Commission is of the opinion that $2,250.00 would have been a reasonable amount to charge to depreciation for the year 1917. As a result, the deficit for the year 1917 as shown by the report of the Commission's statistician should be reduced by the sum of $369.18 or to $1,999.00. A fair return to the owners of the property at this time is not less than the sum of $11,600.00 per annum, so that the earnings for the year 1917 fell short of meeting operating expenses, depreciation, taxes and a fair return to the owners of the property by the sum of $13,599.00. There have also been increases in operating expenses during the year 1918, and on the same basis the deficit for the year 1918 will exceed the above amount.

The Lamar plant of The Intermountain Railway, Light & Power Company is a very inefficient one, the coal consumption being in excess of 16 lbs. of bituminous coal per kilowatt hour of output. While it is fully realized that this condition cannot be corrected at this time on acount of the difficulty in securing equipment, the company is not entitled to any reward for efficient operation in the disposition of this case. The cost of steam power plant generation alone for the year 1917 was 70 per cent of the operating revenues for that period and this ratio will probably be increased for the year 1918. There is also a very high unaccounted for loss in distribution, which, in the opinion of the Commission, does not result largely from leakage through trees, as stated by Mr. van Diest in his testimony.

The serious problem before the Commission, the company and the citizens of Lamar, is that of providing sufficient revenue to enable the company to meet operating expenses necessarily incurred under present operating conditions and with the type of equipment in use. It would be idle at this time to discuss the proposition of providing more efficient equipment for the purpose of reducing operating expenses. Such equipment, even if available, has so advanced in price that its substitution for the present equipment, even if obtainable, might not be desirable on account of the increase in fixed charges which would result.

The Commission is of the opinion that the rates of the applicant are unremunerative under the conditions prevailing at this

time and that, in order to provide additional revenue, the following changes in the present rates and charges should be made:

(a) A surcharge of 20 per cent should be applied to the bills of all commercial lighting, heating and cooking consumers in the City of Lamar, the town of Wiley and adjacent territory.

(b) The present rates for irrigation pumping and commercial alfalfa meal mills should be abolished.

(c) The following schedule should be established to apply to all power consumers in the territory involved—

Rate.

First 100 Kw-hr. consumption per month, 8c per Kw-hr.
Next 300 Kw-hr. consumption per month, 7c per Kw-hr.
Next 400 Kw-hr. consumption per month, 6c per Kw-hr.
Next 500 Kw-hr. consumption per month, 5c per Kw-hr.
Next 700 Kw-hr. consumption per month, 4c per Kw-hr.
Next 2000 Kw-hr. consumption per month, 3c per Kw-hr.
For all consumption in excess of 4000 Kw-hr. per month, 2½c per Kw-hr.

Fuel Clause.

The above rates are based on coal costing $2.25 per ton f. o. b. Lamar; for each 10 cents increase in the cost of coal f. o. b. Lamar above $2.25 per ton, one mill per Kw-hr. on all current sold to power consumers will be added; and for each 10 cents per ton decrease in the cost of coal f. o. b. Lamar below $2.25 per ton, one mill per Kw-hr. will be deducted from the bills of power consumers.

Hours of Service.

Consumers who do not guarantee to use power for twelve months of each year shall not operate their motor or motors between the hours of 5:30 p. m. and 8:00 p. m. during the months of November, December, January and February, except in case of absolute necessity for the protection of life and property.

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 Monthly Guarantee.

The consumer receiving service hereunder must guarantee a 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.

ORDER.

IT IS THEREFORE ORDERED, That the applicant herein, The Intermountain Railway, Light & Power Company, be, and it is hereby, allowed and permitted to cancel its present rates for irrigation pumping and for commercial alfalfa meal mills, on not less than five days' notice to the Commission.

IT IS FURTHER ORDERED, That the applicant herein be, and it is hereby, permitted to establish, effective on not less than five days' notice, by filing and posting with the Commission in the manner provided in Section 16 of the Public Utilities Act,—

A surcharge of 20 per cent to apply to all rates for commercial lighting, heating and cooking service as now in effect.

The following schedule of rates to apply to all power consumers in the territory involved:

Rate.

First 100 Kw-hr consumption per month, 8c per Kw-hr.
Next 300 Kw-hr. consumption per month, 7c per Kw-hr.
Next 400 Kw-hr. consumption per month, 6c per Kw-hr.
Next 500 Kw-hr. consumption per month, 5c per Kw-hr.
Next 700 Kw-hr. consumption per month, 4c per Kw-hr.
Next 2000 Kw-hr. consumption per month, 3c per Kw-hr.
For all consumption in excess of 4000 Kw-hr. per month, 2½c per Kw-hr.

Fuel Clause.

The above rates are based on coal costing $2.25 per ton f. o. b. Lamar; for each 10 cents increase in the cost of coal f. o. b. Lamar above $2.25 per ton, on mill per Kw-hr. on all current sold to power consumers will be added; and for each 10 cents per ton decrease in the cost of coal f. o. b. Lamar below $2.25 per ton, one mill per Kw-hr. will be deducted from the bills of power consumers.

Hours of Service.

Consumers who do not guarantee to use power for twelve months of each year shall not operate their motor or motors between the hours of 5:30 p. m. and 8:00 p. m. during the months of November, December, January and February, except in case of absolute necessity for the protection of life and property.

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 Monthly Guarantee.

The consumer receiving service hereunder must guarantee a 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.

The schedule shall be available to all consumers using the company's standard power service.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 24th day of September, 1918.

DECISION No. 199.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTERURBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

September 28, 1918.

In re Application for Emergency Relief.

STATEMENT.

By the Commission:

On the 12th day of September, 1918, the Commission issued its order in this cause granting emergency relief to The Denver Tramway Company upon its supplemental application for emergency relief. On the 14th day of September, 1918, petitions were filed with the Commission by the City and County of Denver and the Consumers' League of Denver applying for rehearing with respect to that portion of the Commission's order holding that it has

jurisdiction over the issues in the cause. On the same date a petition was filed by John A. Rush applying for rehearing in the cause.

The Commission now being fully advised in the premises is of the opinion that the petitions for rehearing should be denied.

ORDER.

IT IS THEREFORE ORDERED, That the petitions for rehearing filed with the Commission on September 14, 1918, by the City and County of Denver, The Consumers' League of Denver, and John A. Rush, be, and they are hereby, denied.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 28th dayof September, 1918.

DECISION No. 200.

IN RE ADVANCE IN ELECTRIC RATES OF THE HOME GAS & ELECTRIC COMPANY.

Investigation and Suspension Docket No. 18.

October 1, 1918.

STATEMENT.

By the Commission:

By an order entered the 23rd day of February, 1918, the Commission entered upon an investigation and hearing concerning the propriety of the rates and charges for electric service stated in schedules contained in First Revised Sheet No. 8 to Colo. P. U. C. No. 3 of The Home Gas & Electric Company of Greeley, Colorado, serving Greeley, Evans, Kersey and LaSalle, and adjacent communities.

The respondent herein has filed its Second Revised Sheet No. 8 to Colo. P. U. C. No. 3 withdrawing and cancelling the rates under suspension. It therefore appears that the issues in the cause having been withdrawn, the cause should be dismissed from the docket.

ORDER.

IT IS THEREFORE ORDERED, That the orders of the Commission dated February 23, 1918, and June 28, 1918, be vacated and set aside and the cause herein dismissed.

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

(SEAL)

Dated at Denver, Colorado, this 1st day of October, 1918.

DECISION No. 201.

IN THE MATTER OF AN INVESTIGATION AND HEARING, ON MOTION OF THE COMMISSION, AS TO THE REASONABLENESS OF THE LOCAL CLASS AND COMMODITY RATES, AS CHARGED BY THE DENVER & RIO GRANDE RAILROAD COMPANY, BETWEEN POINTS IN THE SAN LUIS VALLEY; ALSO BETWEEN POINTS IN THE SAN LUIS VALLEY AND POINTS ON THE DENVER & RIO GRANDE RAILROAD IN THE STATE OF COLORADO WHERE THE TRANSPORTATION IS WHOLLY WITHIN THE STATE OF COLORADO.

Case No. 49.

October 1, 1918.

STATEMENT.

By the Commission:

On March 4, 1916, the Commission instituted an investigation, on its own motion, as to the reasonableness of certain class and commodity rates between points in the San Luis Valley and other points in the State of Colorado as charged by The Denver & Rio Grande Railroad Company. The Denver & Rio Grand Railroad is now under the control of the United States Administration and rates have been established by the Railroad Administration in accordance with General Order No. 28 of the Director General. It therefore appears that this cause should be dismissed from the docket.

ORDER.

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

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

(SEAL)

Dated at Denver, Colorado, this 1st day of October, 1918.

DECISION No. 202.

IN RE OPERATIONS OF TRAINS NOS. 15, 16, 115, 116, 119, 120, 315, 316, 319 AND 320 BY THE DENVER & RIO GRANDE RAILROAD COMPANY.

Case No. 94.

October 1, 1918.

STATEMENT.

By the Commission:

It appearing that the issues in this cause are no longer pending, the Commission's order of investigation entered August 19, 1916, should be vacated, and the cause herein dismissed.

ORDER.

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

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 1st day of October, 1918.

DECISION No. 203.

CITIZENS OF ENGLEWOOD v. CITY OF ENGLEWOOD AND THE DENVER UNION WATER COMPANY.

Case No. 97.

October 1, 1918.

STATEMENT.

By the Commission:

It appearing that there has been no prosecution of the cause herein, the Commission is of the opinion that the same should be dismissed from the docket.

ORDER.

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed, without prejudice.

GEO. T. BRADLEY,

(SEAL)

LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 1st day of October, 1918.

DECISION No. 204.

IN THE MATTER OF AN INVESTIGATION AND HEARING, ON MOTION OF THE COMMISSION, INTO THE ALLEGED ILLEGAL OPERATION OF PASSENGER AND FREIGHT TRAINS BY ONE OR MORE OF THE COMMON CARRIERS OPERATING TRAINS WITHIN THE STATE OF COLORADO, IN VIOLATION OF CHAPTER 129, PAGE 516, OF THE SESSION LAWS OF COLORADO, 1913, AND INTO THE NECESSITY AND FEASIBILITY OF ORDERING REASONABLE RULES AND REGULATIONS FOR THE SAFE OPERATION OF RAILWAY TRAINS.

Case No. 101.

October 1, 1918.

STATEMENT.

By the Commission:

It appearing that the issues in this cause are no longer pending, the cause should be dismissed.

ORDER.

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

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 1st day of October, 1918.

DECISION No. 205.

CITIZENS OF RULISON, COLORADO, AND VICINITY, v. THE DENVER & RIO GRANDE RAILROAD COMPANY, THE COLORADO MIDLAND RAILWAY COMPANY, GEO. W. VALLERY, RECEIVER, THE RIO GRANDE JUNCTION RAILWAY COMPANY.

Case No. 118.

October 1, 1918.

STATEMENT.

By the Commission:

It appearing that the defendants herein have satisfied the complaint, the cause will be dismissed from the docket.

ORDER.

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

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 1st day of October, 1918.

DECISION No. 206.

THE FEDERAL COAL MINING COMPANY v. THE DENVER & SALT LAKE RAILROAD COMPANY.

Case No. 133.

October 1, 1918.

STATEMENT.

By the Commission:

It appearing that there has been no prosecution in this cause, it is the opinion of the Commission that the same should be dismissed.

ORDER.

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby dismissed, without prejudice.

GEO. T. BRADLEY,

(SEAL)

LEROY J. WILLIAMS,

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 1st day of October, 1918.

DECISION No. 207.

THE HAYDEN BROTHERS COAL CORPORATION, ET AL.,
v. THE DENVER & SALT LAKE RAILROAD COMPANY,
W. R. FREEMAN AND C. BOETTCHER, RECEIVERS.

Case No. 149.

October 1, 1918.

STATEMENT.

By the Commission:

It appearing that the issues in this case are no longer pending, the complaint should be dismissed from the docket.

ORDER.

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

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 1st day of October, 1918.

DECISION No. 208.

IN RE APPLICATION OF THE CITY COUNCIL OF DELTA FOR PERMISSION TO OPEN COLUMBIA STREET ACROSS THE PROPERTY OF THE DENVER & RIO GRANDE RAILROAD COMPANY BETWEEN FOURTH AND FIFTH STREETS, DELTA, COLORADO.

Application No. 3.

October 1, 1918.

STATEMENT.

By the Commission:

It appearing that the issues in this cause are no longer before the Commission, the cause should be dismissed from the docket.

ORDER.

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

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 1st day of October, 1918.

DECISION No. 209.

BOARD OF COUNTY COMMISSIONERS OF LAS ANIMAS COUNTY v. THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Case No. 139.

October 1, 1918.

STATEMENT.

By the Commission:

It appearing that the complainant herein has withdrawn the complaint, the cause should be dismissed.

ORDER.

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

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 1st day of October, 1918.

DECISION No. 210.

FREDERICK W. JEFFERAY,

v.

THE DENVER TRAMWAY CO.

Case No. 160.

October 4, 1918.

STATEMENT.

By the Commission:

It appearing that the complainant in this cause has advised the Commission that the answer of the defendant satisfies the complaint, the same should be dismissed.

ORDER.

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

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

(SEAL)

Dated at Denver, Colorado, this 4th day of October, 1918.

DECISION NO. 211.

In re ADVANCE IN ELECTRIC RATES AT OAK CREEK.

Investigation and Suspension Docket No. 27.

October 11, 1918.

STATEMENT.

By the Commission:

On the 26th day of Augsut, 1918, a revised schedule filed by The Oak Creek Service Company, 1st Revised Sheet No. 3 to Colo. P. U. C. No. 2, in which increases in electric rates were proposed, was suspended by the Commission until the 26th day of December, 1918, pending investigation and hearing thereon.

Notice of the filing of the aforementioned schedule was given in a letter addressed to the Mayor and Board of Trustees of the town of Oak Creek on August 7, 1918, while on the same date communications advising of the proposed increase in rates were forwarded by mail to The Oak Creek Herald and The Oak Creek Times, weekly newspapers published at Oak Creek, requesting that through publication in those newspapers notice of the proposed rate advance be given to the public. No protest against the proposed increase in rates has been filed with the Commission. On the contrary, there has been filed with the Commission a communication in writing, signed by fourteen individuals and business establishments, stating that they are users of the service furnished by The Oak Creek Service Company and that, having been informed that the income of the said company for a long time has been insufficient to meet its monthly expenses, they agree to the increase in rates as contained in the schedule mentioned

herein. On September 18, 1918, the Commission addressed a letter to the Mayor and Board of Trustees asking if the statement signed by the fourteen individuals and firms represented the sentiment of the consumers at Oak Creek with reference to the proposed rate increase. On October 11, 1918, J. T. Richards, town clerk, advised that the town Board of Trustees of Oak Creek had found no sentiment different from that expressed in the statement signed by the fourteen individuals and firms.

It therefore appears that no hearing is necessary in this cause, and that the suspension should be vacated and the cause dismissed from the docket.

ORDER.

IT IS THEREFORE ORDERED, That the order of August 26, 1918, entered in this cause be, and the same is hereby, vacated and set aside as of October 15, 1918.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 11th day of October, 1918.

DECISION No. 212.

IN RE ADVANCE IN ELECTRIC RATES AT PALISADE.

Investigation and Suspension Docket No. 28.

October 11, 1918.

STATEMENT.

By the Commission:

On the 26th day of August, 1918, a revised schedule filed by The Palisade Service Company, 1st Revised Sheet No. 3 to Colo. P. U. C. No. 2, in which increases in electric rates were proposed, was suspended by the Commission until the 26th day of December, 1918, pending investigation and hearing thereon.

Notice of the filing of the aforementioned schedule was given in a letter addressed to the Mayor and Board of Trustees of the town of Palisade on August 7, 1918, while on the same date a communication advising of the proposed increase in rates was forwarded by mail to The Palisade Tribune, a weekly newspaper published at Palisade, requesting that through publication in that newspaper notice of the proposed rate advance be given to the public. No protest against the proposed increase in rates has been filed with the Commission.. On the contrary, there has been filed with the Commission a communication in writing, signed by sixty-eight consumers, stating that the signers are in full accord with the increase in rates proposed by The Palisade Service Company. There also has been received by the Commission a letter signed by J. W. Hoke, town clerk, advising that the Board of Trustees of the town of Palisade, at a meeting held on the 24th

day of September, 1918, requested that an expression of the Board's hearty agreement with the proposed increase in rates be conveyed to this Commission.

It therefore appears that no hearing is necessary herein and that the suspension should be vacated and the cause dismissed from the docket.

ORDER.

IT IS THEREFORE ORDERED, That the order of August 26, 1918, entered in this cause be, and the same is hereby, vacated and set aside as of October 15, 1918.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 11th day of October, 1918.

DECISION No. 213.

IN THE MATTER OF THE APPLICATION OF THE CRYSTAL RIVER AND SAN JUAN RAILROAD COMPANY TO DISCONTINUE OPERATIONS.

Application No. 5.

October 22, 1918.

APPEARANCES: Messrs. Crump and Allen for the applicant.

STATEMENT.

By the Commission:

An order was entered in the above application on October 27, 1917, that The Crystal River & San Juan Railroad Company, petitioner herein, be permitted to discontinue operations upon its line of railroad until April 1, 1918, unless such order be modified or extended by the Commission; on March 27, 1918, the Commission ordered that the permission for discontinuance of operations theretofore granted to said Railroad Company be extended to May 1, 1918; on April 29, 1918, a similar permission was granted to petitioner until November 1, 1918.

On October 18, 1918, the said petitioner filed its verified petition showing that since the issuance of the order dated April 29, 1918, there has been no change in the facts and circumstances recited in the petitions heretofore filed herein, and that petitioner is still without money with which to repair and operate the Crystal River & San Juan Railroad; that the Colorado-Yule Marble Company is still in the hands of a receiver and without funds, and that the affairs of the Colorado-Yule Marble Company will remain un-

altered during the duration of the war, so that it becomes necessary for petitioner to further discontinue operations.

The Commission finds from the verified petition filed herein on October 18, 1918, and the record heretofore made in this application, that permission for the extension of the order heretofore made should be granted; that this is not a matter in which a further public hearing is necessary.

ORDER.

IT IS THEREFORE ORDERED, That the permission for discontinuance of operation heretofore granted to The Crystal River & San Juan Railroad Company of its line of railroad, be, and is hereby, extended from November 1, 1918, until May 1, 1919, 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.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 22nd day of October, 1918.

DECISION No. 214.

IN THE MATTER OF THE APPLICATION OF THE DENVER & RIO GRANDE RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT RAILROAD TRACK ACROSS WALNUT STREET BETWEEN EIGHTH AND NINTH STREETS, IN THE CITY AND COUNTY OF DENVER, COLORADO.

Application No. 28.

October 23, 1918.

STATEMENT.

By the Commission:

This proceeding arises upon application from The Denver & Rio Grande Railroad Company, in compliance with Section 29 of the Public Utilities Act of Colorado as amended April 16, 1917, for permission to construct railroad tracks across Walnut Street between Eighth Street and Ninth Street, in the City and County of Denver, Colorado, to serve the Plains Iron Works Company, which is at present engaged in the production of machinery for the United States Fleet Corporation.

It appearing that application has been made to the city council of the City and County of Denver for a revocable permit for track across Walnut Street between Blocks 67 and 68 in West Denver, and there further appearing no reason why this application should not be granted, provided the revocable permit is secured from the city council, the Commission will issue an order permitting the construction of this trackage in conformity with the provisions of

Section 29 of the Public Utilities Act of Colorado as amended April 16, 1917.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, The Denver & Rio Grande Railroad Company, be, and it is hereby, permitted to construct a railroad track at grade across Walnut Street, between Eighth Street and Ninth Street, in the City and County of Denver, in accordance with the plans submitted and in accordance with the provisions of the Commission's order in Case No. 56; *provided* that the applicant first obtains from the city council of the City and County of Denver a revocable permit authorizing the construction of the track across Walnut Street, heretofore described.

The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of this 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) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 23rd day of October, 1918.

DECISION No. 215.

IN THE MATTER OF THE APPLICATION OF THE GEORGETOWN & GRAY'S PEAK RAILWAY COMPANY TO DISCONTINUE OPERATIONS.

Application No. 30.

November 9, 1918.

APPEARANCES: W. W. Garwood, for the applicant.

STATEMENT.

By the Commission:

On the 24th day of October, 1918, there was filed with the Commisison by The Georgetown & Gray's Peak Railway Company a notice of intention to dismantle the property of the applicant company and remove its tracks therefrom. On October 26, 1918, the Commission notified the communities of Georgetown, Silver Plume and Idaho Springs that such application had been made for the dismantling of applicant's property. On November 8, 1918, the applicant filed its verified petition for an order of this Commission permitting applicant to remove the rails and dismantle its property forthwith.

It appears from applicant's petition that it was organized in July, 1913, to take over the property of The Argentine Central Railway Company, which company had been operating the property and had thereby sustained heavy losses, which resulted in a receivership and foreclosure proceedings. The railway operated by the applicant is a scenic line running from Silver Plume, Colorado, a distance of 15.9 miles to the summit of Mt. McClellan, where operation is difficult and expensive. The operations of the road resulted in an operating loss for the years 1913 to 1918, inclusive. It ap-

pears from the petition that mining properties situated at the terminus of the railroad ceased operation and shipped no freight during the year 1918; that there are no towns or industries located along the right of way; that no objections or protests against the proposed dismantling of said property have been received by the Commission, and that there is no public necessity for the operation of the road; that no freight was offered to or carried by the applicant during the year 1918; that during the year 1918 the railroad carried a few sight-seeing passengers and operated for a period of about six weeks, sustaining a loss from such operation of approximately $3,000.00.

The petition further shows that it will be impossible to operate such railroad in the future except at a great loss. It alleges that an emergency exists requiring immediate action in order that it may remove its tracks and dispose of its steel and iron at the present market value before weather conditions render it impossible to remove the tracks.

The Commission finds that the applicant has been unable to earn its legitimate operating expenses after a fair trial of operation, and that an increase of rates, if granted by the Commission, would not produce sufficient revenues to pay the legitimate operating expenses of the applicant; that on account of weather conditions an emergency exists whereby the applicant should be permitted immediately to dismantle its tracks; that there is no public demand for the continued operation of this railroad; that this is not a matter requiring a public hearing.

ORDER.

IT IS THEREFORE ORDERED, That The Georgetown & Gray's Peak Railway Company, be, and it is hereby, permitted to discontinue operations upon its line of railroad, and to remove the rails and dismantle its railroad property.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

Commissioners.

Dated at Denver, Colorado, this 9th day of November, 1918.

DECISION No. 216.

IN RE ADVANCE IN THE RATES AND CHARGES OF THE DENVER GAS & ELECTRIC LIGHT COMPANY FOR GAS SERVICE IN THE CITY AND COUNTY OF DENVER.

Investigation and Suspension Docket No. 30.

November 9, 1918.

APPEARANCES: Messrs. Bardwell, Hecox and McComb, for The Denver Gas & Electric Light Company; Thomas H. Gibson, Esq., for the City and County of Denver.

STATEMENT.

By the Commission:

On October 5, 1918, The Denver Gas & Electric Light Company filed with the Commission rate schedule P. U. C. Colo. No. 3 cancelling rate schedule P. U. C. Colo. No. 2 by which it was proposed to advance the rates for general gas service in the City and County of Denver, such advance to become effective thirty days after filing with the Commission as provided by law. It appeared that the Commission should enter upon an investigation and hearing concerning the propriety of the proposed rates, and pending such investigation and hearing and decision thereon the proposed rates on October 7, 1918, were suspended until March 4, 1919, or until the further order of the Commission.

Protests against these rate advances were filed by the City and County of Denver and by The Consumers' League of Denver, and due notice having been given to all parties at interest the case came on for hearing in the hearing room of the Commission at the hour of 10 o'clock a. m. on the 4th day of November, 1918. Appearances were entered by Bardwell, Hecox and McComb for The Den-

ver Gas & Electric Light Company, and Thomas H. Gibson, assistant city attorney, for the City and County of Denver, but no appearance was entered in behalf of The Consumers' League of Denver.

As stated, The Consumers' League of Denver, and the City and County of Denver, filed protest against the proposed rates and schedules, and alleged that the Commission has no jurisdiction over the rates and schedules of the respondent company operating within the City and County of Denver, because said city and county operates under charter pursuant to Article XX of the constitution of the State of Colorado, and therefore such city and county has full and exclusive control of rates of public service companies operating within its boundaries; it is further alleged that the respondent company has been and is operating under a franchise contract granted and entered into on May 15, 1906, which is inviolable, and this Commission has no jurisdiction to enter any order in violation of or contrary to the provisions of such franchise.

These contentions have been decided adversely to protestants in a large number of cases before the Commission, and the identical questioon was so decided in the case of Ratner v. Denver G. & E. L. Co., 3 Colo. P. U. C. 379, in which case the respondent company herein interposed objection to jurisdiction on these same grounds. Since that case was decided the same question has been raised in numerous cases, in all of which the Commission has held that it has jurisdiction in cities operating under special charters pursuant to Article XX of the constitution of Colorado.

In re Mountain States T. & T. Co., decision on rehearing, decided July 2, 1918;

In re Application Denver Tramway Company, decision granting emergency relief, decided September 12, 1918.

It is unnecessary to repeat the grounds of those decisions on the question of jurisdiction.

On the question of franchise rates and provisions the Commission stated in the case of *In re* Rates and Rules of The Colorado Springs L. H. & P. Co., 2 Colo. P. U. C. 23, at p. 31:

> "In this connection it should be remembered that this Commission has taken the position heretofore that it is its duty to make reasonable and just rates, regardless of whether certain defined rates and charges are set forth in a franchise con-

> tract or ordinance between the municipality on the one hand and the public utility on the other. The fact that a contract is involved in no respect alters the right of the Commission to revise rates, unless the constitution, or the legislature of the state, expressly delegated to the municipality the power to contract, inviolably, for rates for the period covered by the franchise granted."

The franchise granted by the City and County of Denver to the respondent company's assignor is in evidence in this case. The rates granted by the commission herein do not exceed the maxima fixed by the franchise. There is one particular, however, in which the Commission will order a suspension of the provisions of the franchise. The franchise provides, in addition to the payment of $1,000,000.00 for the twenty-year period of the franchise, that:

> "The said The Denver Gas & Electric Company shall pay into the city treasury of the City and County of Denver all that part of its gross receipts from the sale of gas and electricity hereinafter specified, to-wit: * * * (Amounts are thereupon provided to be paid in excess of certain averages per 1,000 cu. ft. of gas sold for the years 1906 to 1913, inclusive.)
>
> "For the year 1914 and thereafter, for each of the remaining years of the life of this franchise, all that portion of the gross receipts from the sale of all gas in excess of an average of seventy-five (75) cents per one thousand cubic feet sold."

It is estimated that the rates provided hereunder will exceed "an average of 75 cents per 1,000 cubic feet sold." The Commission finds that the rates hereinafter ordered are necessary to yield to the respondent company a sufficient return, as herein stated, and all that portion of the gross receipts from the sale of all gas in excess of an average of 75 cents per 1,000 cubic feet sold should be retained by the respondent company until the further order of the Commission. The necessity for the suspension of this provision of the franchise as an emergency relief to the respondent company is fully set forth in this order.

This ruling is sustained by the decisions of the Supreme Court of Colorado in the cases of Wolverton v. Mountain States T. & T. Co., 58 Colo. 58, 142 Pac. 165; Denver & S. P. R. Co. v. City of Englewood, 62 Colo. 229. Also by the following decisions of this Commission: *In re* Rates Colorado Springs L. H. & P. Co., *supra;*

Golden Cycle M. & R. Co. v. Colorado Springs L. H. & P. Co,. 5 Colo. P. U. C. ——, decided May 1, 1918; *In re* Application of The Colorado Power Company for smelter rate, decided August 6, 1918, and cases cited in the above decisions.

In addition to the provision for the payment of $1,000,000.00 provided by the franchise, which is being regularly paid to the city at the rate of $50,000.00 per annum, the city derives from the general taxes paid by the respondent company a large proportion of the sum of $154,169.50, being the taxes paid during the year 1917, and of the sum of $246,602.23, the taxes paid during the year 1918.

To hold that any portion of gross receipts from the sale of gas in excess of an average of 75 cents per 1,000 cubic feet sold must go to the city, would be in effect to say that the Commission has not complete control over the return to be received by the respondent company. The Commission does not believe that the police power of regulation can be restricted by such a franchise provision in the absence, as in this case, of delegation of rate-making power to the City and County of Denver. Furthermore, this provision of said franchise is, in effect, a means or method of collecting only from gas consumers moneys which go to the credit of the general funds of said City and County of Denver, subject to be used in defraying the governmental expenses of said city and county, and the taxes on all character of property in said City and County of Denver would thereby be decreased to the extent of the moneys thus collected from gas consumers in excess of 75 cents per thousand cubic feet sold, and at the sole expense of gas consumers. The Commission is of the opinion that a public utility should not in this manner be allowed to collect money from one class of its consumers and one portion of the community and that such moneys thereby obtained be used for the benefit of vacant lot owners, and non-resident property owners and non-consumers in the reduction of their taxes, and that this provision of said franchise of 1906, should the same be allowed to remain in full force and effect, would render it impossible for the respondent company to receive a return upon its investment or to provide for the upkeep of its property so that it could render that service to its consumers which they are entitled to receive.

All of the protests are therefore denied, and the suspension of the above provisions of Section 6 of the franchise will be ordered during the continuance of this order.

The rates of the respondent company now on file with the Commission applying to gas service are as follows:

Domestic and Illuminating Gas.

Rate.

For all consumption during the month per M. cubic feet, 95 cents.

Prompt Payment Discount.

A discount of 10 cents per M. cubic feet is allowed on all bills paid within the discount period.

Minimum Monthly Guarantee.

25 cents per month.

Industrial Gas.

Rate.

A fixed charge of $6.00 per year per consumer, plus
A fixed charge of $12.00 per year per hundred cubic feet of maximum demand, plus
$0.65 per M. cubic feet of gas consumed during the month.

Prompt Payment Discount.

A discount of 5 cents per M. cubic feet is allowed on all bills paid within the discount period.

Minimum Monthly Guarantee.

One-twelfth of the above yearly charges is payable each month and constitutes the minimum monthly guarantee.

The rates filed with the Commission on October 5, 1918, and which have been suspended pending the conclusion of this investigation, if permitted to go into effect will increase the above rates by 10 cents net per M cubic feet, no increase being made, however, in the fixed charges applying to industrial consumers.

The testimony submitted at the hearing in this case relates almost entirely to the revenues and expenses of the gas department of the respondent company from January 1, 1915, to date, and to increases in operating expenses especially in the cost of coal, oil, labor, taxes and freight during the past year. An estimate of the cost of reproduction of the gas property under conditions prevailing at this time, but exclusive of going-concern value, overhead costs, etc., was likewise submitted in behalf of the respondent company.

The revenues and expenses of the gas department of the respondent company from January 1, 1915, to September 30, 1918, are set out in Statement No. 1.

STATEMENT NO. 1.

THE DENVER GAS & ELECTRIC LIGHT CO.

GAS DEPARTMENT.

	9 Mos. 1918	1917	1916	1915
Domestic and illuminating sales	$687,108.58	$ 800,244.84	$699,153,02	$642,352.91
Industrial sales	147,629.34	206,873.83	238,346.16	269,658.89
Minimum bills	2,458.40	2,358.95	2,221.65	1,720.00
Forfeited discounts	6,252.16	7,817.37	9,684.77	11,099.24
Total	$843,448.48	$1,017,294.99	$949,405.60	$924,831.04
Less bad debts allowance	4,050.00	3,000.00	3,000.00	3,000.00
Total	$839,398.48	$1,014,294.99	$946,405.60	$921,831.04
Total operation and maintenance	673,876.76	773,406.19	647,627.12	638,345.86
Net	$165,521.72	$ 240,888.80	$296,778.48	$283,485.18

It will be noted from this statement that while the gross earnings from gas sales have steadily increased, the net earnings have been decreasing since 1916, for which year the net earnings were not materially in excess of the net earnings for the year 1915. The net earnings for 1918 based on the net earnings for the period ending September 30, 1918, will approximate $220,000.00, notwithstanding the fact that slightly higher rates have been in effect since January 31, 1918, than were in effect for the year 1917.

The increase in wages and in the cost of material and supplies is shown by Statement No. 2, which is taken from Exhibit No. 4 of the record in this case.

STATEMENT NO. 2.

GAS DEPARTMENT.

Wages and salaries in the various departments have increased as follows in the past year:

	Sept., 1918	Sept., 1917	Increase	Inc. %
Gas Works	$24,833.00	$17,061.15	$ 7,771.85	
Fitting Shops	3,052.75	2,551.15	501.60	
Gas Meter Shops	1,160.00	930.60	229.40	
Meter Readers	1,289.41	985.38	304.03	
Gas Engineering Dept.	962.50	454.50	508.00	
Street Department	2,379.65	2,115.05	264.60	
Office Department	6,349.10	5,950.79	398.31	
Trouble Department	1,528.04	1,395.30	132.74	
Total	$41,554.45	$31,443.92	$10,110.53	32 %

Wages Per Day.

Stokers	$4.25	$3.25	$1.00	31 %
Firemen	3.75	2.96	.79	27 %
Chief Engineers	4.50	3.50	1.00	28 %
Engineers	4.00	3.00	1.00	33⅓%
Laborers	3.25	2.25	1.00	44 %
	3.00	2.25	.75	33⅓%
Gas Fitters	4.25	3.00	1.25	37½%
Meter Repairers	3.13 Av.	2.66 Av.	.47	18 %
Street Laborers	3.00	2.25	.75	33⅓%

Supplies.

Coal	$4.90 ton	$3.90 ton	$1.00	29 %
Oil for Enricher	.0915 gal.	.0645 gal.	.027	42 %
Pipe (¾")	.06⅛ ft.	.04 3/10 ft.	.018	42 %
Fittings (¾")	.02½ each	.03 each	.015	50 %

This statement shows a comparison between the prices and wages in effect for September, 1917, and September, 1918. It will be noted that the average increase in the payroll of the gas department amounts to 32 per cent, and that the increase in the cost of the principal material and supplies ranges from 29 per cent to 50 per cent.

Exhibit No. 3 of the record shows an increase in taxes paid during the year 1918 over those paid in 1917 of $100,363.99, of which increase approximately $45,000.00 is applicable to the gas department of the respondent company.

Exhibit No. 8 of the record submitted in behalf of the respondent company is an estimate of the cost of reproduction under conditions prevailing at this time of certain portions of the gas plant and equipment. The estimate does not include construction overheads, such, for example, as engineering, interest during construction, etc., nor does it include going-concern value. This exhibit shows that under conditions prevailing at this time the cost of reproduction of the property, exclusive of the item above mentioned, would amount to approximately $7,500,000.00.

It is obvious that the Commission cannot make a finding as to the rate-making value of the gas property of the respondent company in this case, and no consideration will be given to reproduction estimates based strictly on conditions prevailing at this time. A complete inventory and appraisal of this property would require a long period of time, and if operating expenses have increased to such an extent that relief is necessary, it should be granted without the delay and expense that would be occasioned by a complete inventory and appraisal of the property. This statement is especially true at this time, as the skilled employes necessary to carry out such work cannot be obtained without diverting them from necessary war work upon which the majority of such men are now engaged. Assuming, but not deciding, that 2 per cent per annum is sufficient to provide for depreciation and 8 per cent per annum is sufficient to provide a return on the investment in the gas property, it will be seen from Statement No. 1 that the net earnings in the gas department have been sufficient to pay depreciation and a fair return on the following amounts:

1915	$2,834,452.00
1916	2,967,785.00
1917	2,408,888.00
1918	2,200,000.00, approximately

Based on valuations made of other gas properties and on the experience of the Commisison in the valuation of public utility properties generally, the Commission is of the opinion that the rate-making value of the gas property of the respondent company is materially in excess of the maximum amount upon which a fair return has been earned under the assumptions made above.

This Commission is of the opinion that the net earnings of the respondent company for the year 1916 were not excessive and did not exceed a fair return on the fair value of the gas property, and that an increase in the rates of the company sufficient to provide a

net revenue at least equivalent to that earned in the year 1916 is reasonable and should be granted. The following schedules of rates for domestice and industrial gas sales are, in the opinion of the Commission, reasonable under conditions prevailing at this time:

Domestic and Illuminating Gas.

Rate.

For all consumption during the month per M. cubic feet, $1.00.

Prompt Payment Discount.

A discount of 5 cents per M. cubic feet will be allowed on all bills paid within the discount period.

Minimum Monthly Guarantee.

A minimum charge of 25 cents per month will be made for the period during which the meter is turned on, either when no gas is consumed or when less than 300 cubic feet of gas is consumed during any month.

Industrial Gas.

Rate.

A fixed charge of $6.00 per year per consumer, plus
A fixed charge of $12.00 per year per hundred cubic feet of maximum demand, plus
$0.75 per M. cubic feet of gas consumed during the month.

Prompt Payment Discount.

A discount of 5 cents per M. cubic feet will be allowed on all bills paid within the discount period.

Minimum Monthly Guarantee.

One-twelfth of the above fixed yearly charges is payable each month and constitutes the minimum monthly guarantee.

In the opinion of the Commission, any consumer of the respondent company should be permitted to take service on either of the above schedules, the selection being entirely optional with the consumer. It is understood that this is the present practice. These rates will in the opinion of the Commission provide the relief to which the respondent company is entitled, will not work any undue hardship on the consumers, especially in view of the present prices of competitive fuels, and such rates are further lower than those provided by the franchise of 1906, under which the respondent company operates.

ORDER.

IT IS THEREFORE ORDERED, That the respondent company, The Denver Gas & Electric Light Company, be, and it is hereby, required to cancel on or before November 14, 1918, the rates and charges set forth in the schedule suspended in the Commisison's order of suspension of October 7, 1918.

IT IS FURTHER ORDERED, That the respondent company, The Denver Gas & Electric Light Company, be, and it is hereby, permitted to establish, on not less than five days' notice to the Commission and to the public by filing and posting in the manner prescribed in the Act, the following rates and charges for gas service:

Domestic and Illuminating Gas.

Rate.

For all consumption during the month per M. cubic feet, $1.00.

Prompt Payment Discount.

A discount of 5 cents per M cubic feet will be allowed on all bills paid within the discount period.

Minimum Monthly Guarantee.

A minimum charge of 25 cents per month will be made for the period during which the meter is turned on, either when no gas is consumed or when less than 300 cubic feet of gas is consumed during any month.

Industrial Gas.

Rate.

A fixed charge of $6.00 per year per consumer, plus
A fixed charge of $12.00 per year per hundred cubic feet of maximum demand, plus.
$0.75 per M. cubic feet of gas consumed during the month.

Prompt Payment Discount.

A discount of 5 cents per M. cubic feet will be allowed on all bills paid within the discount period.

Minimum Monthly Guarantee.

One-twelfth of the above fixed yearly charges is payable each month and constitutes the minimum monthly guarantee.

IT IS FURTHER ORDERED, That the provision of the franchise of 1906, above quoted, be and the same is hereby suspended, and the respondent company shall not be required to account to the City and County of Denver for gross receipts from the sale of

all gas in excess of an average of 75 cents per thousand cubic feet sold from and after the effective date of the rates and charges herein ordered established, and until the further order of the Commission.

IT IS FURTHER ORDERED, That the rates and charges herein established shall remain in force and effect until the further order of this Commission.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 9th day of November, 1918.

DECISION No. 217.

IN THE MATTER OF THE APPLICATION OF THE DENVER & RIO GRANDE RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT A SPUR TRACK ACROSS THE MAIN COUNTY ROAD IN THE BIG EVANS GULCH, AT LEADVILLE, COLORADO.

Application No. 4.

November 22, 1918.

STATEMENT.

By the Commission:

This proceeding arises upon application of The Denver & Rio Grande Railroad Company in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for permission to construct trackage over and across the main county road in the Big Evans Gulch at Leadville, Colorado, said track to serve the Jamie Lee Shaft.

It appearing that immediate construction of this spur track was necessary for industrial purposes; that such construction already has taken place and that the trackage has been so constructed as to make no change in the grade of the county road, the Commission will issue an order approving the construction of such trackage.

ORDER.

IT IS THEREFORE ORDERED, That the construction by The Denver & Rio Grande Railroad Company of the spur track at

grade over the main county road in Big Evans Gulch, to serve the Jamie Lee Shaft at Leadville, Colorado, to the extent that such construction conforms with the plat on file with the Commission in this cause be, and the same is hereby, approved.

The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of this crossing as it may deem right and proper.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

Commissioners.

Dated at Denver, Colorado, this 22nd day of November, 1918.

DECISION No. 218.

IN THE MATTER OF THE APPLICATION OF THE DENVER & RIO GRANDE RAILROAD FOR PERMISSION TO CONSTRUCT A RAILROAD TRACK ACROSS CUCHARAS STREET, IN THE CITY OF COLORADO SPRINGS, COLORADO.

Application No. 21.

November 22, 1918.

STATEMENT.

By the Commission:

This proceeding arises upon application of the Denver & Rio Grande Railroad in compliance with Section 29 of the Public Utilities Act, as amended April 16, 1917, for permission to construct trackage over and across Cucharas Street, in the city of Colorado Springs, Colorado.

There appearing no reason why this application should not be granted, and it appearing further that on November 1, 1918, the applicant obtained authority from the city of Colorado Springs to occupy the above named street, the Commission will issue an order permitting the construction of this trackage, in conformity with the provisions of Section 29 of the Public Utilities Act, as amended April 16, 1917.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, the Denver & Rio Grande Railroad, be, and it is hereby, permitted to

construct a railroad track at grade across Cucharas Street in the city of Colorado Springs, as specifically set out and indicated upon the plat filed with the Commission in this cause.

The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of this 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) LEROY J. WILLIAMS,

Commissioners.

Dated at Denver, Colorado, this 22nd day of November, 1918.

DECISION No. 219.

IN THE MATTER OF THE APPLICATION OF THE DENVER, BOULDER & WESTERN RAILROAD COMPANY FOR PERMISSION TO INCREASE PASSENGER RATES.

Application No. 7.

November 26, 1918.

STATEMENT.

By the Commission:

It appearing that there has been no prosecution of the cause herein, the Commission is of the opinion that the same should be dismissed from the docket without prejudice.

ORDER.

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed without prejudice.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 26th day of November, 1918.

DECISION No. 220.

IN THE MATTER OF THE APPLICATION OF THE TOWN OF JULESBURG FOR PERMISSION TO INCREASE RATES FOR ELECTRIC AND WATER SERVICE.

Application No. 11.

November 26, 1918.

STATEMENT.

By the Commission:

It appearing that the issues in this cause are no longer pending, the cause should be dismissed.

ORDER.

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

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 26th day of November, 1918.

DECISION No. 221.

IN THE MATTER OF THE APPLICATION OF THE DENVER & SALT LAKE RAILROAD COMPANY, W. R. FREEMAN AND C. BOETTCHER, RECEIVERS, FOR PERMISSION TO INCREASE COAL RATES.

Application No. 10.

November 26, 1918.

STATEMENT.

By the Commission:

It appearing that the issues in this cause are no longer pending, the cause should be dismissed.

ORDER.

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

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 26th day of November, 1918.

DECISION No. 222.

In re ADVANCE IN GAS RATES AT DENVER, COLORADO.

Investigation and Suspension Docket No. 30.

(November 26, 1918.)

STATEMENT.

By the Commission:

On the 9th day of November, 1918, the Commission issued its order in the above cause permitting The Denver Gas & Electric Light Company to increase its rates and charges for gas service in the City and County of Denver, by filing of schedule on not less than five days' notice. Such schedule was filed with the Commission November 9, 1918, effective November 14, 1918. On November 13, 1918, a petition for rehearing was filed with the Commission by the City and County of Denver alleging as grounds therefor that the Commission was without jurisdiction to hear and determine the cause. The Commission now being fully advised in the premises is of the opinion that the petition for rehearing should be denied.

ORDER.

IT IS THEREFORE ORDERED, That the petition of the City and County of Denver for rehearing filed in the above cause be, and the same is hereby denied.

GEO. T. BRADLEY,
(SEAL) LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 26th day of November, 1918.

DECISION No. 223.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTERURBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

December 17, 1918.

APPEARANCES: Messrs. Hughes and Dorsey and H. S. Robertson, for the applicant company; Messrs. A. L. Vogl and John A. Rush, for the Consumers' League of Denver, as to the question of the jurisdiction of the Commission only; C. W. Varnum, for himself and the Junior Order of United American Mechanics, protestants; John A. Rush, for himself, protestant; Messrs. Norton M. Montgomery and Thos. H. Gibson, for the City and County of Denver.

STATEMENT.

By the Commission:

The Denver Tramway Company, hereinafter called the Tramway Company, or applicant, filed with this Commission on May

3, 1918, its application for the determination by the Commission of the just and reasonable rates, fares and charges to be hereafter paid and enforced on its street and interurban railway lines, and also for authority to change its existing traffic schedule rates, fares and charges, and to make and collect such fares, rates and charges in accordance with the determination and ruling of this Commission.

The application stated in substance that the applicant is a railway corporation organized in the State of Colorado, and owns and operates all of the street railway lines in the City and County of Denver and adjacent territory, and interurban lines from the City and County of Denver to Leyden and Golden, Colorado; that through capital stock ownership it controls and operates the property of the Denver & Intermountain Railroad Company, which is engaged in the carriage of freight and passengers by steam and electricity between Denver and Golden, Colorado; that said street railway and interurban lines aggregate 253 miles in length and furnish said places with their only street railway and interurban railroad service.

It is further alleged that the present street railway system began in 1871 with a horse car line, succeeded by steam, cable and electricity; that the Tramway Company has extended its system and adopted new devices and power conducive to service, and is now operating its system entirely through electric power known as the overhead trolley system, and has at all times met the demands and requirements of the public for street car service; that the City and County of Denver is increasing in population and demands are being made for extensions and improved service, which can only be met by additional capital expenditure and by permission to charge such rates and fares as will produce a revenue adequate to operate the property and furnish a reasonable return on the value of the property so used in the public service.

It is further alleged that a comparative annual statement of its earnings and expenses since its incorporation, and including estimated results for 1918, is as set forth in Exhibit "A" attached to the application; that the revenue received and the charges and fares collected have been and are inadequate and insufficient to allow, after the deduction of necessary operating costs, a reasonable compensation for the service rendered, and that the increased costs of all items entering into operation have brought about a situation so critical that without immediate higher revenues the Tramway Company cannot continue to give the public

the service to which it is entitled; that increases in compensation have been granted to its employes in 1916 and 1917 in large amounts; that the Tramway Company generates by steam 80 per cent of its own electric power, and for that purpose it operates its own power plant; that coal costs have increased 100 per cent since January 1, 1916, and other items of operating costs have increased proportionately; that for the calendar year 1917 the applicant carried 62,380,777 revenue passengers in the city service, but on account of free transfers, half-fares, etc., the average rate of fare per passenger was 3.96 cents; that since April of 1914 applicant has made capital expenditures of $682,000 for the Colfax-Larimer and 23rd Street viaducts and other improvements occasioned by municipal requirements, as well as for new machinery, installation of "pay-as-you-enter" equipment, and betterments to property; that during this time it has paid on account of sinking fund and maturities of its funded debt $806,115.00.

It is further alleged that since April 1, 1918, it has been impossible for the Tramway Company to obtain capital for such expenditures or buyers or market for its salable bonds and securities; that the situation is a general one, insofar as street railways are concerned; that the margin between revenue and operating costs is not sufficient to meet the present sinking fund requirements even without allowing anything for construction account, extensions or betterments, or increasing costs of operation, and adequate provision for depreciation and renewals; that there has been a great diversion of revenue by reason of the largely increased use of the private automobile; that a higher charge is essential if applicant is to continue even its present service, much less take care of the additional, necessary requirements of approximately $1,693,000.00, most of which is for capital account and the balance for essential renewals and replacements.

It is further alleged that the total capitalization of the Tramway Company outstanding in the hands of the public on January 1, 1918, was:

Bonds	$18,715,800.00
Stock	6,156,300.00
Total	$24,872,100.00

that this is at the rate of $98,800.00 per mile of single track; that no dividends have been paid since July, 1915; that on the average capitalization since March 2, 1899, the rate of return to applicant's investors, including both bondholders and stockholders, has averaged 4.36 per cent, and to stockholders alone 2.61 per

cent, without adequate or any provision for depreciation and renewals.

It is further alleged that on April 1, 1919, $4,500,000.00 of funded debt of applicant will mature, and must be taken care of in addition to $1,355,082.00 for capital and expenditures; that free capital can be obtained only by an increase in rates and fares to be charged by the Tramway Company.

The application is accompanied by certain exhibits. The prayer of the application is that an order be made annulling existing schedules, and, in lieu thereof, fixing and determining such just rates, fares and charges as will yield the applicant a just and reasonable return upon the value of its property devoted to the public service; that an inventory and valuation be had of its property used in such service; that pending such proceedings applicant be given such relief, temporary or permanent, as may seem to the Commission just and proper, and that a hearing be had on the application.

On May 6, 1918, the Commission ordered that a complete inventory and appraisal of all the property of the Tramway Company, used and useful and necessary in the conduct of its business, be made and submitted to the Commission, and that all records pertaining to the operations of the company, financial and otherwise, be submitted to the Commission for examination. Pursuant thereto such inventory has been furnished and checked by the engineering staff of the Commission, while the statisticians of the Commission have thoroughly investigated the books and records of the company. Both matters have required a large amount of time and labor, and have now been completed.

On August 28, 1918, the Tramway Company filed its supplemental application for emergency relief, the substance of which is set forth in an order in this case issued by the Commission on September 12, 1918. This supplemental application alleged that the applicant was subject to wage increases of $225,000.00 per annum in addition to the wage increases set forth in its original application; that increased costs of operation made emergency relief immediately essential, and prayed for a hearing forthwith; that applicant be permitted to charge and collect on all its lines, where a 5-cent fare then prevailed, a 6-cent fare, with half-fares for children under 12 years of age, and to increase rates on its interurban lines from Berkeley and county line of the City and County of Denver to Golden, Arvada, Leyden and Leyden June-

tion and intermediate points, to the extent authorized by General Order No. 28 of the Director General of Railroads of the United States.

Hearing was had on the supplemental application on September 4, 1918. Protests and objections to the jurisdiction of the Commission had been filed by the Whittier Welfare Improvement Association on May 11, 1918; by the Consumers' League of Denver on May 18, 1918; by W. R. Abbott on September 3, 1918, and by the City and County of Denver on September 4, 1918. All these protests were directed to the question of the jurisdiction of the Commission over fares and rates within the City and County of Denver. The Commission in its order of September 12, 1918, denied all of said objections and protests for reasons fully set forth in that order.

Upon the consideration of the evidence produced at said hearing the Commission found that emergency relief was justified, and held as follows:

> "IT IS THEREFORE ORDERED, That the Denver Tramway Company, the applicant herein, be, and it is hereby, allowed and permitted to establish effective September 15, 1918, on not less than one day's notice to the Commission and to the public by posting and filing in the manner provided in Section 16 of the Act, fares of 6 cents for transporting adult passengers, and 3 cents for children over 6 years of age and under 12 years of age, within the limits of the City and County of Denver, and on all of its lines where a 5-cent fare now prevails.
>
> "IT IS FURTHER ORDERED, That The Denver Tramway Company, the applicant herein, be, and it is hereby, allowed and permitted to establish effective September 15, 1918, on not less than one day's notice to the Commission and to the public by posting and filing in the manner provided in Section 16 of the Act, passenger fares between points on its interurban lines not in excess of those made effective June 10, 1918, on federal controlled railroads, as per General Order No. 28 of the Director General of Railroads of the United States Railroad Administration."

The Commission did not attempt to base this order upon a valuation, as the same was then incomplete, and it was further ordered:

"The cause will be retained for further proceedings in the matter of valuation, rates and all other matters under the original petition herein."

The case was set for hearing on the original application at the hearing room of the Commission, State Capitol building, Denver, Colorado, on October 28, 1918, and was continued to and including October 31, 1918, at which time and hearings the Tramway Company introduced its testimony in support of its application.

On October 28, 1918, the Consumers' League of Denver and the City and County of Denver renewed their objections to the jurisdiction of the Commission as above stated. These objections were overruled, the Consumers' League of Denver and C. W. Varnum declining to participate further in the proceedings. The City and County of Denver was represented at the subsequent proceedings.

The Commission holds as it has heretofore, and for the reasons fully set forth in its order in this matter on September 12, 1918, that it has jurisdiction of this application and of all the rates, charges and regulations of the Tramway Company, and therefore all objections and protests filed in this proceeding are hereby denied.

Counsel for the Tramway Company, Gerald Hughes, outlined in his opening remarks the plan of presentation of the case by the company and, generally, the company's contentions. F. P. Woy, valuation engineer of the Tramway Company, thereafter identified the inventory, consisting of Vols. 1 to 31, inclusive, as a correct inventory of the applicant's property, except as modified in certain particulars described in his testimony. Mr. Woy, orally, and by exhibits 32 to 54, inclusive, covered the following subjects:

Exhibit No. 32, Inventory,
32A, Historical and financial review of the transportation systems of Denver,
33, Letter and report of real estate appraisers,
34, Gravel values,
35, Comparison of real estate appraisals,
36, Description of appraisal,
37, General costs,
38, Contingencies, incidentals and omissions,
39, Water rights,

40, Franchise election costs,
41, Interest during construction,
42, Taxes during construction,
43, Working capital, supplies and cash,
44, Going value,
45, Cost of reproduction new 1-1-18,
46, Average cost new,
47, Financing costs,
48, Rate-making value,
49, Depreciation reserve and maintenance for replacements and renewals of property,
50, Fair return,
51, Condensed comparative statement of net income,
52, Income statement,
53, Estimated income statement classified to urban and interurban revenues and expenses for 1918-1919, adjusted as to 1918 wage and fare increases,
54, General summary.

The evidence of L. F. Eppich, Edward R. Conaway and John F. Willetts was introduced in support of real estate values claimed by the Tramway Company. Chester C. Bennett, Joseph C. Houston, and Walker Van Riper testified on the matter of rates of return in Colorado; William A. Doty, auditor of the Tramway Company, testified to the figures produced in evidence from the company books, and Frederic W. Hild, general manager of the company, testified to matters respecting the Tramway Company system, valuation and operation.

An adjournment was taken on October 31, 1918, to November 25, 1918. The case was subsequently postponed until November 26, and later set for November 29, 1918. On November 29, 1918, further testimony was introduced in behalf of the Tramway Company as follows:

Exhibit No. 55, by Arvid Olson, being a summary of his estimate of the cost of reproduction of the concrete and brick work in the various Tramway buildings.

Exhibit No. 56, being a certified copy of the award of the National War Labor Board. Docket No. 173, fixing the wages of trainmen and other employes of the Tramway Company.

57, identified by W. A. Doty, being an estimated income statement for the urban and interurban lines of the Tramway Company for the years 1918 and 1919, taking into account the effect of the award of the National War Labor Board and the effect of the epidemic of Spanish influenza.

58, identified by W. A. Doty, purporting to show the general effect of the various increases in wages upon the financial showing of the company for the years 1918 and 1919.

At this same hearing testimony was submitted on behalf of the Commission in support of an inventory and appraisal of the properties of the Tramway Company, which had been prepared by the engineering staff of the Commission, and likewise in support of reports on the financial operations and the general history of the Tramway Company, as disclosed by an extensive investigation of the books and records of the applicant company by the Commission's statistical department.

The appraisal of the physical properties of the applicant was submitted by F. J. Rankin, engineer of the Commission in charge of this work, and he testified at length in support of the conclusions reached. In addition to the testimony of the Commission's engineer in charge of the appraisal, testimony was given by Louis F. Bartels, real estate appraiser, as to the market value of land and rights of way; by George Walter Brown, building contractor, as to the cost of reproduction of the principal buildings of the applicant, and by Charles D. Vail, the Commission's railway engineer, as to the detailed inventory and appraisal of the interurban lines. The above witnesses constituted the staff of the Commission which prepared the appraisal of the Tramway property on behalf of the Commission. The testimony on behalf of the Commission, relative to the history, financial operations, revenues, expenses, etc., of the applicant company was submitted by Fred W. Herbert, chief statistician of the Commission.

History of Development of the Denver Tramway System.

Investigations and evidence of F. P. Woy, valuation engineer for the Tramway Company, and of F. W. Herbert, statistician for the Commission, present a detailed and interesting history of the development of the Tramway system in Denver from its beginning to the present time.

On January 10, 1867, by a special act of the territorial Legislature of Colorado, The Denver Horse Railroad Company was incorporated to operate solely in Denver. Regular service was established in January, 1872, and the rate of single fare was 10 cents. In 1872 the name was changed by permission from the legislature to The Denver City Railway Company. At that time it operated 12 miles of track, with 12 cars and 32 horses. In 1883 the property rights and franchises of The Denver City Railway Company were sold, and represented at that time, according to the best records available, an investment of approximately $770,000.00. In 1888 The Denver City Cable Railway Company was organized, and on June 4, 1888, a franchise was obtained which, while it allowed the company to retain its horsepower privilege during the reconstruction period until about 1889, permitted the use of cable power. In 1888 the president of The Denver City Cable Railway Company stated that:

> "To increase the horse car service involved the expenditure of large sums for stable accommodations alone. The use of electricity was too experimental to warrant its adoption. After mature deliberation the adoption of cable power was decided upon and as the charter of The Horse Car Company did not permit the use of cable power it became necessary to organize a new company called The Denver City Cable Railway Company and to obtain a franchise from the City of Denver."

At this time the property of the Horse Car Company was estimated to be worth $3,000,000.00. Cable roads and power houses were installed, but the earnings from 1890 to 1893 were inadequate to pay operating expenses, and the company went into receivership in November, 1893, with debts of approximately $4,500,000.00. A subsidiary company, The West End Street Railway Company, also went into receivership at this time. It is estimated that the total cost of the street railway property to November 10, 1893, the date of receivership, including the 16th and Larimer Street viaducts, was $5,909,000.00.

Giles E. Taintor, acting for the bondholders' committee, purchased the properties at foreclosure sale and conveyed them to The Denver City Railroad Company on May 29, 1896. This company likewise went into receivership and the property was bought on December 16, 1898, by The Denver City Traction Company. It is estimated that the cable property had cost to this date $6,150,000.00.

Other companies were organized in 1885 and thereafter and various experiments were made for propelling cars by electricity. The present The Denver Tramway Company had two predecessors of that name, designated in the evidence as The Denver Tramway Company (Senior) and The Denver Tramway Company (Junior). The Denver Tramway Company (Senior) was organized in 1886. On May 6, 1890, The Denver Tramway Company (Junior) was organized and was a consolidation of the South Denver Cable Railway Company, The Denver Tramway Extension Company and The Denver Tramway Company (Senior). The Denver Tramway Company (Junior) thus formed was operating about 100 miles of electric railway at the end of 1899. The consolidation of this and other lines followed until the present applicant company was organized, March 30, 1914. During these later years the Tramway Company and its predecessors suffered from competition with bicycles, motorcycles and automobiles, such competition being seriously reflected in their earnings. Changes in the art and early supersession of cable and other motive powers required heavy expenditures for property betterments and improvements. These improvements have been constant to date, and in very recent times include heavy rails on 16th Street, special work at 15th and Curtis Streets, the Colfax-Larimer viaduct, new turbine installation, Union Station loop, work on Emerson Street, and the Broadway extension now in course of construction.

Horse cars were succeeded by steam dummy engines, later by electric conduit traction, cable cars, overhead trolley construction, with constant changes in weight and sizes of cars, power houses, equipment and design.

The Denver & Intermountain Railroad Company was successor in ownership of the "Lakewood" line to Golden, originally operated as a steam line, and now operated by steam for freight and electricity for passenger traffic. Through capital stock ownership this company is controlled and operated by The Denver Tramway Company.

A detailed statement of the stock and bonds in the hands of the public on January 1, 1918, is set forth in the order for emergency relief, issued September 12, 1918, and need not be repeated here. There are seven bond issues with a total of $18,715,800.00 of bonds outstanding, and $6,156,300.00 of stock, making a total capitalization of $24,872,100.00. Of this amount about $50,000.00 of bonded indebtedness was retired in 1918. The issues of bonds known as the Denver City Tramway Company 5 per cent first mortgage and the Denver Tramway Company 6 per cent convertible gold bonds, for $2,000,000.00 and $2,500,000.00, respectively, mature April 1, 1919, and present a difficult question of refinancing under present conditions.

The Tramway Company now serves the City and County of Denver and adjacent territory with urban service, and from the county line to Golden via the Denver & Intermountain Railroad, and from the county line to Golden, Arvada and Leyden via Clear Creek Junction it furnishes interurban and freight service. The company operates a total of approximately 253 miles of single track, and has a total equipment of 619 pasesnger, utility and freight cars. During the calendar year 1917 it carried 62,380,777 revenue passengers in its urban service.

Inventory.

In compliance with the order of the Commisison of May 6, 1918, an inventory of the physical property of the applicant company was prepared and used as a basis for the appraisals that have been made and introduced in evidence. The Tramway Company, in anticipation of the necessity of such a procedure, began the actual work of inventorying its property the latter part of December, 1917, and such work was completed about June 1, 1918. This inventory was taken as of date December 31, 1917, and lists in detail the various units going to make up the principal property of the applicant company as of that date.

Since May 3, 1918, the date of filing the original application herein, the Commission's engineering staff has been furnished with these inventories as fast as completed and summarized, and a careful check has been made by field parties organized from such department and under the supervision of the department's engineer.

At the hearings the Commission's valuation engineer testified that the inventory as prepared and submitted by the applicant company had been carefully checked by the engineering staff, that such check had covered about 20 per cent of the property of the

city lines and practically all of the interurban lines, and that, except as noted in his testimony or in that of individual witnesses, the inventory as submitted was found to fairly represent the quantities going to make up the physical property of the Tramway Company. The Commission's engineering staff did not, however, include in its final summary certain obsolete and abandoned property which was included in the appraisal submitted by the applicant. Such property as was excluded by the engineering staff will be discussed more in detail later in this decision.

For the purpose of inventory and appraisal three separate and distinct divisions of the property were assumed and designated as follows:

1. "City lines," comprising primarily the lines in the City and County of Denver, but including also the lines extending to Aurora and Englewood.

2. "D. & N. W. Ry.," extending from Berkeley to Arvada, Leyden and Golden.

3. "D. & I. M. R. R.," serving Barnum, Morrison and Golden.

The property of The Consolidated Securities & Investing Company, a subsidiary of The Denver Tramway Company, consisting principally of land holdings, was in general inventoried to the "City lines" and classified according to its use.

Following is a brief summary of the principal items going to make up the property of the applicant company as compiled from the inventory and appraisal submitted by the engineering staff of the Commission:

Land Right of Way—348 separate tracts or parcels.

Buildings—One central office building and car barns combined; 4 car barns, 1 paint shop, several shop buildings, material yards, storerooms and miscellaneous structures appurtenant to such buildings; 8 stations and miscellaneous buildings comprising the central loop depot, central loop garage, building "A" at central loop, interurban depot, Logan Hotel, Weidman buildings, Golden depot, Arvada dwelling house and Arvada section house; 1 modern power plant building including steam and electric generating equipment of approximately 18,000 kilowatts capacity; 5 substation buildings and substation equipment; and 7 buildings included in Account 404—Miscellaneous Physical Property.

Roadway—The system comprises approximately 252 miles of single track, including the necessary rails and fastenings, ties, ballast, grading, paving, special work, bridges, trestles, viaducts, culverts, crossings, fences, signs, signals, telephone and telegraph lines and the overhead electric system. Under this classification there are 40 bridges, trestles and viaducts of appreciable size which the company either owns outright or toward which it has contributed a portion of the cost of construction. In addition to the larger bridges and trestles, there are approximately 225 small culverts and miscellaneous structures of which the company has borne all or a part of the cost of construction

Rolling Stock—The company owns and operates 266 motor passenger cars, 121 trailer cars, 143 freight, express and mail cars, 70 service cars, and 2 steam and 5 electric locomotives. In addition there are 37 cars of various types which have either been abandoned or are not in good service condition and which have not been included in the inventory.

Appraisals.

The Tramway Company presented in evidence appraisals as of two different periods. One is called the January 1, 1918, cost of reproduction new, wherein it is claimed that the elements of property are priced at their fair market values as of that date, such prices reflecting all elements entering into the cost to reproduce on that particular date. The other is designated as the "average" cost of reproduction new, wherein it is claimed that elements of property are priced at their fair average market value as found during the recent past, during which time costs and conditions are still reliably available, and covering a reasonable period of years during which the property might reasonably be created. The Tramway Company has insisted that the former method is the fair standard of value, and has sought to maintain it before the Commission in this case. The company has insisted that the cost of reproduction based on prices and conditions prevailing as of the date of the appraisal should be used by the Commission in determining the fair value of its properties, instead of the reproduction cost as determined by the use of prices averaged over a period of years, and that the appraisal based upon average prices and conditions has been submitted without prejudice to its contention as to "1-1-18" value, and out of deference to the known practice of the Commission in applying average prices in other valuation cases, and

further on account of the Commission's insistence in this particular case that an appraisal based upon normal or average conditions be made.

The appraisal submitted on behalf of the Commisison by its engineering staff was based entirely on average or normal conditions, the so-called war prices being given consideration only to the extent that they entered into such averages or influenced the general trend of labor and material costs.

The principal methods used by the Commission's engineers in arriving at what were termed normal or average prices, were as follows:

(1) The average of market prices prevailing for the 10-year period prior to the date of appraisal. This method was used in connection with the pricing of steel rails, copper wires, wood poles and steel poles.

(2) The average of market prices current during the year 1915, the prices prevailing during this year being, in the opinion of the Commission's engineers, fairly representative of normal conditions. This method was used in pricing materials for which the quotations covering a 10-year period were not available, including such items as angle bars, track bolts, spikes and miscellaneous pole line hardware and fixtures.

(3) The average of prices actually paid during a period of several years prior to the date of appraisal. This method was used in pricing ties, cement, lumber and numerous other items.

(4) Actual cost of completed structures as determined from the records of the company. This method was used for pricing bridges, trestles, viaducts and culverts on the city lines, and the central office building and car barns located at 14th and Arapahoe Streets.

(5) Contract prices actually paid for similar work in Denver and vicinity. This method was used for pricing grading, paving, concrete and buildings other than the central office building.

In the development of unit costs the valuation engineer for the Tramway Company included in such unit costs, in addition to the labor and material entering therein, allowances for engineering, superintendence, stores, tools, insurance, and for general and executive expense. The unit costs as finally arrived at and used by the company's engineer do not appear in the appraisal submitted, so

that it is not possible for the Commission to analyze these in detail as to their reasonableness.

The unit costs developed and applied by the engineering staff of the Commission include, in addition to labor and material, allowances for supply expense, purchasing and inspection, tool expense and liability insurance. In addition various percentages, as seemed proper, were added to such unit costs for contingencies and omissions, loss, breakage and waste. In general the Commission's engineers attempted to include in such unit costs only such items of cost as under the uniform classification of accounts are permitted to be charged to the particular account to which such unit costs applied. All unit costs as developed and used in the appraisal submitted on behalf of the Commission were included in detail in the various exhibits in such form that they can be conveniently referred to and the methods used fully and properly analyzed.

In compiling the inventory of the physical property the Commission's engineers followed as closely as practicable the uniform classification of accounts as established by the Commission for electric railways. The inventory and appraisal submitted by the applicant company's engineer complied with such classification only in part. As a result it has not been found possible to compare either the unit costs used in the two appraisals or the reproduction costs assigned to the property embraced under the various accounting classifications.

A summary of the appraisal submitted by the Commission's engineering staff is set out in Statement No. 1; likewise a summary of the two appraisals submitted in behalf of the company, one based on average prices and conditions and the other on the prices and conditions prevailing as of January 1, 1918, are set out in Statements Nos. 2 and 3, respectively. It is to be noted that the appraisal submitted in behalf of the Commission does not include any allowance for water rights, for gravel deposits on lands where the market value of such deposits is in excess of the market value of such lands, or for going value. Attention is further directed to the fact that the Commission's engineering staff did not include in its inventory and appraisal abandoned property, such, for example, as some 37 cars of various type, the Ralston branch of the D. & N. W. Ry., and an abandoned power plant on the D. & I. M. R. R. The engineers of the Commission likewise reduced the reproduction cost of a portion of the passenger cars on account of deferred maintenance.

STATEMENT No. 1.

FINAL SUMMARY OF APPRAISAL.

Engineering Staff.

I.C.C. Acct No.	Description	Normal Reproduction Cost City Lines	D. & N. W. Ry.	D. & I. M. R. R.	Total for System
	I—WAY AND STRUCTURES				
501	Engineering and Superintendence	$ 491,387	$ 52,850	$ 39,262	$ 583,499
502	Right of Way Lands	27,059	68,725	27,434	123,218
502	Other Right of Way	485,220	.....	.....	485,220
503	Other Land used in El. Ry. Operations	893,290	6,743	235,726	1,135,759
504	Grading	418,614	120,437	60,282	599,333
505	Ballast	158,181	10,670	6,915	175,766
506	Ties	582,113	75,687	82,047	739,847
507	Rails, Rail Fastenings and Joints	953,702	165,601	109,753	1,229,056
508	Special Work	407,776	27,109	19,255	454,140
510	Track and Roadway Labor	1,291,352	33,674	26,929	1,351,955
511	Paving	1,170,516	.....	1,488	1,172,004
512	Roadway Machinery & Tools	39,913	698	.....	40,611
515	Bridges, Trestles & Culverts	277,154	46,967	28,147	352,268
516	Crossings, Fences and Signs	4,391	11,752	9,835	25,978
517	Signals and Interlocking Apparatus	2,339	.....	.....	2,339
518	Telephone & Telegraph Lines	.....	1,807	666	2,473
519	Poles and Fixtures	229,141	47,728	24,549	301,418
521	Distribution System	605,282	95,927	67,265	768,474
522	General Office Building	711,274	.....	.....	711,274
523	Shops and Carhouses	347,543	.....	19,622	367,165
524	Stations, Misc. Bldgs. and Structures	65,954	12,975	7,650	86,579
404	Mis. Physical Property—Land	280,504	.....	.....	280,504
404	Misc. Physical Property—Buildings	287,312	.....	.....	287,312
	Total, Way and Structures	$ 9,730,017	$ 779,350	$ 766,825	$11,276.192
	II—EQUIPMENT				
530	Passenger and Combination Cars	$ 1,401,629	$ 38,857	$ 48,137	$ 1,488,623
531	Freight, Express & Mail Cars	.....	131,536	88,655	220,191
532	Service Equipment	164,031	3,929	1,482	169,442
533	Electric Equipment of Cars	584,102	21,293	24,578	629,973
534	Locomotives	.....	33,860	21,765	55,625
536	Shop Equipment	176,918	.....	3,489	180,407
537	Furniture	73,130	329	1,851	75,310
538	Miscellaneous Equipment	16,339	.....	.....	16,339
	Total, Equipment	$ 2,416,149	$ 229,804	$ 189,957	$ 2,835,910
	III—POWER				
539	Power Plant Buildings	$ 280,520	.....	.....	$ 280,520
540	Substation Buildings	41,947	.....	.....	41,947
542	Power Plant Equipment	1,204,897	.....	.....	1,204,897
543	Substation Equipment	162,288	.....	.....	162,288
544	Transmission System	39,689	.....	.....	39,689
	Total, Power	$ 1,729,341	.....	.....	$ 1,729,341
	IV—GENERAL AND MISCELLANEOUS				
545	Franchises	$ 180,000	.....	.....	$ 180,000
546	Law Expenditures	138,755	$ 10,092	$ 9,568	158,415
547	Interest During Construction	1,680,147	52,917	50,435	1,783,499
548	Injuries and Damages	69,378	5,046	4,784	79,208
549	Taxes	385,985	2,276	3,590	391,851
550	Miscellaneous	445,207	31,784	33,967	510,958
	Total, General and Misc.	$ 2,899,472	$ 102,115	$ 102,344	$ 3,103,931
	Total Above Items	$16,774,979	$1,111,269	$1,059,126	$18,945,374
	Working Capital	467,500	38,500	44,000	550,000
	Grand Total	$17,242,479	$1,149,769	$1,103,126	$19,495,374

STATEMENT No. 2.

THE DENVER TRAMWAY COMPANY SYSTEM.

Average Cost of Reproduction New.

Acct. No.	Description	Denver Tramway Co., City	D. & N. W. Ry.	D. & I. M. R. R.	Total System
502	Right of way	$ 47,217	$ 105,942	$ 39,406	$ 192,565
503	Other Lands	1,471,600	9,272	252,748	1,733,620
503	Improvements	33,185	.....	.....	33,185
503	Lands not used or useful	68,378	.....	14,287	82,665
	Gravel Beds—Net extra	205,077	.....	.....	205,077
	Water Rights—Net extra	49,900	.....	.....	49,900
504	Grading	666,207	384,053	165,282	1,215,542
505	Ballast	301,387	.....	47,390	348,777
506	Ties	722,970	133,680	106,943	963,593
507	Rails, Rail Fastenings and Joints	1,154,316	234,340	134,903	1,523,559
508	Special Work	591,449	43,195	33,337	667,981
510	Track and Roadway Labor	1,403,020	182,404	123,566	1,708,990
511	Paving	1,348,979	2,362	1,424	1,352,765
512	Road Machinery and Tools	41,738	.....	.....	41,738
515	Bridges, Viaducts, etc.	1,008,752	131,806	54,462	1,195,020
516	Fences, Crossings and Signs	4,479	21,112	14,169	39,760
517	Signals	2,455	.....	.....	2,455
518	Telephone	.....	4,154	1,522	5,676
519	Poles and Fixtures	272,038	48,782	22,173	342,993
521	Distribution System	775,805	125,822	76,636	978,263
522	Tramway Building	771,075	.....	.....	771,075
523	Shops and Carhouses	468,695	.....	20,725	489,420
524	Station and Misc. Buildings	443,425	23,476	22,742	489,643
530	Rolling Stock	2,782,182	294,267	241,575	3,318,024
536	Shop Equipment	185,764	.....	3,663	189,427
537	Furniture	109,249	.....	1,722	110,971
538	Garage Equipment	19,079	.....	.....	19,079
539	Power Plant Buildings	402,851	.....	.....	402,851
540	Substation Buildings	39,329	13,463	.....	52,792
542	Power Plant Equipment	1,421,156	.....	.....	1,421,156
543	Substation Equipment	142,852	38,351	.....	181,203
544	Transmission Lines	39,867	15,098	.....	54,965
545	Election Expenses	180,000	.....	.....	180,000
547	Interest During Construction	1,712,141	107,922	95,326	1,915,389
549	Taxes During Construction	408,370	6,031	8,878	423,279
	Totals	$19,294,987	$1,925,532	$1,482,879	$22,703,398
	Working Capital and M. & S.	447,048	38,820	42,100	527,968
	Totals	$19,742,035	$1,964,352	$1,524,979	$23,231,366
	Going Value	2,900,000	460,000	340,000	3,700,000
	Totals	$22,642,035	$2,424,352	$1,864,979	$26,931,366
	Adjustments to allocate property to correspond with operating analysis:				
	Clear Creek Substation Land	$ 350	$ 350*	.....	.....
	Clear Creek Substation Bldg.	13,463	13,463*	.....	.....
	Clear Creek Substation Equipment	38,351	38,351*	.....	.....
	Clear Creek Feeder jointly used	.....	3,000*	$ 3,000	.....
	Clear Creek Transmission Wire	7,407	7,407*	.....	.....
	Clear Creek Transmission Poles	7,691	7,691*	.....	.....
	Fixed charges on adjustments	6,000	6,000*	.....	.....
	Total Adjustments	$ 73,262	$ 76,262*	$ 3,000	.....
		$22,715,297	$2,348,090	$1,867,979	$26,931,366
	Deductions:				
	Bell Ranch and other Real Estate	158,478	.....	.....	158,478
		$22,556,819	$2,348,090	$1,867,979	$26,772,888

*Credit.

STATEMENT No. 3.

THE DENVER TRAMWAY COMPANY SYSTEM.

Cost of Reproduction New. 1-1-1918.

Acct. No.	Description	Denver Tramway Co., City	D. & N. W. Ry.	D. & I. M. R. R.	Total System
502	Right of Way	$ 47,217	$ 105,942	$ 39,406	$ 192,565
503	Other Lands	1,471,600	9,272	252,748	1,733,620
503	Improvements	39,660	.....	.....	39,660
503	Lands not used and useful	68,378	.....	.....	68,378
	Gravel Beds—Net extra	205,077	.....	.....	205,077
	Water Rights—Net extra	49,900	.....	.....	49,900
504	Grading	906,798	456,077	232,984	1,595,859
505	Ballast	377,971	54,663	62,197	494,831
506	Ties	1,107,314	141,315	163,588	1,412,217
507	Rails, Fastenings and Joints	2,129,680	427,463	255,911	2,813,054
508	Special Work	1,048,438	77,866	56,477	1,182,781
510	Track and Roadway Labor	1,906,718	251,185	171,902	2,329,805
511	Paving	1,698,875	2,476	1,782	1,703,133
512	Road Machinery and Tools	57,163	.....	.....	57,163
515	Bridges, Viaducts, etc	1,389,579	172,422	70,085	1,632,086
516	Crossings, Fences and Signs	6,069	26,123	17,893	50,085
517	Signals	18,982	.....	.....	18,982
518	Telephones	.....	5,400	1,814	7,214
519	Poles and Fixtures	413,040	61,291	27,103	501,434
521	Distribution System	1,128,271	181,689	112,181	1,422,141
522	Tramway Building	1,150,277	.....	.....	1,150,277
523	Shops and Carhouses	627,656	.....	27,652	655,308
524	Station and Misc. Buildings	598,276	31,152	29,618	659,046
530	Rolling Stock	3,944,685	393,877	337,624	4,676,186
536	Shop Equipment	248,002	.....	4,993	252,995
537	Furniture	129,860	.....	2,245	132,105
538	Garage Equipment	21,202	.....	.....	21,202
539	Power Plant Buildings	533,118	.....	.....	533,118
540	Substation Buildings	52,874	17,437	.....	70,311
542	Power Plant Equipment	2,372,642	.....	.....	2,372,642
543	Substation Equipment	203,326	55,383	.....	258,709
544	Transmission Lines	57,637	21,595	.....	79,232
545	Election Expenses	180,000	.....	.....	180,000
547	Interest During Construction	2,429,693	148,486	129,168	2,707,347
549	Taxes During Construction	579,477	8,293	12,029	599,799
	Totals	$27,199,455	$2,649,407	$2,009,400	$31,858,262
	Working Capital and M. & S.	475,048	42,941	42,111	560,100
	Totals	$27,674,503	$2,692,348	$2,051,511	$32,418,362
	Going Value	2,900,000	460,000	340,000	3,700,000
	Totals	$30,574,503	$3,152,348	$2,391,511	$36,118,362
	Adjustments to allocate property to correspond with operating analysis:				
	Clear Creek Substation Land	$ 350	$ 350*	.....	.....
	Clear Creek Substation Bldg.	17,438	17,438*	.....	.....
	Clear Creek Substation Equipment	55,383	55,383*	.....	.....
	Clear Creek Feeder jointly used	.....	4,000*	$ 4,000	.....
	Clear Creek Transmission Line Wire	11,138	11,138*	.....	.....
	Clear Creek Transmission Line Poles	10,456	10,456*	.....	.....
	Fixed charges on adjustments	8,500	8,500*	.....	.....
	Total Adjustments	$ 103,265	$ 107,265	$ 4,000	.....
	Totals	$30,677,768	$3,045,083	$2,395,511	$36,118,362
	Deductions:				
	Bell Ranch and other Real Estate	158,478	.....	.....	158,478
	Totals	$30,519,290	$3,045,083	$2,395,511	$35,959,884

*Credit.

Going Value.

No allowance was included in the cost of reproduction estimate submitted by the Commission's engineering staff for going concern value. The engineer for the Tramway Company estimated this item at $3,700,000.00 and apportioned it to the different divisions of the property as follows:

City lines	$2,900,000.00
D. & N. W. Ry.	460,000.00
D. & I. M. R. R.	340,000.00

Revenues and Expenses.

The revenues and expenses of the Denver Tramway system, comprising The Denver & Northwestern Railway Company, The Denver & Intermountain Railroad Company and The Consolidated Securities & Investing Company, are shown by Statement No. 4, which is a statement of gross income for the period from March 31, 1914, to December 31, 1917, inclusive, as shown by the books of the company.

In addition to this statement of gross income various estimates were submitted at the hearings showing the effect of increases in wages and rates of fare upon the revenues and expenses of the applicant company. These will be discussed later in connection with the Commission's findings.

STATEMENT No. 4.

THE DENVER TRAMWAY SYSTEM.

Income Statement.

	9 Months Ended Dec. 31, 1914	1915	1916	1917
Operating Revenue—				
Revenue from Transportation	$2,474,960.59	$3,077,314.03	$3,208,102.41	$3,350,387.01
Other Revenue	47,708.37	64,592.05	67,774.12	69,080.76
Total Operating Revenue	$2,522,668.96	$3,141,906.08	$3,275,876.53	$3,419,467.77
Operating Expenses—				
1. Way and Structures	191,708.27	229,482.02	181,483.74	229,476.17
2. Equipment	120,243.79	136,678.55	135,817.81	242,836.63
3. Power	172,204.47	190,093.96	193,828.67	211,947.35
4. Conducting Transportation	614,213.88	792,864.67	811,231.42	908,320.89
5. Traffic	13,704.69	12,091.85	21,207.49	22,926.64
6. General and Misc.	198,738.07	255,240.33	271,206.33	300,425.79
Total Above Items	$1,310,813.17	$1,616,451.38	$1,614,775.46	$1,915,933.47
Taxes	165,143.43	220,731.02	216,440.00	293,181.98
Franchise Payments	45,000.00	60,000.00	60,000.00	60,000.00
Total Operating Expenses	$1,520,956.60	$1,897,182.40	$1,891,215.46	$2,269,115.45
Net Operating Revenue	1,001,712.36	1,244,723.68	1,384,661.07	1,150,352.32
Miscellaneous Income	25,152.72	22,709.48	21,233.88	19,817.90
Gross Income	$1,026,865.08	$1,267,433.16	$1,405,894.95	$1,170,170.22

Annual Depreciation Requirement.

The amount that should be set aside annually to provide for accruing depreciation over and above such wear and tear as is taken care of through the medium of current maintenance, was estimated by the engineering staff of the Commission at $677,644.00 for the entire system when set aside on the straight-line basis, and at $435,275.00 when set aside on the 4 per cent sinking fund basis. These estimates were apportioned to the city and interurban lines as follows:

ANNUAL DEPRECIATION REQUIREMENT.

	Straight-line Basis	4% Sinking Fund Basis
City Lines	$607,313	$385,194
D. & N. W. Railway	37,378	27,325
D. & I. M. Railroad	32,953	22,756
Totals	$677,644	$435,275

The Tramway Company's engineering staff submitted estimates of the amounts that should be set aside annually as a reserve for depreciation and maintennce combined on the three divisions of the property. No estimate of the annual requirement exclusive of current maintenance was submitted by the applicant company.

General and Miscellaneous Construction Expenditures.

General and miscellaneous expenditures during construction are classified by the uniform classification of accounts as follows:

Account No. 545—Franchises,
546—Law expenditures,
547—Interest during construction,
548—Injuries and damages,
549—Taxes during construction,
550—Miscellaneous.

The appraisal submitted on behalf of the Tramway Company shows as separate items cost of securing franchises, interest during construction and taxes during construction. However, other miscellaneous construction expenditures, such as legal expenses, injuries and damages, and miscellaneous expenditures, instead of being set out separately in accordance with the uniform classification of accounts, were included as a part of the unit costs and the amounts allowed therefor do not appear separately. The appraisals submitted by the Commission's engineering staff show separately the amounts included under each of the above classifications.

Findings.

The Commission has given careful consideration to the evidence before it bearing upon the value, both tangible and intangible, of the property of the applicant company devoted to public use, and likewise to the revenues derived and the expenses incurred in its operations, and is now in a position to make its findings.

The Commission is of the opinion that the cost of reproduction of this property, as submitted by the Tramway Company based on market prices and conditions prevailing as of January 1, 1918, and as heretofore set out in Statement No. 3, should not be given any consideration in arriving at the value of the property in a procedure of this nature. The Commission's findings as to the value of the property for the purpose of determining the adequacy of the present rates of fare will, therefore, be based entirely upon the cost of reproducing the property under normal or average conditions. Whether or not the property of the applicant company has actually enhanced in value on account of the conditions brought about by the war will depend to a large extent upon the period of time that labor and material costs remain at their present level, and is a matter which cannot be determined at this time.

The Commission will base its findings very largely upon the cost of reproduction as determined and submitted by its engineering staff; first, for the reason that the appraisal so submitted conforms with the classification of accounts as prescribed by the Commission for electric railways; and, second, for the reason that the labor and material costs used in the appraisal submitted by the Tramway Company were in most instances averaged over a period of only five years or less, and thereby reflected to too great an extent the abnormal prices prevailing during the years 1916 and 1917. Due consideration will be given, however, in the findings of the Commission, to the differences developed by the two appraisals.

Land and Right of Way: In the appraisal of land and right of way lands the real estate appraisers both for the applicant and the Commission based their findings upon the market value of adjacent or similarly situated lands as of December 31, 1917. In addition, however, the real estate appraisers for the Tramway Company added 25 per cent to the market value of right of way lands for the "cost of assembling," and, further, added 50 per cent to the market value of certain lands in the City of Denver on account of their availability or adaptability to the particular

needs and uses of the Tramway Company. No allowances of this nature were made in the appraisal of land and right of way as submitted on behalf of the Commission by Mr. Bartels, his conclusions being based entirely upon the market value of such land and right of way as of the date of appraisal. The Commission's land appraiser testified, however, that in his judgment the cost to the applicant company of assembling its right of way lands, that is, of securing such lands in one continuous strip, might even exceed 25 per cent of their market value.

In view of the decision of the United States Supreme Court in the Minnesota Rate Cases, 230 U. S. 352, the Commission is of the opinion that the right of way lands of the applicant company should be appraised on the basis of their market value and that no allowance for the cost of assembling such lands can properly be made, although such costs might actually be experienced in the acquisition of such right of way lands.

The Commission will, however, in reaching its conclusions as to the value of other lands owned and used by the applicant, take into consideration their adaptability and availability for the purposes for which they are used, and for other similar uses.

In the appraisal submitted by the Tramway Company based on average conditions, a considerable sum was included in addition to the market value of such lands for improvements other than building thereon. These improvements consist in the main of sidewalks, curbs, gutters, grading, lawns, trees, fences, and connections with water mains, etc. There was also included in the appraisal submitted by the applicant company an estimated cost of reproducing the residences and other buildings, fences, ditches and the like, on a certain piece of farm property known as the Bell ranch, although at the final hearing the Tramway Company's engineer testified that such improvements on ranch property had been erroneously included by him and should be eliminated inasmuch as such improvements were included in the market values assigned by the real estate appraisers.

The Commission is of the opinion that all such improvements as above enumerated were properly excluded by its engineering staff. Such improvements add to the market value of land and are necessarily taken into account when market value is adopted as the basis of appraisal. Their separate inclusion would clearly result in duplication.

Certain of the land holdings of the Tramway Company, as well as the buildings located thereon, are not at this time devoted to public use. Such property was included by the engineering staff of the Commisison under Account 404—Miscellaneous Physical Property, and may generally be divided into three general classes, as follows:

1. Property at one time devoted to public use but not at this time used in the operations of the company;

2. Property acquired for future use;

3. Property that has never been devoted to public use and which has no prospective future use.

The Commission is of the opinion that only such property as is devoted to public use, or which may reasonably be required in the operations of the company in the near future, should be included in arriving at a valuation for rate-making purposes. In accordance with this view the Commission's findings as to the value of the lands of the applicant company will include only such lands as, in the opinion of the Commission, are necessary for the present or future operations of the company.

According to the testimony submitted by the applicant company certain of the lands owned by it contain valuable gravel deposits, and in some cases the value of such gravel deposits appraised on a royalty basis is in excess of the market value of the lands. The record is clear that all land was appraised by the real estate appraisers on the basis of market value, and that the value of the gravel deposits thereon was not by them taken into account. A. J. Hall, an experienced gravel operator in Denver, made an examination of these gravel deposits and testified as to his findings. The Commission is of the opinion that where the value of such gravel deposits is in excess of the market value of the land for other purposes, an additional allowance should be made to the market value of the lands as determined by the real estate appraisers. No separate finding as to the value of these gravel deposits will be made, but they will be given such consideration as the Commission deems necessary in its findings of the value of the lands of the applicant.

The Tramway Company has filed on and uses certain rights for the diversion of water from the Platte River in connection with its Platte Street power plant. This water is used at the present time for condensing purposes and is essential in the operation of the

power plant. The applicant's valuation engineer estimated the value of such water rights, based upon their utilitarian value, at $49,900.00. The Commission is of the opinion that such water rights have a material value as measured either by the costs of acquiring such rights, or by their utilitarian value as determined by the applicant's engineer, and a proper allowance for the value of those water rights will be made in the final determination of the rate-making value of the applicant's property.

BUILDINGS: The property of the Tramway Company comprises a large number of buildings, such as the general office building, power plant buildings, substation buildings, car houses, shops, stations, and other miscellaneous structures. The general office building, with which is combined the central car barns, was erected in 1910 and 1911, and was appraised by the different engineers on the basis of its original cost. In the appraisal of other buildings the Commission had the assistance of George Walter Brown, a building contractor and appraiser of some forty years' experience. The testimony submitted in behalf of the Tramway Company by one Arvid Olson, a brick and concrete contractor who erected a large portion of the brick and concrete work on these buildings, convinces the Commission that the brick and concrete work on certain of these buildings, particularly on the Platte Street power house, were slightly underestimated by Mr. Brown, notwithstanding his long experience as a building contractor, and his apparent fairness in arriving at his conclusions. It was apparent, however, from Mr. Olsen's testimony that his estimates were based very largely upon present labor and material prices, so that the Commission can give his testimony only such consideration as it deems necessary under the circumstances.

BRIDGES, TRESTLES AND CULVERTS: The bridges, trestles and viaducts in the City of Denver, upon which the applicant company operates, may be divided into two general classes as follows:

1. Structures toward which the Tramway Company has contributed only a portion of the cost of construction, and the titles to which are not vested in the company.

2. Structures owned and erected entirely by the Tramway Company.

Contributions made by the applicant company toward the cost of erection of structures included under subdivision 1 above are,

under the uniform classification of accounts, chargeable to right of way, while the cost of erecting structures included under subdivision 2 are chargeable to Account No. 515—Bridges, Trestles and Culverts. In the appraisal submitted by the Tramway Company no distinction was made as between the above subdivisions, and the cost of erecting all such structures was included under Account No. 515. For that reason there is a wide difference in the amounts included in the two appraisals submitted under the heading of Bridges, Trestles and Culverts.

The appraisal of bridges, trestles and culverts was based on the original cost of such structures in each of the appraisals submitted, both on account of joint construction and on account of the fact that the original cost records were available. The appraisal submitted by the Commission's engineering staff differs from that submitted by the Tramway Company in the following respects:

(a) The Tramway Company included as a part of the cost of such structures an estimated allowance for general and miscellaneous expenditures, while the Commission's engineering staff included such expenditures under a separate account.

(b) The Tramway Company included an estimate of the remaining value of bridges abandoned at the time the present structures were erected, while the Commission's engineering staff did not include an allowance for such abandoned property.

(c) The Commission's engineering staff made a deduction from the original cost of the 16th Street viaduct on account of a contribution of $25,000.00 made thereto by the City of Denver, while the Tramway Company did not make such a deduction.

(d) There was a material difference between the Tramway Company's appraisal and that of the Commission's engineering staff, as to the expenditures made by the Tramway Company on account of the Broadway bridge, which was erected by the City and County of Denver.

(e) The Tramway Company included as a part of the original cost of bridges, trestles, etc., the expenditures made by the applicant company for temporary tracks necessary for the maintenance of service during the erection or reconstruction of the present structures, while the Commission's engineering staff did not include such expenditures.

The Commission finds as to the bridges, trestles and culverts that the appraisal submitted by its engineering staff fairly represents the cost to the applicant company of the present structures. The Tramway Company's engineer's estimate of the expenditures made by the company on account of the Broadway bridge, was not sustained by the testimony submitted. The structures abandoned before the end of their useful lives should not be included in an inventory and appraisal of the present physical property. The losses sustained on account of such abandonments contribute to the intangible value of the property and will be considered by the Commission in making its findings as to the element of going value.

A detailed inventory and appraisal was made of all bridges, trestles and culverts on the interurban lines and included in the appraisals submitted. The Commission is of the opinion that the appraisal of these structures as submitted by the Tramway's engineer is excessive, and that on the other hand the unit costs used by the Commission's engineering staff should be to some extent increased, although it is again impossible to make direct comparisons for the reason that costs of an overhead nature, included by the applicant's engineer as a part of the cost of bridges, were set out by the Commission's engineering staff under separate accounts.

ROLLING STOCK: In the appraisal of rolling stock, the Commission's engineering staff based its estimates upon the original cost of such equipment, although the Commisison's valuation engineer testified that purchases made a number of years ago or at times when market prices were abnormally low, were not considered in arriving at average costs. He further did not include in his appraisal six motor cars, twenty trailer cars and eleven service cars, that have become obsolete, and made a deduction, on account of deferred maintenance, on some eighteen passenger cars that were not in good service condition. The applicant's engineer, in his appraisal of rolling stock, included the abandoned cars just referred to, and made no deduction on account of deferred maintenance as did the Commission's engineering staff. A large portion of the rolling stock of the applicant company was manufactured in Denver, and some testimony was introduced to the effect that the prices actually paid were materially lower than such equipment could have been bought for elsewhere. It is further apparent from the records that it was necessary for the Tramway Company to extend aid, financial and otherwise, to the manufacturer of car bodies in order to secure them at the prices actually paid.

The Commission is of the opinion that the exclusion of abandoned and obsolete cars and the deduction on account of deferred maintenance on other cars by its engineering staff, was proper, but finds that in view of all the circumstances the cost of reproduction of passenger and combination cars, as determined by its engineering staff, should be to some extent increased.

OTHER PROPERTY: In the appraisal of property embraced under other classifications, such, for example, as paving, grading, rails, ties, poles and fixtures, distribution system, and the like, there were, as was to have been expected, differences in the appraisals submitted. These differences came about very largely through differences in opinion as to the propriety of the prices to be applied, differences in the methods and items included in unit costs, and to some extent on account of differences in inventory. The appraisals submitted by the Tramway Company further included substantial allowances on account of property abandoned or superseded before the end of its useful life, due to increased service demands, municipal or public requirements, obsolescence and improvements in the art, such, for example, as re-location and change of grade of tracks in conformity with municipal requirements, and reconstruction of track before the end of its useful life on account of municipal paving requirements.

The Commission, in the final determination of the fair value of this property, will give such consideration to the differences between the Tramway Company's engineer and the Commission's engineering staff on the items above enumerated as in its judgment is proper.

GOING VALUE: The engineering staff of the Commission did not include any allowances for going-concern value in its appraisal of the property, but did not by its exclusion deny the existence of such element of value. The applicant's engineer made a study to determine what, in his judgment, a fair allowance for going-concern value would be, and made use of two or three recognized methods for determining this item. The allowance which he finally arrived at and included in his appraisal was $3,700,000.00, apportioned to the three operating divisions as follows:

City lines	$2,900,000.00
D. & N. W. Ry.	450,000.00
D. & I. M. R. R.	350,000.00
Total	$3,700,000.00

The question of an allowance for going value as a part of the total valuation of a public utility property for rate-making purposes has been before courts and commissions for a number of years, and it seems now to be well established that such an allowance is not only proper in such cases, but that it cannot be left out of consideration. In the "Digest of the Decisions of the Railroad Commission of Wisconsin," containing the decisions of that body from July 20, 1905, to February 4, 1915, the Wisconsin Commission says at page 496, paragraph 44:

> "The courts have almost universally held that going value is an important and valuable consideration which cannot be left out of account in fixing the fair value of the property of a public service corporation devoted to the public service."

And further, in paragraph 130, it is stated, that

> "The early losses or deficits, or the amounts by which the earnings of the plant have failed to meet the ordinary operating expenses, taxes, depreciation and a reasonable return on the investment, will, in the majority of cases, very closely measure the cost of developing the business."

Further, on page 495, under paragraph 43, it is stated:

> "On the other hand, if property is devoted to the public use, and reasonable care has been exercised in all the phases of its management, but the owners have not received a fair return during the earlier years of the operation of the plant in which the property is used for the convenience of the public, the deficit thus incurred must be made up out of later earnings, insofar as this is commercially possible and expedient. In other words, every effort honestly put forth, every dollar properly expended, and every obligation legitimately incurred in the establishment of an efficient public utility business must be taken into consideration in the making of rates for such business. Collectively the elements just referred to may be designated by the term going value, and in this sense there can be no question regarding the propriety and justice of admitting going value as a consideration in the determination of rates."

In the case of the Portland Railway, Light & Power Company, before the Oregon Public Service Commission, Order No. 191, decided April 30, 1917, and in a prior order dated May 31, 1916, the Commission says:

"For the purpose of showing the intangible value of the well-established business of the respondent over and above the items making the complete and operating plant, elaborate computations have been submitted by the respondent. This item may be termed going value. It is not to be confused with good-will in the ordinary sense of that term for, as to a monopoly, actual or virtual, such as the respondent, good-will is a factor which cannot be recognized by a rate-making body. Nor is going value to be confused with franchise value, although the right of the concern 'to go' depends upon the existence of a franchise.

"There appears to be more or less confusion as to the term to be applied to this intangible element which enters into the value of a utility property. 'Going value,' 'going concern value,' 'going cost,' and 'development cost' seem to have been variously used by the courts and commission, but, by whatever appellation it should be known, the amount which this Commission will allow in a rate case for this element of value is the sum which represents the reasonable cost of attaching the normal business to a plant reasonably required to serve the territory covered. The term 'development cost' seems to be the most appropriate to apply, and it will be used, as thus defined, throughout these findings.

"The Commission is of the opinion that the determination of a proper allowance for development cost must rest upon the judgment and discretion of the determining body, after a full consideration of the history of the physical plant of the utility, and of its rates, results of operation, operating organization, and attached business; the nature and size of the territory served, growth of population, and kind, number and general circumstances of its patrons; the general commercial conditions during the life of the plant and during ownership by the present investors; the terms of, and conditions under which the transfers of ownership have occurred; the financial history of the plant; the progress of the art and general attitude of the public toward its utility product; the competitive conditions, if any, and all matters and things which, in this particular instance, may have a bearing on the subject."

A very recent decision of the United States Supreme Court involving this question was in the case of Denver v. The Denver

Union Water Company, decided March 4, 1918, 246 U. S. 178, 62 L. ed. ——, P. U. R. 1918C, 640, 38 Sup. Ct. Rep. 278. In that case the rates of a water company were involved. An item of $800,000.00 for going-concern value was allowed by the master in chancery, as stated in the opinion of the Supreme Court, "upon the ground that the company had 'an assembled and established plant doing business and earning money,' according to the principle laid down by this court in Des Moines Gas Company v. Des Moines, 238 U. S. 153, 59 L. ed. 1244, P. U. R. 1915D, 577, 35 Sup. Ct. Rep. 811." The City and County of Denver contended that the allowance of $800,000.00 as the going-value of the property was an improper allowance, contending that while it was proper in sale cases to make such an allowance, such course was not proper in a rate case. The Supreme Court said on this subject, Mr. Justice Pitney delivering the opinion:

> "What we have said establishes the propriety of estimating complainant's property on the basis of present market values as to land, and reproduction cost, less depreciation, as to structures. That this method was fairly applied by the special master hardly is disputed by appellants, except as they contest the items allowed for 'going concern value' and for the water rights acquired by complainant and its predecessors by original appropriation. With respect to the former item, we adhere to what was said in Des Moines Gas Co. v. Des Moines, *supra;* 'that there is an element of value in an assembled and established plant doing business and earning money, over one not thus advanced, is self-evident. This element of value is a property right, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned, although dedicated to public use.'
>
> "As was then observed, each case must be controlled by its own circumstances. In the present case, the master expressly declared that his detailed valuation of the physical property and water rights included no increment because the property constituted an assembled and established plant, doing business and earning money; and a careful examination of his very elaborate report convinces us that this is true. The amount allowed by him on this account is not open to serious question from the standpoint of appellants."

The Commission has given careful consideration to the element of going value in this case, and no matter what line of reasoning it has pursued, the conclusion has been reached that the allowance for this element of value should be substantial. It is now generally recognized that on account of the rapid changes that have taken place in the development of the art of urban transportation, necessitating the abandonment of property before the end of its service life, the returns to the owners have, as a rule, been very meagre. The case under consideration is no exception to the general rule, and, as will appear later in these findings, the net earnings for a number of years have exceeded by only a small amount the interest on the funded debt, and no adequate allowance for depreciation has ever been made. Based upon the capitalization of deficits as a measure of going-concern value a very large, and, in fact, prohibitive amount, could be arrived at. The Commission is fully aware of the fact that such a method of estimating going-concern value results in the smallest allowances in the case of the most prosperous concerns, and in allowances perhaps excessive in the case of concerns that have had insufficient earnings. The Commission is also aware of the fact that such a method in effect capitalizes bad management and mistakes and errors made in the past, but the Commission is of the opinion that such deficiency of earnings has resulted in this case not from bad management, but from management which for a number of years has been reasonably comparable with the very best in the United States.

The Commission will not attempt to lay down or adopt a general rule for determining going value to be applied in this or any other case, as it is firmly of the opinion that no such general rule can be adopted or applied. The use of such rules, however, is of assistance to the Commission in indicating what a reasonable allowance should be. The final determination of the amount to be allowed is one requiring the Commission to exercise its best judgment in connection with all other relevant facts surrounding the particular case, and the Commission will in its final findings make such allowance as in its opinion is just and proper.

PRESENT FAIR VALUE OF THE PROPERTY: The Commission has given careful consideration to the evidence submitted bearing upon the value of the property of the applicant company devoted to public use, and finds that the present fair value of such property as of December 31, 1917, including a reasonable allowance

for working capital, was the sum of $23,674,100.00, apportioned to the three operating divisions as follows:

City lines	$20,867,750.00
D. & N. W. Ry.	1,448,550.00
D. & I. M. R. R.	1,357,800.00
Total	$23,674,100.00

The present fair value as determined is based upon the cost of reproduction of the property of the applicant company used in the public service, and due consideration has been given to its present condition and operating efficiency, deduction having been made for depreciation where necessary based upon the testimony in the case and also personal investigation and inspection of the property made either by the Commission or on its behalf. The amount arrived at represents, in other words, the present fair value of the property based upon its cost of reproduction under average or normal conditions, its present service condition and efficiency, and all other relevant facts.

With the exception of the estimated cost of securing the franchise of 1906, under which the company operates within the city and county of Denver, no allowance has been made for the one hundred and thirty-eight franchises and permits which the applicant company now owns and under which it is now operating.

The Commission makes no finding as to the value of the property of the applicant company not devoted to public use, which embraces, among other items, bonds and securities of other companies and certain other property, all of a substantial value, and the Commission further holds that the eliminations made by its engineering staff on account of abandoned and obsolete property, deferred maintenance and depreciation were just and proper. Substantial additions have been made to the property of the applicant company since December 31, 1917, such, for example, as the Emerson Street connection, Union Station loop and the Broadway extension. The Commission makes no finding at this time as to the expenditures made on account of such additions or as to the amount by which such additions will increase the value of the property. The expenditures made therefore, however, represent a substantial sum.

Valuations of property of this character must necessarily be determined upon the record and the judgment of the Commission, following certain well-established principles of law, scientific methods and engineering rules; but as the highest courts have many times said that even capitalization may be considered as af-

fording some light on the subject and as indicating some limitations of value, it is helpful to make certain comparisons in the final valuation arrived at with the results obtained in similar proceedings before other tribunals, including public utility and railroad commissions and courts of the highest jurisdiction. From the testimony in this case it appears that in similar proceedings, involving street railroad properties of the same general character, the following valuations for rate-making purposes have been determined and have been sustained:

Year.	Location.	Total appraised value per mile of single track.
1913	Toronto	$167,000.00
1913	Kansas City, Mo.	134,600.00
1915	Detroit	134,300.00
1917	Portland, Ore.	117,000.00
1917	Chicago surface lines	143,400.00

The valuation arrived at in this case is slightly less than $94,000.00 per mile of single track, which, compared with the foregoing, indicates that the findings have been based upon conservative estimates tending to minimum values, and which, while contested vigorously by the applicant company, will, the Commission believes, afford grounds for permanent satisfactory relations between the applicant company and the public and the municipalities which it serves. One further deduction to be drawn from the foregoing comparison is that the development and extension of these properties over a period of more than forty years has been accomplished with a minimum of waste and mistakes necessarily incidental, to some extent, in every development of a project of this size.

REVENUES AND EXPENSES: The Commission finds that Statement No. 4 heretofore set out in this opinion, is a correct statement of the revenues and expenses for the period covered thereby, and that with the exception of such replacements of property as were made during this period and charged to the maintenance accounts, the Tramway Company has had available for depreciation and a return to its investors the amounts shown as Gross Income in this statement. The extent to which the depreciation on this property has been provided for through current maintenance and charges to the maintenance accounts will be discussed later under another heading. It is sufficient to state here that the amounts available for interest and depreciation, with the exceptions as to depreciation just noted, were as follows:

1915	$1,267,433.00
1916	1,405,895.00
1917	1,170,170.00

In order to determine the amount actually available for a return to the owners of the property it is necessary to determine what amount or amounts over and above current maintenance should be set aside as an annual depreciation requirement. Estimates of what this amount should be were submitted both by the applicant company and the Commission's engineering staff. The estimate submitted on behalf of the applicant company is based upon an allowance for maintenance and depreciation combined, and is of little assistance to the Commission in making its findings. The estimate submitted by the Commission's engineering staff was determined by assigning various lives and salvage values to the various items of depreciable property and shows that amount which, in the judgment of the Commission's engineers, should be set aside annually in addition to such expenditures as are made on account of current maintenance. The estimate submitted by the Commission's engineering staff is summarized as follows:

ANNUAL DEPRECIATION REQUIREMENT.

	Straight Line Basis.	4% Sinking Fund Basis.
City lines	$607,317.00	$385,194.00
D. & N. W. Ry.	37,378.00	27,325.00
D. & I. M. R. R.	32,953.00	22,756.00
Totals	$677,644.00	$435,275.00

The Commission finds that for the year 1917 the maintenance charges for the system included replacements of property in the sum of $150,000.00, and that the amount available for interest and depreciation for that year should be increased by the above amount, or to $1,320,170.00. The maintenance accounts for the year 1914, 1915 and 1916 likewise include replacements of property, but it is not necessary for the Commission to determine at this time the amounts of such replacements.

Under the Uniform Classification of Accounts for electric railways, prescribed by the Interstate Commerce Commission and adopted by General Order No. 24 of this Commission, depreciation accounts are provided for as follows:

> "Depreciation accounts in which to include monthly charges to cover depreciation of way and structures, equipment, power plant buildings, and power plant equipment are provided in order that carriers may create reserves which will meet or reduce the amounts otherwise chargeable to Operating Expenses or to Profit and Loss Account to cover the cost of the renewal or retirement of property. Such depreciation charges should be upon a basis determined to be equita-

ble according to the carrier's experience and best sources of information as to the actual accruals of current loss from depreciation. Depreciation charges with respect to property or equipment shall cease when the difference between the ledger value (estimated if not known) and the estimated scrap value shall have been credited to the depreciation reserve account. A statement of the bases used by the carrier for computing these charges shall be included in its annual report to the Commission.

"Commencing July 1, 1914, carriers shall accrue depreciation on equipment (included in accounts Nos. 530 to 535), but the accrual of depreciation on way and structures, power plant buildings, and power plant and substation equipment is left optional with the carrier until such time as the Commission shall direct otherwise.

"When equipment (included in accounts Nos. 530 to 535) is retired from service and proper charges for depreciation have not been made during its life, the ledger value of such equipment, less salvage and depreciation accrued to the date of retirement, shall be charged as follows: That proportion of the actual loss from depreciation equitably assignable to the period prior to July 1, 1914, shall be charged to Profit and Loss and the remainder shall be charged to operating expense Account No. 41, 'Equipment retired.'"

During the year 1917 the applicant company established a reserve for depreciation of rolling stock and miscellaneous equipment. This reserve on December 31, 1917, had accumulated to the amount $76,089.84, from which there was a deduction on account of property retired from service amounting to $20,007.45, leaving a balance in this reserve on December 31, 1917, of $56,081.59. With this exception no reserve for depreciation has ever been set up by the applicant company.

The Commission is of the opinion that in addition to current maintenance, the Tramway Company should be permitted to earn and set aside annually the sum of $500.000.00 as an annual depreciation requirement, and that this amount should be apportioned to the three operating divisions of the system as follows:

City lines	$450.000.00
D. & N. W. Ry.	27,500.00
D. & I. M. R. R.	22,500.00

In the opinion of the Commission it is well established that in addition to current maintenance such a depreciation reserve as above determined should be earned annually for the purpose of taking care of the ravages of time and wear and tear in whatever form they may manifest themselves, such as obsolescence, inadequacy, public requirements, etc., in order that at any particular time the capital invested in the property shall remain unimpaired. Failure to make an allowance for a depreciation reserve and to afford the applicant company a legal right to earn the same, would be only a means of confiscating a portion of the property devoted to public use, differing in form, but not in substance, from a refusal to allow an adequate rate of return.

RATE OF RETURN: It cannot be disputed that over and above such amounts as are reasonably necessary to meet operating expenses, including maintenance, taxes and depreciation, the Tramway Company is entitled to earn a fair return upon the value of the property which is dedicated to public use. The Commission is fully aware of the fact that, from the uncontradicted testimony submitted, there has prevailed for several years and now prevails a much higher rate of return on investments and loans than heretofore, and that it may justly be contended by the applicant company that capital in the amount required could not at this time be induced into such an enterprise for less than a reasonably assured earning of 10 per cent. However, like many phases of the problem involved in this case, unusual, abnormal and war-time conditions have brought about this situation, and it is the judgment of the Commission that these high rates of return will not be permanently maintained and that it is to the interest both of the public and the Tramway Company that such rate of return should be based upon normal and pre-war conditions.

In the City and County of Denver, and elsewhere in the State of Colorado, in many other similar proceedings, the Commission has had occasion to investigate this problem, and finds no reason to alter its previous determination to the effect that a return of 8 per cent. upon the present fair value of such a property is just and reasonable.

Having determined that the amount available for interest and depreciation for the year 1917, after deducting all operating expenses, was the sum of $1,320,170.00 for the entire property, and having determined the present fair value of the property, the annual depreciation requirement and the rate of return to be

allowed, the Commission now makes its findings as to the operating results for the year 1917 as follows:

Fair return, 8 per cent on $23,674,100.00	$1,893,928.00
Annual depreciation requirement	500,000.00
Total requirement for interest and depreciation	$2,393,928.00
Gross income available after making adjustments on account of replacements charged to maintenance accounts	$1,320,170.00
Deficit	$1,073,758.00

The above amount is the deficit from operations for the entire Tramway system for the year 1917, and its apportionment to the various operating divisions of the company will be shown later in this decision. The Commission will not attempt to determine the operating results for the years 1915 and 1916, but based on the findings herein and the net earnings as shown by Statement No. 4, it is apparent that even for those years the earnings of the applicant company were entirely inadequate for the purpose of meeting its operating expenses and, in addition, providing for depreciation and a fair return to the owners of the property. Dividends were paid to stockholders only during a short period; they were never excessive, and no dividends have been paid since 1915.

It is further manifest to the Commission that to afford such a return as the applicant company might legally be allowed to earn, even under conditions prevailing in 1917, would require a very substantial advance in the present rates of fare. It would be unfortunate for the public and for the applicant company if it were found necessary or advisable to raise the fares so as to make the burden upon the patrons of the company so great as to curtail the use of the service, as such a procedure would make it necessary eventually to reduce the service and would probably be disastrous to the company.

A basic 6-cent fare has already been established by order of this Commission and has been in effect since September 15, 1918. Such increase in fare was scarcely sufficient to meet the increased operating costs experienced prior to the wage award of the National War Labor Board recently announced, which wage award will further increase the operating costs of the applicant company by approximately $500,000.00 per year. It must be evident that such increase in wages cannot be met without a further increase in the present rates of fare. However, as will appear later in this opinion, the Commission has not found it to be either practical or desirable to establish fares sufficient to enable the applicant com-

pany to meet this increase in wages, much less to permit it to earn under prevailing conditions a reasonable return on the fair value of its property.

EFFICIENCY OF OPERATION: The extent and character of the system of the Tramway Company is fully set forth in other portions of this opinion, but it appears clearly and without contradiction in the record that the applicant company, in the development of its property, has kept pace with the needs and requirements of the community it serves and with the progress in the arts and sciences relating to street railway equipment and operation. The system has given and is giving adequate service to the public, and contains within it potentialities of a further extension and development ample to meet any reasonable requirements that may reasonably be expected in the future.

In economy of operation it stands well to the forefront in comparison with other similar properties, as is shown by the following table of comparisons:

City	Operating Ratio Excluding Taxes 1916	1917	Operating Ratio Including Taxes 1916	1917
Providence (R. I. Co.)	-----	-----	72.7	86.3
New Haven (Conn. Co.)	-----	-----	73.0	84.0
Detroit	74.1	76.0	-----	-----
Kansas City	60.0	74.5	-----	-----
Cleveland	71.7	73.7	-----	-----
Des Moines	-----	64.0	-----	70.4
Grand Rapids	-----	-----	63.8	69.7
Columbus	-----	67.8	-----	-----
Salt Lake City	65.5	-----	-----	-----
Philadelphia	55.8	59.4	-----	-----
Omaha	56.4	-----	-----	-----
Cincinnati	53.6	56.5	-----	-----
DENVER	49.29	56.03	56.0	62.7
United States (a)	-----	66.6	-----	-----
Western District (b)	-----	66.9	-----	-----

(a) 8,400 miles of street railways.
(b) 1,800 miles of street railways.

The conclusion to be drawn from the operating figures for many years, placed in the record and undisputed, as well as the above comparative data, is that there is no waste of revenue of the applicant company by reason of extravagance or poor operation, and that therefore the "revenue" shown to be available for depreciation and a return on the investment is a real and dependable figure.

INCREASES IN OPERATING EXPENSES AND THE OUTLOOK AS TO THE FUTURE: During the pendency of this proceeding the tendency of all operating costs has been upward, but an unprecedented increase was encountered by the applicant company under the award of the National War Labor Board, dated November 26,

1918, and made retroactive to August 24, 1918, on account of which award it appears from the testimony the pay-roll of the applicant company will be increased at the rate of some $500,000.00 per annum. Regardless of the question of value and adequate return upon the fair value of the property devoted to the public use, it is obvious that such an increase in fare must be afforded the Tramway Company as is required to meet and offset these pressing and daily costs of operation if public service is to be maintained. The award of the National War Labor Board, to which the matters of the wages of trainmen and other employees of the applicant company were submitted, was signed by Hon. William Howard Taft, former president of the United States, and by the Hon. Frank P. Walsh, and is as follows:

NATIONAL WAR LABOR BOARD.

DOCKET NO. 173.

AMALGAMATED ASSOCIATION OF STREET AND ELECTRIC RAILWAY EMPLOYEES OF AMERICA, DIVISION NO. 746.

v.

DENVER TRAMWAY COMPANY

The undersigned were selected as a Section of the National War Labor Board to hear this controversy, and do hereby report to the board the following findings and award:

1. WAGES.

The rates are fixed for the period of the war only, and therefore there is substituted for more extended graduation of rates by years a shorter period for the increases.

The wage rates for all motormen and conductors shall be:

For the first three months of service, 43 cents per hour.

For the next nine months of service, 46 cents per hour.

Thereafter, 48 cents per hour.

2. WAGES OF OTHER EMPLOYEES.

The wages of employees other than motormen and conductors, which have been submitted to the board for fixation,

shall be increased by the same percentage that the maximum of the wage scale paid to motormen and conductors is increased by this award; provided, however, that if this increase does not bring the wage of any adult male employee up to a minimum of 42½ cents per hour he shall be paid said minimum of 42½ cents per hour up to not more than ten hours' work per day. The foregoing provisions shall not apply to such employees who already are receiving union craft rates, nor operate so as to increase their wages beyond such rates.

3. EMPLOYEES OF THE DENVER AND INTERMOUNTAIN RAILROAD.

This award shall also apply to those employees of the Denver and Intermountain Railroad whose wages have been submitted to the board for fixation.

4. BONUS PAY FOR LONG ELAPSED TIME.

Where the elapsed time consumed by swing runs exceeds 13 hours, an addition of pay for the period of excess consumed time shall be allowed as follows:

For the fourteenth hour, 15 minutes.
For the fifteenth hour, 30 minutes.
For the sixteenth hour, 45 minutes.
For the seventeenth hour and each successive hour, one hour.

These allowances are to be applied to successive periods of one-half hour each; less than one-half of such period to be neglected and more than one-half of each such period to count as allowed time for the full allowed period.

5. INTERPRETATION OF AWARD.

For the purpose of securing a proper interpretation of this award the secretary of the National War Labor Board shall appoint an examiner, who shall hear any difference arising in respect to the award between the parties and promptly render his decision, from which an appeal may be taken by either party to the board. Pending a final adjudication upon the appeal the decision of the examiner shall be binding, except as provided in the rules of the board.

6. DATE EFFECTIVE.

This award is to take effect as of August 24, 1918, and shall continue for the duration of the war, except that either

party may reopen the case before the board at periods of six months' interval, beginning May 15, 1919, for such adjustment as changed conditions may render necessary.

The company shall be allowed until February 1, 1919, to make payments to its employees of the back pay due them under the award.

7. FINANCIAL RECOMMENDATION.

This increase in wages will add substantially to the operating cost of the company and will require a reconsideration by the proper regulating authority of the fares which the company is allowed by law to collect from its passengers.

We make part of this award the words we have used in the award in the Cleveland case:

"We have recommended to the President that special congressional legislation be enacted to enable some executive agency of the Federal Government to consider the very perilous financial condition of this and other electric street railways of the country, and raise fares in each case in which the circumstances require it. We believe it to be a war necessity justifying Federal interference. Should this be deemed unwise, however, we urge upon the local authorities and the people of the locality the pressing need for such an increase adequate to meet the added cost of operation.

"This is not a question turning on the history of the relations between the local street railways and the municipalities in which they operate. The just claim for an increase in fares does not rest upon any right to a dividend upon capital long invested in the enterprise. The increase in fare must be given because of the immediate pressure for money receipts now to keep the street railways running so that they may meet the local and national demand for their service. Over-capitalization, corrupt methods, exorbitant dividends in the past are not relevant to the question of policy in the present exigency. In justice the public should pay an adequate war compensation for a service which can not be rendered except for war prices. The credit of these companies in floating bonds is gone. Their ability to borrow on short notes is most limited. In the face of added expenses which this and other awards of needed and fair compensation to their employees will involve, such credit will completely disappear. Bankruptcy, receiverships, and demoralization, with

failure of service, must be the result. Hence our urgent recommendation on this head."

Without in any way abating in the slightest degree its own duties and responsibilities in the premises, it is proper that the Commission should give due regard to the effects of this wage increase and to the request of the National War Labor Board received by the Commission in the following communication:

A469A 226 Govt. 1/170. Washington, December 5, 1918.

Honorable George Bradley,
Chairman Public Utilities Commission of Colorado,
Denver, Colorado.

On November twentieth, nineteen-eighteen, the National War Labor Board, upon the recommendation of the joint chairmen, made a very substantial increase in the wages to be paid by the Denver Tramway Company to their employees, under a submission by the Company and men to the Board. The Joint Chairmen who heard the case found that the additional burden put upon the company by their award would so increase their expense that they were in justice entitled to an increase in the rate of fare which the municipal and state authorities permitted them to charge; as part of the award of the Board, therefore, the increase in fares was recommended to your honorable body as a measure of justice to the company. We are advised that there has been delay in such increase and the delay is greatly embarrassing the company in paying current wages and preparing to meet its retroactive obligations under the award. We, therefore, venture urgently again to call your attention to the real need the company is in and to the justice of its application. Failure of state authorities to act in such cases has led in other cases to a ceasing of service and great public inconvenience.

Wm. H. Taft (Joint Chairman, Basil M. Manly),
National War Labor Board.

During the period covered by this investigation, and, in fact, during the entire war period, it was apparent that the applicant, in common generally with street railways throughout the United States, was called upon to assume and discharge vastly increased and important functions and war work and under ever-increasing operating costs, without any means of increasing earnings. The

matter became so nationally important that it was the subject of public proclamation by the most prominent officials of the national government, including the President of the United States. Many of these official pronouncements were sent direct to this Commission and were in the nature of requests that the Commission accord to such utilities such relief as the situation demanded. Among these were the following:

The White House, Washington.
19 February, 1918.

My Dear Mr. Secretary:

I have examined with care the memoranda and letters which you transmitted to me with your letter of the fifteenth. I fully share the views you express regarding the importance of the public service utilities as a part of our national equipment, especially in wartime. It is essential that these utilities should be maintained at their maximum efficiency and that everything reasonably possible should be done with that end in view. I hope that State and local authorities, where they have not already done so, will, when the facts are properly laid before them, respond promptly to the necessities of the situation.

I shall be glad to have you communicate with the local authorities whenever the information in your possession suggests that such a course is desirable and in the national interests.

Cordially yours,
(Signed) WOODROW WILSON.

HON. WILLIAM G. MCADOO,
Secretary of the Treasury.

Feb. 15, 1918.

Dear Mr. President:

I beg to hand you herewith several memoranda and letters relating to street railway and other local public utilities furnishing light, heat, and power, which I have been asked to bring to your attention by a committee representing public utility interests.

These papers indicate the existence of genuine apprehension regarding the adequacy, under present conditions, of the services and rates of local public utilities. The view is expressed that increased wages and the high cost of essential materials and supplies have affected them as they have af-

fected everybody else, and that united effort will be necessary in order to meet alike the public requirements for service and the corporate financial needs upon which that service depends.

As Secretary of the Treasury, I must take official notice of these matters. It is obvious that every part of our industrial and economic life should be maintained at its maximum strength in order that each may contribute in the fullest measure to the vigorous prosecution of the war. Our local public utilities must not be permitted to become weakened. Transportation of workers to and from our vital industries and the health and comfort of our citizens in their homes are dependent upon them, and the necessary power to drive many of our war industries and many other industries essential to the war is produced by them. It may be that here and there, because of the prominence given to less important interests immediately at hand, State and local authorities do not always appreciate the close connection between the soundness and efficiency of the local utilities and the national strength and vigor and do not resort with sufficient promptness to the call for remedial measures. In such cases, I am confident that all such State and local authorities will respond promptly to the national needs when the matter is fairly and properly brought before them.

Our public service utilities are closely connected with and are an essential part of our preparation for and successful prosecution of the war, and the unfavorable tendencies which the accompanying papers reveal may most effectively be checked, wherever they may be found to exist, and the needed relief obtained, only by prompt action on the part of the respective local authorities.

I earnestly hope that you may feel justified in expressing the conviction that the vital part which the public utilities companies represent in the life and war-making energy of the nation ought to receive fair and just recognition by State and local authorities.

Cordially yours,
(Signed) W. G. McAdoo.

The President, the White House.

Excerpt from the annual report of the Hon. John Skelton Williams, Comptroller of the Currency, to the Congress:

Maintenance of Efficiency and Credit of Public Utility Companies Essential.

National and State Banks, and many thousands of small and large investors, have suffered seriously from the decline of the earning capacity of public utility corporations and the consequent shrinkage in the value of their securities, representing investments of many hundred millions of dollars. These losses naturally diminish the power and disposition of the public to respond to the calls of the Government for money for war. This danger should arouse, I venture to suggest, the anxiety and stimulate the efforts of the Congress and of every patriotic citizen. A more urgent and pressing peril is forced upon our attention by the obvious fact that we are dependent so largely on the efficiency and strength of these corporations and on our railroads for speed and success in preparing for and prosecuting the war.

The work of war has thrown upon many of these corporations strains which they are unable to endure without prompt help. The costs of their labor and of all material for operation, betterment, and upkeep have increased heavily and suddenly.

The continued and increasing efficiency of these corporations is important for the successful conduct of the war. This efficiency is not possible with present conditions. Corporations proved by their own figure to be approaching bankruptcy can not obtain money for improvements or maintenance. On the other hand, banks and citizens suffering severe losses from investments in the securities of these entirely legitimate and once promising enterprises will be discouraged from lending money to the Government or deprived of the means to lend.

The first and most direct relief of the public utilities corporations can be given by the State public utilities commissions and municipal and local authorities, with the broad-minded co-operation of the people generally, understanding the necessities of war and realizing that the more promptly its burdens are accepted the sooner they will be lifted. It is essential that forbearance and consideration be exercised by the State Commissions and municipal authorities, and that the corporations also be permitted to make such additions to their charges for service as will keep in them the breath of

> solvency, protect their owners against unjust loss, and give them a basis of credit on which they may obtain the funds with which to meet the strain put on them by the Government's needs. The breaking down of these corporations would be a national calamity.
>
> Because of the gravity of the situation in this regard, I am moved to ask for it the careful attention of the Congress and the public.

It has been and is the desire of this Commission to keep step with the national movement in respect to public utilities and to maintain their efficiency where just and proper, both in the interest of the general public welfare and in the interest of the public utilities themselves.

The Commission has given careful study to the effect of the award of the National War Labor Board on the operating expenses on the applicant company, and finds that as nearly as can be estimated the revenues and expenses for the years 1918 and 1919, taking into account the increase in fares authorized on September 15, 1918, will be approximately as shown by Statement No. 5. In this statement the revenues and expenses have been apportioned to the three operating divisions of the system, while the year 1917 is shown for the purpose of comparison. Likewise the deficits for the different divisions are shown, after taking into account depreciation and a fair return on the fair value of the property in the amounts previously determined. It is to be noted that the operations for the year 1917 are based entirely on a five-cent fare on the city lines and upon the fares prevailing on the interurban lines prior to the issuance of General Order No. 28 by the Director General of the United States Railroad Administration. For the year 1918 the operating revenues include the increase in fares authorized by the Commission in its order effective September 15, 1918, but take into account the effect of the epidemic of Spanish influenza which has been prevalent for several months. For the year 1919 the estimate of operating revenues has been based for the entire year upon the rates and charges established by the Commission in its order effective September 15, 1918.

Had the operating expenses of the applicant company not increased materially over those experienced in the year 1917, the facts developed in this case prove clearly that the rates and charges permitted to become effective September 15, 1918, by

STATEMENT No. 5.

THE DENVER TRAMWAY SYSTEM.

		1917 ACTUAL				1918 ESTIMATE				1919 ESTIMATE			
	Revenue from Transportation	D. T. CO.	D.& NW.Ry.	D.& IM.RR.	System	D. T. Co.	D.& NW.Ry.	D.& IM.RR.	System	D. T. Co.	D.& NW.Ry.	D.& IM.RR.	System
101	Passenger	$3,062,975.13	$ 65,795.44	$ 93,705.91	$3,222,476.48	$3,236,720.00	$ 68,000.00	$ 90,000.00	$3,394,720.00	$3,673,375.00	$ 75,375.00	$101,250.00	$3,850,000.00
102	Baggage			9.50	9.50			7.00	7.00			8,00	8.00
103	Parlor, Chair and Special Car	7,156.40	5,078.67	222.60	12,457.67	3,205.00	7,797.00	38.00	11,040.00	2,000.00	7,478.00	100.00	9,578.00
104	Mail	1,463.76		245.40	1,709.16	1,454.00		249.00	1,703.00	1,450.00		249.00	1,699.00
105	Express	2,528.97	268.00	2,758.30	5,555.27	2,680.00	268.00	2,800.00	5,748.00	2,500.00	270.00	2,800.00	5,570.00
106	Milk			232.28	232.28			41.00	41.00			41.00	41.00
107	Freight		42,202.23	43,332.97	85,535.20		46,550.00	48,450.00	95,000.00		50,470.00	52,530.00	103,000.00
108	Switching	13,979.08		8,428.28	22,407.36	13,687.00		9,333.00	23,020.00	13,600.00		9,500.00	23,100.00
109	Miscellaneous			4.09	4.09								
	Total Revenue from Transportation	$3,088,103.34	$113,344.34	$148,939.33	$3,350,387.01	$3,257,746.00	$122,615.00	$150,918.00	$3,531,279.00	$3,692,925.00	$133,593.00	$166,478.00	$3,992,996.00
	Revenue from Oper. other than Transportation												
110	Station and Car Privileges	$ 19,210.27		$ 730.00	$ 19,940.27	$ 19,358.00		$ 380.00	$ 19,738.00	$ 19,200.00		$ 380.00	$ 19,580.00
113	Car Service			1,733.08	1,733.08	3.00		871.00	874.00			875.00	875.00
115	Rents of Track and Terminals	7,197.99			7,197.99	7,380.00			7,380.00	6,300.00			6,300.00
116	Rents of Equipment	4,604.94		7,585.15	12,190.09	5,011.00		8,000.00	13,011.00	4,500.00		6,876.00	11,376.00
117	Rents of Buildings and Other Property	32,786.53		561.04	33,347.57	32,000.00		560.00	32,560.00	31,500.00		560.00	32,060.00
118	Power	37,689.70			37,689.70	39,000.00			39,000.00	39,000.00			39,000.00
119	Miscellaneous	457.27		14.55	471.82	500.00		80.00	580.00			90.00	90.00
	Total Rev. from Oper, other than Transportation	$ 101,946.70		$ 10,623.82	$ 112,570.52	$ 103,252.00		$ 9,891.00	$ 113,143.00	$ 100,500.00		$ 8,781.00	$ 109,281.00
	Other Miscellaneous Income	2,411.74	3,002.53	14,403.63	19,817.90	3,498.00			3,498.00	2,383.00			2,383.00
	Total Operating Revenues	$3,192,461.78	$116,346.87	$173,966.78	$3,482,775.43	$3,364,496.00	$122,615.00	$160,809.00	$3,647,920.00	$3,795,808.00	$133,593.00	$175,259.00	$4,104,660.00
	Operating Expenses												
I.	Way and Structures	$ 197,542.51	$ 9,651.34	$ 22,282.32	$ 229,476.17	$ 213,199.00	$ 10,412.00	$ 24,017.00	$ 247,628.00	$ 271,435.00	$ 13,257.00	$ 30,608.00	$ 315,300.00
II.	Equipment	221,635.23	4,570.78	16,630.62	242,836.63	228,694.00	4,741.00	17,235.00	250,670.00	290,686.00	6,083.00	22,081.00	318.850.00
III.	Power	196,001.35	20,431.65	20,010.61	236,443.61	212,823.00	21,499.00	21,056.00	255,378.00	254,861.00	24,168.00	23,671.00	302,700.00
IV.	Conducting Transportation	850,708.21	20.392.35	38,953.61	910,054.17	1,020,185.00	23,136.00	42,449.00	1,085,770.00	1,375,109.00	26,662.00	49,379.00	1,451,150.00
V.	Traffic	22,360.09	250.00	316.55	22,926.64	33,625.00	375.00	200.00	34,200.00	23,735.00	265.00	200.00	24,200.00
VI.	General and Miscellaneous	263,878.26	22,789.00	31,018.75	317,686.01	329,535.00	28,593.00	32,916.00	391,044.00	341,583.00	29,973.00	34,784.00	406,340.00
	Taxes and Franchise Payments	341,398.40	5,783.58	6,000.00	353,181.98	342,726.00	5,872.00	8,030.00	356,628.00	342,726.00	5,872.00	8,100.00	356,698.00
	Total Operating Expenses	$2,093,524.05	$ 83,868.70	$135,212.46	$2,312,605.21	$2,380,787.00	$ 94,628.00	$145,903.00	$2,621,318.00	$2,900,135.00	$106,280.00	$168,823.00	$3,175,238.00
	Net Revenue	$1,098,937.73	$ 32,478.17	$ 38,754.32	$1,170,170.22	$ 983,709.00	$ 27,987.00	$ 14,906.00	$1,026,602.00	$ 895,673.00	$ 27,313.00	$ 6,436.00	$ 929,422.00
	Add Replacements Charged to Maintenance	140,000.00	6,000.00	4,000.00	150,000.00	140,000.00	6,000.00	4,000.00	150,000.00	140,000.00	6,000.00	4,000.00	150,000.00
	Adjusted Net Revenue	$1,238,937.73	$ 38,478.17	$ 42,754.32	$1,320,170.22	$1,123,709.00	$ 33,987.00	$ 18,906.00	$1,176,602.00	$1,035,673.00	$ 33,313.00	$ 10,436.00	$1,079,422.00
	Less Fair Return and Depreciation	2,119,420.00	143,384.00	131,124.00	2,393,928.00	2,119,420.00	143,384.00	131,124.00	2,393,928.00	2,119,420.00	143,384.00	131,124.00	2,393,928.00
	Deficit	$ 880,482.27	$104,905.83	$ 88,369.68	$1,073,757.78	$ 995,711.00	$109,397.00	$112,218.00	$1,217,326.00	$1,083,747.00	$110,071.00	$120,688.00	$1,314,506.00

the Commission's order granting emergency relief, not only were fully justified, but that their continuance would have been necessary. However, conditions have so changed since that time that service cannot long be maintained at its present state of efficiency under the fares then established. From an examination of Statement No. 5 it is apparent that if the Tramway Company is to meet its operating expenses for the year 1919, provide for depreciation, and pay a reasonable return to the owners of the property, it will be necessary to increase the operating revenues of the entire system by approximately $1,300,000.00 over and above the revenues that may reasonably be expected under the rates and charges now in effect. The Commission is of the opinion, however, that such rates of fare, if established, would be prohibitive and would exceed the value of the service to the street car patrons, and might result in a reduction rather than an increase in earnings.

The Commission is moreover not disposed to establish rates of fare sufficient to enable the applicant to earn the full return under the present emergency.

The problem with which the Commission is confronted is, therefore, that of establishing such a system of charges as will not exceed the value of the service to the patrons on the one hand, and, on the other hand provide such increase in revenues as will permit the applicant to meet, temporarily at least, the present emergency.

Three methods of providing additional revenue may be briefly considered, as follows:

1. By the introduction of a zone system of charges, whereby the fare would be commensurate with the distance traveled;

2. An increase in the present flat 6-cent fare now charged, with no change in the present free transfer privilege;

3. An increase in the flat 6-cent fare, and, in addition, the establishment of a charge for transfers.

The zoning system would tend to make the cost of the service more nearly approximate its value to the passenger, and would tend to secure the maximum revenue to the operating company at the minimum equitable cost to the passengers carried. However, on account of the delay that would ensue before such a system could be developed and equitably applied it will not be considered further at this time. As an approximation to the zoning system, however, the Commission is of the opinion that a

charge for transfers should be made for the reason that, on the average, patrons of the applicant company making use of transfers travel longer distances and receive a more valuable service than those patrons who do not take advantage of the transfer privilege. The additional charge made for transfers should, however, in the opinion of the Commission, be a very nominal one, and the Commission is of the opinion that a basic fare of 7 cents, with 3½ cents for half fares, and a charge of 1 cent for all transfers, will prove to be most equitable under present conditions. The adoption by the Commission of a flat fare with free transfer privileges would be a means of continuing a form of discrimination which for a long time existed in favor of transfer passengers, and would also require the basic fare to be so high as to exceed in some cases the value of the service, particularly to short haul passengers.

While an increase in the basic fare to 7 cents, with a charge of 1 cent for transfers, would theoretically provide an increase of approximately $700,000.00 per year, experience has shown that such theoretical increase not only will not be realized, but that the amount actually realized will fall considerably under the theoretical increase. However, if such theoretical increase were realized in full the applicant would fall short of earning its requirements for depreciation and a fair return on the property by at least $600,000.00 per year. The enforcement of such rates and charges will in all probability not provide revenue in excess of that required to meet the interest on the funded debt and provide for a very modest depreciation reserve.

It has not appeared to be either possible or practicable to increase the interurban fares of the applicant company beyond those established at the time the Commission issued its order granting emergency relief, except as to minimum fares on interurban lines to conform with fares permitted to be charged on the city lines.

The United States Railroad Administration, as a war measure, increased passenger fares June 10, 1918, between points on railroads under federal control. The interurban lines of the applicant company compete with railroads under federal control. On July 5, 1918, the applicant company filed with the Commission a tariff, its Colo. P. U. C. No. 3, proposed to become effective August 6, 1918, in which provision was made for fares and charges on the interurban lines between the City and County of Denver and Golden, Leyden and Leyden Junction, upon the basis of the fares as initiated for railroads under federal control by General Order

No. 28 of the Director General of the United States Railroad Administration. This tariff was suspended on July 13, 1918, pending an investigation into the reasonableness of the rates proposed therein. In its order granting the applicant emergency relief, effective September 15, 1918, the Commission permitted the applicant company to establish passenger fares on its interurban lines not in excess of those made effective June 10, 1918, on federal-controlled railroads by General Orders No. 28 of the Director General of the United States Railroad Administration. Accordingly, the Commission vacated, effective September 15, 1918, its previous order suspending applicant's tariff establishing interurban fares upon the basis charged by federal-controlled railroads. Effective September 15, 1918, also, the applicant company, as permitted by the Commission in the order for emergency relief, filed an amendment to its tariff, establishing on its interurban lines a minimum fare of 6 cents for adults and a half-fare of 3 cents for children over six years of age and under twelve years of age.

The system of the applicant includes two interurban lines between Denver and Golden, the one above referred to and the Denver & Intermountain Railroad. The Denver & Intermountain Railroad is now operating under fares established upon the basis of those prescribed in General Order No. 28 of the Director General of the United States Railroad Administration, with a minimum fare of 6 cents and a minimum half-fare of 3 cents. In the order herein, therefore, the term "Interurban" lines shall have reference to the two lines from Denver to Golden and the lines from Denver to Leyden and Leyden Junction.

Inasmuch as permission is granted herein to establish on lines within the city and county fares of 7 cents for adults and 3½ cents for childen between the ages of six and twelve years, the Commission will permit the establishment on interurban lines of the applicant, including that known as the Denver & Intermountain Railroad, minimum fares of 7 cents for adults and 3½ cents for children over six years of age and under twelve years of age.

ORDER.

IT IS THEREFORE ORDERED, That The Denver Tramway Company, the applicant herein, be, and it is hereby, allowed and permitted to establish, effective on not less than one day's notice to the Commission and to the public, by posting and filing in the manner provided in Section 16 of the Act, fares of 7 cents for

transporting adult passengers and 3½ cents for transporting children over 6 years of age and under 12 years of age, within the limits of the City and County of Denver, and on all of its lines, both urban and interurban, where a 6-cent fare now prevails and where a 5-cent fare prevailed prior to September 15, 1918; with an additional charge for all transfers issued as hereinafter provided.

IT IS FURTHER ORDERED, That The Denver Tramway Company, the applicant herein, be, and it is hereby, allowed and permitted to establish, effective on not less than one day's notice to the Commission and to the public, by posting and filing in the manner provided in Section 16 of the Act, a charge of One (1) cent for all transfers issued.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 17th day of December, 1918.

DECISION No. 224.

IN THE MATTER OF THE APPLICATION OF THE PUEBLO GAS & FUEL COMPANY FOR DETERMINATION BY THE COMMISSION OF THE RATES AND CHARGES TO BE MADE FOR GAS SERVICE IN THE CITY OF PUEBLO.

Application No. 20.

December 18, 1918.

APPEARANCES: Adams and Gast for the applicant company and Chas. M. Rose for the City of Pueblo.

STATEMENT.

By the Commission:

On the 26th day of June, 1918, The Pueblo Gas & Fuel Company, hereinafter referred to as the applicant or the company, filed with the Commission its application, alleging among other things that notwithstanding an increase in its rates and charges granted by the Commission in its order in Case No. 142 decided January 31, 1918, operating costs have advanced to such an extent that, for the first four months during which the increase in rates and charges authorized by the Commission was in effect, the net earnings of the applicant were only $5,647.60 as compared with net earnings of $8,268.47 for the corresponding period of the preceding year, and that this reduction in net earnings came about despite an increase of $4,336.00 in gross receipts for the same period; that, in other words, with an increase in gross receipts of 13.2 per cent, a decrease in net earnings of approximately 32 per cent was experienced on account of increases in the cost of labor and material.

The application sets out in some detail a comparison of prices in effect on June 1, 1917, with those in effect on June 1, 1918, and alleges that as a result of such increases the company's deficit for the first five months of the year 1918 was $17,421.98, and that such costs, particularly of material, will be further increased on account of a substantial increase in freight rates made effective by the United States Railroad Administration, but that the extent of such increase could not at that time be determined.

The application further alleges that the company has outstanding bonds of the total par value of $613,000.00, and notes representing its floating debt to the amount of $423,412.51, making a total debt of $1,036,412.51; that the book value of the applicant's plant investment on May 31, 1918, was $1,010,584.65, and that the applicant should be permitted to establish such rates and charges for its service as will permit it to earn over and above operating expenses a fair return on its investment. The applicant asks that the Commission ascertain the value of the assets of the company, determine the rate of interest thereon to which as a public service company it is entitled under the unusual conditions now prevailing, and authorize it to establish and put in force and effect such rates and charges as will enable it to obtain a proper return upon the fair value of its property.

A petition to dismiss was filed with the Commission on December 4, 1918, by the City of Pueblo. This petition alleges in effect that the ordinance and franchise of The Pueblo Gas and Fuel Company was granted by the City of Pueblo in conformity with the sanction and direction of the statutes of the State of Colorado (Section 6525, Par. 69, Revised Statutes of 1908); that by the terms and provisions of Article XX of the Constitution of the State of Colorado and the terms and provisions of the Charter of the City of Pueblo the power to regulate and fix rates of The Pueblo Gas and Fuel Company is vested exclusively in the government of the City of Pueblo; "that the said franchise and ordinance fixing the rates to be charged by The Pueblo Gas and Fuel Company is confirmed and approved by the adoption of the Charter of Pueblo, except insofar as the same may be legally inconsistent with said charter; that the rates prayed for in said pending application are in excess of the rates set forth in said franchise and ordinance so enacted and confirmed; that the rates prayed for in said application are in excess of the limitation imposed by law (Laws 1913, page 469, Par. 15)." Accompanying the petition for dismissal is a stipulation as to certain facts signed

by Robert S. Gast of counsel for the applicant, and Charles M Rose, attorney for the City of Pueblo. A copy of the charter of the City of Pueblo was likewise submitted with the petition to dismiss.

Pursuant to notice duly given to all parties in interest, this cause came on for hearing before the Commission at its hearing room in the State Capitol building, City and County of Denver, Colorado, at the hour of 10 o'clock a. m., December 9, 1918. Appearances were entered by Adams and Gast for the applicant, and by Charles M. Rose for the City of Pueblo.

At this hearing the petition to dismiss filed on behalf of the City of Pueblo alleging that the Commission does not possess jurisdiction over the rates and charges of public utilities in "Home Rule" cities was overruled. The matter of the jurisdiction of the Commission over the service and rates and charges of public utilities operating in municipalities governed under the amended Article XX of the Constitution of the State of Colorado has been before the Commission on numerous occasions, and most recently in the mater of the investigations of the rates and charges and rules and regulations of The Mountain States Telephone & Telegraph Company, and in the matter of the rates and fares to be charged by The Denver Tramway Company. The question has been involved in many other cases before the Commission, among which are: Castle Rock Railway & Park v. Denver Tramway Co. (1 Colo. P. U. C. 126), East Denver Business & Property Association v. Denver Tramway Company (3 Colo. P. U. C. 333 and 4 Colo. P. U. C. 276), Ratner v. Denver Gas & Electric Light Company (3 Colo. P. U. C. 379). The holdings of the Commission in all these cases, as well as in the cases affecting other "Home Rule" cities in Colorado, have been to the same effect, and in the present case the Commission will hold as heretofore that the regulation of rates to be charged by public service utilities is not a municipal matter, but is a sovereign right belonging to the state in its sovereign capacity. This holding of the Commission is in accordance with the trend of numerous court decisions throughout the country. In the decisions of the Commission previously referred to are cited many opinions holding to the same effect. Since the issuance of the Commission's previous decisions numerous cases have been decided by state courts, notably Cleveland Telephone Co. v. City of Cleveland, Supreme Court of Ohio, decided June 21, 1916, and Travers City vs. Michigan Railroad Commission, — Mich. —, 168 N. W. 481, P. U. R. 1918 F, 752, de-

cided July 18, 1918. In both of these cases the courts held that the regulation of public utility rates in municipalities, although such municipalities operate under constitutions giving the municipalities power to regulate all matters of local and municipal concern, is a matter of general concern and does not pertain to local or municipal affairs. Recently the Supreme Court of Oregon has held to like effect in its decision upholding the Public Service Commission in the Portland Street Railway fare case. The petition to dismiss this case is therefore denied.

At the hearing in this case no evidence was submitted bearing upon the value of the property of the applicant. Mr. Gast stated for the applicant, however, that on account of the serious condition in which the company found itself, particularly as to its inability to meet the interest on its bonded debt past due, the company was before the Commission asking merely for such rates as will yield a fair return upon the company's bonded debt, namely, $613,000.00. He stated further that it had been estimated, and that evidence would be introduced, to show that an increase of 25 cents net per thousand cubic feet in the rate for domestic gas and an increase of 15 cents net per thousand cubic feet in the rate to industrial consumers would produce, if conditions remained reasonably constant, a moderate return upon an assumed value of $613,000.00. Mr. Rose stated in effect that while the City of Pueblo did not admit that the plant of the applicant had a value of $613,000.00, that he was not prepared to go into a valuation proceeding at this time, and that for the purpose of this hearing only and without in any way binding the City of Pueblo, the sum of $613,000.00 might be considered as representing the value of the plant without any serious objection on his part.

The Commission is familiar with the property of the applicant, and while no valuation thereof has ever been made on its behalf, the general character and extent of the property appears in some detail in the record in Case No. 142, which has been made a part of the record in this proceeding. Based upon the Commission's experience in the valuation of similar properties and in the valuation of public utility properties generally, the Commission is of the opinion that the sum of $613.000.00 may be considered as the value of the property of the applicant for the purpose of this case, and that such rates as will provide a reasonable return on this amount should not be considered excessive under the conditions prevailing at this time. It will, therefore, be neces-

sary for the Commission to determine only to what extent it will be necessary to increase the present rates and charges in order to provide for a reasonable return on the bonded indebtedness of the applicant.

The earnings and expenses of the company for the years ending October 31, from 1915 to 1918, inclusive, are set out in the following statement:

EARNINGS STATEMENT.

YEARS ENDING OCT. 31, 1918.

	1915	1916	1917	1918
Gross Earnings	$97,009.04	$98,999.47	$107,698.29	$122,088.66
Operating Expenses	65,977.06	67,885.96	82,198.51	99,444.77
Net Earnings	31,031.98	31,113.51	25,499.78	22,643.89
Interest Charges	50,599.92	51,651.59	53,930.41	60,433.85
Deficit	19,567.94	20,538.08	28,480.63	37,789.96

From this statement, which is undisputed in the record, it appears that the net earnings for the year ending October 31, 1918, amounted to $22,643.89 or to 3.7 per cent on the applicant's bonded debt. It further appears that at no time during the above period have the net earnings exceeded 5.1 per cent on the present bonded debt of $613,000.00.

The remainder of the testimony submitted on behalf of the applicant consisted in the main of data relative to increases in taxes and in the cost of labor and material which it has been necessary to meet. This testimony appears undisputed in the record and it is unnecessary that it be discussed in detail in this opinion. Applicant's exhibit No. 10 is an estimate of the increase in gross and net earnings that would result from an increase of 25 cents net per thousand cubic feet in the rate for domestic gas and an increase of 15 cents net per thousand cubic feet in the rate for industrial gas, the exhibit being based on the gas sales for the year ending October 31, 1918. This exhibit shows that such an increase would result in net earnings of approximately $50,140.00, which if realized would yield a return of 8.15 per cent on the outstanding bonds.

In view of the decrease in consumption that always follows an increase in rates the Commission is of the opinion that the increase asked for by the applicant will not result in net earnings in excess of 8 per cent on its bonded debt of $613,000.00, and that such increase should be granted.

The franchise under which the company operates in the City of Pueblo establishes maximum rates for the various classes of service and further provides that the company shall pay into the City Treasury of the City of Pueblo all that part of its gross receipts from the sale of gas as follows:

> "For the remainder of the year 1911, after the granting of this franchise, and for each of the years 1912, 1913, 1914, 1915 and 1916, all that portion of the gross receipts from the sale of gas in excess of an average of $1.05 per thousand cubic feet sold; for each of the years 1917, 1918, 1919, 1920 and 1921, all that portion of the gross receipts from the sale of all gas in excess of an average of $1.00 per thousand cubic feet sold; for each of the years 1922, 1923, 1924, 1925 and 1926, all that portion of the gross receipts from the sale of all gas in excess of an average of 95 cents per 1,000 cubic feet sold; for each of the years 1927, 1928, 1929, 1930 and 1931, all that portion of the gross receipts from the sale of all gas in excess of an average of 90 cents per thousand cubic feet sold; for each of the years 1932, 1933, 1934, 1935 and 1936, all that portion of the gross receipts from the sale of all gas in excess of an average of 85 cents per thousand cubic feet sold. Said company further agrees, however, to adjust its rates so far as it is possible so that said rates shall be reduced to consumers rather than any excess to be paid to said city."

The rates and charges which the Commission will establish in its order in this case will exceed in some respects the maximum rates permitted by franchise. The average receipts from the sale of all gas will likewise be in excess of $1.00 per thousand cubic feet, and the fanchise provides that that portion of such receipts in excess of $1.00 per thousand cubic feet shall be paid into the treasury of the City of Pueblo.

The Commission has held many times that rates established by franchise are not binding upon the Commission and that the Commission may either increase or decrease such franchise rates as circumstances warrant. The provision in the franchise in this case to the effect that all receipts in excess of a certain stipulated average price per thousand cubic feet of gas sold shall be paid into the treasury of the city should not, in the opinion of the Commission, be binding upon the applicant during the present emer-

gency. This provision is similar to that under which The Denver Gas & Electric Light Company operates in the City and County of Denver, and in Investigation and Suspension Docket No. 30, decided November 9, 1918, the Commission held that such franchise provisions should be suspended until the further order of the Commission. The Commission's reasons for such action were clearly set out in the above case and do not need to be repeated here.

ORDER.

IT IS THEREFORE ORDERED, That the applicant herein, The Pueblo Gas and Fuel Company, be, and it is hereby, permitted to establish on not less than five days' notice to the Commission and to the public by filing and posting in the manner prescribed in Section 16 of the Act, the following rates and charges for gas service:

Illuminating or Fuel Gas.

Rate.

For all consumption during the month, $1.40 per thousand cubic feet.

Prompt Payment Discount.

A discount of five cents per thousand cubic feet will be allowed on all bills paid within the discount period, providing that no discount shall be allowed on gas sold through prepayment meters.

Minimum Monthly Guarantee.

Each consumer must guarantee a minimum monthly bill of fifty cents net.

Industrial Fuel.

Rate.

A fixed charge of $9.00 per year per consumer, plus
A fixed charge of $30.00 per year per one hundred cubic feet of maximum demand, plus
Ninety cents per thousand cubic feet for the first fifty thousand cubic feet of gas consumed during the month, and sixty-five cents per thousand cubic feet for all consumption during the month in excess of fifty thousand cubic feet.

Prompt Payment Discount.

A discount of ten per cent will be allowed on all bills paid within the discount period.

Minimum Monthly Guarantee.

One-twelfth of the above yearly fixed charges is payable each month and constitutes the minimum gross monthly bill.

IT IS FURTHER ORDERED, That the provision of the franchise contained in Ordinance No. 851 of the City of Pueblo, approved September 26, 1911, for the payment into the Treasury of the City of Pueblo of all receipts in excess of a certain stipulated average price per thousand cubic feet of gas sold, above quoted, be, and the same is hereby, suspended, and that the applicant shall not be required to account to the City of Pueblo for gross receipts from the sale of all gas in excess of an average of $1.00 per thousand cubic feet sold from and after the effective date of the rates and charges herein permitted to be established and until the further order of the Commission.

IT IS FURTHER ORDERED, That the rates and charges herein established shall remain in force and effect until the further order of this Commission.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 18th day of December, 1918.

DECISION NO. 225.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY, FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTERURBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

December 30, 1918.

APPEARANCES: Gerald Hughes, for The Denver Tramway Company, Messrs. A. L. Vogl, John A. Rush and E. W. Hurlbut, for The Consumers' League of Denver; John A. Rush, *pro se;* Jas. A. Marsh, for the City and County of Denver.

STATEMENT.

By the Commisison:

On December 26, 1918, John A. Rush, *pro se,* and for all others similarly situated, and The Consumers' League of Denver, filed in the above cause their application for an order modifying the order heretofore made herein, and to require The Denver Tramway Company to give to each person paying a 7-cent fare and 1 cent for transfers a slip or token representing the one cent additional in the case of the 7-cent fare and the 1 cent for transfers, which slips or token should be redeemed by The Denver Tram-

way Company in case the orders of this Commission herein shall be held to be void or made without jurisdiction.

The matter was set for hearing at the hearing room of the Commission at Denver, Colorado, at 1:00 o'clock p. m., December 30, 1918, whereupon argument was presented upon the application by counsel for The Consumers' League of Denver and John A. Rush, *pro se*, representing the petitioners, and by Gerald Hughes, representing The Denver Tramway Company. At the conclusion of this argument the Commission announced that in view of the fact that the said petitioners herein withdrew from this case after the question of jurisdiction had been decided by the Commisison, and refused to participate or take any part in the proceedings subsequent to the hearings on emergency relief, and took no part in the proceedings after that time, they were not in a position to make such application, and their petition was therefore denied.

Thereupon the Commission announced to Jas. A. Marsh, city attorney of the City and County of Denver, that the Commission would consider such application or motion as he deemed proper to make with reference to a return of fares in excess of those authorized by the emergency order of the Commission issued under date of September 12, 1918, in the event the jurisdiction of the Commission in this case should be denied by the Supreme Court. The Commission further stated that the city had been a party to the proceedings throughout the entire hearings and there was therefore no question as to its right to make such application.

Mr. Marsh then presented orally an application that the order of the Commission entered on the 17th day of December, 1918, be modified to the extent that, until the question of jurisdiction has been determined by the Supreme Court, The Denver Tramway Company be required to issue tokens or receipts showing the amount paid by passengers in excess of the fares specified in the order of the Commission in the so-called emergency relief case, issued September 12, 1918, and stated further that he would file, this date, a written application confirming his oral application. Said written application has been filed and the Commission considers that this is a matter in which the rights of the persons making such payments can only be protected by the issuance of some form of receipt or token by The Denver Tramway Company, there being no other manner in which the evidence or identification of such payment by the passenger can be preserved.

The question of jurisdiction of the Commission is involved in this matter and is now before the Supreme Court in the case of the City and County of Denver, petitioner, v. The Public Utilities Commission of the State of Colorado and The Mountain States Telephone & Telegraph Co., respondents, being Case No. 9443 in the Supreme Court of the State of Colorado; other cases involving the jurisdiction of this Commission over rates of utilities in the City and County of Denver are also pending in said court. It seems proper that until this matter has been decided the passengers should be protected in payments made should it ultimately prove that the Commission was without authority to regulate public utility rates in the City and County of Denver.

By the Commission's order of December 17, 1918, fares of 7 cents for adult passengers and 3½ cents for children over 6 years of age and under 12 years of age, were permitted to be collected by The Denver Tramway Company, the same being an increase of one cent and one-half cent, respectively, over the 6-cent fare and 3-cent half fare authorized by order of this Commission issued September 12, 1918, with an additional charge of one cent for all transfers issued; this transfer charge being also an increase over the order of September 12, 1918, theretofore no charges for transfers having been made; that on December 24, 1918, The Denver Tramway Company filed its schedules with this Commission putting into effect as of December 26, 1918, the rates authorized by this Commission in its order of December 17, 1918.

ORDER.

IT IS THEREFORE ORDERED, That the application of John A. Rush, pro se, and for all others similarly situated, and The Consumers' League of Denver, above described, be and the same is hereby denied.

IT IS FURTHER ORDERED, That the application of the City and County of Denver in the above matter is hereby granted.

IT IS FURTHER ORDERED, That The Denver Tramway Company shall, commencing January 1, 1919, within the City and County of Denver, Colorado, issue to each passenger paying a 7-cent fare, or paying 7 cents for two half fares, a receipt or token for one cent, and to each passenger paying one cent for a transfer, a receipt or token for one cent, such tokens or receipts

to be redeemed by said The Denver Tramway Company at one cent each in the event the jurisdiction of this Commission to regulate rates of public utilities operating within the City and County of Denver, Colorado, is denied by the Supreme Court of the State of Colorado, which question is now pending before said court in the case of the City and County of Denver, petitioner, v. The Public Utilities Commission of the State of Colorado and The Mountain States T. & T. Co., respondents, being Case No. 9443 in said court, and in other casees, and if such charge is not otherwise legally justified and authorized.

IT IS FURTHER ORDERED, That in the event the jurisdiction of this Commission to regulate rates within the City and County of Denver is upheld by said Supreme Court, in the aforesaid case, then said receipts shall be null and void and said The Denver Tramway Company shall be under no obligation to redeem the same.

IT IS FURTHER ORDERED, That this order shall also apply to passengers traveling in a continuous trip to or from territory contiguous to the City and County of Denver, for which trip a 6-cent fare formerly was charged and for which a 7-cent fare is now being charged.

IT IS FURTHER ORDERED, That the form of said tokens or receipts and the method of using and issuing the same, shall be subject to the approval of this Commission.

This order shall remain in effect until the further order of the Commission.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 30th day of December, 1918.

DECISION No. 226.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTERURBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

December 31, 1918.

STATEMENT.

By the Commission:

On the 17th day of December, 1918, the Commission issued its order in this cause on the petition of The Denver Tramway Company for a determination by the Commission of just and reasonable rates, fares and charges. On December 21, 1918, a petition was filed by the City and County of Denver applying for rehearing.

The Commission now being fully advised in the premises is of the opinion that the petition for rehearing should be denied.

ORDER.

IT IS THEREFORE ORDERED, That the petition for rehearing filed with the Commission on December 21, 1918, by the City and County of Denver be, and the same is hereby, denied.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 31st day of December, 1918.

DECISION No. 227.

IN THE MATTER OF THE APPLICATION OF THE PUEBLO GAS & FUEL COMPANY FOR DETERMINATION BY THE COMMISSION OF THE RATES AND CHARGES TO BE MADE FOR GAS SERVICE IN THE CITY OF PUEBLO.

Application No. 20.

December 31, 1918.

STATEMENT.

By the Commission:

On the 18th day of December, 1918, the Commission issued its order in this cause permitting The Pueblo Gas & Fuel Company to make certain changes and increases in its rates for gas service in the City of Pueblo. On the 26th day of December, 1918, a petition for rehearing was filed by the City of Pueblo, one of the parties to the case.

The Commission now being fully advised in the premises is of the opinion that the petition for rehearing should be denied.

ORDER.

IT IS THEREFORE ORDERED, That the petition for rehearing filed with the Commission on December 26, 1918, by the City of Pueblo be, and the same is hereby, denied.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 31st day of December, 1918.

DECISION No. 228.

IN THE MATTER OF THE APPLICATION OF THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY FOR PERMISSION TO CONTRUCT A PUBLIC HIGHWAY CROSSING OVER THE TRACKS OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD BETWEEN RANGES 53 AND 54, TOWNSHIP 2 NORTH, WASHINGTON COUNTY, COLORADO.

Application No. 26.

January 6, 1919.

STATEMENT.

By the Commission:

This proceeding arises upon application of the Board of County Commissioners of Washington County, Colorado, in compliance with Section 29 of the Public Utilities Act of Colorado as amended April 16, 1917, for permission to construct a public highway crossing over the tracks of the Chicago, Burlington & Quincy Railroad on the range line between Ranges 53 and 54, Township 2 North, Washington County, Colorado.

Under date of December 17, 1918, the Chicago, Burlington & Quincy Railroad, through its attorney, Mr. E. E. Whitted, advised the Commission that the railroad company had reached an agreement with the representatives of Washington County whereby the interested inhabitants of Washington County had agreed to pay all expense incident to the opening and construction of the crossing, with the exception of the expense incident to the installation of the necessary wing fences and cattle guards.

Under date of December 18, 1918, the Board of County Commissioners of Washington County was advised of the position of the railroad company, and under date of December 19, 1918, Mr. R. A. Edmondson, clerk of the board, advised the Commisison that the County Commissioners of Washington County agreed to the proposition as outlined in Mr. Whitted's letter to the Commission.

It appearing that there is no reason why this application should not be granted and it appearing further that the Board of County Commissioners of Washington County and the Chicago, Burlington & Quincy Railroad have agreed to the issuance of an order without a hearing upon this application, the Commission will issue an order permitting the construction of this highway crossing in conformity with the provisions of Section 29 of the Public Utilities Act of Colorado as amended April 16, 1917, and in conformity with the agreement entered into by the Board of County Commissioners of Washington County and the Chicago, Burlington & Quincy Railroad.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, the Board of County Commissioners of Washington County, Colorado, be, and it is hereby, permitted to construct a highway crossing over the Chicago, Burlington & Quincy Railroad tracks on the range line between Ranges 53 and 54, Township 2 north, Washington County, Colorado, in accordance with the provisions of the Commission's order in Case No. 56, issued May 27, 1916.

IT IS FURTHER ORDERED, That all expense incident to the opening and construction of the crossing described herein shall be borne by Washington County, with the exception of the expense incident to the installation of the necessary wing fences and cattle guards, which expense shall be borne by the Chicago, Burlington & Quincy Railroad.

The Commission reserves the right to make such further orders relative to the construction, operation, maintenance and protection of this 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.

(SEAL)

GEO. T. BRADLEY,
LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 6th day of January, 1919.

DECISION No. 229.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTERURBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

January 9, 1919.

STATEMENT.

By the Commission:

On the 17th day of December, 1918, the Commisison issued its order in this cause on the petition of The Denver Tramway Company for a determination by the Commission of just and reasonable rates, fares and charges. On December 21, 1918, a petition was filed by the City and County of Denver applying for rehearing. On December 31, 1918, the Commission issued an order denying the petition for rehearing.

In view of the fact that the order denying the motion for rehearing in this cause was made without oral argument and oral argument is now desired upon the hearing of the said motion, the

order denying the motion for rehearing is therefore set aside, vacated and held for naught, and the hearing on said motion for a rehearing set for Monday, January 13, 1919, at 2 p. m.

ORDER.

IT IS THEREFORE ORDERED, That the order of the Commission dated December 31, 1918, denying the petition for rehearing be, and the same is hereby, set aside, vacated and held for naught, and a bearing on said motion for rehearing set for Monday, January 13, 1919, at 2 p. m.

GEO. T. BRADLEY,

(SEAL) LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 9th day of January, 1919.

DECISION No. 230.

BOARD OF COUNTY COMMISSIONERS OF PARK COUNTY, *et al.*,

v.

THE COLORADO MIDLAND RAILROAD COMPANY, a Corporation, A. E. CALTON, Receiver, *et al.*

Leslie E. Hubbard, Attorney General for the State of Colorado, *Intervernor.*

THE COLORADO MIDLAND SHIPPERS' ASSOCIATION,

v.

THE COLORADO MIDLAND RAILROAD COMPANY, a Corporation, *et al.*

Cases Nos. 156 and 161.

January 15, 1919.

APPEARANCES: Melville & Melville, and M. I. O'Mailia, for complainants and protestants; F. E. Gregg, for the protestant The Colorado Lime & Fluxing Company; Hughes and Dorsey and W. M. Bond, for the defendants; T. H. Devine, for protestant The American Beet Sugar Company; W. V. Hodges, for The Colorado Title & Trust Company; Jesse G. Northcutt, for protestant The Rocky Mountain Fuel Company; Leslie E. Hubbard and Charles Roach, for intervenor; Merle Vincent, for complainant Colorado Midland Shippers' Association; M. I. O'Mailia, for the Colorado Springs Chamber of Commerce.

STATEMENT.

By the Commission:

On the 1st day of July, 1918, certain proceedings were had in the District Court of the Fourth Judicial District, within and for

the County of El Paso, before Honorable J. W. Sheafor, judge of said court, in the case of The Colorado Titile & Trust Company, as trustee, against The Colorado Midland Railroad Company, and on that date A. E. Carlton was appointed by the court as receiver for The Colorado Midland Railroad Company. On July 2, 1918, in the same proceedings, an order and decree was entered by the court as follows:

Order to Cease Operations and Sale of Properties.

This cause coming on to be heard upon the petition of A. E. Carlton, receiver of The Colorado Midland Railroad Company, praying authority to cease operations upon the tracks of The Colorado Midland Railroad Company and requesting authority to discontinue all operations thereover as a common carrier, and it appearing to the court that the facts and allegations set out in said petition of the said receiver are true.

It appearing to the court and being found as a fact that said road is insolvent, has not and cannot pay operating expenses. That each day's further operation thereof entails a loss of approximately $1500.00 and that said losses will increase.

That the withdrawal of Government control, the increased costs of material and the increased wages together with the diversion of traffic under government orders, cause and will cause still greater deficits in attempting to operate said road.

That same cannot be operated as a going concern, and that no purchaser charged with the duty of operating said road can be found.

That there is no adequate demand for the services of said carrier, and that same cannot be further operated as such, and should therefore be discontinued.

It further appearing that the release of its trained employes and of its equipment will materially aid carriers now under the control of the Director General of Railroads upon roads suffering from shortage of equipment and employes.

It is now considered and adjudged by the court that the said The Colorado Midland Railroad Company should not be further operated as a common carrier of freight and passengers, and that any further attempt to so operate same will

create a deficit of operating expenses over revenues of at least $40,000.00 a month, and that the best interests of the plaintiff, the defendant, the bond holders and the creditors of the said road and of the public generally will be subserved and promoted by the discontinuance of all railroad operations on said railroad system.

It is now ordered and adjudged by the court that the said receiver of this court be and he is hereby ordered to cease all operations of trains and the carrying on of the business of a common carrier over the tracks of the defendant railroad corporation or any part thereof on and after the fifth day of August, A. D. 1918.

The court further finds as a fact that the best interests of all parties in interest, the plaintiff, the defendant, the bond holders, creditors and the public generally will be subserved and promoted by the sale of the properties, railroad iron, rolling stock, engines and other equipment of said railroad by the said receiver at public or private sale and upon such terms at such times as, in the discretion of said receiver may be most fit and proper, having due regard to the prices offered and the terms of said sale.

That the said receiver be, therefore, and he is hereby, authorized to make such sales of the above described properties as, in his discretion shall be for the best interests of all parties concerned, subject always to the approval of this court first had and obtained, upon reports made and filed by said receiver.

The said receiver, his servants, agents and employes are authorized and instructed in making such sales to remove and dismantle the said tracks and equipment and to so dispose of the same, with the engines, rolling stock, and other equipment of said road as to carry out this said order of the court.

This said cause is retained for such other and further orders as the court may from time to time make and enter herin, and the said receiver is ordered to make due report of his proceedings in the premises in respect to the carrying out of the sale of the properties above described.

It is further ordered by the court that notice of the entering of this decree shall be served upon the Colorado State Public Utilities Commisison by delivery of a copy of this order to its said chairman or one of the members of said board at and in the City and County of Denver, forthwith.

And that notice of said decree shall be given by publication thereof, in Denver, Colorado Springs, Leadville, Grand Junction, Glenwood Springs, Aspen and Buena Vista in newspapers published in said cities forthwith.

Done by the court in open court this 2nd day of July, 1918.

J. W. SHEAFOR, *Judge.*

The above order was reversed by the Supreme Court of the State of Colorado on December 7, 1918, as hereinafter stated, but is set out here to show the course of this proceeding.

On July 3, 1918, pursuant to the order of the court, there was filed with the Commission by the attorneys for the receiver of The Colorado Midland Railroad Company, a notice of intention of the proposed discontinuance of service and abandonment of property effective August 5, 1918, to which notice was attached a copy of the order of the District Court as fully set out above.

On July 9, 1918, and at subsequent dates, protests against the discontinuance of service by and abandonment of the property of The Colorado Midland Railroad Company were filed with the Commission by The Colorado Lime Rock Company, operating a plant at Lime Creek, Colorado; The Colorado Lime & Fluxing Company, operating a plant at Newett, Colorado; The American Beet Sugar Company, operating three factories in the State of Colorado and obtaining its supply of lime rock from the quarry at Newett, Colorado; and by the Leadville Chamber of Commerce.

On July 15, 1918, a protest was filed with the Commission by E. E. Davidson and 133 others. The protest recited in effect that the District Court was without jurisdiction to enter its order of July 2, 1918, that grievous injustice would result from the discontinuance of service by the railroad. This protest was also signed by the Colorado Springs Chamber of Commerce and C. E. Thomas, mayor of the City of Colorado Springs.

A complaint was filed with the Commission, on July 15, 1918, by the Board of County Commissioners of Park County; the Chalmers-Galloway Live Stock Company; the South Park Land & Live Stock Company; the South Park Hay Company; the South Park Mercantile Company; the South Park Chamber of Commerce; the South Park Stock Growers' Association; the South Park Sheep Growers' Association; the South Park Ranchmen's Association, and fifty-six individuals.

The complaint among other things, alleges that the railroad, in pursuance of its original purpose of constructing and operating a line of road from Colorado Springs to Grand Junction, obtained rights-of-way through the lands of several of the complainants, or that of their grantors, for a nominal, and in some instances for no, consideration, other than its promises made to said land owners that it intended to and would construct and operate continuously a line of railroad as a common carrier of freight and passengers under the laws of Colorado; that by reason of its promises and representations and its operations, it induced the complainants and others similarly situated along its line to invest large sums of money in purchasing and improving large bodies of land lying along said line and adjacent thereto, and to invest large sums in erecting store buildings, opening up mines, quarries and other enterprises; all of which industries are wholly dependent upon the continued operation of said line of road.

The complaint further alleges that the order of the District Court was entered after an *ex parte* hearing at which the only representation was that of the receiver for the railroad company, without opportunity being given the complainants herein to appear, and that the District Court, in entering said order, was wholly without jurisdiction in the premises and exceeded its authority, in that exclusive jurisdiction in such matters is vested in the Public Utilities Commission, which Commission alone may legally issue orders of abandonment of public utilities, and then only upon application duly made to it and after a hearing had thereon at which all parties interested, such as the complainants, have had timely notice and an opportunity to be heard in the matters involved.

The complaint alleges that no application has ever been made by the said carrier that it be allowed to increase its freight and passenger rates, nor has any application been made to the Commission for permission to discontinue service; that if service be abandoned as threatened to be done under said order, the complainants, and others similarly situated along the line of road, will lose millions of dollars placed in said industries and in building up hamlets and towns, ranches, mines and quarries, etc., and all such towns and hamlets, and the business built up in connection therewith, and said mines and quarries, will cease to exist and be a total loss, and thereby not only financially ruin the owners thereof, but create as well an irreparable injury to the entire State of Colorado and the nation as well, at this particular time.

The complainants pray that the Commission take such steps in the premises, in accordance with its rules and the statutes of the State of Colorado, as may be necessary to require the continuous operation of the entire line of road of The Colorado Midland Railroad Company as a common carrier, and particularly through the county of Park with terminal connections, in accordance with the terms of said company's franchise.

On July 23, 1918, there was filed with the Commission, by the attorneys for the defendants, a plea to the jurisdiction of the Commission and a motion to dismiss the cause on account of lack of jurisdiction in the premises, urging as grounds therefor that the District Court, having entered an order in the premises in respect to the operation and handling of the railroad and properties, the assumption of jurisdiction on the part of the District Court becomes exclusive, and no other court or commission has any power to hear evidence as to the effect of or to pass upon or review the findings and orders of the said District Court, except through an appeal or writ of error to the Supreme Court.

The same date, July 23, 1918, a plea to the jurisdiction of the Commission was filed with the Commission by Judge J. W. Sheafor of the District Court of the Fourth District. The plea or statement of Judge Sheafor recited that the District Court's jurisdiction arose out of the constitutional and legal duties and authorities vested in it, and that the Court is not, and should not be made, a party to the proceedings before the Commission, but that the statement was made in deference to the notice of the Commission setting the cause for hearing.

On July 17, 1918, the Commission sent to the complainants, protestants, defendants and others interested notices of a hearing to be held July 25, 1918. Pursuant to this notice the cause came on for hearing at Denver, Colorado, on July 25, 1918, at which all parties appeared. The Commission announced at the opening of the hearing that the pleas to the jurisdiction would be temporarily overruled and that the Commission would assume jurisdiction over the matters presented. Objections were entered to the ruling of the Commission and permission was requested to present authorities. The Commission granted the requested permission and oral argument was therefore had before the Commission with respect to the jurisdiction of the Commission over the matter of the proposed discontinuance of service by, and the abandonment of property of, The Colorado Midland Railroad Company by its receiver, A. E. Carlton.

Two days were consumed in presenting oral argument, at the conclusion of which, on July 26, 1918, the Commission announced that on July 30, 1918, at 10 o'clock a. m., it would rule with respect to its jurisdiction over the issues in the cause, and that if it decided it had jurisdiction it would proceed to take evidence. It further announced that a representative of the Commission would appear before Judge Sheafor in the District Court at Colorado Springs and present a motion for the modification of the Court's order and decree of July 2, 1918, and in such motion present what it believed to be the Commission's rights and duties in the matter. On July 29, 1918, Commissioner L. J. Williams appeared before Judge Sheafor and presented the motion of the Commission. The motion and arguments in support thereof were directed to objection to the order of the District Court of July 2, 1918, and to the court's jurisdiction to order discontinuance of service and abandonment of the railroad.

The motion contained a request that the Court modify its order to the extent therein stated, and as grounds for such motion stated: That the Commission has original and exclusive jurisdiction over all public utilities defined as such in the Public Utilities Act, and over matters of service of such utilities, including cessation of operation and abandonment of lines of railroad; that the Court is without jurisdiction to order cessation of operations upon, or abandonment of, a line of railroad, such power being vested exclusively in the Commission; that the consent of the State, through the Commission, must be obtained prior to such abandonment; that the public, through the Commission, should have opportunity to be heard on such questions; that in recognition of the previous decisions and holding of the Commission to the effect that the consent of the Commission must be obtained before a railroad may withdrawh from public service, the Honorable Robert E. Lewis, Judge of the District Court of the United States for the District of Colorado, ordered the receiver of The Denver & Interurban Railroad Company to apply to the Commission for consent to abandon operation of its line of railroad in the city of Fort Collins. Whereupon the Commission prayed that the Court modify and vacate that portion of its order requiring the receiver of The Colorado Midland Railroad Company to cease all operations the 5th day of August, 1918, and in lieu thereof direct the receiver to apply to the Commission for leave to cease operations; and that sufficient time be given the Commission to investigate the matters and hear the complainants whose interests may be affected by the

abandonment, and the evidence of the receiver in support of his position.

At the close of arguments upon motion of the Commission the Court made its statement—that the Court had no desire or intention to deprive anybody of a hearing, and the order was never intended to be absolute without an opportunity given for a hearing; that the question of jurisdiction of the Court in the matter would not be passed upon at that time; that the Court believed that any delay in the matter would be disastrous to all parties concerned; that the Court could see no reason why the Commission should not proceed with the hearing as intended, and that the Court was perfectly willing the Commission should do so, but that it felt that the hearing before the Commission should consist of a showing as to the condition of the road, the future condition if operated, and financial condition at present; that the question involved is whether the road can operate, as a whole, at a profit or a loss, and that it is immaterial what condition the petitioners will be in if the road is losing money; that the question of jurisdiction would be withheld in the hope that it might not be necessary to pass upon such question, and the Court had no desire to be in conflict with the Public Utilities Commission, if such conflict could be avoided.

Thereafter, on July 30, 1918, the Commission resumed hearings for the purpose of announcing its ruling upon the question of its jurisdiction and to take testimony in the cause should it rule that it had jurisdiction. The motions and demurrers of the defendants brought to issue the following propositions:

1. Whether the Commission had jurisdiction in a question of abandonment or the District Court had original jurisdiction under authority of Section 11 of Article VI of the Constitution of the State of Colorado.

2. Whether the District Courts and the Public Utilities Commission had concurrent jurisdiction in such cases, and the Court or Commission first assuming jurisdiction had original jurisdiction to the exclusion of the other.

3. Whether the Commission was without jurisdiction for the reason that an order already had been entered by the District Court in and for the County of El Paso, and that the Commission was without any power to annul, suspend, set aside or enjoin the order of the said District Court.

With these questions before it the Commission held that it had jurisdiction over matters involving the proposed discontinuance of service or abandonment of property by common carriers; that such matters were questions of service of common carriers which questions were matters within the jurisdiction of the Commission; and that before a common carrier may withdraw its property from the public service it must show that it is unable to earn its legitimate operating expenses; that the public demands do not require the further operation of its property, and that an increase in rates commensurate with the value of the service, if permitted by the Commission, will not increase revenues sufficiently to pay operating expenses. The Commission further held that it was without any power to determine the question of the jurisdiction of courts and was therefore unable to pass upon any questions presented with respect to the jurisdiction or action of the courts.

So holding, the Commission overruled the pleas and demurrers to the jurisdiction of the Commission and proceeded to take testimony and evidence upon the question of the public necessity and demand for the continued operation of the Colorado Midland Railroad.

In thus holding, the Commission did not establish any new ruling, but simply affirmed and adhered to the position always taken by the Commission in such matters. Thorman v. D. & I. R. Co., 2 Colo. P. U. C. 171, P. U. R. 1916E, 421; Colorado Springs & Interurban Ry. Co. v. A. T. & S. F. R. Co., 2 Colo. P. U. C. 219; City of Colorado Springs v. C. S. & I. R. Co., 3 Colo. P. U. C. 1; Citizens of Grand Lake v. D. & S. L. R. Co., 3 Colo. P. U. C. 33; In re Denver, Laramie & Northern R. R. Co., 3 Colo. P. U. C. 316, P. U. R. 1917F, 744; In re Removal of Tracks of A. T. & S. F. Ry. Co. between Shelton Junction and Fenton, 5 Colo. P. U. C. —; In re Discontinuance of Service by Denver, Boulder & Western R. R. Co., 5 Colo. P. U. C. —; In re Fort Collins Street Railway Line, 5 Colo. P. U. C. —.

The principal and leading case before the Commission was that of In re Denver, Laramie & Northern Railroad Co., *supra,* in which are fully set out the many authorities relied upon by the Commission in support of its position that before a common carrier may withdraw from public service, either in whole or in part, it must first make application to the Commission for permission to discontinue service and abandon its property, definitely show that the public demands do not require the continued operation of the

road, and that an increase in rates commensurate with the value of the service will not increase its revenue sufficiently to pay operating expenses; and that, after making such a showing, the common carrier must obtain the consent of the State through the Public Utilities Commission.

On August 3, 1918, the Commission again appeared before the District Court of El Paso county and applied for an extension of time to August 10, 1918, during which time the road be not dismantled. This was denied, although the Court stated he did not anticipate any sale or dismantling would take place within that time. The Court also denied the motion filed by the Commismission on July 29, 1918.

At midnight, August 4, 1918, service was abondoned and on August 5, 1918, the receiver was stopped by a restraining order of the Supreme Court from dismantling the road. On August 12, 1918, a motion for a new trial made by the Commission to the District Court was denied. The Commission thereupon proceeded by writ of error in the Supreme Court.

The Attorney General appeared in the District Court on July 29, 1918, and asked leave to file petition in intervention raising the same questions above set forth in the application of the Commission as to its exclusive jurisdiction, and upon denial of leave to intervene, proceeded in the Supreme Court. There the cases were consolidated and on December 7, 1918, the Supreme Court rendered its decision and reversed the cases "with directions to the District Court to vacate that portion of the order of July 2nd directing the receiver to cease operations upon and to dismantle the road." The Court held in substance that if the jurisdiction of the Commission was usurped by a Court, the Commission had a right to appear in Court and ask the Court to vacate or modify the order to avoid a conflict of jurisdiction, and in case the Court refused, to have the ruling reviewed; and that the Public Utilities Act confers exclusive jurisdiction upon the Commission to determine whether a railroad company may abandon service upon and dismantle a railroad, lying wholly within the state.

At the hearing July 30, 1918, immediately after announcing its ruling on the question of jurisdiction, the Commission stated that it would then proceed to take testimony and evidence in the cause, as the Commission previously had announced it would do provided it decided it had jurisdiction. Upon the Commission holding that it had jurisdiction the defendants filed their answer

in the cause generally denying the allegation of the complaint and protests. At the same time a motion was filed by the attorneys for the complainants praying for an extension in time for the hearing on evidence and testimony and asking the Commission to set a date not earlier than August 5, 1918, on which to hear the cause, urging as grounds therefor that "the plaintiffs have been unable prior to this time to anticipate or know the quality or kind or extent of the evidence required to be submitted by them to disprove the contentions of the defendant." On July 26, 1918, the Commission made the explicit announcement that on July 30, 1918, when it ruled as to jurisdiction, it would immediately proceed to take evidence and testimony in the cause in event it decided it had jurisdiction. The notices of hearing sent out on July 17, 1918, were issued with the expectation that the Commission would be able to proceed with the hearings of evidence on the original date set, July 25, 1918. At the close of the oral argument, as to jurisdiction, as stated, the Commission announced for the benefit of all parties, that they be fully prepared to proceed with the submission of evidence at the hearing July 30, 1918, in event the Commission held it had jurisdiction. The Commission stated that its time for holding the hearing and rendering a decision thereon was necessarily limited, the order of Judge Sheafor being effective August 5, 1918, and that while the Commission desired to grant all possible time to all parties concerned, it was imperative that the cause proceed on July 30, 1918. The motion of the complainants for an extension of time was, therefore, overruled.

Thereupon the defendants proceeded to introduce evidence in support of their contention that the public demands do not require the continued operations of The Colorado Midland Railroad Company's line.

The receivership of A. E. Carlton is the fourth in the history of the line now known as The Colorado Midland Railroad. In 1912 George W. Vallery was appointed receiver for The Colorado Midland Railway Company. A. E. Carlton purchased the property about June 1, 1917, under foreclosure proceedings in the United States District Court. The Colorado Midland Railroad Company was thereupon organized, purchased the road and continued its operations until July 1, 1918, when A. E. Carlton, president of the railroad company, was appointed receiver by the District Court of the Fourth Judicial District of Colorado.

The owned and operated mileage of line of the railroad as now existing and practically as constituted, with but minor changes, since the year 1900, is as follows:

OWNED.

	Main Line	Yard Tracks and Sidings	Total
Colorado Springs to New Castle	221.92	52.57	274.49
Basalt to Aspen	19.37	8.92	28.29
Cardiff to Gulch	15.01	3.77	18.78
Arkansas Junction to Leadville	4.80	11.24	16.04
Total owned	261.10	76.50	337.60

OPERATED UNDER CONTRACT.

Rifle Creek to Grand Junction	62.08	10.99	73.07

OPERATED UNDER TRACKAGE RIGHTS.

End of C. M. R. R. to Rifle Creek	13.44	3.71	17.15
End of R. G. J. Ry. to Grand Junction	.57	18.03	18.60
Colorado Springs—C. M. R. R. terminal	.45	3.75	4.20
	14.46	25.49	39.95
Total line operated	337.64	112.98	450.62

The line of the Colorado Midland Railroad is highly competitive, all of the important points on the road being also located on the line of The Denver & Rio Grande Railroad Company which parallels the line of the Colorado Midland Railroad for a distance of approximately 169 miles. The receiver for the road testified that 85 per cent of the traffic of the railroad was competitive and 15 per cent local; also that formerly the through business of the road represented 25 per cent of its traffic, but that, under orders promulgated by the United States Railroad Administration, in taking over and supervising the railroads, a large volume of freight traffic which the Colorado Midland had received from connecting carriers had been diverted to other lines under government control.

It was further testified by A. E. Carlton, receiver for the road, that the proclamation of the President of December 27, 1917, was understood as taking control and possession of The Colorado Midland Railroad Company by the federal government, and that this understanding was entertained by the owners during the continued operations until June 21, 1918, when a letter of relinquishment was received by Mr. Carlton reading as follows:

> You are hereby advised that the United States Railroad Administration, not having at any time exercised jurisdiction over the Colorado Midland Railroad, the same is definitely relinquished from federal control pursuant to the Act of Congress approved March 21, 1918.

This letter was signed by John Barton Payne, general counsel of the United States Railroad Administration, and was dated at Washington, D. C., June 21, 1918, having been delivered to Mr. Carlton while he was in Washington.

With respect to the operations of the road under his receivership, Mr. Carlton testified that the road during July, 1918, was losing approximately $1,500.00 a day, and that the loss for the month of July would be $50,000.00. Testimony was introduced by the defendants to show that the operating revenues have been exceeded by the operating expenses each month since November, 1917; that for the first five months of 1918 operating expenses exceeded revenue by $123,534.95, an operating ratio of 118.48 per cent. The following table was introduced as evidence by the defendants to illustrate the operating conditions of the road since July 1, 1912. This table covers the operations of the road under The Colorado Midland Railway Company from July 1, 1912, to December 13, 1912; under Geo. W. Vallery, receiver of The Colorado Midland Railway Company, from December 14, 1912, to May 31, 1917, and under The Colorado Midland Railroad Company from June 1, 1917, to May 31, 1918. The statistics, however, are shown in continuous comparative tables and are not separated according to the various divisions of operating control. The table follows:

STATEMENT OF INCOME ACCOUNT FOR THE FISCAL YEARS ENDING JUNE 30, 1913, TO 1916, INCLUSIVE.

	1913	1914	1915	1916
Operating Revenue	$1,828,335.03	$1,773,413.14	$1,698,779.85	$1,516,758.46
Operating Expense	1,662,261.44	1,754,951.93	1,541,175.79	1,441,148.85
Net Opr. Revenue	$ 166,073.59	$ 18,461.21	$ 157,604.06	$ 75,609.61
Taxes	97,223.99	108,000.00	109,709.30	97,809.77
Net Opr. Income	$ 68,849.60	$ *89,538.79	$ 47,894.76	$ *22,200.16
Miscellaneous Credits	15,717.26	23,138.01	15,415.51	21,812.91
Total Income	$ 84,566.86	$ *66,400.78	$ 63,310.27	$ *387.25
Rentals	88,510.22	74,283.08	74,519.85	64,877.66
Total	$ *3,943.36	$ *140,683.86	$ *11,209.58	$ *65,264.91

* Deficit.

FOR CALENDAR YEARS 1916 AND 1917, AND THE FIRST FIVE MONTHS OF 1918.

	1916	1917	1918 5 Months
Operating Revenue	$1,666,812.76	$1,622,443.14	$668,634.67
Operating Expense	1,532,327.76	1,664,557.16	792,169.62
Net Operating Revenue	$ 134,485.00	$ *42,114.02	$*123,534.95
Taxes	94,800.00	47,464.55	34,319.91
Net Operating Income	$ 39,685.00	$ *89,578.57	$*157,854.86
Miscellaneous Credits	16,475.28	39,414.95	494.63
Total Income	56,160.28	$ *50,163.62	$*157,360.23
Rentals	73,432.66	63,492.96	18,369.64
Total	$ *17,272.38	$ *113,656.58	$*175,729.87

* Deficit.

Evidence was submitted by the defendants to show that any increase in rates would not increase the operating revenues, because of the extreme level to which it would be necessary to increase rates in order to obtain the required revenue. From June 25, 1918, when General Order No. 28 of Director General McAdoo of the United States Railroad Administration became effective with respect to freight rates, to August 5, 1918, when operations on the road ceased in compliance with the order of Judge Sheafor of the District Court of the Fourth Judicial District, the freight rates in effect on the Colorado Midland Railroad were those initiated by the Director General of Railroads through his General Order No. 28. There were few, if any, increases in the one-way passenger fares, since the rates in effect prior to June 10, 1918—the effective date of General Order No. 28 with respect to passenger fares—were those prescribed by this Commission In re Passenger Rates and Rules, 1 Colo. P. U. C. 35, and were upon a basis of four cents per mile, except between Arkansas Junction and Glenwood Springs, where the basis was fixed at four and one-half cents per mile.

The 25 per cent increase in general class and commodity freight rates and the specific increases on defined commodities as prescribed in General Order No. 28 became effective June 25, 1918, and are now in effect. Practically all of the rates of competitive nature established by the Colorado Midland Railroad have been, of necessity, those in effect via the line of the Denver & Rio Grande Railroad, and the increased rates of General Order No. 28 are likewise in effect upon the Denver & Rio Grande Railroad. It is obvious that it would be impossible to increase the rates of the Colorado Midland Railroad on competitive traffic to a point above those of its competitor, since such increase would mean the diversion of all competitive traffic to the Colorado Midland's competitor. This, therefore, leaves consideration of increased revenues through advances in freight rates to strictly local traffic, which, according to the testimony, amounts to 15 per cent of the road's traffic. According to the testimony of Mr. Carlton, it would be necessary to increase the local traffic rates between 300 and 400 per cent in order to sufficiently increase revenues to meet operating expenses. To do so would result in wholly restricting the local traffic movement, since the rates would be on such a plane that it would be prohibitive for patrons to ship any commodities.

In detailing the history of the road, Mr. Carlton testified that only two persons were interested in the purchase of the road at the time of the sale in April, 1917; that Spencer Penrose assumed

one-fifth of the purchase price, and he, Mr. Carlton, assumed four-fifths; that he acquired four-fifths with the idea of subsequently interesting other persons in the road, and that he did interest other persons—the present owners numbering about fifty persons. He further testified that there were several bidders competing at the sale and that each of the other bidders was bidding solely for the purpose of junking the road if purchased; that his interest in purchasing it was constructive, to the end that he desired the operation of the road to continue; that he desired to build up the property and try and operate it economically and make a success of it. The evidence shows that Mr. Carlton is, and has been since the organization of June 1, 1917, the president of The Colorado Midland Railroad Company, and, as such official, has not received any salary, although devoting practically his entire time to the road.

This railroad encounters difficult and adverse operating conditions occasioned by the mountainous territory through which it passes. Mr. Carlton testified with respect to the advances in wages and in costs of supplies and materials. Increases of this nature are a matter of such general knowledge that it is unnecessary to do more than illustrate instances of advances as affecting the Colorado Midland Railroad. The fuel costs have advanced more than 100 per cent since the organization of the present company; the increased expense of wages of station agents and telegraph oprators is $2,000.00 per month; of wages of shopmen and carmen $6,000.00 per month. The witness testified that if the wage scale as prescribed by the Director General of Railroads for railroads under federal control were adopted by the Colorado Midland Railroad the increase would be $22,000.00 per month; and that the total increase in expenses, since he assumed control of the road, has been not less than $30,000.00 per month. Mr. Carlton testified that he personally took an assignment of wages and bills due employes in an amount of about $200,000.00 for the purpose of meeting payrolls which the railroad company was financially unable to meet.

The protestants at this hearing, other than the Park County Commissioners and complainants, were The Colorado Lime Rock Company, The Colorado Lime & Fluxing Company, the American Beet Sugar Company, the Chamber of Commerce of Leadville, the Chamber of Commerce of Colorado Springs, and the mayor of the city of Colorado Springs. The Colorado Lime Rock Company operates a lime producing plant at Lime Creek, 165 miles from Colorado Springs. No appearance was entered at the hearing by this

company. The Colorado Lime & Fluxing Company, with quarries at Thomasville, 165.2 miles from Colorado Springs, at Meredith, 167.0 miles from Colorado Springs and at Newett, 90.3 miles from Colorado Springs, is engaged in the business of producing and furnishing fluxing rock for smelters, lime rock for sugar factories, and in the manufacture of lime. Floyd L. Perry, witness for this company, testified that between 66 and 75 per cent of the business was produced at the Newett plant and the balance at Thomasville, there being no operation at Meredith. Newett is located 12.9 miles from Wildhorse, a point of connection between the Colorado Midland and the Denver & Rio Grande. Witness stated that the Thomasville and Meredith plants would not be operated so long as the Newett plant was producing, as the difference in freight rates from the further distant points rendered such operations more expensive. According to witness, the investment of the company in equipment is approximately $39,000.00 and the land or quarry value about $70,000.00.

While appearances were entered on behalf of The American Beet Sugar Company, the Chamber of Commerce of Colorado Springs, and the mayor of the city of Colorado Springs, no witnesses were presented nor evidence given on behalf of these protestants. One witness testified at a later hearing in behalf of the Chamber of Commerce of Leadville.

The defendants put in evidence with respect to the railroad traffic of Park county. The Colorado Midland Railroad runs through the southern part of Park county, a distance of approximately 47 miles. The principal business of Park county, with respect to railroad traffic, consists of livestock and hay. An exhibit was filed by the defendants showing the volume and revenue of traffic originating at or destined to the nine stations located on their line in Park county. This statement covered the period of operations from January 1, 1917, to May 31, 1918, and includes the stations of Hartsel, Howbert, Lake George, Antero, Bath Haver and Spinney. The population of Park county in 1910, according to the Thirteenth Census of the United States, was 2,492. This figure is a decrease from those of former years, the population in 1890 having been 3,548, and in 1900, 2,998. The recapitulation of the tonnage and revenue statement is as follows:

	Weight (Pounds)	Revenue
Merchandise	2,036,559	$ 7,692.66
Coal	379,400	421.41
Live stock	5,500,600	6,776.60
Petroleum and other oils	338,357	1,126.72
Cotton seed cake	280,000	570.84
Hay	5,976,389	5,832.08
Wool	190,566	714.22
Lumber	3,650,120	2,652.39
Ice	11,768,740	3,787.00
Potatoes	547,339	723.70
Miscellaneous	1,998,548	2,953.37
Total	32,666,618	$33,250.99

The statistics above shown include both the inbound and outbound traffic of stations on the Colorado Midland Railroad in Park county during the 17-months period from January 1, 1917, to May 31, 1918, an average gross revenue to the railroad per month of $2,770.92. The figures of revenue are the amounts received by the Colorado Midland Railroad only and do not include any portion of revenue accruing to other lines on interline traffic.

The passenger traffic or earnings both in and out of stations in Park county has been as follows, observing the same period in connection with freight statistics above—from January 1, 1917, to May 31, 1918:

Lake George	$ 722.12
Lidderdale	.....
Springer	.....
Idlewild	13.40
Howbert	1,881.77
Spinney	87.10
Park	9.40
Hartsel	5,856.84
Boyer	.....
Antero	.....
Haver	.....
Bath	11.55
Total Park County	$8,582.18

The average gross passenger revenue to the Colorado Midland Railroad per month to and from Park county stations, as seen from this statement is $715.69. As may be noted from the freight statement, the principal tonnage and revenue, outside of merchan-

dise, is that derived from the handling of livestock and hay. Testimony was presented to prove that the greater portion of the hay produced in Park county is grown in the northern part of the county, north of the town of Garo, and that the principal movement of hays from Park county is over the line of the Colorado & Southern Railway from points on that line; also that the Colorado Midland Railroad and the Colorado & Southern Railway are so nearly competitive, even in this territory considered as local by the defendants, that any rate on hay from points on the Colorado Midland Railroad higher than the rates from the cross country points on the Colorado & Southern Railway results in the diverting of the hay traffic from the Colorado Midland to the Colorado & Southern. In fact, a few years ago the Colorado Midland Railroad increased its rate on hay from the hay producing district and its former patrons thereupon hauled their product to the Colorado & Southern Railway for transportation.

On December 20th and 21st, 1918, the Commission resumed the hearing of this cause. A complaint was filed on September 23, 1918, by the Colorado Midland Shippers' Association against The Colorado Midland Railroad Company, et al., in case numbered by the Commission as Case No. 161. It presents the same issues as Case No. 156 and, on December 20, 1918, was consolidated with Case No. 156, and it was ordered that the evidence theretofore taken in Case No. 156 should be considered in the consolidated cases. On December 20, 1918, the attorney general of Colorado was granted leave to file his petition in intervention. On December 18, 1918, the Rocky Mountain Fuel Company filed its protest, and on December 20, 1918, a supplemental complaint was filed in the consolidated Cases Nos. 156 and 161. It was ordered that the answers on file would be considered as answers to the petition in intervention of the attorney general. At the opening of the hearing on December 20, 1918, the attorney general filed a motion that the Commission, prior to the determination of the issues herein, arrange a conference between the representatives of the United States Railroad Administration and this Commission at Washington, D. C., for the purpose of requesting the government to take such immediate action as would insure the continuous operation of the road, having in view the rights of the people as well as the property rights of the owners and bondholders of the road. There was filed with said motion the following telegrams:

Washington, D. C., December 19, 1918.

HON. LESLIE E. HUBBARD,
Denver, Colorado.
Attorney General.

We will give earnest consideration to any recommendation Public Utilities Commission may submit regarding Colorado Midland.

(Signed) JOHN BARTON PAYNE.

December 11, 1918.

MERLE VINCENT,
Grand Junction.

Your wire *re* Colorado Midland. In view of ending of war and changed conditions since offer was made I am not now prepared to state what action the Railroad Administration should take.

(Signed) JOHN BARTON PAYNE.

December 13, 1918.

MERLE VINCENT,
Grand Junction.

I doubt whether we should take any postion at all until we are advised by the Public Utilities Commission and other authorities in Colorado what they desire *re* Midland Road.

(Signed) JOHN BARTON PAYNE.

The ruling of this Commission was deferred pending the taking of testimony. In addition to many matters heretofore discussed there was offered in evidence the following telegrams:

Washington, D. C., August 27, 1918.

A. E. CARLTON,
Colorado Springs, Colo.

Am advised you state Government has not made offer of compensation for operation Colorado Midland Railroad. The Government offers to take over the road, pay $100,000 per year as compensation, and absorb operating losses back to January 11, 1918, including the application of wage Order No. 27. Please acknowledge receipts of this telegram.

(Signed) JOHN BARTON PAYNE.
Washington, D. C., September 3, 1918.

A. E. CARLTON, Pres & Rec. C. M. R. R.,
Colorado Springs, Colorado.

Answering yours August thirty-first just received. The offer submitted to you direct August twenty-seventh provides for the same form of contract prepared for class one roads; compensation offered you is more than six times the average net earnings of your road for the three-year test period, and is adequate and liberal, your counter proposition merely invites litigation which it is the purpose of the contract to avoid and is therefore respectfully declined.

(Signed) JOHN BARTON PAYNE.

Complainants' Exhibit No. 2 consisted of a copy of the contract offered by the government.

In response to a question as to whether he accepted or rejected the offer Mr. Carlton stated:

I did not do anything with it at all, I ignored it, it was so ridiculous; a company signing that contract would owe the government money every year. They first set out in Clause One that the waiver of all claims for traffic—

The following letter was also introduced:

Washington, D. C., December 11, 1918.

MR. A. E. CARLTON, Rec. Colorado Midland Railroad,
Colorado Springs, Colorado.

Dear Sir:

Notwithstanding your failure to take notice of the offer submitted by the Railroad Administration July 29, 1918, to take over and operate the Colorado Midland, it is probably due you to say that in view of the ending of the war, the great length of time since the offer was made, and other changed conditions, you cannot consider the offer as still open.

If anything is desired, we will, however, give consideration to the matter and deal with it on its merits.

Yours very truly,

(Signed) JOHN BARTON PAYNE.

Mr. Carlton testified at the previous hearing that he estimated the junk value of the road at that time to be about $5,000,000.00, and at the subsequent hearing held December 20, 1918, he testified

that the present junk value is about $1,000,000.00. H. G. Koch testified on behalf of the Colorado Midland Shippers' Association as to the effect of discontinuance of service and dismantling of the road upon the western part of Colorado, and particularly as to Aspen and surrounding territory; Warren G. West testified on behalf of said association and the Leadville Chamber of Commerce as to such situation at Leadville; R. E. Clark, J. W. White and C. H. Harris testified on behalf of said association as to the effect of discontinuance of service and dismantling of the road in connection with the sheep, cattle and farming interests along the line of the road. George Smith testified for said association as to such effect upon certain coal interests at Palisade, Colorado.

The Rocky Mountain Fuel Company introduced the testimony of John G. Featherstone, Harry N. Jones and David E. Brown, who testified in substance that this company owns or controls the Midland, Marion and Vulcan coal mines on the line of the Midland Railroad in Garfield County, Colorado; that the Midland and Marion mines are located on the Cardiff branch of the Midland Railroad and the Vulcan mine on the main line thereof; that the combined capacity of these mines is at the present time, if operated, about 1,000 tons of coal per day, which could be increased to about 2,000 tons per day; that considerable development had been made in these properties up to last summer, when the Midland Railroad ceased operations; that the Fuel Company has been unable to induce the Denver & Rio Grande Railroad to take out coal over the Midland tracks or to bring in supplies; that the Midland Railroad had encouraged the Fuel Company and urged it to increase its tonnage; that the development and equipment of these properties had cost the Fuel Company about $210,000.00, and that a very large amount of coal is available in these properties if the same continue to be developed.

Emma Ash and W. H. Hilbert testified on behalf of the protestants from Park county as to the inconvenience and loss which would result to residents and stock growers in that vicinity from the dismantling of the road and further discontinuance of service.

The evidence of J. M. Silcox, manager of the Grand Junction Fruit Growers' Association, at Grand Junction, Colorado, was to the effect that during the fruit season of 1918 the refrigerator car service furnished by the Denver & Rio Grande Railroad was inadequate to handle the movement of fruit; that serious delay occurred in the shipment of all fruit from August 28th to September

3rd, 1918, due to the inability of the Denver & Rio Grande to properly handle the volume of business; that the season just passed is the first witness has known of there being such a shortage since he became connected with the Grand Junction Fruit Growers' Association in 1908; that there was no shortage of cars in the shipment of the apple crop, on account of there being an unusual shortage of this crop in 1918.

On December 28, 1918, the attorney general, Board of County Commissioners of Park county, *et al.*, Colorado Midland Shippers' Asosciation and the Rocky Mountain Fuel Company filed their joint motion to the effect that the Commission should make no order in this case until the judge of the District Court of El Paso county should require the railroad to be offered at public sale as a going concern.

Formerly three railroad lines operated into the Cripple Creek district. One of these lines, from Canon City, has long been abandoned. The other two are the direct line of the Cripple Creek & Colorado Springs Railroad—known as the Short Line—and the line formed by the Colorado Midland Railroad from Colorado Springs to Divide and the Midland Terminal Railway operated under lease by the Cripple Creek & Colorado Springs Railroad Company from Divide to Crippel Creek. The Short Line is not in operation at the present time, operations having been suspended following the destruction of a bridge by fire. Therefore the only line now serving the Cripple Creek District is that via the Colorado Midland Railroad, and it is essential that the Cripple Creek district be not embarrassed by lack of railroad facilities.

The Offer of the United States Railroad Administration and the Motion Respecting Conference Therewith.

The evidence shows that the offer of the United States Railroad Administration was withdrawn on December 11, 1918, and there had been no acceptance of it prior to its withdrawal. The offer was the most favorable the government would make after solicitation by committees from the office of the Attorney-General of Colorado and attorneys for protestants and individuals representing shipping and stock growing interests, who visited Washington for the purpose of obtaining aid from the administration. Since the offer is now withdrawn it has no bearing upon the case, and the statement of the government to the attorney-general is that it will give earnest consideration to any recommendation the Commission

may submit. A different situation than that which heretofore existed has now been presented as a result of the signing of the armistice and the cessation of hostilities abroad. The president stated in his message to Congress, on December 2, 1918, on the questtion of railroad control, that he had no confident judgment of his own on the subject; also that,

> I stand ready and anxious to release the roads from the present control, and I must do it at a very early date, if by waiting until the statutory limit of time is reached I shall be merely prolonging the period of doubt and uncertainty which is hurtful to every interest concerned.

Since the president takes this view as to government-controlled roads it seems most unlikely and doubtful if the government will take over the Colorado Midland and operate it upon any terms, although it may permit other government-controlled roads to take over all or portions of the Midland Railroad. Recommendations to that effect are set forth in this order, which the Commission requests the United States Railroad Administration to adopt and carry out and thereby keep the road in operation; and the Commission here indicates its willingness to take up these recommendations in conferences with the United States Railroad Administration at Washington, D. C., and with the receiver of the railroad, if such action will further the acceptance of its recommendations.

The motion of the attorney-general on the above subject is therefore denied, and for the further reason that the Commission must in this case act upon evidence produced before it, and not upon information which it might gain by a conference in Washington. The Supreme Court of Colorado, in the case of Denver & S. L. R. Co. v. Chicago, B. & Q. R. Co., —— Colo. ——, 171 Pac. 84, referred to the following from I. C. C. v. L. & N. R. R. Co., 227 U. S. 88, 57 L. ed. 431:

> The Commission is an administrative body, and, even where it acts in a *quasi* judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parties. Int. Com. Comm. v. Baird, 194, U. S. 25 (24 Sup. Ct. 563, 48 L. ed. 860). But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the commissioners cannot act upon their own information as could

jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense.

Finally, however, no power is conferred upon this Commission to compel the owners or the receiver to turn the property over to the government on any terms; such action would be a clear violation of the "due process" and "just compensation" clauses of the state and federal constitutions. It may also be said that no power exists in the Commission to compel any other carrier to operate the lines, branches or spurs of the Midland Railroad without such carrier's consent, and the Commission, for this additional reason, has made the recommendations hereafter stated.

The Motion to Postpone Action Until the District Court Has Offered the Road at Public Sale as a Going Concern.

In this connection, the Supreme Court of Colorado, in its decision in People etc. v. Colorado Title & Trust Company, *et al., supra,* stated:

> There is no question about the jurisdiction of the District Court to entertain the foreclosure suit, appoint a receiver and order the sale of the property on foreclosure.

While the Commission recommends to the District Court that the road be offered at public sale as a going concern before any dismantling of the road is begun, that appears to be a matter for the District Court and the Commission will not under the circumstances of this case require such procedure to be had before making its order herein. The motion is therefore denied.

Recommendations.

(1) The Commission recommends that the United States Railroad Administration and the receiver of the property agree upon terms and execute contracts which will permit the operation of the railroad as a whole, or any part, by roads under federal control, in the interests of the state, the owners, and the people along the line of the railroad; or that connecting lines under federal control be permitted to purchase and operate all such parts of the Midland Railroad as the said parties my deem advisable, or can agree upon;

or that industries near a connecting carrier, if feasible, purchase the portion of the railroad extending from their properties to the connecting carrier and arrange for the operation of the same.

(2) The Commission further recommends that the District Court of El Paso county, Colorado, prior to any dismantling of the road, offer the road at public sale as a whole.

Findings.

The Commission finds from the evidence that the Colorado Midland Railroad as a whole does not earn sufficient revenue to meet its legitimate operating expenses, and the Commission therefore finds that there is no public demand for the continued operation of said railroad and it should be permitted to withdraw its property from the public service, except that operations shall be continued between Colorado Springs and Divide, Colorado, until the further order of the Commission; that it is impracticable to increase the competitive rates of the Colorado Midland Railroad for the reason that to do so will divert competitive traffic from the road; that any increase in local rates sufficient to bring the revenues to a point where operating expenses can be met would be so prohibitive as to almost entirely restrict the movement of local traffic; that while conditions are abnormally adverse to the operation of the road at the present time, there is little if any prospect of an improvement of such conditions, while, on the contrary, there are many reasons to believe that conditions will be even more adverse in the future; that the Colorado Midland Railroad may be dismantled, except as to the portions hereafter stated; that until the further order of the Commission the portions of said railroad from Colorado Springs to Divide shall not be dismantled; from Glenwood Springs to Cardiff, the Cardiff branch, the Leadville terminals, the Aspen terminals, the Newman tunnel branch at Aspen, the portion from the station of Newett to the connection with the Denver & Rio Grande at Wildhorse, and the portion from New Castle to Vulcan, shall not be dismantled until the expiration of sixty (60) days from the date of this order.

In view of the fact that discontinuance of service on August 5, 1918, was ordered by the District Court of El Paso county, Colorado, although such order was later reversed by the Supreme Court, and of the circumstances and evidence of this case before this Commission, the discontinuance of service by the Colorado Midland Railroad on August 5, 1918, which has since remained in effect is approved and confirmed.

ORDER.

IT IS THEREFORE ORDERED, (1) That railroad service may be discontinued over the entire property of the Colorado Midland Railroad and each and every part thereof, and that the owners of said property, the receiver thereof, and those interested in said ownership may permanently withdraw the same from further service as a railroad public utility, except that operations as at present conducted shall be continued between Colorado Springs and Divide, Colorado, until the further order of the Commission.

(2) That said order permitting discontinuance of service shall be effective to authorize and confirm the discontinuance of railroad service which occurred on August 5, 1918, and has since remained in effect.

(3) That the owners of said property, the receiver thereof, and those interested therein, shall be and hereby, are authorized and permitted to dismantle the same and each and every part thereof, except as otherwise specifically provided in the next succeeding paragraph hereof; and that said order, shall be and hereby, is effective five (5) days from the date of this order, except as otherwise specifically provided in the next succeeding paragraph hereof.

(4) That said order for the dismantling of said property set forth in the preceding paragraph hereof, although as to all other portions of the property effective five (5) days from the date of this order, shall not, as to the following parts and portions thereof, become effective until the expiration of sixty (60) days from the date of this order, to-wit:

(a) That portion of the road from the station of Newett to connection with the Denver & Rio Grande at Wildhorse;
(b) The Leadville terminals;
(c) The Aspen terminals;
(d) The Newman tunnel branch at Aspen;
(e) The portion from Glenwood Springs to Cardiff;
(f) The Cardiff branch;
(g) That portion of the line from New Castle to Vulcan.

That the said order for the dismantling of the property shall not become effective as to that portion from Colorado Springs to Divide, Colorado, until the further order of this Commission.

(SEAL)

LEROY J. WILLIAMS,
A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 15th day of January, 1919.

DECISION NO. 231.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTERURBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

January 15, 1919.

STATEMENT.

By the Commission:

On the 9th day of January, 1919, the Commission issued its order that a hearing on the motion for rehearing filed in this cause be had on Monday, January 13, 1919, at 2:00 o'clock p. m., which hearing was subsequently continued until Wednesday, the 15th day of January, 1919, at the hour of 2:00 o'clock p. m. At that time the City and County of Denver, by its counsel, James A. Marsh, applied for a continuance of such hearing on the motion for rehearing, and for a suspension of that portion of the order of the Commission in this cause, dated December 17, 1918, providing for an increased fare of from six to seven cents for transporting adult passengers, and from three to three and one-half cents for transporting children over six years of age and under twelve years of age, within the limits of the City and County of Denver, and for a suspension of the charge of one cent for transfers; and, as grounds

therefor, directed the attention of the Commission to the decision of the Supreme Court of the State of Colorado, rendered January 14, 1919, in the case of the City and County of Denver v. The Mountain States Telephone & Telegraph Company and the Public Utilities Commission of the State of Colorado. Messrs. Gerald Hughes and C. C. Dorsey appeared for The Denver Tramway Company.

After argument by counsel, and it appearing to the Commission that the Supreme Court of Colorado rendered its opinion on January 14, 1919, in the case of the City and County of Denver v. Mountain States T. & T. Co., *et al.*, which decision denied the jurisdiction of the Commission over the regulation of rates in the City and County of Denver; that the time has not elapsed in which an application for rehearing may be filed with the Supreme Court in said cause and said decision has not become final; that the decision in said cause my determine the question of jurisdiction in the present proceeding; that pending final decision of said cause in the Supreme Court that portion of the Commission's order of December 17, 1918, increasing fares from six to seven cents for transporting adult passengers, and from three to three and one-half cents for transporting children over the age of six years and under the age of twelve years, within the limits of the City and County of Denver, and providing a charge of one cent for transfers, should be suspended until the final determination of the case of the City and County of Denver v. The Mountain States T. & T. Co., *et al.*, now pending in the Supreme Court of Colorado; that in the event the said cause should be determined in favor of the jurisdiction of the Commission this suspension shall be immediately raised and the said increases become immediately effective; that the hearing upon the motion for rehearing filed by the City and County of Denver in this cause should be continued until February 15, 1919, at 2:00 o'clock p. m.

ORDER.

IT IS THEREFORE ORDERED, That that portion of the order of the Commission in Application No. 17 of The Denver Tramway Company, providing for an increase of one cent in fares, being from six to seven cents for transporting adult passengers, and the increase of one-half cent, being from three cents to three and a half cents for transporting children over six years of age and under twelve years of age, within the limits of the City and

County of Denver, and the charge of one cent for transfers, be and the same is hereby suspended until the final determination by the Supreme Court of the State of Colorado of the case of The City and County of Denver v. The Mountain States T. & T. Co., *et al.*, being Case No. 9443 in said court; provided, that in the event of the decision of said cause in favor of the jurisdiction of this Commission to regulate rates in the City and County of Denver this suspension shall be immediately raised, and the said rates and charges so suspended shall become immediately effective.

IT IS FURTHER ORDERED, That the hearing on the motion for rehearing, filed herein by the City and County of Denver, be and the same is hereby continued to February 15, 1919, at 2:00 o'clock p. m., without prejudice to the right of the City and County of Denver, The Denver Tramway Company or this Commission to call the same up for hearing prior to such date, or for a further continuance of the same, and without prejudice to the right of any party to obtaining a writ of review in this cause upon its final decision.

(SEAL)

LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 15th day of January, 1919.

DECISION No. 232.

BOARD OF COUNTY COMMISSIONERS OF PARK COUNTY, COLORADO, *et al.*

v.

THE COLORADO MIDLAND RAILROAD COMPANY, *et al.*
THE PEOPLE, *ex rel.* ATTORNEY-GENERAL,

Intervenor.

THE COLORADO MIDLAND SHIPPERS' ASSOCIATION,

v.

THE COLORADO MIDLAND RAILROAD COMPANY, *et al.*

Cases Nos. 156 and 161.

January 20, 1919,

STATEMENT,

By the Commission:

On the 15th day of January, 1919, the Commission entered its order in these consolidated causes. On January 18, 1919, a stipulation was filed with the Commission by all parties to the proceedings, in which it was stipulated that the Commission should extend to February 8, 1919, the time in which a petition for rehearing might be filed, and that the said order of the Commission should not become effective pending the filing and consideration of petition for rehearing. The stipulation further provided that nothing therein contained should be considered as requiring the resumption of service by the defendant railroad company or its receiver pending said

petition for rehearing. The stipulation being under consideration, and the Commission being fully advised in the premises, the Commission is of the opinion that an order should be entered in accordance with such stipulation.

ORDER.

IT IS THEREFORE ORDERED, That time until February 8, 1919, shall be granted in which parties may file petitions for rehearing in the above consolidated causes.

IT IS FURTHER ORDERED, That the order of the Commission entered January 15, 1919, shall not become effective pending the filing of petition for rehearing and the consideration thereof by the Commission. That nothing in this order shall be considered as requiring the resumption of service by defendant railroad company or its receiver, pending said petition for rehearing.

L. J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 20th day of January, 1919.

DECISION No. 233.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTERURBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

February 14, 1919.

STATEMENT.

By the Commission:

On the 15th day of January, 1919, the Commission issued its order in the above matter suspending certain increases in fares as stated in said order and continuing to February 15, 1919, at 2 o'clock p. m., the hearing on the motion for rehearing filed herein by the City and County of Denver.

The said order of January 15, 1919, is hereby modified in the following particulars only:

ORDER.

IT IS HEREBY ORDERED, That the hearing on the motion for rehearing filed herein by the City and County of Denver be

and the same is hereby further continued to March 15, 1919, at 2 o'clock p. m., without prejudice to the right of the City and County of Denver, The Denver Tramway Company or this Commission to call the same up for hearing prior to such date, or for a further continuance of the same, and without prejudice to the right of any party to obtaining a writ of review in this cause upon its final decision.

L. J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 14th day of February, 1919.

DECISION No. 234.

BOARD OF COUNTY COMMISSIONERS OF PARK COUNTY, COLORADO, *et al.*

v.

THE COLORADO MIDLAND RAILROAD COMPANY, *et al.*
THE PEOPLE, *ex rel.* ATTORNEY-GENERAL,
Intervenor.

THE COLORADO MIDLAND SHIPPERS' ASSOCIATION,

v.

THE COLORADO MIDLAND RAILROAD COMPANY, *et al.*

Cases Nos. 156 and 161.

February 18, 1919.

STATEMENT.

By the Commission:

On January 15, 1919, the Commission issued its order in this cause. On the 7th day of February, 1919, the Board of County Commissioners of Park County, The Colorado Midland Shippers' Association, The Rocky Mountain Fuel Company and the Attorney-General of Colorado filed their joint petition with the Commisison praying for a rehearing of the above cause, and as grounds for such motion alleged certain error on the part of the Commission.

The said order contained certain recommendations directed to the United States Railroad Administration, and immediately on issuance of the order a copy of the same was transmitted to the

general counsel for the United States Railroad Administration. These recommendations were likewise presented to said general counsel personally by the chairman of the Commission on January 25, 1919, who was informed that the recommendations had already received the attention of the United States Railroad Administration. Since that date the Commission has not been advised as to any action taken upon these recommendations. There is nothing, therefore, with reference to the recommendations to justify a rehearing of the cause. The matters stated in the motion for rehearing do not, in the judgment of the Commision, afford sufficient reason for a rehearing herein.

The Commission being now fully advised in the premises is of the opinion that the petition for rehearing should be denied.

ORDER.

IT IS THEREFORE ORDERED, That the petition for rehearing filed with the Commisison on February 7, 1919, by the Board of County Commissioners of Park county, the Colorado Midland Shippers' Association, the Rocky Mountain Fuel Company and the Attorney-General of Colorado, be, and it is hereby, denied.

(SEAL)

LEROY J. WILLIAMS,

A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 18th day of February, 1919.

DECISION NO. 235.

THE GOLDEN CYCLE MINING AND REDUCTION COMPANY,

v.

THE COLORADO SPRINGS LIGHT, HEAT AND POWER COMPANY.

Case No. 157.

February 19, 1919.

APPEARANCES: H. McGarry, for the complainant, and R. L. Holland, for the defendant.

STATEMENT.

By the Commission:

On the 15th day of July, 1918, The Golden Cycle Mining and Reduction Company, hereinafter called the Reduction Company, filed with the Commission a petition alleging in substance as follows: That on June 30, 1914, The Colorado Springs Light, Heat and Power Company, hereinafter called the Power Company, entered into a written contract with the Reduction Company, by the terms of which the Power Company was to supply the Reduction Company for the period commencing March 1, 1915, and ending March 1, 1920, all electrical energy required by the Reduction Company for the operation of its ore reduction plant located near Colorado Springs, and for which service the Reduction Company agreed to pay centain rates therein named.

The petition further alleges that on the 15th day of December, 1915, this Commission, after and upon due consideration of said contract in connection with its investigation into the reasonableness of the rates and charges of the Power Company, established and approved the rates being charged by the Power Company to the Reduction Company, and permitted such rates in said contract to exist and continue for five-year periods thereafter to customers of that class; that thereafter and on March 1, 1916, the Commission upon a rehearing obtained by the Power Company as to the reasonableness of the rates and charges theretofore established and approved by the Commission on December 15, 1915, affirmed its order made on said last named date in relation to the rate being charged the Reduction Company by the Power Company.

The petition alleges that on July 31, 1917, the Commission upon subsequent investigation and hearing concerning the reasonableness of the rates and charges being made by the Power Company to its consumers made and entered an order authorizing the Power Company to charge and collect from the Reduction Company a rate for the same service theretofore given by the Power Company to the Reduction Company under the terms of such contract in excess of the rate provided by such contract, notwithstanding the fact that the rates provided in such contract had theretofore been approved and permitted by the Commission under dates of December 15, 1915, and March 1, 1916; that the excess charge by the Power Company against the Reduction Company at the rate named by the Commission in its order dated July 31, 1917, is at least $10,000.00 more per annum than such charge would have been under the terms of such contract.

The petition further alleges that on May 25, 1918, the Commission upon another investigation and hearing into the reasonableness of the rates and charges of the Power Company, to which it is further alleged that the Reduction Company was not a party nor so related that it could apply for a rehearing in such proceeding, made and entered another order effective June 1, 1918, authorizing the Power Company to charge and collect from the Reduction Company a rate for the same service theretofore given by the Power Company to the Reduction Company under the terms of such contract; that the effect of such order appears to be the cancellation of the order of July 31, 1917, and establishes another and higher rate for the Reduction Company; that the Commission exceeded its power in making the order of May 25, 1918.

The petition further alleges that the rate so established by the Commission discriminates against the Reduction Company in favor of other consumers of the Power Company, and that after careful study and estimates it has been ascertained that an electric plant of sufficient capacity to fulfill the requirements of the Reduction Company can be constructed for about $200,000.00, and that by means of such a plant the Reduction Company can supply the service now being received from the Power Company for much less than it is now required to pay; that the Reduction Company is not a public customer of the Power Company and the relations between them are not subject to regulation by the Commission under the laws of Colorado. The prayer of the petition of the Reduction Company is to the effect that upon hearing the order of the Commission dated May 25, 1918, be vacated.

The Power Company in its answer to the petition of the Reduction Company stated in substance that it admitted the making of the contract dated June 30, 1914, and that the orders of this Commission were made as alleged by the Reduction Company; that the rate established by this Commission on July 31, 1917, increased the cost of service to the Reduction Company by about $10,000.00 per annum over and above the rates theretofore in effect; and that the Reduction Company now owes it a bill for current sold and delivered since the effective date of the order of July 31, 1917, computed at the rates established in said order and in the order of May 25, 1918, in the sum of $17,054.00; and that the Power Company has been and now is financially embarrassed by reason of the failure, neglect and refusal of the Reduction Company to pay such arrearage.

Allegations contained in the petition of the Reduction Company to the effect that the Commission exceeded its power in issuing the foregoing orders, and as to the profit derived by the Power Company from the business of the Reduction Company, and that the Reduction Company is not a public customer of the Power Company, are denied by the Power Company in its answer.

The cause came on for hearing at the hearing room of the Commission in the State Capitol building, Denver, Colorado, on December 19, 1918.

It was agreed that all of the evidence in the case of the Golden Cycle M. & R. Co. v. Colorado Springs L., H. & P. Co., Case No. 147, decided May 1, 1918, now pending in the Supreme Court, and all of the evidence in the case of In re Advances in Rates for

Gas and Electric Service of the Colorado Springs L., H. & P. Co., I. & S. No. 15, Decision No. 177, decided May 25, 1918, and the records in those cases, be incorporated into and made a part of the record in this case, and this was done.

Thereupon certain exhibits relating to assessments and taxes of the Power Company were introduced in evidence by the Reduction Company; also some additional evidence on the subject of the electrical plant proposd to be built by the Reduction Company, and a further examination of the Commission's engineer was had by the Reduction Company.

On July 31, 1917, the order was made providing the rate for "Mill Power," which was complained of in the case of Golden Cycle M. & R. Co. v. Colorado Springs L., H. & P. Co., No. 147, *supra,* which schedule is as follows:

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.

The rate complained of in the present case was made May 25, 1918, in the case of In re Advance in Rates for Gas and Electric Service of Colorado Springs L., H. & P. Co., I. & S. No. 15, *supra,* as follows:

Schedule D.
Large Light and Power Service.

Rate.

Demand Charge.

$4.00 net, or $4.50 gross, per month per kilowatt for the first 10 kilowatts of maximum demand.

$3.00 net per month per kilowatt for the next 15 kilowatts of maximum demand.
$2.00 net per month per kilowatt for the next 25 kilowatts of maximum demand.
$1.00 net per month per kilowatt of maximum demand in excess of the first 50 kilowatts of maximum demand.

Energy Charge—Base Rates.
Alternating Current—Low Tension.

1.2 cent per kilowatt for the first 20,000 kilowatt hours of monthly consumption.
1.0 cent per kilowatt hour for the next 40,000 kilowatt hours of monthly consumption.
0.7 cent per kilowatt hour for all consumption during the month in excess of 60,000 kilowatt hours.

Direct Current.

1.4 cents per kilowatt hour for all energy used.

Alternating Current Untransformed.

1.2 cent per kilowatt hour for the first 20,000 kilowatt hours of monthly consumption.
0.9 cent per kilowatt hour for the next 40,000 kilowatt hours of monthly consumption.
0.6 cent per kilowatt hour for all consumption during the month in excess of 60,000 kilowatt hours.

Fuel Clause.

The energy charges herein provided are based on coal costing not less than $2.00 nor more than $2.50 per ton delivered at the main steam plant of the company. When such coal cost is in excess of $2.50 per ton as shown by the records of the company for the previous calendar month, the above base rates shall be increased 0.15 mills ($0.00015) per kilowatt hour for each increase of 10 cents per ton, and when such coal cost is less than $2.00 per ton, the above base rates shall be decreased 0.15 mills ($0.00015) per kilowatt hour for each 10 cents per ton decrease in the cost of coal, provided that this fuel clause shall not apply to the first 20,000 kilowatt hours of monthy consumption.

Determination of Maximum Demand.

The demand to be considered and paid for hereunder shall be the highest 15-minute peak recorded by demand meter or as indicated by suitable indicating instruments during the 12-month period immediately preceding, such period to include the month for which bill is rendered; or if service has not been rendered for a full 12-month period the demand shall be based on the highest such peak established during the period for which service has been rendered. The company may at its option and in lieu of a measured or tested demand base the demand hereunder on 75 per cent of the total installation

of motors and lighting equipment. In the case of extraordinary or abnormal demands, the company may at its option not consider such demands.

Power Factor.

The consumers shall at all times take 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 less than 80 per cent 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 cent of the total connected load, but in no event shall such guaranteed demand be less than 10 kilowatts.

Availability.

This schedule shall be available to all consumers using the company's standard service for light and power.

The opinion of the Commission in Golden Cycle M. & R. Co. v. Colorado Springs L., H. & P. Co., Case No. 147, decided May 1, 1918, is in general applicable to this case, as the question involved is identical, and if the Commission had the power and authority to establish the rate to be paid by the Reduction Company in its order of July 31, 1917, it certainly had the power to make a further modification in such rate in its order of May 25, 1918, especially in view of the increase in operating expenses of the Power Company that took place between these two dates. As to the allegations of the Reduction Company to the effect that the Commission in its first orders of December 15, 1915, and March 1, 1916, establishing rates for the Power Company, approved the terms of such contract and provided that it should be available to consumers similarly situated on the basis of the five-year contract, it is well to call attention to the fact that in the readjustment of the rates of the Power Company at that time no consideration whatever was given to the advisability of either increasing or decreasing the rate paid by the Reduction Company, but such reduction as the Commission considered proper to make was applied to the small

power and lighting consumers. As a matter of fact, under conditions prevailing at that time, there was no occasion or justification for disturbing this rate. Conditions were in every respect normal and the Reduction Company, it may be fairly assumed, was paying for the service it received what it was reasonably worth at that time. Any increase in the rate to the Reduction Company at that time would, therefore, have exceeded the value of the service to the Reduction Company.

The conditions brought about by the war justified the full amount of the increase placed on the Reduction Company by the order of the Commission dated July 31, 1917, and by the order of May 25, 1918.

All of the questions raised by the petition in this case are decided adversely to the petitioner in the case of Golden Cycle M. & R. Co. v. Colorado Springs L., H. & P. Co., *supra,* and the same is decisive of this present case.

The record shows and the Commission finds that the power rate under which the Reduction Company operates, fixed by the Commission in its order of May 25, 1918, is and was fair and reasonable and not discriminatory as against the Reduction Company or in favor of the other consumers.

ORDER.

IT IS THEREFORE ORDERED, That the complaint herein be and is hereby dismissed.

(SEAL)

LEROY J. WILLIAMS,

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 19th day of February, 1919.

DECISION No. 236.

IN THE MATTER OF THE APPLICATION OF THE CITY OF LAMAR, FOR ISSUANCE OF A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE INSTALLATION, CONSTRUCTION AND OPERATION OF AN ELECTRIC LIGHTING AND POWER SYSTEM BY SAID CITY.

Application No. 35.

March 7, 1919.

APPEARANCES: Messrs. W. E. Fee and Hillyer and Kinkaid, for the applicant city, and R. L. Holland and A. C. Gordon, for The Intermountain Railway, Light & Power Company.

STATEMENT.

By the Commission:

This is a petition for a certificate of public convenience and necessity, filed January 22, 1919, under the provisions of Chap. 110, Session Laws of Colorado, 1917, by the City of Lamar, hereinafter called the City, a municipal corporation located in Prowers county, Colorado. The petition alleges in substance that the city has a population of about four thousand people resident within the corporate limits thereof; that the city and its inhabitants are large consumers of electric current for lighting and power purposes; that the only source of electric current for such purposes in said city is the plant of The Intermountain Railway, Light & Power

Company, hereinafter called the Intermountain Company, which plant is located in said city and operates under the authority of this Commission and the franchises of said city permitting the use of streets and alleys therein by the Intermountain Company for the purpose of maintaining light and power lines through and over the same; that upon petition of the Intermountain Company this Commission recently largely increased the rates authorized to be charged by the Intermountain Company for electric current used for lighting and power purposes; that said company has for a long time failed to operate its plant in such manner as to furnish an adequate or sufficient supply of electric current for lighting or power purposes in said city and in the territory adjacent to said city; that for more than one year last past the plant of the Intermountain Company has been so maintained and operated as to be totally inadequate to furnish, and has not furnished, a sufficient service for lighting or power purposes, and that its inefficiency has steadily increased during the past year, and particularly during the last three months prior to the filing of the petition.

The petition further alleges that there are a number of industrial and business enterprises dependent for power as well as lighting upon the electric current furnished by said company, including two alfalfa meal mills, numerous dairies and motors used to grind feed and grain and for other purposes; that the proper operation of all these industries is of vital importance to the welfare of the inhabitants of said city and the territory adjacent thereto; that for long periods of time no power whatever has been furnished for the operation of such plants, greatly to the loss and damage of such consumers of power and to the entire community; that in addition a large number of other persons resident in said city and in the territory adjacent thereto are desirous of acquiring the use of electric current for power purposes but cannot do so on account of the inefficient service of said company, greatly to the detriment of the community and the inhabitants thereof, which conditions greatly retard and injure the development of the said city and the country adjacent thereto.

It is further alleged in said petition that the city has for a long time endeavored to secure the installation of additional lighting devices for the streets of the city, and the Intermountain Company agreed to furnish the same, but has been unwilling or unable to do so; that notwithstanding the growth of the city and its increasing need for additional street lights it has been unable to obtain the same from the Intermountain Company.

It is alleged on information and belief that the Intermountain Company, on account of lack of funds and credit, has been unable to obtain the necessary equipment and materials to install such lights, and has been unable to obtain the necessary repairs and materials for the proper operation of its lighting and power plant; that for many months past the service of the Intermountain Company for the lighting of the city, both as to streets and domestic lighting, has been inadequate and inefficient to properly light the streets and alleys, residences, offices and business houses in said city, and has been of such a fluctuating and undependable character as to be a constant source of annoyance, as well as of actual loss and damage to the inhabitants of the city, and such condition has steadily grown worse; that the city has made every effort to induce the Intermountain Company to remedy such conditions and to furnish an efficient and satisfactory service, but that the company has failed and refused to do so. It is alleged on information and belief that the Intermountain Company is not able to remedy such conditions; that during a number of days in December, 1918, and January, 1919, the company was unable to furnish any current for lighting and power purposes to its consumers in the city or in the territory adjacent thereto.

It is further alleged on information and belief that the plant of the Intermountain Company in said city is incapable in its present condition of repair of being made to produce a sufficient amount of electric current to furnish electricity for lighting and power purposes in said city and the territory adjacent thereto, and that the operation of said plant in its present condition is far more expensive to the company and to its consumers than if the same were maintained in a reasonable state of repair; that the city is a thriving community located in a territory capable of constant development, and that it is of vital importance to it that it be served by a public utility capable of furnishing an adequate supply of electric current for lighting and power purposes, not only in the city but in the territory adjacent thereto, and that the failure of the Intermountain Company to furnish a proper service and its failure to extend and increase such service retards the growth of the city and adjacent territory, and that it is greatly to the interest of the inhabitants of the city and to the said city that the Commission authorize the construction, installation and operation of a public utility therein capable of furnishing a sufficient amount of electric current for the lighting and power needs of the city

and the territory adjacent thereto, and that the present and future public convenience and interest requires such construction.

It is further alleged in the petition that the city has not by vote of the electors thereof authorized the construction of a municipal lighting, heating and power plant, but that it is proposed at the next ensuing municipal election therein to submit to the electors of the city, on April 1, 1919, the question of the construction and operation of a municipal heating, lighting and power plant and the issuance of bonds of the city for the purpose of paying therefor; that the city desires authority to erect such plant by first securing an order preliminary to the issuance of a certificate of public convenience and necessity from this Commission, giving the city authority to pass an ordinance calling an election at the general spring election on April 1, 1919, to submit to the electors of said city the question of the construction and operation of such plant and the issuance of bonds of the city for the purpose of paying therefor.

On February 12, 1919, the Intermountain Company filed its answer, which alleges, in substance, that it admits the allegations of the petition that the city is a municipal corporation having a population of about four thousand,, and that the city and its inhabitants are consumers of electrical energy for lighting and power purposes, and that electric and steam heating services have been and now are supplied by the Intermountain Company.

The answer further admits that the electric service supplied during the past year or more has not been satisfactory; that the city is a thriving community surrounded by a large territory naturally tributary to said city, and that the development of this territory is of great importance to the city; that it is of vital importance to the city that it be adequately supplied with electricity for its needs and for its inhabitants and its various enterprises, and that the adjacent territory be adequately supplied with electricity.

It further admits that for the past year or more the company has not properly served said city or territory with its electric requirements. The answer alleges that the failure of the Intermountain Company in this regard has been due to causes beyond its control, largely growing out of and due directly to war conditions, which could not be foreseen or avoided, all of which obtained, and, with one exception, designated as item (a) in the answer, in a modified form still obtain as to this company's plant and properties in the city of Lamar, to-wit:

(b) Scarcity of labor,

(c) Incompetent labor,

(d) Scarcity of coal, it being at times impossible to obtain an adequate supply.

(e) Inferior quality of coal,

(f) Inability to obtain new equipment and material necessary for extensions.

(g) Inability to obtain new capital except at ruinous discounts and exorbitant rates of interest,

(h) Delay in obtaining increased rates,

(i) Inability to obtain rates necessary to meet increased operating expenses, and to make a showing as to earnings so as to obtain capital for extensions, bettements and improvements.

The one exception above referred to as item (a) in the company's answer is the matter of management, the company contending that incompetent local management was one cause of inadequate service at its Lamar plant, but not admitting that this condition exists at the present time.

The answer further states that, while admitting the electric service at Lamar has been inadequate, and that it is of vital importance to the city to have and receive an adequate supply of electricity for its present and future needs and those of its inhabitants and the territory adjacent to the city, it is denied that it would be to the interest of the city or its inhabitants for the Commission to authorize the city to engage in the business of generating, distributing and selling electricity. It is denied that either the present or future business interests or convenience require the construction and operation of the suggested municipal plant by the city; that realizing the conditions at Lamar the company has been arranging to remedy them, and to this end called and held a special meeting of its stockholders in November, 1918, at which such action was taken as will enable the company to raise the funds necessary to make the required improvements to put the Lamar plant in good condition, and to provide adequate service; that the matter has been necessarily delayed on account of the demoralized condition of the market for public utility securities, and on account of inability to promptly obtain necessary relief in increased rates.

It is further alleged in the answer that if the people of Lamar are of the opinion that through the medium of a plant munici-

pally owned and managed they can obtain their electric and steam heat requirements more cheaply than the same can be furnished from the plant of the Intermountain Company, the said company offers to sell to the city its plant, property and equipment at its fair and reasonable value; that if this value cannot be agreed upon by negotiation then it offers to submit the question to an impartial board of arbitration to be composed of three engineers, one chosen by the city, one by the company, and the third to be selected by the two so chosen.

The petition and answer contain other allegations with reference to steam heat, which matter this Commission has repeatedly held is not subject to its jurisdiction, and no further reference will be made to the matter of steam heat.

Pursuant to notice duly given to the city and the Intermountain Company this cause came on for hearing in the council chamber in the City of Lamar on February 25th and 26th, 1919. The city produced numerous witnesses to sustain the allegations of the petition and proved that the electric service for lighting and power purposes has been very poor for several months past; that failures of the plant came at the time of the heaviest load, frequently during the past winter; that during the month of January, 1919, the service was at its worst; that there were constant complaints as to the service; that while all service in the city is required by the Commission to be metered, there are seventy-five or eighty consumers who have no meters; that fifty meters are in the plant needing repairs; that those consumers not provided with meters are paying the minimum charge of $1.25 as against high rates charged to those who have metered service.

According to a report placed in evidence by the Intermountain Company, made by A. L. Jones of the General Electric Company, the plant consists of "a 75 Kva alternator direct connected to a Skinner engine, a 130 Kva alternator belted to a simple non-condensing Corliss engine, and a 400 Kva turbo generator with jet condenser and cooling tower. This unit is of the 'mixed pressure' type designed to operate primarily on exhaust steam but having high pressure valves which enable it to develop full capacity on high pressure steam at fair economy. The unit as now installed is being operated exclusively on high pressure steam. Excitations provided for either of the belted units by their own exciter or from a 35 Kw. non-condensing turbo-generator. A voltage regulator is in use. The boiler room contains two Heine boilers of the double drum

type, reported as 306 HP each. These boilers have individual stacks 48 inches in diameter, extending 100 feet above the grates. The steam pressure is 150 pounds gauge. There are also two horizontal return tubular boilers reported as 150 HP each but safe for only 125 pounds steam pressure. The two Heine boilers are required to carry the load.''

The evidence shows that the turbine is not in first class condition; that it has had to be repaired twice recently and a number of new parts are needed, which have been ordered; that practically all of the boilers and machinery in the plant were second hand when installed; that during the month of January the condition of the boilers was very bad. The evidence shows extreme neglect on the part of the management in failing to maintain the plant so as to produce the efficiency which could reasonably be expected had proper attention been given to it. The boilers and boiler room operation were such that the plant was using more than double the amount of fuel it should use; that there was large waste on account of the lack of a feed water heater and on account of the turbine being allowed to run non-condensing. It appears that these conditions were allowed to exist and have exsited for many months without any reasonable attempt being made to remedy them.

Evidence was produced that in the town of Wiley, which is furnished electricity from the Lamar plant of the Intermountain Company, during the last three or four months the street lights were out about half the time on account of the poor service, and part of the time lamps were not installed after being burned out; that the Intermountain Company was unable to furnish adequate service to light residences and mills at Wiley, the lights being dim and uncertain.

It was shown that the street lighting of the City of Lamar had been inadequate as to the quantity of light, and that although the company had been uredged for a considerable time to better this condition nothing had been done in that regard. It was further shown that the street lighting in the City of Lamar was inefficient; that several times in December, 1918, and January, 1919, the street lights were out on several occasions for an hour or more at a time in the evening; that for power purposes in newspaper offices, stores, mills and garages the current was frequently shut off entirely, causing very unsatisfactory service and loss to the proprietors of such business enterprises; that for lighting purposes in stores, other business places and residences the lighting service was uncertain, fluctuating and very inadequate.

It was shown that the service furnished the Kornman mill of the Denver Alfalfa Milling & Products Company was very unsatisfactory; that although the plant, since the fall of 1918, had not operated later than 5:30 p. m., it had been obliged to shut down many times, at the suggestion of the Intermountain Company, as often as three or four times in one day; that during the entire season the milling company had received insufficient power; that this company had on several occasions furnished coal to the Intermountain Company on account of that company being short of coal; that in the grinding of hay this mill had been seriously handicapped on account of failure to receive power.

Representatives of the city further proved that they proposed to submit to the voters thereof on April 1, 1919, the question of authorizing the city council of said city to erect electric light works for the purpose of supplying the city and the inhabitants thereof with electric light and power, the said works to be owned, managed and operated by the said city, and further to submit to the electors of said city on said date the question of authorizing the city council to contract an indebtedness on behalf of the city upon the credit thereof by issuing bonds thereof in the aggregate amount of $45,000.00 for the purpose of constructing a plant to supply electric light.

It was further shown, on behalf of the city, that on September 21, 1918, increased rates were granted the Intermountain Company by this Commission, consisting of a surcharge of 20 per cent applied to the bills for all commercial lighting, heating and cooking consumption in the City of Lamar, the town of Wiley and adjacent territory, together with certain other rates mentioned in the Commission's order of said date.

The evidence of the Intermountain Company does not differ materially from that produced by the city as to the above matters. The company, however, sought to justify these conditions on the ground that it was unable to secure efficient employes on account of war conditions. It is true that all branches of industry experienced this difficulty during the war, but the evidence shows that other industries at Lamar and vicinity were able to secure fairly efficient help, and all other electrical companies experienced the same difficulties as did this company, but the Commission knows of no instance in the state where service conditions were such as the evidence shows existed at Lamar during the past several months.

In the order of this Commission made September 21, 1918, in the matter of the application of the Intermountain Company for permission to increase its rates and charges for electric service in the City of Lamar, the Commission stated:

> "The Lamar plant of the Intermountain Railway, Light & Power Company is a very inefficient one, the coal consumption being in excess of 16 pounds of bituminous coal per kilowatt hour of output. While it is fully realized that this condition cannot be corrected at this time on account of the difficulty in securing equipment, the company is not entitled to any reward for efficient operation in the disposition of this case. The cost of steam power plant generation alone for the year 1917 was 70 per cent of the operating revenues for that period and this ratio will probably be increased for the year 1918. There is also a very high unaccounted for loss in distribution, which, in the opinion of the Commission, does not result largely from leakage through trees, as stated by Mr. van Diest in his testimony."

The company further contended that it was preparing to install machinery and make changes which would render service adequate and efficient. The Railroad Commission of California, under a statute similar to ours, has held:

> "In times past in this state efforts on the part of the public authorities to force utilities to give reasonable rates and adequate service have been met with long-continued litigation, and if the public authorities have at hand an efficient and summary method of forcing public utilities to accord to their patrons such reasonable rates and adequate service, then, in our opinion, it is their duty to use it. If any territory served by an existing utility is afflicted by such utility with excessive rates or inefficient service, and a second utility of the same kind desires to enter such territory, and this Commission should say to the existing utility 'although when you had matters your own way, you lost sight of your duty to the public, yet we shall still preserve for you this territory in consideration of your furture good behavior,' in how many instances does one suppose a new utility would apply to enter a territory served by an existing utility when the only effect of all its trouble and expense would be the cheapening of the rate and the improvement of the service of the existing utility? And

hence if we should in the very first important contested application for a certificate of public convenience and necessity announce the rule that where the major portion of a territory is served, though inefficiently and at high rates, the result of such application will be merely to put the existing utility upon its good behavior, then we would, in effect, be saying to all the offending utilities of this state, if there be any, 'you may proceed with your present methods until competition knocks at the door of your territory and only then will you be compelled to do justice,' and we would be saying to every new public utility 'You will knock in vain at the door of any field now served by a utility.' The result would be that old utilities would keep their territory unspurred by the fear of competition, knowing always that only when it was imminent, need they prepare to do justice to their patrons, and the new utilities, having no incentive to apply for permission to go into territory more or less completely, but inefficiently served, would limit themselves to new fields within which they would soon, in turn, assume the same attitude as would be assumed by the old utilities now doing business within the state. Rather, do we announce the rule that only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons, that this Commission may find that such patrons are adequately served at reasonable rates. By announcing this principle, we hope we shall hold out to the existing utilities an incentive which will induce them voluntarily, without burdening this Commission, or other governmental authorities, to accord to the communities of this state those rates and that service to which they are in justice entitled, and to the new utilities we shall likewise hold out the incentive that on the discovery by them of territory which is not accorded reasonable service and just rates, they may have the privilege of entering therein if they are willing to accord fair treatment to such territory."

Pacific Gas & Elec. Co. v. Great Western Power Co., 1 R. R. Comm., Calif. Rep., 210.

This case was followed by Idaho Public Utilities Commission in the case of Application of Idaho Power & Light Co., for certificate of convenience and necessity, Idaho Commission Reports (7-1-14 to 6-30-15), page 57.

One purpose of the act relating to public convenience and necessity, Chap. 110 Session Laws Colorado 1917, was to afford protection to the public utility which has pioneered in a field and is rendering efficient service at reasonable rates, and adequately serving the public, but, on the other hand, it is not intended to protect against competition a public utility which is not performing these duties and which for a considerable period of time has failed to bring its service up to the ordinary efficient standards of similar companies operating in similar territories.

The Commission finds that the present and future public convenience and necessity of the inhabitants and citizens of the City of Lamar and of said city require and will require the construction, acquisition and operation by said city of electric light and power works, and that said city should be given permission to submit to the qualified voters and electors thereof at the general municipal election to be held thereon on April 1, 1919, the question of authorizing the city council of said city to erect electric light and power works to be owned, managed and operated by the said city, and of authorizing the said city council, of said city, to contract an indebtedness on behalf of the city and upon the credit thereof, by issuing the bonds of the city in the aggregate amount of $45,000.00 for the purpose of constructing a plant to supply electric light and power; and the Commission further finds that it will thereafter, upon showing being duly made to it by said city that the majority of the said qualified voters and electors thereof voting upon said propositions at said election of April 1, 1919, have voted in the affirmative upon said questions, and upon application by said city therefor, issue the certificate of this Commission that the present and future public convenience and necessity require and will require the construction, erection or acquisition by said city, and operation by it, of electric light and power works; that an order pursuant to the foregoing shall issue preliminary to the issuance of the said certificate.

ORDER.

IT IS THEREFORE ORDERED, That the Public Utilities Commission of the State of Colorado finds that the present and future public convenience and necessity of the inhabitants and citizens of the City of Lamar and of said city require and will require the construction, acquisition and operation by said city of electric light and power works, and that said city should be and

is hereby given permission to submit to the qualified voters and electors thereof at the general municipal election to be held thereon on April 1, 1919, the question of authorizing the city council of said city to erect electric light and power works to be owned, managed and operated by the said city, and of authorizing the said city council of said city to contract an indebtedness on behalf of the city and upon the credit thereof, by issuing the bonds of the city in the aggregate amount of forty-five thousand ($45,000.00) dollars for the purpose of constructing a plant to supply electric light and power; and the Commission finds, and it is hereby ordered, that it will thereafter, upon showing being duly made to it by said city that a majority of the qualified voters and electors thereof voting upon said propositions at said election of April 1, 1919, have voted in the affirmative upon said questions, and upon application by said city therefor, issue the certificate of this Commission that the present and future public convenience and necessity require and will require the construction, erection or acquisition by said city and operation by it of electric light and power works.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 7th day of March, 1919.

DECISION NO. 237.

THE BIG FIVE MINING COMPANY,

v.

THE DENVER, BOULDER AND WESTERN RAILROAD COMPANY.

Case No. 98.

March 13, 1919.

STATEMENT.

By the Commission:

IT APPEARING, That on February 24, 1917, the Commission issued an order in this cause requiring the defendant to not remove its spur track, and holding the cause open for a reasonable time in order that the complainant might introduce further evidence with respect to the amount of tonnage, and there has been no prosecution of the cause, the Commission is of the opinion that the same should be dismissed from the docket.

ORDER.

IT IS THEREFORE ORDERED, That this cause be, and the same is, hereby dismissed without prejudice.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

G. E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 13th day of March, 1919.

DECISION No. 238.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTERURBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

March 14, 1919.

STATEMENT.

By the Commission:

On the 15th day of January, 1919, the Commission issued its order in the above matter suspending certain increases in fares as stated in said order, and continuing to February 15, 1919, at 2:00 o'clock p. m. the hearing on the motion for rehearing filed herein by the City and County of Denver. On February 14, 1919, the Commission ordered that the hearing on the motion for rehearing filed herein by the City and County of Denver be continued to March 15, 1919, at 2:00 o'clock p. m.

The foregoing orders are hereby modified in the following particulars only:

ORDER.

IT IS HEREBY ORDERED, That the hearing on the motion for rehearing filed herein by the City and County of Denver be and the same is hereby, further continued to April 15, 1919, at 2:00 o'clock p. m., without prejudice to the right of the City and County of Denver, The Denver Tramway Company or this Commission to call the same up for hearing prior to such date, or for a further continuance of the same, and without prejudice to the right of any party to obtaining a writ of review in this cause upon its final decision.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 14th day of March, 1919.

DECISION No. 239.

IN RE ADVANCE IN ELECTRIC RATES OF THE GLENWOOD LIGHT & WATER COMPANY.

Investigation & Supervision Docket No. 24.

March 26, 1919.

APPEARANCES: Hughes and Dorsey, and E. I. Thayer, for the applicant company; C. L. Taylor, for the City of Glenwood Springs.

STATEMENT.

By the Commission:

On May 10, 1918, The Glenwood Light & Power Company filed with the Commission, its schedule, Colo. P. U. C. No. 13, to become effective June 10, 1918, and cancel its schedule then in effect, known as Colo. P. U. C. No. 12. On July 1, 1918, the city council of Glenwood Springs passed a resolution protesting against the increases proposed in the new schedule and instructing its city attorney to file a protest with this Commission against the schedule being allowed to become effective and against any increase in the rates or charges of the said company. On July 9, 1918, the city attorney filed with the Commission a protest, as instructed in said resolution, together with a copy of the resolution.

On May 28, 1918, the Commission entered into an investigation of this matter, and, after consideration, suspended the effective

date of the schedule to September 25, 1918. Thereafter the Commission again suspended the schedule to March 28, 1919, to allow the completion of reports to the Commission by its statistical and engineering staffs.

Pursuant to notice duly given this cause came on for hearing, January 31, 1919, at the court house in Glenwood Springs, Colorado. At the hearing evidence was received by the Commission relative to the reasonableness of the present and proposed rates of the company. The present rates of the company on file with the Commission and in effect for electric service in the town of Glenwood Springs and vicinity, are as follows:

Store and Residential Lighting.

Metered service 100 K. W. H. per month, 12 cents per K. W. H.
More than 100 K. W. H. and less than 200 K. W. H. per month, 11¼ cents per K. W. H.
Over 200 K. W. H. per month, 10 cents per K. W. H.
Minimum monthly guarantee, $1.50 net.

Discount.

18 K. W. H. or less, 33⅓%.
19 to 24 K. W. H. discounted to make the net amount $1.50.
25 K. W. H. or over, 50%.

Flat Rate.

60 watt Mazda lamps, or smaller, per lamp per month, 75 cents.
Over 60 watts and not exceeding 100 watts, per lamp per month, $1.25.
All night office or store lights, not exceeding 60 watts per lamp per month, $1.00.

Flat Rate Discount.

On bills less than $3.00 per month, 33⅓%.
On bills amounting to over $3.00 per month, 50%.

Commercial Lighting, Rural Service.

The metered schedule above applies without discount.

Commercial Power, Metered Service.

Fractional H. P. motors, per K. W. H., 5 cents per K. W. H.
Minimum monthly guarantee, $1.50.
One H. P. or over, single phase, per K. W. H. per month, 5 cents.
Minimum monthly guarantee. $2.00 per month.
Motors one H. P. or over, three phase:
5 H. P. or less, fixed charge, $1.00 per H. P. per month, plus an energy charge of less than 800 K. W. H. per montht, 4 cents per K. W. H.

From 800 to 900 K. W. H. per month, 3½ cents per K. W. H.
From 900 to 1,000 K. W. H. per month, 3¼ cents per K. W. H.
1,000 K. W. H. per month or over, 3 cents per K. W. H.
5 to 10 H. P. motors per month, $5.00, plus same energy charge as above.
10 H. P. motors or over per H. P. per month, 50 cents, plus an energy charge as above.
Motors for refrigerating plants, $6.00 per month per H. P. for each month in which operated.
Minimum monthly guarantee, $30.00.

Cooking.

Appliances less than 660 watts, per K. W. H. per month, 5 cents.
Minimum monthly guarantee, $1.00.
Appliances exceeding 660 watts, per K. W. H. per month, 4 cents
Minimum monthly guarantee, $1.00.
Laundry irons less than 300 K. W. H. per month, 4 cents per K. W. H.
More than 300 K. W. H. per month, 3 cents per K. W. H.
Minimum monthly guarantee, $2.00.

Flat Service.

Domestic irons, 50 cents per month.
Commercial irons, one iron $2.00 per month, 2 or more irons, per iron, $1.50 per month.
Water heaters, 4 quarts or less in capacity, per month, $2.00.
Larger capacities, per K. W. H. per month, 3 cents.
Minimum monthly guarantee, $2.00.

Coffee Urns.

Flat rate per month, $5.00.

Commercial Power, Rural Customers.

First 20 K. W. H. per month per K. W. H., 8 cents.
All in excess of 20 K. W. H. per month per K. W. H., 5 cents.
Minimum monthly guarantee, $2.00.

Commercial Power, Motion Picture Projectors.

Direct current service flat rate per month, $20.00.
Battery charging per K. W. H. per montth, 5 cents.
Discount to commercial garages, 20%.
Electric vehicle batteries per K. W. H. per month, 4 cents.

Street Lighting.

Arc Light Service.

D. C. arc lamps all night per single lamp per month, $11.00.
Two or more lamps, per lamp per month, $10.00.

Multiple flame arcs, dusk to midnight, per lamp per month, $6.00.
Service from dusk to 10:00 p. m. per lamp per month, $4.00.

Incandescent Multiple Street Lamps.

60 watts capacity each per month, 60 cents.
Minimum monthly guarantee, $3.00.
Decorative street lamps, 15 watts or less, 25 lamps or less, per lamp, 15 cents per month.
15 watts or less, 50 lamps or more, per lamp, 12 cents per month.

Ornamental Posts.

Not less than 300 watts per post, 2 cents per K. W. H. per month.
Minimum monthly guarantee, $1.00.

In addition to the above schedule there are the following special rates and contracts with the Denver & Rio Grande Railroad:

For arc lights east of the Grand River, $10.00 per month per lamp.
For metered energy consumed east of the Grand River per month, 7 cents per K. W. H.
For metered energy consumed west of the Grand River per month, 7½ cents per K. W. H.

There is also a contract with The Colorado Hotel Company for an annual amount of $1,595.00, a contract with the County Commissioners of Garfield County for service at the County Poor Farm and Hospital of 12 cents per K. W. H. per month for all energy used, and a contract with The Cardiff Light & Water Company at the rate of 3 cents per K. W. H. per month for metered energy and 30 per cent of all of the flat rate collections.

The schedule filed on May 10, 1918, and suspended until September 25, 1918, and on September 19, 1918, suspended until March 28, 1919, provides changes in all schedules. This schedule contained the following proposed rates:

Commercial Lighting.

Business Rate.

Primary rate, fifteen cents per kilowatt hour.
Secondary rate, seven and one-half cents per kilowatt hour.

Universal Rate.

Primary rate, fifteen cents per kilowatt hour.
Secondary rate, seven and one-half cents per kilowatt hour.

Residence Flat Rate.

Each 25 watt lamp connected, per month.....$0.60
Each 40 watt lamp connected, per month..... 0.90
Each 60 watt lamp connected, per month..... 1.25

Sign and Window Lighting Rate.

Connected Load Burning until Ten (10:00) P. M.
First 200 watts. Rate per watt connected, per month....$0.0125

Next 200 watts.	Rate per watt connected, per month....	0.0113
Next 200 watts.	Rate per watt connected, per month....	0.01
All additional.	Rate per watt connected, per month....	0.0088
Connected Load	Burning until Twelve (12:00) Midnight	
First 200 watts.	Rate per watt connected, per month....	$0.0156
Next 200 watts.	Rate per watt connected, per month....	0.0144
Next 200 watts.	Rate per watt connected, per month....	0.0131
All additional.	Rate per watt connected, per month....	0.0119

Ornamental Outdoor Fixture Rental and Service Rate.

Connected Load	Burning until Midnight	Burning All Night
Burning until 10:00 P. M.		
200 watts, per month,	$3.75	$4.40	$ 8.75
300 watts, per month,	$5.00	5.90	10.65
400 watts, per month,	6.25	7.50	12.50

Commercial Power.

Flat Rate for Restaurant Coffee Urn Heaters.

Rate per 100 watts connected and fraction thereof, $1.85.

Energy for Heating Purposes.

For Domestic use, per kilowatt hour, four cents.

For Industrial use, consumption to be restricted to the hours between midnight and 5:00 p. m., per kilowatt hour, four cents.

City Power Rate.

Fixed Charge: $1.00 per horsepower per month.

Energy Charge: Add for all energy used, five cents per kilowatt hour.

Flat Rate Direct Current Service for Motion Picture Projectors.

Nightly performances averaging three hours, and one matinee per week; pro rata additional charge of 65 cents for each additional matinee; per month, $20.00.

Metered Direct Current Energy for Battery Charging.

Portable storage batteries for sparking and lighting purposes, per kilowatt hour, metered, $0.075.

Discount from the above to established commercial garages, 25%.

Minimum gross amount for any single charge, 50 cents.

Electric vehicle batteries, per kilowatt hour, $0.05.

Special Contracts.

Special Contract No. 1.

With The Denver & Rio Grande Railroad Company provides for electric energy for lighting at the following rates:

A. Arc lights, located east of the Grand River, $10.00 per light per month.

B. All incandescent lamps located east of the Grand River at 7 cents net per kilowatt hour.

C. All energy supplied for use west of the Grand River at 7½ cents net per kilowatt hour.

Special Contract No. 2.

With the Cardiff Light & Water Company provides for the operation by The Glenwood Light & Water Company, of the Cardiff Company's electric transmission line, which begins at the station of The Glenwood Light & Water Company, and extends to Cardiff, Colorado, including the substation and distribution system at Cardiff; and for conducting the electrical business with its consumers of said Cardiff Light & Water Company, including collecting and accounting for the revenue therefrom. The compensation for such service to be based upon the energy delivered to the consumers, and to be at the following rates:

Energy for lighting purposes, 3 cents per kilowatt hour.

Energy for power purposes, 1½ cents per kilowatt hour, plus a sum equal to 20 per cent of the difference between the amount paid by the consumer and the foregoing charge of 1½ cents per kilowatt hour for the energy used by said consumer.

Special Contract No. 3.

In consideration of the construction by the Glenwood Hot Springs and Hotel Colorado Company of all lines needed for transmitting energy to its buildings and about its grounds beyond such points as The Glenwood Light & Water Company may have existing distributing lines; and

In further consideration of the large consumption of energy by said Glenwood Hot Springs and Hotel Colorado Company and its virtual delivery to said consumer at the power house of The Glenwood Light & Water Company; and

In further consideration of the fact that said Glenwood Hot Springs and Hotel Colorado Company has not, for many years been a profitable enterprise, but is nevertheless essential to the general prosperity of the community of Glenwood Springs.

There has been established a rate of 2 cents per kilowatt hour for all energy consumed by the said Glenwood Hot Springs and Hotel Colorado Company in and about its bath houses, Hotel Colorado, and the grounds surrounding the same.

The Glenwood Light & Water Company, a Colorado company, was incorporated September 7, 1888, under the laws of the State of Colorado, having its term of existence as twenty years. It operated under an ordinance granted by the City of Glenwood Springs. The corporate existence of this company expired by limitation, and The Glenwood Light & Water Company of Nevada was incorporated on September 18, 1909. A provision was made by the members of the last board of directors or trustees of The Glenwood Light & Water Company of Colorado to sell and transfer all of its property and property rights connected with its water and electric lighting system to the Nevada Company.

On February 4, 1905, a new ordinance was passed granting a franchise to The Glenwood Light & Water Company of Nevada and

the said ordinance is now operative and is the ordinance under which the present company is supplying electric current to the City of Glenwood Springs and its inhabitants. On September 15, 1914, the water plant of this company was sold to the City of Glenwood Springs. Early in the year 1911, The Mutual Light, Heat & Power Company was incorporated as a competing company to The Glenwood Light & Water Company, and was granted a franchise under date of April 11, 1911, to furnish light, heat and power for commercial and domestic use and street lighting for the City of Glenwood Springs. The plant of the Mutual Company was completed about November, of 1911, and continued operations until November 5, 1917, when it was purchased by The Glenwood Light & Water Company for the sum of $15,000.00. The Glenwood Light & Water Company assumed the franchise and the lighting contract of The Mutual Light, Heat & Power Company. The Glenwood Light & Water Company operates a hydro-electric plant, and also obtains current under contract from The Colorado Power Company.

An inventory and appraisal of the property of the respondent company was made by the engineering staff of the Commission and was submitted for the consideration of the Commission at the hearing in this cause. A summary of this appraisal is set out in Table No. 1, the amounts therein shown being exclusive of going concern value, cost of money, promoter's remuneration, etc.

TABLE NO. 1

Acct. No.	Classification	Normal Reproduction Cost
101	Organization	$ 575.00
102	Franchises	250.00
105	Land and Right of Way	1,100.00
106	Buildings	7,762.00
109	Hydraulic Power Works Equipment	497.00
110	Hydraulic Power Plant Equipment	16,473.00
113	Miscellaneous Power Plant Equipment	1,070.00
120	Transmission System	11,552.00
121	Substation Equipment	7,320.00
140	Distribution System	16,839.00
141	Transformers	7,397.00
142	Meters	6,017.00
150	Commercial Lamp Equipment	106.00
160	Municipal Contract Lighting System	9,549.00
162	General Office Equipment	1,010.00
166	Customers' Installations	751.00
168	Miscellaneous Equipment	1,000.00
169	Utility Equipment	2,000.00
	Miscellaneous Construction Expenditures	11,926.00
	Total Fixed Capital Accounts	$103,194.00
	Working Capital	7,500.00
	Grand Total	$110,694.00

The revenues and expenses of the company for the years 1915, 1916, 1917 and 1918, as compiled from the books of the company by the statistician of the Commission, are set out in Table No. 2.

TABLE NO. 2

	Operating Revenues:	1915	1916	1917	1918
501	Commercial Lighting	$24,994.36	$22,302.47	$15,266.85	$15,519.50
501	Domestic Lighting			10,513.13	12,232.39
	Total	$24,994.36	$22,302.47	$25,779.98	$27,751.89
	Discount	9,266.77	8,382.90	8,598.49	9,594.46
501	Net Commercial Lighting	$15,727.59	$13,919.57	$17,181.49	$18,157.43
502	Municipal Street Lighting	1,140.01	882.90	563.06	3,859.10
503	Commercial Power	3,181.00	2,808.65	2,587.23	3,057.13
504	Municipal Power	39.01	134.10	24.00	24.75
505	Sales to Other Public Service Corporations	232.43	341.37	713.00	552.01
506	Electric Merchandise and Jobbing	557.42	950.75	1,573.99	1,553.15
507	Miscellaneous Electric Revenue	283.84	114.31	73.51	64.26
	Total Operating Revenues	$21,161.30	$19,151.65	$22,716.28	$27,267.83

Note:—Discount deductions mean a discount to establish the rate due to competition, and is not a discount for prompt payment.

	Operating Expenses:				
620	Hydraulic Generation	$ 5,808.04	$ 5,646.70	$ 5,748.02	$ 5,890.79
670	Purchased Power	1,053.39	1,067.04	1,052.91	290.23
671	Transmission	34.40	36.09	254.85	139.56
685	Storage Battery	45.39			
700	Distribution	2,200.71	2,791.39	2,019.36	2,873.53
720	Utilization	693.60	604.73	732.14	629.74
740	Commercial			1,534.46	2,607.45
745	New Business	1,023.81	745.94	676.23	525.44
760	General Expense	5,985.34	6,463.32	5,528.53	5,023.04
	Total Above Items	$16,844.68	$17,355.21	$17,546.50	$17,979.78
779	Taxes	2,933.82	1,675.75	1,658.03	2,401.18
	Total Operating Expenses	$19,778.50	$19,030.96	$19,204.53	$20,380.96
	Net Operating Revenue Available for Depreciation and Return to Investor	1,382.80	120.69	3,511.75	6,886.87

In fixing the value of this property for rate-making purposes the Commission has estimated the depreciation requirement on the sinking fund basis. The company contended for a rate-making value of $142,127.21, and contended for an increase in value in various items over that fixed by the engineers of the Commission, and especially on the value of certain buildings.

However, after hearing and considering the evidence presented in this case, and being fully advised in the premises, the Commission finds as follows:

1. That the rate-making value of the property of The Glenwood Light & Water Company as of November 30, 1918, including a reasonable allowance for working capital and going concern value, and considering all elements of value, both tangible and intangible, was $120,694.00.

2. That a proper annual depreciation requirement at this time to be set aside on the 4 per cent sinking fund basis is the sum of $2,271.00.

3. That a fair return to the owners of this property is 8 per cent on the above rate-making value.

4. That the average annual cost to the company of furnishing service under the conditions prevailing at this time is as follows:

Operating Expenses	$17,980.00
Taxes	3,301.00
Depreciation	2,271.00
Return 8% on $120,694.00	9,656.00
Total	$33,208.00

5. That the annual gross revenue of the respondent company under the rates now in effect and on file with the Commission has not equaled the sum of $33,208.00.

6. That the rates and charges set out in the order herein are reasonable and should be substituted for the rates now on file with the Commission.

7. The Commission finds that the contract rates now charged and proposed to be charged to The Hotel Colorado Company and The Denver & Rio Grande Railroad Company are each discriminatory and unreasonable rates, and service rendered The Hotel Colorado Company and The Denver & Rio Grande Railroad Company shall be upon the schedules hereinafter set forth.

ORDER.

IT IS THEREFORE ORDERED, That the respondent company, The Glenwood Light and Water Company, be, and it is hereby, required to cancel, on or before March 28, 1919, the rates

and charges set forth in the schedule suspended in the Commission's orders of May 28, 1918, and September 18, 1918;

IT IS FURTHER ORDERED, That the respondent company, The Glenwood Light and Water Company, be, and it is hereby permitted to cancel, effective April 25, 1919, on not less than three days' notice to the Commission and the public, the schedule of rates and charges filed by The Mutual Light, Heat & Power Company on January 10, 1916, effective February 10, 1916, and adopted by the respondent company on November 7, 1917;

IT IS FURTHER ORDERED, That the respondent company, The Glenwood Light and Water Company, be, and it is hereby, permitted to establish, effective April 25, 1919, on not less than three days' notice to the Commission and the public by filing and posting in the manner prescribed in the Act, the following rates and charges for electric service:

COMMERCIAL LIGHTING.

Business Lighting.

Rate.

First 40 hours' use per month of connected load per K. W. H....$0.15
All monthly consumption in excess of 40 hours' use, per K. W. H. 0.075
All monthly consumption in excess of 120 K. W. H..... 0.075

Application.

This rate shall apply to alternating current service supplied at 110 or 220 volts for the lighting of commercial establishments.

Standard lamp socket appliances may be used under this rate, but shall not be considered as constituting a part of the consumer's demand.

Minimum.

Net monthly bill shall in no event be less than $2.50.

Discount.

On above charges for payment within 15 days from the date of bill, 10%.

Domestic Lighting.

Rate.

First step per K. W. H., $0.15.
Second step per K. W. H., $0.075.
Third step per K. W. H., $0.03.

Application.

This rate shall apply to alternating current service supplied at 110 or 220 volts for the lighting of private residences, apartment houses, hotels and boarding houses of less than ten (10) rooms.

This rate may also be used at the option of the consumer as a combination rate to include service for lighting, heating, cooking and small power service, provided the entire service is taken through one meter.

From October of each year until the following April, inclusive, the first step shall apply to the first 3 K. W. H. used per month per room; the second step shall apply to the next 3 K. W. H. used per month per room, and the third step shall apply to all use in excess of the first and second steps.

From May of each year until the following September, inclusive, the first step shall apply to the first 2 K. W. H. used per month per room; the second step shall apply to the next 2 K. W. H. used per month per room, and the third step shall apply to all use in excess of the first and second steps.

Minimum.

Net monthly bill shall in no event be less than $1.25.

Additional Minimum.

When used as a combination rate for lighting, heating and cooking purposes, for each H. P. additional connected load exclusive of lighting and lamp socket appliances, per month, $0.50.

Discount.

On above charges for payment within 15 days from the date of bill, 10%.

Limitations.

Motors 3 H. P. total capacity, single phase, 110 or 220 volts.

Active Rooms.

No residence shall be considered as having more than 10 rooms. Attics and cellars (unfinished), porches and closets, shall not be considered as active rooms.

Sign and Window Lighting Flat Rate.

Single phase alternating current service, at from 110 to 115 volts, and a frequency of approximately 60 cycles.

Connected Load	Burning until Ten (10:00) P. M.	
First 200 watts.	Rate per watt connected, per month...	$0.0125
Next 200 watts.	Rate per watt connected, per month...	0.0113
Next 200 watts.	Rate per watt connected, per month...	0.01
All additional.	Rate per watt connected, per month...	0.0088
Connected Load	Burning until twelve (12:00) Midnight	
First 200 watts.	Rate per watt connected, per month...	$0.0156
Next 200 watts.	Rate per watt connected, per month...	0.0144
Next 200 watts.	Rate per watt connected, per month...	0.0131
All addidtional.	Rate per watt connected, per month...	0.0119

The customer provides external switch and company turns off the sign or window lights at the stipulated time, at its expense.

Minimum connected load under this classification, two hundred (200) watts.

Payment required monthly in advance.

No discount allowed for prompt payment.

Ornamental Outdoor Fixture Rental and Service Rate.

Single phase, alternating current service, at from 110 to 115 volts, and a frequency of approximately 60 cycles.

Company furnishes, installs, maintains, and cleans lighting fixtures equipped with nitrogen-filled tungsten lamp; and supplies energy for same; at the following rates:

Connected Load	Burning until Midnight	Burning All Night
Burning until 10 P. M.		
200 watts, per month,	$3.75	$4.40	$ 8.75
300 watts, per month,	5.00	5.90	10.65
400 watts, per month,	6.25	7.50	12.50

Company provides extra external switch and turns lamps off at the stipulated time, at its own expense.

Minimum connected load, under this classification, 200 watts.

Payment required monthly in advance.

No discount allowed for prompt payment.

Lamp renewals furnished as per above.

Municipal Street Lighting.

100 candlepower, 6.6 amperes, type C, series incandescent lamps.

50 lamps or less, each $30.00 per year.

More than 50 and less than 150 lamps, each $27.00 per year.

60 candlepower, 6.6 amperes, type C, series incandescent lamps.

50 lamps or less, each $27.00 per year.

More than 50 and less than 150 lamps, each $24.00 per year.

More than 150 and less than 250 lamps, each $21.00 per year.

More than 250 lamps, each $18.00 per year.

Minimum monthly guarantee, $300.00.

Standard commercial arc lamps.

10 lamps or less, per lamp per month, $10.00.

Service: All night.

Remarks: The company installs, maintains and operates all municipal street lamps.

Fuel.

Rate.

All monthly consumption per K. W. H., $0.04.

Application.

This rate shall apply to consumers using service for ranges and appliances only of an aggregate connected load in excess of 1,000 watts.

Minimum.

Net monthly bill shall in no event be less than $1.25.

Discount.

On above charges for payment within 15 days from the date of bill, 10 per cent.

Commercial Power.

Rate.

A fixed charge per month per horsepower of maximum demand or connected load, as hereinafter provided, $1.00.

And in addition for all energy used per K. W. H. per month, $0.05.

Application.

This rate shall be available to all power consumers using the company's standard alternating current service for power purposes at potential of 220 or 440 volts.

Discount.

On above charges for payment within 15 days from the date of bill, 10 per cent.

Minimum.

Net monthly guarantee per horsepower of maximum demand, $1.00.

Determination of Maximum Demand.

If the connected load is less than 10 horsepower, the maximum demand may be taken as the combined name plate rating of the appliances.

If the connected load is 10 horsepower or more, the maximum demand shall be determined by meter measurement.

No consumer's installation shall be considered as having a maximum demand of less than one horsepower.

Special Contract.

With the Cardiff Light & Water Company provides for the operation by The Glenwood Light & Water Company of the Cardiff Company's electric transmission line, which begins at the station of The Glenwood Light & Water Company, and extends to Cardiff, Colorado, including the substation and distribution system at Cardiff; and for conducting the electrical business with its consumers of said Cardiff Light & Water Company, including collecting and accounting for the revenue therefrom. The compensation for such service to be based upon the energy delivered to the consumers, and to be at the following rates:

Energy for lighting purposes, 3 cents per kilowatt hour.

Energy for power purposes, 1½ cents per kilowatt hour, plus a sum equal to 20 per cent of the difference between the amount paid by the consumer and the foregoing charge of 1½ cents per kilowatt hour for the energy used by said consumer.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 26th day of March, 1919.

DECISION No. 240.

IN THE MATTER OF THE APPLICATION OF THE TOWN OF MEEKER FOR PERMISSION TO CONTRACT OR LEASE ITS MUNICIPAL WATER SYSTEM FOR A TERM OF YEARS.

Application No. 36.

March 31, 1919.

STATEMENT.

By the Commission:

This cause comes on for consideration by the Commission on the petition of the town of Meeker filed February 21, 1919, by its Mayor, W. D. Simms, and its Board of Trustees, C. T. Gwynne, J. E. Rooney, R. H. Taylor, H. H. Joy, Hewitt Arnold, L. L. Offerle, and John C. Clark, town attorney.

In the petition the town of Meeker prays the approval of a proposed lease agreement, a copy of which is attached to and filed with the petition, wherein the town proposes to contract and lease its municipal water system to one R. C. Graham, his personal representatives and assigns, the conditions of which are set out in said proposed lease. Accompanying the petition is a resolution passed by the town trustees. The resolution embodies and sets forth the reasons and necessity for the town of Meeker entering into said lease, and authorizes the Board of Trustees to carry out the provisions of the lease for and on behalf of the town of Meeker.

The petitioner alleges that it is a municipal corporation organized under the laws of the state of Colorado; that the town is

the owner of its water system used for the purpose of supplying the inhabitants of the town with water for domestic, irrigation and commercial purposes, and for protection against fire; that the system is a gravity supply system diverting its water from the White River approximately 9 miles above the town of Meeker; that the plant was constructed during the years 1905 and 1907, inclusive.

R. C. Graham, the proposed lessee, also filed with the Commission his petition asking that he be joined in the application of the town of Meeker and that the proposed lease be approved by the Commission. In his petition the said Graham alleges that if the lease is approved by the Commission, he will improve the water system by the installation of an emergency pumping plant in accordance with the terms of the lease; that he is able to finance the installation of the proposed emergency plant and to make such repairs on the system as the present demands require and do such other things, as provided in said contract, as will insure efficiency of service to the inhabitants of the town of Meeker at all times.

The proposed lease or agreement provides for a lease, for a term of 20 years, of all of the water system belonging to said town, including rights of way, accessories and appurtenances, the main pipe line, service lines and all other parts of the system maintained and used by the town for the purpose of supplying water to its inhabitants. A consideration for said lease is that during the first year of operation of the water system by him the lessee will, at his own expense, make all necessary repairs to place the system in proper working and serviceable condition, and that thereafter he will pay to the town of Meeker 25 per cent of all money received and collected by him for water service rentals. The proposed lease provides that on taking over the water system the lessee shall install, at his own expense, a pumping plant to be used for emergency purposes, and to have the same in operation within a period of not to exceed one year, said emergency pumping plant to derive its water supply from wells to be constructed in a workmanlike and proper manner by said lessee; that at all times during the life of the contract or lease, all expenses incurred for repairs and maintenance of the water works system, including fire hydrants, shall be paid and borne by the lessee, as well as all cost of laying new lines and extensions and the making of necessary improvements and additions. It is then provided how and on what terms at the termination of said contract

the town shall purchase such permanent improvements as have been made by the lessee.

It appears, as set out by the town in its petition, that the water system was constructed by the town of Meeker during the years 1905 and 1907, inclusive; that the main pipe line from the head works to the corporate limits of the town is a banded, wooden stayed pipe, 12 inches at the head and reduced to 10 inches farther down the line. It appears further that the pipe line was in poor condition when laid; that it was laid for a considerable distance in low and marshy land which, it has developed, contains alkali and other corrosive mineral, sometimes resulting in the iron bands giving way, causing the pipe frequently to leak and burst open; that the town has had continual trouble during recent years in maintaining the pipe line; that during the summer of 1917 the town caused a considerable portion of the main pipe line to be taken out of the alkali seeps through which it ran and to be placed on wooden supports over the surface of said marshes; that the system has been difficult to manage so as to give efficient service, and that in order to get proper results it is necessary that the system be put in charge of a thoroughly competent engineer; that the work of maintaining the system in the past has entailed large expenditures of money on the part of the town, and that, owing to the small population of the town of Meeker, it is difficult to maintain the system from the revenue derived from water rentals and to properly operate it under present difficulties; that the town is not able financially to overcome these difficulties and place the system in condition to insure constant and efficient service. It also appears that the town has been unable to secure the services of a competent engineer to manage and supervise the water system, owing to the demand for skillful engineers and the inability of the town to pay the salary that would be necessary in order to obtain the services of such an engineer; that despite the best efforts of the town the water has been off on numerous occasions and frequently for long periods of time, and that some parts of the town have had no water service since December 22, 1918; that the inhabitants of the town generally speaking, realizing the situation, have refrained from making any formal complaint to this Commission. It further appears that to insure service at all times it will be necessary to install an emergency pumping plant consisting of a pressure pump, taking water from wells and forcing it into distribution lines of the water system when the gravity system or main feeder line is out

of repair. It also appears that the town is heavily bonded for its water system. It appears further that the said Graham, the proposed lessee, is a man of expert technical training and wide experience in the management and operation of public utilities; that he is responsible financially and has ample available funds to make all repairs and improvements immediately needed upon the water system.

The town of Meeker is situated in the western part of the State of Colorado and is the county seat of Rio Blanco County. It is without railway transportation, being located from 30 to 40 miles north of the main line of the Denver & Rio Grande Railroad, and has a population of less than 2,000 people.

The Commission can appreciate the difficulties with which the town has to contend on account of its location, distance from a railroad, scarcity of labor, and the high cost of construction, maintenance and repairs, and its inability to employ a competent person to manage and supervise its water system. This, taken together with the small population and consequent small number of consumers of water, comparatively low taxation values, necessitates a heavy rate of taxes and a heavy bonded indebtedness.

After due consideration of the above conditions, it appearing to the Commission that the proposed lessee, R. C. Graham, is a man peculiarly fitted by technical knowledge and experience for the management of such plants, and that he is able financially to place the water system of the town of Meeker in such condition as will insure to the inhabitants of the town an efficient and adequate supply of water, the Commission is of the opinion that it is to the best interests of the town that the contract or lease be approved by this Commission.

ORDER.

IT IS THEREFORE ORDERED, and the Commission hereby approves the said proposed lease agreement entered into between the town of Meeker and the said R. C. Graham, a copy of which lease agreement is now on file with this Commission, whereby the town of Meeker has contracted and leased its municipal water system unto the said R. C. Graham, his personal representatives and assigns, in the manner proposed and as therein set forth, and the Board of Trustees of the town of Meeker is hereby authorized to carry out the provisions thereof by, and on behalf of, the town of Meeker.

The said approval is, however, subject always to the considerations that the Commission does not hereby accept or assume any jurisdiction or duties not conferred upon it by the Public Utilities Act, chapter 127 of the Session Laws of 1913, and the amendments thereto, and subject also to the consideration that the Public Utilities Commission retains jurisdiction under the law to regulate the rates and services of the said water utility as a public utility.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

G. E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 31st day of March, 1919.

DECISION No. 241.

CITY OF GRAND JUNCTION,

v.

THE GRAND RIVER VALLEY RAILWAY COMPANY.

Case No. 158.

April 2, 1919.

STATEMENT.

By the Commission:

It appearing that the complainant in this cause has advised the Commission that the complaint may be dismissed.

ORDER.

IT IS THEREFORE ORDERED, That this cause be, and the same is hereby, dismissed, without prejudice.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 2nd day of April, 1919.

DECISION No. 242.

IN THE MATTER OF THE APPLICATION OF THE CITY OF LAMAR, FOR ISSUANCE OF A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE INSTALLATION, CONSTRUCTION AND OPERATION OF AN ELECTRIC LIGHTING AND POWER SYSTEM BY SAID CITY.

Application No. 35.

April 12, 1919.

STATEMENT.

By the Commission:

This Commission having made the following order in this cause on March 7, 1919:

IT IS THEREFORE ORDERED, That the Public Utilities Commission of the State of Colorado finds that the present and future public convenience and necessity of the inhabitants and citizens of the city of Lamar and of said city require and will require the construction, acquisition and operation by said city of electric light and power works, and that said city should be and is hereby given permission to submit to the qualified voters and electors thereof at the general municipal election to be held thereon on April 1, 1919, the question of authorizing the city council of said city to erect electric light and power works to be owned, managed and operated by the said city, and of authorizing the said city council of said city to contract an indebtedness on behalf of the city and upon the credit thereof, by issuing the bonds of the city in the aggregate amount of Forty-five thousand

($45,000.00) dollars for the purpose of constructing a plant to supply electric light and power; and the Commission finds, and it is hereby ordered, that it will thereafter, upon showing being duly made to it by said city that a majority of the qualified voters and electors thereof voting upon said propositions at said election of April 1, 1919, have voted in the affirmative upon said questions, and upon application by said city therefor, issue the certificate of this Commission that the present and future public convenience and necessity require and will require the construction, erection or acquisition by said city and operation by it of electric light and power works.

And it now appearing to the Commission that the showing mentioned in said order has been made, and satisfactory evidence has been presented that such vote has been secured.

ORDER.

IT IS THEREFORE ORDERED, That a certificate be and the same is hereby issued that the present and future public convenience and necessity of the inhabitants and citizens of the city of Lamar, and of said city, in the State of Colorado, require and will require the construction, erection or acquisition by said city and operation by it of electric light and power works.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 12th day of April, 1919.

DECISION No. 243.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTER-URBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

April 14, 1919.

STATEMENT.

By the Commission:

On the 15th day of January, 1919, the Commission issued its order in the above entitled cause suspending certain increases in fares as specified in said order and continuing to February 15, 1919, the hearing on the motion for rehearing filed herein by the City and County of Denver. Subsequently thereto orders were issued deferring the hearing on the motion for rehearing until March 15, 1919.

Necessity being shown for further continuance of said hearing, the foregoing orders are hereby further modified in the following particulars only:

ORDER.

IT IS HEREBY ORDERED, That the hearing on the motion for rehearing filed herein by the City and County of Denver be, and the same is hereby, further continued to June 16, 1919, at 2:00 o'clock p. m., without prejudice to the right of the City and County of Denver, The Denver Tramway Company or this Commission to call a hearing on the motion for rehearing prior to such date, or for a further continuance of the same, and without prejudice to the right of any party to obtain a writ of review in this cause upon its final decision.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 14th day of April, 1919.

DECISION No. 244.

CITIZENS OF BEAVER PARK,

v.

THE BEAVER, PENROSE & NORTHERN RAILWAY COMPANY.

Case No. 172.

April 15, 1919.

APPEARANCES: D. D. Bowman and C. E. Oatman, a committee, for the complainants; Hamlin and Rothrock, for the defendant.

STATEMENT.

By the Commission:

On the 18th day of February, 1919, there was filed with the Commission a notice by The Beaver, Penrose & Northern Railway Company, hereinafter called the Railway Company, of its intention to discontinue its service as a common carrier of freight and passengers, to discontinue the operation of its line of railroad, to abandon its line of railroad and remove its tracks, on March 21, 1919. On March 15, 1919, a protest by citizens of Beaver Park was filed against such action by the Railway Company.

The case came on for hearing before the Commission at its hearing room, Capitol Building, Denver, Colorado, on April 7, 1919.

The Railway Company showed that its railway extends from the town of Beaver to the town of Penrose, in Fremont County, Colorado, and is about eight miles in length. There was presented a statement of operating revenue, expense, gain, loss, taxes and total loss from operation from June 30, 1908, to January 1, 1919, as follows:

THE DENVER, PENROSE & NORTHERN RAILWAY COMPANY

STATEMENT OF OPERATING REVENUE, EXPENSES AND OPERATING LOSS AND TOTAL LOSS FROM OPERATION

Year Ending	Operating Revenue	Operating Expense	Operating Gain	Operating Loss	Hire of Equipment	Taxes	Joint Facility Expenses	Total Loss From Operation
June 30, 1909	$ 564.13	$ 484.37	$79.76	.....	$ 64.10	.....	.....	*$ 15.66
June 30, 1910	5,844.35	12,938.12	.....	$ 7,093.77	292.52	$ 375.00	.....	7,761.29
June 30, 1911	4,376.64	10,948.14	.....	6,571.50	309.11	640.84	.....	7,521.45
June 30, 1912	4,679.18	9,993.49	.....	5,314.31	377.55	1,000.00	.....	6,691.86
June 30, 1913	4,483.25	10,726.34	.....	6,243.09	861.91	990.00	$315.33	8,410.33
June 30, 1914	2,988.98	5,626.26	.....	2,637.28	326.67	522.00	91.91	3,577.86
June 30, 1915	3,211.72	5,204.82	.....	1,993.10	189.03	504.00	117.54	2,803.67
To June 30, 1916	3,041.91	7,231.09	.....	4,169.18	146.32	741.00	103.51	5,180.51
June to December, 1916	1,019.13	4,461.81	.....	3,442.68	28.50	417.00	39.52	3,927.70
Calendar Year 1917	1,712.27	9,199.17	.....	7,486.90	69.30	735.00	96.01	8,387.21
Calendar Year 1918	5,075.80	10,660.71	.....	5,584.91	257.88	900.00	98.08	6,840.87
Totals	$36,997.36	$87,474.32	$79.76	$50,556.72	$2,923.39	$6,824.84	$861.90	$61,087.09

*Indicates Credit.

This shows a loss in operation for that period of nearly $5,000.00 a year. It was further shown that the operating loss for January, 1919, was $368.50, and for February, 1919, $424.50; the operating expense for February, 1919, was $593.84 and the revenue, $169.34. The evidence shows that, after a fair trial for a period of about twelve years, this railway property has been unable to earn its legitimate operating expenses and taxes. The matter of increased rates was gone into by witnesses for the Railway Company. The evidence was to the effect that increased rates have been put in effect in the past year without substantial relief therefrom, and any further increase would be likely to decrease, rather than increase, the income. The protestants conceded the financial condition of the railroad to be as claimed by the Railway Company, and that its management had been careful and economical. Their evidence was directed chiefly to hardships which would be suffered by patrons of the road. It does not appear, however, that there is sufficient business in the district tributary to this road to yield even operating expenses and taxes, not to mention a return for depreciation or return on the investment.

The Commission finds from the evidence that the Beaver, Penrose & Northern Railway as a whole does not earn sufficient revenue to meet its legitimate operating expenses, and the Commission, therefore, finds that there is no public demand for the continued operation of said railway, and it should be permitted to withdraw its property from the public service and discontinue its operations; that it is impractical to increase the rates of the railway, as any increase in rates sufficient to bring the revenues to a point where operating expenses can be met would be so prohibitive as to restrict the movement of traffic; that the said railroad may be dismantled.

ORDER.

IT IS THEREFORE ORDERED, That railroad service may be discontinued over the entire property of The Beaver, Penrose & Northern Railway Company, and each and every part thereof, and the said Railway Company may permanently withdraw the same from further service as a railroad public utility.

IT IS FURTHER ORDERED, That the said Railway Company shall be, and hereby is, authorized and permitted to dismantle the same, and each and every part thereof.

IT IS FURTHER ORDERED, That this order shall become effective April 25, 1919.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 15th day of April, 1919.

DECISION No. 245.

IN RE ADVANCE IN GAS RATES OF THE TRINIDAD ELECTRIC TRANSMISSION, RAILWAY & GAS COMPANY, AT TRINIDAD, COLORADO.

Investigation and Suspension Docket No. 29.

April 21, 1919.

APPEARANCES: James McKeough, for the respondent company; Franklin P. Wood, for the Trinidad Chamber of Commerce; W. W. Taylor, mayor, for the City of Trinidad.

STATEMENT.

By the Commission:

On August 16, 1918, The Trinidad Electric Transmission, Railway & Gas Company, hereinafter called the Trinidad Company, filed with this Commission rate schedule P. U. C. Colo. No. 3, cancelling rate schedule P. U. C. No. 2, by which it was proposed to advance the rates for general gas service in the City of Trinidad, Colorado, and by which it was further proposed that such rates should become effective on and after September 16, 1918.

It appeared that the Commission should enter upon an investigation and hearing concerning the propriety of the proposed rates, and on September 10, 1918, pending such investigation and hearing and decision thereon, the proposed rates were suspended by order of the Commission until January 8, 1919. On January 7, 1919, the

investigation not having been completed and hearing not having been had, the proposed rates were further suspended until June 8, 1919.

Protests were filed againts the proposed increase in rates by the City of Trinidad, The Trinidad-Las Animas County Chamber of Commerce and several individuals. These protests were also directed against the gas service furnished by the Trinidad Company; that of the Chamber of Commerce stated in part that it believed "that if the plant is put in good condition for adequate service, and if good service is actually given, the company is entitled to the increase, but not until that time."

The case came on for hearing in the City of Trinidad on March 28, 1919. At the hearing, evidence was received by the Commission relative to the reasonableness of the present and proposed rates in the old and proposed schedules, and of additional increases claimed to be necessary by the Trinidad Company; also as to the quality of the service. The rates now on file with the Commission and those proposed in the suspended tariff filed to become effective on September 16, 1918, are as follows:

Present rates per 1,000 cubic feet of monthly consumption:

Commercial light	$1.70 gross, $1.60 net
Fuel gas	1.10 gross, 1.00 net
Combined fuel and light	1.35 gross, 1.25 net

Prepay rate, $1.00 net, except a few at $1.25 net.

Proposed rates in schedule P. U. C. Colo. No. 3, gas for fuel, illumination or both, commercial and residence:

Per 1,000 cubic feet per month	$1.35
Minimum charge per month	1.00

At the hearing, the Company contended for the following rates:

Gas for fuel, illumination or both, commercial and residence:

Per 1,000 cubic feet per month	$1.85
Prompt payment discount per 1,000 cubic feet per month	0.10
Minimum charge per month	1.00

The Trinidad Company supplies electrical energy to the cities of Trinidad and Walsenburg, and a large area in the southern coal fields. It also furnishes gas to the City of Trinidad and operates an electric railway system in Trinidad and adjoining towns. The gas department of the Trinidad Company produces coal gas.

It appears from the evidence that the gas department has until recently been treated as a secondary consideration by the Trinidad Company, and allowed to run down to such an extent that the service furnished was very unsatisfactory, and resulted in many complaints against the service, including those filed in this case in September, 1918, as above described. It further appears that about a year ago the Trinidad Company commenced rebuilding its gas plant, and within the past few months has added a new retort of six benches, two new purifying boxes, new condensers and scrubbers, a booster, and has generally overhauled its system.

A tentative valuation of the Trinidad Company's gas property is found to be sufficient for the purpose of this case, as the rate allowed in the order will be no more than sufficient to provide for a return and depreciation requirement on a valuation much lower than those shown by the valuations submitted.

The engineering and statistical departments of the Commission submitted such a tentative valuation, the same being a summary of the approximate cost of reproducing this gas property under normal conditions, not including any allowance for going-concern value, or other intangible elements of value. This tentative valuation follows:

Acct. No.	Classification of Property	Normal Reproduction Cost
101	Organization	$ 2,500.00
105	Land	5,250.00
106	Buildings	5,470.00
108	Coal Gas Apparatus	39,057.00
111	Boiler Equipment	262.00
121	Mains	32,159.00
122	Services	13,125.00
123	Meters	7,047.00
124	Customer's Installations	1,565.00
140	General Office Equipment	525.00
142	Utility Equipment	289.00
143	Miscellaneous Equipment	1,050.00
145	Miscellaneous Construction Expenditures	21,160.00
	Working Capital	6,500.00
		$135,959.00

The Trinidad Company submitted the following statement of average cost of reproduction of the same property in its gas department:

Acct. No.		
101	Organization	$ 4,000.00
102–3	Franchises (See 145F—Cost only is considered)	.....
105	Lands	5,250.00
106	Buildings	6,930.00
108	Coal Gas Apparatus	48,726.00
111	Boiler Equipment	394.00
121	Mains	40,326.00
122	Services—owned by Company	14,480.00
123	Meters	7,520.00
124	Customer's Installation—Meter settings and fittings	2,187.00
140	General Office Equipment and Furniture	593.00
142	Utility Equipment and Horses and Wagons	289.00
143	Miscellaneous Tools and Instruments	1,084.00
145	Miscellaneous Construction and Equipment Expenditures—	
145	A—Legal Expenses during Construction	3,000.00
145	B—Injuries, Damages and Liability Insurance during Construction	3,600.00
145	C—Taxes during Construction	650.00
145	D—Interest during Construction	6,600.00
145	E—Discount on Bonds during Construction	.....
145	F—Executive and Administrative during Construction	7,320.00
145	G—Engineering and Superintendence during Construction	7,200.00
145	Working Capital—Cash and Supplies	6,200.00
		$166,349.00

Revenues and Expenses.

The revenues and expenses for the calendar years 1916, 1917 and 1918, as compiled from the books of the Trinidad Company by the statistician of the Commission, are as follows:

	Gross Earnings:	1916	1917	1918
501	Commercial Lighting	$ 1,090.10	$ 737.54	$ 538.68
503	Commercial Heat and Power	15,086.08	16,119.62	17,089.19
501a	Prepaid Gas	.....	1,813.95	1,633.50
509	Earnings from Residuals	1,703.18	2,976.17	3,039.71
510	Merchandise and Jobbing	129.57	256.01	286.04
515	Miscellaneous Earnings	129.90	107.25	126.10
		$18,138.83	$22,010.54	$22,713.22
	Less Discounts and Allowances	$ 1,058.55	$ 1,255.43	$ 1,354.10
	Total Gross Earnings	$17,080.28	$20,755.11	$21,359.12
	Operating Expenses:			
	Production	$ 8,413.83	$13,286.55	$16,437.78
	Distribution	1,835.53	1,803.81	1,766.83
	Commercial	791.68	824.87	964.04
	New Business	141.02	45.31	10.03
	General Expense	2,670.65	2,816.84	2,663.52
	Total Operating Expense	$13,852.71	$18,777.38	$21,842.20
	Net Earnings from Operations	$ 3,227.57	$ 1,977.73	*$ 483.08

*Indicates Deficit.

Note:—In the development of the above Income Statement, there has been nothing deducted for Fixed Charges, as there has been no segregation in the accounting of the company of the amount applicable to the Gas Department. The amount of Fixed Charges is considered as one item applicable to the Electric, Gas and Railway Departments as a whole. There is also no deduction for Depreciation.

From this statement, it is apparent that the amounts available for accruing depreciation and for a return on the investment in the property for the years under consideration were $3,227.57 for 1916, $1,977.73 for 1917 and a deficit of $483.08 for 1918.

Quality of Service.

The protestants have at all times stated that they would not object to a reasonable increase in gas rates if the service were made satisfactory. It appears that the Trinidad Company has in the past few months in good faith attempted to better the service with satisfactory results. The evidence showed that up to the date of the hearing practically $9,000.00 had been spent by the Trinidad Company on these improvements, and that $1,000.00 would be spent to finish the work. It was further shown that the service had become very much better since the installation of the improvements. The Commission will expect this condition to be maintained and the sources of complaint removed so far as possible.

Rates.

The Commission is of the opinion that the present dual system of rates should be abolished, and that the same schedule should apply to gas sold for illuminating purposes as to gas sold for fuel purposes.

After giving due consideration to the evidence in this case, the Commission is of the opinion that the following rates are fair and reasonable under conditions prevailing at this time and should be substituted for the rates now in effect and on file with the Commission:

Illuminating or Fuel Gas.

Rate.

For all consumption during the month, $1.60 per thousand cubic feet.

Prompt Payment Discount.

A discount of ten cents per thousand cubic feet will be allowed on all bills paid within the discount period.

Minimum Guarantee.

Each consumer must guarantee a net minimum monthly bill of $1.00.

Prepayment Meters—Rate.

$1.60 net per one thousand cubic feet.

ORDER.

IT IS THEREFORE ORDERED, That the respondent company, The Trinidad Electric Transmission, Railway & Gas Company, be, and it is hereby, required to cancel on or before April 28, 1919, the schedule of gas rates and charges filed on August 16, 1918, and suspended by the Commission's orders of September 10, 1918, and January 8, 1919.

IT IS FURTHER ORDERED, That the respondent company, The Trinidad Electric Transmission, Railway & Gas Company, be, and it is hereby, permitted to file schedules effective as of April 28, 1919, providing for the following rates and charges to apply on all service rendered on and after that date:

Illuminating or Fuel Gas.

Rate.

For all consumption during the month, $1.60 per thousand cubic feet.

Prompt Payment Discount.

A discount of ten cents per thousand cubic feet will be allowed on all bills paid within the discount period.

Minimum Guarantee.

Each consumer must guarantee a net minimum monthly bill of $1.00.

Prepayment Meters—Rate.

$1.60 net per one thousand cubic feet.

IT IS FURTHER ORDERED, That The Trinidad Electric Transmission, Railway & Gas Company shall file the foregoing rates in accordance with Section 16 of the Public Utilities Act.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 21st day of April, 1919.

DECISION No. 246.

CITY OF GOLDEN AND BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY,

v.

THE DENVER TRAMWAY COMPANY AND THE DENVER & INTERMOUNTAIN RAILROAD COMPANY.

Case No. 154.

April 24, 1919.

APPEARANCES: William G. Smith for complainants; Howard S. Robertson for defendants.

STATEMENT.

By the Commission:

On March 18, 1918, a complaint was filed by the above named complainants alleging unlawful and unjust discrimination in the commutation fares of the defendants as charged and collected upon the interurban lines of The Denver Tramway Company between Berkeley and stations from Griffith to Golden, between Berkeley and stations from Arvada to Leyden and between Arvada and stations from Oberon to Leyden, and upon the interurban line of The Denver & Inter-Mountain Railroad Company between County Line and stations between Lakewood and Golden. The complaint sets forth in detail the mileage between the stations, the rate per

mile of commutation fares and the cost of fifty-ride commutation books in effect at the time of filing of the complaint, and the rate per mile of commutation fares proposed by complainants to remove the alleged discrimination. Attached to the complaint as Exhibit "A" is a petition supporting the complaint and signed by some 378 patrons of the interurban lines of the defendant companies.

The answer of the defendants was filed with the Commission March 29, 1918, and in general admits the statements of facts with reference to tariffs, existing rates and mileages. The answer denies the allegations of discrimination and alleges that to establish the rates proposed by complainants would be unreasonable and unjust and would not permit of the defendants receiving adequate, proper or fair compensation for the service rendered.

A replication was filed by the complainants to the answer of defendants on April 16, 1918. Pursuant to notices served on the parties the cause came on for hearing at Denver, Colorado, on December 30, 1918.

At the hearing no evidence or testimony was submitted by the complainants, who elected to stand on the issues, facts and allegations set forth in the complaint. The defendant introduced several exhibits showing in detail the number of commutation books sold, the rates of fare per mile, the cost per book, and the revenue received, between all stations involved in the complaint, during the months of September, October and November, 1918. Subsequent to the hearing, as requested at the hearing by counsel for complainants, a similar set of statements was filed showing the same statistics for the months of June, July and August, 1918.

The defendant The Denver Tramway Company, in addition to owning and operating the urban electric street railway lines in the City and County of Denver, operates interurban lines between Denver and Golden and Denver and Leyden. The defendant The Denver & Inter-Mountain Railroad Company operates an interurban line between Denver and Golden. The prevailing rate of fare in the city is charged and collected from any point within the city to the city limits or county line, which marks the point at which the rails of the interurban lines leave the city. Transfers from any of the city lines are honored on the interurban cars of defendants as far as the county line and transfers are likewise issued on the inbound interurban cars and are honored on the city lines.

One-way, round-trip and commutation fares between the county line and all points on the interurban lines are named in the defendants' schedules. The commutation fares on the interurban lines are not predicated upon any fixed rate per mile. The one-way fares on the interurban lines are upon a basis of three cents per mile, that basis having been established on the Denver & Inter-Mountain Railroad between County Line and Golden effective June 25, 1918, while the Denver & Inter-Mountain was under the control and operation of the United States Railroad Administration, and was published under authority of General Order No. 28 of the Director General of Railroads. The basis of three cents per mile was established on the interurban lines of The Denver Tramway Company between Berkeley and Golden, and Berkeley and Leyden, effective September 15, 1918, under permission of this Commission by orders issued in Application No. 17 and I. & S. No. 25, granted in accordance with the evidence in those proceedings and also in order to place the interurban fares on a parity.

Commutation fares on the Denver & Inter-Mountain Railroad were increased 10 per cent on June 25, 1918, as prescribed in General Order No. 28 of the Director General. A similar increase in commutation fares on the interurban lines of The Denver Tramway Company was permitted by this Commission, effective September 15, 1918.

As before stated there is no general basis of rate per mile in connection with the commutation fares. The length of the Denver Tramway Company's interurban line from Berkeley to Golden is 10.01 miles, and that from Berkeley to Leyden 9.74 miles with an extension to Shaft No. 3, making total distance of this line 10.79 miles. The length of the Denver & Inter-Mountain Railroad line from County Line to Golden is 9.61 miles. The average commutation fare per mile on the Berkeley-Golden line is 1.93 cents, on the Berkeley-Leyden line 1.91 cents, and on the Denver & Inter-Mountain Railroad 2.19 cents.

The lowest commutation fares per mile applicable on the defendants' lines are those between the city limits and the first stations beyond. Books of fifty rides, limited to 90 days from date of sale, the only class of commutation books available, are sold for $1.38 between Berkeley and Griffith, and Berkeley and Arvada, and between County Line and Lakewood. The records of the Commission show that formerly commutation fares were not carried by the defendants between these points, the one-way fare of five

cents having been applicable. Effective June 12, 1916, books of 50-rides were sold at a cost of $1.25 between Berkeley and Griffith and between Berkeley and Arvada. Effective September 10, 1916, a similar fare was established between County Line and Lakewood on the Denver & Inter-Mountain. The fares thus established resulted in a one-way trip rate of 2.5 cents between such points, and a rate per mile of 1.07 cents between Berkeley and Griffith; 1.09 cents between Berkeley and Arvada; and 1.24 cents between County Line and Lakewood. Effective in 1918, as before stated, an increase of 10 per cent was made on all commutation fares. The complainants ask that the commutation fares between all points on the Berkeley-Golden line be based on the rate per mile contemporaneously in effect between Berkeley and Griffith; that fares between all points on the Berkeley-Leyden line be based on the rate per mile in effect between Berkeley and Arvada; that fares between Arvada and Leyden be based on the rate per mile in effect between Arvada and Oberon; and that fares between all points on the Denver & Inter-Mountain Railroad be based on the rate per mile in effect between County Line and Lakewood. In other words, the complainants assume as a reasonable rate per mile for the entire line the lowest rate in effect between any two points on the same line, and ask that an order be entered requiring the extension of such rate to all points on such line in order to remove what is termed the unjust and unlawful discrimination.

Golden is the most populous point on the interurban lines of the defendants, the complainants in the cause being the City of Golden, and the Board of County Commissioners of Jefferson County, of which county Golden is the county seat. This city may therefore be selected as best illustrating the commutation fares as now in effect. The 50-ride books are sold at a charge of $8.25 between Berkeley and Golden, and between County Line and Golden, resulting in a per trip rate of 16.50 cents, and in a rate per mile of 1.65 cents between Berkeley and Golden and 1.72 cents between County Line and Golden. These rates are considerably lower than the average rate per mile on either the Tramway or Denver & Inter-Mountain line to Golden, the average rate per mile on the former being 1.93 cents and on the latter 2.19 cents. If the average rate of 1.93 cents per mile on the Berkeley-Golden line were selected as the base rate, the charge for a 50-ride book to Golden would be $9.66, or 19.32 cents per trip, an increase of 17 per cent. If the average rate of 2.19 cents per mile on the Denver & Inter-Mountain

Railroad were chosen as the base rate, the charge for a 50-ride book to Golden would be $10.52, or 21.04 cents per trip, an increase of 27.5 per cent.

It is unnecessary to consider at length the theory of counsel for complainants to the effect that the lowest rate that may be found shall be considered prima facie reasonable and thereupon extended over the defendants' lines. In the opinion of the Commission such a theory is untenable. To properly adjust the rate fabric of a carrier it is necessary to determine a reasonable rate upon findings of fact and evidence, and this cannot be done by simply selecting the lowest rate in effect and setting up that rate as a reasonable base rate. The carriers might just as well contend that the highest rate should be selected. Or it might be contended that the average rate should be selected. Any such theory of rate-making is faulty and without foundation.

Methods of rate establishment are proposed in the complaint which, if adopted, would result in the very things against which complaint is made. Complainants state that conditions of transportation are similar between points on each of the defendants' interurban lines; that to remove the alleged unjust and unlawful discrimination the lowest rate per mile shall be ascertained and then applied to the entire line. Inasmuch as the lowest rates on each of the three lines are different the resulting rates predicated on such bases would vary on each of the lines. Transportation conditions on the three interurban lines are similar, at least sufficiently so to permit a comparison of rates. To accept complainants' contentions would be to make effective different rates on the several lines of the defendants under similar transportation conditions.

The Commission has carefully considered the allegations of unjust and unlawful discrimination contained in the complaint. The Public Utilities Act prohibits only such difference in rates as between localities or as between any classes of service as may be "unreasonable." The Commission is of the opinion, and so holds, that there is no undue, unreasonable, unjust or unlawful discrimination in the commutation fares of the defendant companies. As the issues involve discrimination only there is no finding as to the reasonableness of the individual rates. An order will be entered dismissing the complaint.

ORDER.

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

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 24th day of April, 1919.

DECISION No. 247.

IN RE ADVANCE IN ELECTRIC RATES OF THE ROARING FORKS ELECTRIC LIGHT & POWER COMPANY, AT ASPEN, COLORADO.

Investigation and Suspension Docket No. 35.

April 25, 1919.

APPEARANCES: John H. Fry and J. M. Downing for the respondent company; H. W. Clark and J. W. Deane for the city of Aspen.

STATEMENT.

By the Commission:

On January 16, 1919, The Roaring Fork Electric Light & Power Company, hereinafter called the Electric Company, filed with this Commission rate schedule P. U. C. Colo. No. 3, cancelling rate schedule P. U. C. No. 2, by which it was proposed to advance the rates for electric service in the city of Aspen, Colorado, and by which it was further proposed that such rates should become effective on and after February 17, 1919.

It appeared that the Commission should enter upon an investigation and hearing concerning the propriety of the proposed rates, and on February 27, 1919, pending such investigation and hearing and decision thereon, the proposed rates were suspended by order of the Commission until June 27, 1919, unless otherwise ordered by the Commission.

Protest against the proposed increase in rates was filed by Charles Wagner, mayor of the city of Aspen, Colorado. The case came on for hearing in the city of Aspen on March 28, 1919, and the evidence of the statistician and chief engineer of the Com-

mission, and of the bookkeeper and secretary of the Electric Company, was heard. On motion of the attorneys for the city of Aspen, the hearing was continued until April 22, 1919, for the introduction of further evidence. On April 21, 1919, the Commission was notified by the attorneys for protestant, Charles Wagner, mayor of the city of Aspen, and the Electric Company, that a stipulation had been entered into between the Electric Company, the mayor of Aspen, and committee of the Pitkin County Chamber of Commerce, whereby the proposed schedule should be modified, and as modified, become effective May 1, 1919. The order for hearing on April 22, 1919, was therefore vacated.

On April 23, 1919, the following stipulation was filed with the Commission.

Dated Aspen, Colorado, this 21st day of April, 1919.

I. & S. No. 35.

Before the Public Utilities Commission of the State of Colorado.

In re: Matter of the Application of The Roaring Fork Electric Light & Power Company to increase its schedule of rates for lighting, commercial and power purposes.

Stipulation:

It is hereby stipulated and agreed by and between Charles Wagner, as Mayor of the City of Aspen, protestant herein, and The Roaring Fork Electric Light & Power Company, respondent, and their respective attorneys. That a schedule asking for increase rates as filed in the office of the Public Utilities Commission of to-wit: The 17th day of January, 1919, is hereby agreed upon as the schedule of rate to be charged and collected by said Electric Light & Power Company with the amendment and modification thereof in respect to the minimum charge to be made for domestic lighting, which charge shall be One dollar and fifty cents ($1.50) per month, based upon yearly contracts to be made and signed by the consumer, and the further modification that whenever the income from power rentals shall equal or exceed the sum of Three thousand dollars ($3,000.00) per month for three consecutive months; then and in that case the charges to be made and collected for domestic lighting purposes only by said company shall be reduced to conform to the schedule of rates existing and in force prior to January 17th, 1919.

It is further stipulated that your Commission may, and is hereby requested, to enter in the above entitled cause a proper

order in conformity with this stipulation, the same to become effective May 1st, 1919.

It is hereby further stipulated that the order heretofore entered by said Commission setting this matter for further hearing on Tuesday, April 22nd, 1919, may be vacated.

THE ROARING FORK ELECTRIC LIGHT & POWER CO.

DAVID R. C. BROWN,
President.

ATTEST:
C. F. BROWN,
Secretary.

(SEAL)

CHARLES WAGNER,
Mayor of the City of Aspen.

J. M. DOWNING,
Attorney for The Roaring Fork Elec. L. & P. Co.

H. W. CLARK,
Attorney for Protestants.

J. W. DEANE,
Attorney for Protestants.

The above and foregoing stipulation and agreement is hereby approved by the Committee of five (5) members appointed by the Pitkin County Chamber of Commerce to negotiate with The Roaring Fork Electric Light & Power Company for the purpose of settling and adjusting the differences in controversy in this suit.

BENJ. R. KOBEY,
Chairman of the Committee.

E. W. JEWETT,

ROBT. SHAW,

R. J. MORRISON,

JAMES GOULD.

It now appearing that the protestant and the Electric Company have agreed to the foregoing modifications of proposed schedule, and the Commission, having considered the evidence in this case, finds that the schedule P. U. C. Colo. No. 3 should be permitted to become effective May 1, 1919, except as modified by the terms of the above stipulation.

ORDER.

IT APPEARING, That by order dated February 27, 1919, the Commission entered upon a hearing and investigation concerning the propriety of the increases and lawfulness of the rates, charges and regulations stated in schedule P. U. C. No. 3, cancelling schedule P. U. C. No. 2 of The Roaring Fork Electric Light & Power Company, and ordered that the operation of the said schedule be suspended until June 27, 1919.

IT FURTHER APPEARING, That an investigation of the matters and things involved has been had, and a stipulation has been entered into by the protestant and the respondent company, as above set forth.

IT IS ORDERED, That the order heretofore entered in this proceeding suspending the operation of the said schedule be, and it is hereby, vacated and set aside as of May 1, 1919, except as to the minimum charge contained on original sheet No. 3 thereof.

IT IS FURTHER ORDERED, That the respondent, The Roaring Fork Electric Light & Power Company, be, and it is hereby, required to cancel, on or before May 1, 1919, its proposed minimum charge of $2.00 per month for domestic lighting contained on original sheet No. 3 of its schedule Colo. P. U. C. No. 3.

IT IS FURTHER ORDERED, That the respondent, The Roaring Fork Electric Light & Power Company, be, and it is hereby, allowed and permitted to publish and make effective May 1, 1919, a minimum charge of $1.50 per month for domestic lighting to be based on yearly contracts made and signed by the consumer.

IT IS FURTHER ORDERED, That the respondent, The Roaring Fork Electric Light & Power Company, be, and it is hereby, required to incorporate in its schedule of rates a clause providing that whenever the income from power rentals shall equal or exceed the sum of $3,000.00 per month for three consecutive months, the charges to be made and collected for domestic lighting only shall be reduced to conform to the schedule of rates for domestic lighting as contained in its schedule Colo. P. U. C. No. 2.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 25th day of April, 1919.

DECISION No. 248.

THE GOLDEN CYCLE MINING AND REDUCTION COMPANY

v.

THE COLORADO SPRINGS LIGHT, HEAT & POWER COMPANY.

Case No. 157.

May 3, 1919.

Denial of Rehearing.

STATEMENT.

By the Commission:

On February 19, 1919, an order was issued by the Commission in the above entitled cause dismissing the complaint. On April 14, 1919, an application for rehearing was filed by the complainant praying that the order of dismissal be set aside and that an order be issued by the Commission as prayed for in the complaint. It is unnecessary to herein set forth the grounds relied upon by complainant as justification for rehearing. The application for rehearing was filed under section 51 of the Public Utilities Act (Laws, 1913, ch. 127.)

Section 51, in part, reads as follows:

"Section 51. After any order or decision has been made by the commission, any party to the action or proceeding or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in said action or proceeding and specified in the application for rehearing, and the commission may grant and hold such rehearing on said matters, if in its judgment sufficient reason therefor be made to appear. No cause of action arising out of any order

or decision of the commission shall accrue in any court to any corporation or person unless such corporation or person shall have made, before the effective date of said order or decision, application to the commission for a rehearing. * * *"

Section 46 of the Public Utilities Act provides that an order entered by the Commission in proceedings initiated by complaint against a corporation or person conducting a public utility shall, of its own force, take effect and become operative twenty days after the service thereof, unless otherwise provided. The order in this cause was issued February 19, 1919, and became effective, therefore, twenty days thereafter. Under the provisions of the act just cited the complainant had twenty days subsequent to February 19, 1919, or until March 11, 1919, in which to file application with the Commission for rehearing.

It is clearly apparent that the application for rehearing has not been filed as required by the statute under which the Commission operates and should be denied. Failing to comply with the Public Utilities Act the application for rehearing must be denied and dismissed. Except for one or two changes in minor wording, Section 51 of the Public Utilities Act of Colorado corresponds to Section 66 of the Railroad Commission Act of California, and section 46 of the Colorado act likewise corresponds to Section 61 (a) of the California statute. The Supreme Court of California has held that the Railroad Commission of California must dismiss an application for rehearing if not made prior to the effective date of the order in question. Clemmons v. Railroad Commission, — Cal., — 159 Pac. 713, P. U. R. 191F, 469.

The Commission also is of the opinion that the application for rehearing should be denied even though the complainant had filed his application for rehearing within the time permitted by the Act. An order will be issued denying the application.

ORDER.

IT IS THEREFORE ORDERED, That the application of the complainant for rehearing in this cause be, and the same is hereby, denied.

LEROY J. WILLIAMS,
(SEAL) A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 3rd day of May, 1919.

DECISION No. 249.

THE FARMERS ELECTRIC & POWER COMPANY,

v.

THE TOWN OF AULT, COLORADO.

Case No. 167.

May 6, 1919.

APPEARANCES: H. E. Churchill for the complainant; Lilyard & Simpson for the defendant.

ORDER OVERRULING DEMURRER TO COMPLAINT.

By the Commission:

On January 22, 1919, complainant filed its complaint with the Commission, the material allegations of which are as follows: That complainant is an electrical corporation organized and doing business under the laws of the State of Colorado and is engaged in distributing and furnishing electrical energy for general lighting and power purposes to individuals, corporations and associations in the town of Ault and adjacent territory; that the defendant is a municipal corporation organized and incorporated under the general laws of the State of Colorado for the incorporation of towns and municipalities; that the complainant at all times has conducted and operated its electrical lighting system under the provisions of the statute creating this Commision and all laws incident thereto, and at all times has submitted itself to the jurisdiction of the Commission; that its plant and property now has

an actual value of over $100,000.00; that it has issued and outstanding approximately $21,000.00 of its paid-up capital stock, which is owned by citizens of the State of Colorado; that it has outstanding a bonded indebtedness of more than $65,000.00; that complainant is now operating and has for many years last past operated under a franchise granted to it by the defendant, the town of Ault; that complainant's plant in the town of Ault is a part of its general system, and if the defendant municipality should for any reason prevent complainant from operating its said plant and furnishing the citizens of the town of Ault with electricity, complainant will be prevented from carrying on its function as a public utility.

The complainant further alleged that the defendant for several weeks last past had been and at the time of filing the complaint was then engaged in constructing an electric light plant and system within the limits of said town of Ault, with the declared intention and purpose of erecting, installing, operating and maintaining an electric system for the purpose of furnishing electrical energy for lighting and other purposes to said town and for the purpose of operating and maintaining in said town a public utility, selling to the inhabitants of said town electrical energy for lighting and power purposes; that notwithstanding said defendant municipality has heretofore commenced construction and installation of said electric system, defendant has wholly failed to apply for and obtain from this Commission a certificate of public convenience and necessity as required by law; that said defendant has not submitted to the vote of the people of the town of Ault the question of whether or not the said town shall construct and operate said system, neither has it passed any ordinance therefor.

The complainant prays that this Commission make and enter and order prohibiting defendant from constructing or continuing to construct an electric light system in the town of Ault, and that it make and enter an order prohibiting said municipality from constructing, operating or maintaining any electric light system until said municipality shall have applied to the Public Utilities Commission and obtained a permit so to do, and that the Commission make and enter such other orders as are necessary and rightful in the premises.

On the 1st day of February, 1919, the defendant, appearing specially therefor, filed its demurrer to the complaint, the material allegations of which are as follows: (1) That the defendant

being a body politic and corporate, the Public Utilities Commission of the State of Colorado is without authority or jurisdiction to hear or determine any matters of complaint set forth by complainant in its complaint, and is without authority or jurisdiction to enter, render or enforce any order as against the defendant, in that any such action would be contrary to the provisions of the constitution of the State of Colorado, and especially would contravene the provisions of Section 35 of Article V of the constitution of the State of Colorado; (2) That any such action by the Public Utilities Commission would also contravene the provisions of Section 25 of Article 11 of the constitution of the State of Colorado; (3) That any such action by said the Public Utilities Commission would also contravene the provisions of Section 1 of Article XIV of the constitution of the United States of America.

The complainant and defendant filed briefs herein, and argument upon the demurrer was heard on the 24th day of March, 1919. The principal point urged by the defendant is that the legislature could not confer on this Commission jurisdiction to interfere and regulate or control municipally-owned public utilities, for the reason that the legislature is prohibited from conferring such jurisdiction by the constitutions of the State of Colorado and of the United States.

Section 3 of the Public Utilities Act, approved April 13, 1913, provides as follows:

> "The term public utility,' when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, person or municipality operating for the purpose of supplying the public for domestic, mechanical or public uses, * * *."

It will be noted that a municipality is particularly mentioned in this section and is classed as a public utility.

Section 35 of the Public Utilities Act, as amended, and effective July 16, 1917, reads as follows:

> "No public utility shall henceforth begin the construction of a new facility, plant or system, without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction; * * * provided, further, that

> if any such public utility, in constructing or extending its line, plant or system, shall interfere or be about to interfere with the operation of the line, plant or system of any other public utility already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order prohibiting such construction or extensions or prescribing such terms and conditions for the location of the lines, plants or systems affected as to it may seem just and reasonable."

The Commission has given careful consideration to the issues herein raised by defendant's demurrer and has also carefully considered the brief of the defendant herein. The above statutes were passed by the legislature to govern the actions of the Commission and to define its jurisdiction, and they have never been repealed or declared unconstitutional by any court. They are plain and unambiguous and clearly define the duties of the Commission thereunder. There can be no doubt in the mind of the Commission as what the intentions of the legislature were. If the Commission had any doubt as to the constitutionality of this law and the amendment thereto, the Commission would still be without jurisdiction to declare the same unconstitutional or void.

Section 1 of Article VI of our state constitution, as amended, and effective January 22, 1913, reads as follows:

> "Section 1. The judicial power of the state as to all matters of law and equity, except as in the constitution otherwise provided, shall be vested in a Supreme Court, District Courts, County Courts, and such other courts as may be provided by law. * * * None of said courts except the Supreme Court shall have any power to declare or adjudicate any law of this state or any city charter or amendment thereto adopted by the people in cities acting under Article XX hereof as in violation of the Constitution of this state or of the United States; * * *."

This Commission is, therefore, without jurisdiction to pass upon the constitutionality of any part of the Public Utilities Act, and until the Supreme Court has had an opportunity to pass upon the same, the Commission cannot refuse to perform the duties therein imposed.

Commissions have refused to assume jurisdiction in cases where, in their judgment, the Act itself did not confer the jurisdiction which it was urged that they assume. However, in this case the law is plain, simple and mandatory and points out the duties of the Commission and the Commission must assume them. The constitutionality of the law itself is a question to be decided by the Supreme Court.

ORDER.

IT IS THEREFORE ORDERED, That the demurrer of the defendant to the complaint filed herein be, and the same is, hereby overruled. The defendant is allowed fifteen days to file its answer to the complaint herein.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 6th day of May, 1919.

DECISION NO. 250.

THE BURLINGTON GAS & ELECTRIC COMPANY,

v.

THE TOWN OF BURLINGTON, THE THOMAS S. HAYDEN REALTY COMPANY, INTERVENOR.

Case No. 165.

May 14, 1919.

APPEARANCES: Wm. R. Eaton, Esq., of Denver, for complainant; Louis Vogt, Esq., of Burlington, Colorado, for defendant; John W. Sleeper, Esq., of Denver, for intervenor.

STATEMENT.

By the Commission:

On December 24, 1918, the complainant, The Burlington Gas & Electric Company, a corporation, filed its complaint before the Commission against the town of Burlington, a municipal corporation of this state in Kit Carson County, alleging, inter alia, that the defendant town granted to the complainant on the 31st day of March, 1914, a franchise for the purpose of supplying gas and electricity, either or both, to said town and its inhabitants for a period of 20 years; that thereafter and within the time limited by said franchise, complainant constructed and installed at a cost of about $20,000.00 a plant or facility of sufficient size and capacity

to supply said town and its inhabitants with acetylene gas for lighting and heating purposes, and that it operated said acetylene gas plant from the time of its installation in 1914 and until the month of October, 1917, and enjoyed the proceeds and benefits of its said franchise.

It is further alleged that in the year 1917 the defendant town constructed and installed and on October 2, 1917, begun to operate a plant or facility with which said town and its inhabitants were furnished electricity for lighting and power, without first having applied for and received a certificate of public convenience and necessity therefor from this Commission, as required by subdivision (b), section 35, chap. 110, Session Laws of Colorado, 1917, effective July 16, 1917; and that such electric light plant or facility was installed by said town without any franchise, permit, ordinance, vote or other authority of said town, in violation of the provision of said subdivision (b).

Complainant further alleges that said town obtained the funds with which said electric light plant was installed through the sale of water bonds issued by the authorities of said town for the purpose of making extensions and improvements to the water system of said town, and without compliance with any requirement of the constitution or statutes of the State of Colorado pertaining to the construction or erection of a plant or facility for light, heat or power purposes; and that the officers of said town deliberately evaded the requirements of the constitution and statutes of Colorado in that regard, including the provisions of the Public Utilities Act, chap. 110, Session Laws of 1917, page 418, and diverted the funds obtained from the sale of water works extension bonds from the purpose for which said funds were to be applied, to the installation of an electric light plant or facility for said town, which, it is charged, is an illegal and void procedure; that such electric plant so installed and operated in said town is in direct competition with the business conducted by complainant and of the rights conferred upon complainant by the franchise granted to it by said town, and the act of the defendant town in the construction and operation of said electric light plant is highly detrimental to the business and investment of complainant in the operation and maintenance of its said acetylene gas plant and system. Complainant prays that the Commission issue its order restraining said town from further operation of its electric light plant or facility, and for such other relief as may appear or the Commission to be proper in the premises.

On January 15, 1919, the defendant town filed a demurrer to the complaint and on the same date filed its answer to said complaint. The answer admits the granting by it to complainant on March 31, 1914, of the franchise alleged in the complaint, and alleges that complainant has never funished, and does not furnish, electicity to said town and its inhabitants, and that said franchise in section 10 thereof provides that it shall not be deemed an exclusive franchise. The answer further alleges that the acetylene gas plant of complainant is not of sufficient size or capacity to meet the needs of the defendant town and its inhabitants, and that the service furnished by complainant has been unsatisfactory to the defendant and its inhabitants. Defendant charges that complainant knew prior to Januay 1, 1917, that the electric light plant of said town as completed by it October 1, 1917, was being contemplated, and that complainant was fully cognizant of the erection and construction of said electric light plant at all times.

Defendant town further alleges that it commenced the construction of its said electric plant or facility in December, 1916, and continued the construction thereof until its completion in October, 1917, when it began to supply electricity to itself and inhabitants; but denies that it then or ever furnished electricity in competition with complainant, and alleges that complainant never sold electricity to any person or at all. Defendant admits that it has continued to use and furnish electricity for light and power purposes, but denies that same was done in violation of the franchise granted complainant or of the laws and constitution of this state.

For a further and second defense, the defendant alleges that it has expended large sums of money in the erection and construction of its electric light plant or facility with the full knowledge of, and without objection or complaint being made thereto by the complainant, and that if complainant ever had the right to complain or object to the construction of the electric light facility by said town, and to the town furnishing electricity to itself and its inhabitants, it is estopped and cannot now complain, for the reason that the complainant has been guilty of laches and should have made objection and attempted to prevent the erection and construction of said electric light plant by said town, before the town had expended the moneys necessary for the completion of said electric light plant; and it prays that the complaint be dismissed, and for other proper relief.

The case was set for hearing, and was heard, by the Commission on the 14th and 15th days of March, 1919, at Burlington, Colorado, at which time The Thomas S. Hayden Realty Company asked leave to file its petition in intervention, wherein it is alleged that the Hayden Company is the owner of bonds of the complainant gas and electric company to the amount of $6,000.00, acquired about the time the acetylene gas plant was constructed in 1914, and is interested in the outcome of these proceedings, for the reason that if such municipality be permitted to continue to operate its electric light plant, intervenor's investment in said bonds will become a total loss, and it asks that it be permitted to adopt the pleadings of said complainant as its own, and join with complainant in asking for the relief prayed for in its complaint.

The Commission allowed the petition in intervention to be filed, and made a part of this case, and overruled the demurrer of defendant to the complaint.

At the hearing, a large amount of testimony was taken and heard, both oral and documentary, much of which is immaterial and irrelevent to a decision of this case in the view of it taken by the Commission. As disclosed by the record, the town of Burlington on March 31, 1914, granted complainant a franchise for the erection and construction of "a plant or plants and works for the manufacture and generation of gas and electricity, either or both, for illuminating, heating and power purposes" within the said town for a period of 20 years, which franchise expressly provides that it shall not be construed to be exclusive. In pursuance thereof, complainant constructed and installed an acetylene gas plant, only, and began to furnish acetylene gas to said town and its inhabitants under the terms imposed by said franchise ordinance, complainant's Exhibit 1.

In December, 1916, the board of trustees of said town began the preliminary steps necessary to the issuance and negotiation of its coupon bonds in the amount of $15,000.00 for the purpose of the construction, extension and improvement of its system of water works, which chiefly consisted of the installation of a new engine, pump house and pumping plant; the pumping to be done with electricity, the then existing gasoline pumping apparatus having become inadequate for the purpose. On January 5, 1917, Ordinance No. 135 was passed by said board of trustees, pursuant to a resolution of said board passed December 16, 1916, in that regard, authorizing the issuance and sale of the negotiable coupon bonds

of the town in the sum of $15,000.00 for the purpose aforesaid, and such bonds were soon thereafter issued and sold. With the funds thus derived, or to be derived, the town authorities entered into contracts with sundry concerns for the construction and installation of an electric pumping plant and selected a site for the location of its electric power house. The testimony discloses that in the month of December, 1916, some of the citizens of said town, as well as members of the board of trustees, began to discuss and consider the feasibility and practicability of using the surplus electric energy of the pumping plant to supply electricity to the town and its inhabitants, with the result that the contracts made by the town for the electric pumping plant in the latter part of December, 1916, included, also, various electric apparatus for such electric light plant or facility. Poles, wire, cross arms, light posts for street lighting and various other appliances were contracted for by said town for the proposed electric light plant in the early winter and spring of 1917, so that practically all of the appliances needed for the construction of the light plant had been ordered and much of it delivered at Burlington prior to July 1, 1917, and the electric light plant was completed and began operations on October 2, 1917.

No steps whatever were taken by the complainant company to test the regularity or legality of the defendant's acts until December 24, 1918, when it filed its complaint before this Commission in this proceeding. Indeed, the president and manager of the complainant company testified that he had no knowledge, nor could he obtain information, of the defendant's acts in the construction of said electric light plant until October 1, 1917, when he was notified by the town officials to cease furnishing gas to the town, and on the next day, October 2, 1917, the town began to furnish itself and its inhabitants with electric light, though he was in the town of Burlington several days of each month of 1917.

The record discloses, and it is practically conceded by the defendant town, that no authority was ever given for the construction of said light plant in conjunction with the erection or construction of the town's electric pumping plant, other than the authority of the board of trustees in entering into the contracts aforesaid and in providing for the installation of such electric light plant or facility in connection with the construction of the town's electric pumping plant, and that the funds for the construction of the electric light facility were a part or portion of the proceeds derived from the sale of the town's water works extension bonds.

Complainant assails the legality and validity of the act of the defendant town in thus diverting a portion of the moneys of the water works extension fund to the purpose of constructing and installing an electric light plant, facility or system.

At the conclusion of the hearing, the Commission requested that it be advised whether or not the Commission has the power and authority under the act creating it to pass upon the legality of the action of the defendant town in thus using the funds derived for water works extensions for another and different purpose, to-wit, the construction of an electric light plant, and all parties were given time within which to file briefs covering this and other questions presented by the record. The only authority cited is the case of Sandpoint Water & Light Co. v. Humbird Lumber Co., P. U. R. 1918B, 535-540, cited by complainant; but that case is not in point. It arose under the Public Utilities Act of Idaho which was passed in 1913. Subsequently, the Idaho Commisison fixed rates for water to be charged to the inhabitants of said City of Sandpoint, which rates became effective November 1, 1915. Before the adoption of the public utilities act in Idaho, the lumber company had installed its own water plant and system, and subsequent to the effective date of said order, to-wit, on December 16, 1916, the lumber company began furnishing water to the Northern Pac. Ry. Co. in the City of Sandpoint, under contract of that date at rates lower than the rates fixed by the Commission to be charged consumers by the water company in said Commission's order of November 1, 1915. The Idaho Commission rightly held that the lumber company was subject to the Utilities Act in furnishing water to a consumer of the City of Sandpoint, and that it was in direct competition with the existing water utility in so doing. The Commission restrained and enjoined the lumber company from continuing such practice. No such question is presented here.

The Commission rates a decision of this question, therefore, upon the principle announced by this Commission in the case of Western Light & Power Co. v. City of Loveland, 5 Colo. P. U. C. ——, P. U. R. 1918B, 644, that it is without power to adjudicate the above question, that being for the courts to decide, and until a court of competent jurisdiction has decided such acts of the defendant town to have been illegal, the Commission will presume such acts valid. See also *In re* Application Southern Sierras Power Co., 2 Calif. R. R. Com., 647; Crescent City L. W. & P. Co. v. Keller, 6 Calif. R. R. Com., 847.

The next question presented by complainant is that defendant town failed to apply for and obtain a certificate of public convenience and necessity from this Commission under the requirements of subdivision (b), Section 35, Chapter 110, Laws of 1917, which became effective July 16, 1917. Complainant's contentions in this respect are two-fold, viz., that defendant constructed and installed its electric light system without any "franchise, permit, ordinance, vote or other authority" so to do, and second, that the statute requiring a certificate of public convenience and necessity is to be applied to the date of the completion and use of the utility, and not as to the date the construction thereof was begun. Complainant contends that, it being admitted that defendant's electric light plant was not completed and electricity generated thereby until October 2, 1917, two and one-half months subsequent to the effective date of the Act, to-wit, July 16, 1917, it follows that the defendant proceeded unlawfully and directly in violation of said subdivision (b).

On the other hand, it is the contention of the defendant that the construction of the electric plant was authorized by the board of trustees of defendant town, and that construction of the plant was begun in December, 1916, or at least in the late winter and early spring of 1917, several months before the effective date of the 1917 statute. Therefore, defendant asserts, it was not necessary to obtain a certificate of public convenience and necessity, and its actions were not in violation of said law, for that the law was not in effect until months after it had let its contract for said electric light plant and started the actual work of construction thereof.

The Commission is clearly of the opinion that the evidence amply establishes the fact that the work of construction of said electric light plant was begun, and the machinery and appliances for such plant were ordered and much of it delivered at Burlington, some months before July 16, 1917, the effective date of the 1917 statute. That being true, and bearing in mind the language of the 1917 statute insofar as it is germane to this discussion, the Commission will take up contentions of complainant in the order stated.

That part of subdivision (b) aforesaid deemed pertinent to this discussion reads as follows:

> "Provided, that when the commission shall find, after hearing, that a public utility has heretofore begun actual con-

struction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise, permit, ordinance, vote or other authority heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege."

The language of the statute above quoted clearly answers both of the contentions so ingeniously argued by counsel for complainant. The case made by the statute plainly contemplates a public utility project that *at the time of the hearing* is in course of construction and not actually completed. In the case at bar, the hearing was had on March 14 and 15, 1919, upon complaint filed on December 24, 1918, while the evidence shows, and it is conceded by both complainant and defendant, that the electric light plant or system of defendant was completed on October 1, 1917, and electric energy supplied thereby on October 2, 1917,—about 15 months prior to complaint filed, and about a year and a half prior to the hearing. Here is a utility begun before the law became effective and fully completed and in operation many months before complaint is made and a hearing had thereupon by this Commission, and the Commission, therefore, holds that the statute does not apply to the particular facts of this case. But, for the sake of argument, let it be supposed that subdivision (b) of the Act of 1917 was applicable to this case. It then appears by the undisputed testimony that the actual work of construction of the electric light plant in question was begun long before July 16, 1917, the effective date of the Act, and that in view of general conditions and the difficulties of procuring machinery, appliances and supplies, caused by the country then being in a state of war, of which fact this Commission will take judicial notice, aside from the testimony to that effect in the record, the Commission is clearly of the opinion that such work of construction was prosecuted by the defendant town "in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking," in complete harmony with the provisions of said subdivision (b), and no certificate of public convenience and necessity was required. It follows, therefore, that complainant is not entitled to the relief prayed of this Commission, if either of the above views is adopted

in the construction and application of the statute to the facts of this case. Western L. & P. Co. v. City of Loveland, *supra.*

Nor can the Commission agree with the other position of complainant, that the date of completion and use of the utility is the date contemplated by the framers of the statute to apply to the construction and installation of a public utility project, requiring procurement of a certificate of public convenience and necessity. The language of the statute is so clearly opposed to the construction contended for by complainant that argument would seem to be unnecessary.

The Commission is of the opinion also that the defense of laches pleaded by defendant, is entitled to some consideration and is an additional reason why complainant is not entitled to the relief sought at the hands of the Commission. Complainant might have sought relief from the alleged illegal acts of the defendant town had it begun in apt time a proceeding before a tribunal having jurisdiction; but to procrastinate until more than a year subsequent to the completion by defendant of its electric light plant or system and until after defendant had expended the money necessary therefor, before taking any steps to question the right of defendant to do what it did do, contravenes those well established principles of law and equity that require one whose rights are being invaded to be alert and vigilant in invoking the law's protection. True, the president and manager of complainant company testified, as has been said, that he had no knowledge of the purpose of defendant town to construct and install an electric system until his company was notified by defendant on October 1, 1917, to cease furnishing acetylene gas to said town; but it is also true that he testified that he was in said town as often as once a month during 1917, prior to October 1 of that year, on business for his company, and just why he could not ascertain that the town had under construction its electric light plant, when the evidence shows that poles were set, wires strung thereon and other work of construction plainly to be seen by one who cared to see, is not clear to the Commission. The Commission, however, is clear upon the point that said manager was not justified in wilfully failing to see that which was plainly visible to any one. "None is so blind as he who will not see" might properly be the attitude of said manager under the evidence in this case, and whether as a matter of fact he saw or knew of the defendant town being engaged in the construction of such electric light plant is really unimportant, when the cir-

cumstances are such that, by the exercise of ordinary prudence and diligence he could have acquainted himself with that fact.

With respect to the contention of defendant that in furnishing electricity to itself and its inhabitants it is not and was not in competition with complainant in furnishing acetylene gas to the citizens of Burlington under complainant's franchise, because of the dissimilarity of the respective agencies employed for lighting and power purposes, the Commission does not deem it necessary to decide, though it presents a novel question and one by no means free from doubt.

ORDER.

IT IS THEREFORE ORDERED, By the Public Utilities Commission of the State of Colorado, and said Commission upon due consideration, and now being sufficiently advised, does find, that the complainant, The Burlington Gas & Electric Company, is not entitled to the relief prayed, and therefore its complaint filed herein against the defendant town of Burlington shall be, and hereby is, dismissed.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 14th day of May, 1919.

DECISION No. 251.

IN RE PROPOSED DISCONTINUANCE OF SERVICE BY THE DENVER, BOULDER & WESTERN RAILROAD COMPANY, REMOVAL OF ITS TRACKS AND WITHDRAWAL FROM THE PUBLIC SERVICE.

Application No. 12.

May 27, 1919.

STATEMENT.

By the Commission:

On March 28, 1919, The Denver, Boulder & Western Railroad Company, a Colorado corporation, filed its notice with the Public Utilities Commission of the State of Colorado, wherein it gave notice to the Commission and to the public that on the 1st day of May, 1919, it would permanently discontinue service, both freight and passenger, over its line of railroad, and thereafter surrender its charter, take up its tracks, dismantle its property and dispose of the same; giving in said notice the reasons therefor that under present conditions said railroad could not be operated so as to pay its operating expenses and taxes, and that it had not for the last two years been able to earn its operating expenses and taxes, and it had not been able to earn said expenditures since the order of this Commission dated December 26, 1917, Decision No. 149, Application No. 12.

The Commission gave notice of the filing of the above notice or application to the people of Boulder through the newspapers of said city, with the result that on April 10, 1919, there was filed before the Commission a protest in the above entitled matter by a

number of interested parties by their attorney against the proposed discontinuance of said railroad service, the Commission in the meantime having notified the railroad company that it should continue its service until the notice or application should be heard by the Commission.

On November 24, 1917, the above railroad company filed its notice or application before this Commission for the idential purpose, same being Application No. 12 of the records of this Commission.

Thereafter a hearing was had on said application, evidence taken and on December 26, 1917, the Commission rendered its decision No. 149, which denied the application to discontinue service and ordered that the railroad company continue to operate its lines in accordance with the rules, regulations and tariffs on file with the Commission, and in accordance with the increases in rates granted by the Commission in Case No. 140, until the further order of this Commission.

The second paragraph of the protest as aforesaid reads as follows:

> "That this Honorable Commission ought not consider or hear any original proceeding or notice to discontinue operation as filed by said Denver, Boulder & Western Railroad Company, until said railroad company shall have procured a rehearing upon proper showing of its original Application No. 12 and of the decision of this Honorable Commisison No. 149, which now remains in full force and effect. That by reason of the premises, the said notice filed herein March 28, 1919, is a nullity and ought to be stricken from the records of this Honorable Commission."

The protestants thereby questioned the method of procedure of the railroad company in filing the aforesaid notice of its proposed discontinuance of service on May 1, 1919, which matter was set down for hearing upon the 23rd day of May, 1919, at the hearing room of the Commission, Capitol Building, Denver, Colorado.

Mr. John R. Wolff of Boulder appeared for the protestants, and Mr. J. Q. Dier of Denver appeared for the railroad company, and the matter was heard by the Commission upon said date upon the matters embraced in the second paragraph of the protest as filed.

The matter involves a question of procedure merely, and so far as the Commission is advised, it is a matter of first impression before it. While the Commission would undoubtedly have a right to treat the notice as an application for the reopening of the prior case, Application No. 12, yet it is thought best to establish a rule to serve as a precedent for the guidance of future cases of this kind. The Commission has carefully considered the argument and reasons advanced by both parties, and has concluded that in view of the fact that the railroad company made a prior application to discontinue service, dismantle its property and dispose of the same, which upon hearing had been denied by the Commission under its Decision No. 149, it would be a more logical procedure were the railroad company to make application by formal petition or otherwise to reopen its Application No. 12, setting forth therein such new matters as have arisen since the former decision, as in its judgment would warrant the Commission in reopening and reconsidering said matter, and ask that the decision rendered in said application be set aside and permission be granted to it now to discontinue its service, withdraw its tariffs, dispose of its property and cease to operate its line of railroad. This conclusion is reached from a consideration of all facts of record, as well as of the further fact that the matters embraced in the prior hearing will necessarily be considered in any further hearing had upon the application of the railroad company to cease its operations.

ORDER.

IT IS THEREFORE ORDERED, By the Public Utilities Commission of the State of Colorado, that motion of protestants as set forth in the second paragraph of its said protest be sustained, and that The Denver, Boulder & Western Railroad Company shall have time, and five days from this date, within which to file its petition to reopen its original Application No. 12 and ask for a reconsideration and redetermination of Decision No. 149.

IT IS FURTHER ORDERED, That protestants in the protest filed shall within ten days from the service of this order upon their said attorney file an answer to said petition, or in lieu thereof, they may elect to treat the protest filed herein as an answer to such petition of said railroad company.

IT IS FURTHER ORDERED, That by agreement of counsel had with this Commission on May 23, 1919, this matter shall be heard before the Commission at its hearing room, Capitol Building, Denver, Colorado, at 10 a. m. on Monday, the 16th day of June, 1919, without further or any notice of any kind being served.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 27th day of May, 1919.

DECISION NO. 252.

THE BRECKENRIDGE CHAMBER OF COMMERCE,

v.

THE COLORADO & SOUTHERN RAILWAY COMPANY.

Case No. 37.

May 27, 1919.

STATEMENT.

By the Commission:

In the above entitled cause, brought by complaint September 1, 1915, an order was entered by the Commission on October 20, 1915, requiring the defendant carrier to maintain and operate a through passenger train service daily except Sunday, and a through freight service at least three days each week, in each direction, between Denver and Leadville, via Como and Breckenridge.

On May 22, 1919, there was filed with the Commission a stipulation entered into by the complainant and defendant, whereby complainant and defendant requested the Commission to modify its order of October 20, 1915, so as to permit a reduction in the freight train service to two trains each way each week. No change is proposed in the passenger train service. The stipulation recites that present conditions warrant the proposed change in service, but it is provided in the stipulation that neither complainant nor defendant shall be required to produce any evidence concerning the matters and things set forth. It is further stipulated that either party may at any time in the future file a petition for modifiication of the orders of the Commission in the cause, and that upon demand by

the complainant by resolution duly and regularly passed the defendant will immediately restore service provided prior to the stipulation. The rights of neither party are waived or prejudiced by the stipulation.

The Commission is of the opinion that an order should be entered in conformity with the filed stipulation, without prejudice to the rights of the complainant or defendant.

ORDER.

IT IS THEREFORE ORDERED, That the order of the Commission entered October 20, 1915, in this cause be, and the same is hereby, modified and amended to read as follows:

It Is Therefore Ordered, That the defendant, The Colorado & Southern Railway Company, be, and it is hereby, notified and directed, on or before June 1, 1919, and until further order of the Commission, to maintain, operate and conduct a through freight train service from Denver to Leadville, and from Leadville to Denver, via Como and Breckenridge, at least two days each week.

It Is Further Ordered, That the defendant, The Colorado & Southern Railway Company, be, and it is hereby, notified and directed, on or before June 1, 1919, and until the further order of the Commission, to maintain, operate and conduct a through and exclusive passenger train service daily except Sunday from Denver to Leadville, and from Leadville to Denver, via Como and Breckenridge.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 27th day of May, 1919.

DECISION No. 253.

THE GOLDEN CYCLE MINING & REDUCTION COMPANY,

v.

THE COLORADO SPRINGS LIGHT, HEAT & POWER COMPANY.

Case No. 157.

May 28, 1919.

Withdrawal of Denial of Rehearing.

STATEMENT.

By the Commission:

WHEREAS, On May 3, 1919, an order was made in the above case denying the application of complainant for rehearing, and on May 27, 1919, a stipulation was filed in this case by the parties hereto as follows:

"1. That the opinion, decision and order of the Honorable Commission made and given under date of May 3, 1919, whereby a rehearing of this cause was denied, may be withdrawn and for all purposes shall be treated as though never made and given.

"2. That upon an order being entered withdrawing said opinion, decision and order, the complainant may file an affi-

davit or affidavits in support of its motion for rehearing of this cause filed by it April 14, 1919, as to the facts of service upon it of a certified copy of the Commission's decision in this cause made and given under date of February 19, 1919, to which said motion for rehearing is addressed."

Now, therefore, upon consideration of said stipulation,

IT IS ORDERED, That the order of this Commission made on May 3, 1919, be, and the same is hereby, withdrawn and for all purposes is treated as though never made and given.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 28th day of May, 1919.

DECISION NO. 254.

THE GOLDEN CYCLE MINING & REDUCTION COMPANY,

v.

THE COLORADO SPRINGS LIGHT, HEAT & POWER COMPANY.

Case No. 157.

May 28, 1919.

Denial of Rehearing.

STATEMENT.

By the Commission:

On February 19, 1919, an order was issued by the Commission in the above entitled cause dismissing the complaint. On April 14, 1919, an application for rehearing was filed by the complainant praying that the order of dismissal be set aside and that an order be issued by the Commission as prayed for in the complaint. On May 27, 1919, an affidavit was filed on behalf of complainant in support of its motion for rehearing.

The Commission now being fully advised in the premises is of the opinion that the petition for rehearing should be denied.

ORDER.

IT IS THEREFORE ORDERED, That the petition for rehearing filed with the Commission on April 14, 1919, by The Golden Cycle Mining & Reduction Company, be, and it is hereby, denied.

LEROY J. WILLIAMS,
(SEAL) A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 28th day of May, 1919.

DECISION No. 255.

IN THE MATTER OF THE APPLICATION OF D. C. CONVERSE FOR THE OPENING OF A PUBLIC HIGHWAY CROSSING OVER THE TRACKS OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD, IN WELD COUNTY, COLO.

Application No. 38.

June 13, 1919.

STATEMENT.

By the Commission:

This proceeding arises upon the application of D. C. Converse, in compliance with Section 29 of the Public Utilities Act of Colorado as amended April 16, 1917, for the opening of a public highway crossing at grade over the tracks of the Chicago, Burlington & Quincy Railroad on the section line between Sections 20 and 29, Township 1 N., Range 65 W., Weld County, Colorado.

An investigation into the necessity for the opening of a public highway crossing at this point was made by the Commission's engineer on February 27, 1919. He found, and so reported to the Commission, that in this vicinity there are two private crossings used more or less as public highways, one on the line between Sections 20 and 21 and one on the line between Sections 20 and 29, the last mentioned being that which applicant requests be opened as a public highway crossing; that inasmuch as these crossings are within one-half mile of each other, it would be reasonable if one were made a public crossing and the other closed, or at least made

a strictly private crossing. In his report the engineer recommended that a public highway crossing be opened on the line between Sections 20 and 21, rather than on the line between Sections 20 and 29, as requested by applicant. In suport of his recommendation that a crossing be located at this point he gave the following reasons: It equally divides the distance between existing crossings; it furnishes a direct route to Hudson for ranchers living east of the railroad tracks; it affords an unobstructed view of approaching trains, while at the point of the proposed crossing between Sections 20 and 29 the view of westbound trains would be obstructed to highway traffic approaching the crossing from the east by a small hill.

At a meeting of the Board of County Commisisoners of Weld County, held at Greeley March 4, 1919, and at which this Commission was represented by Charles D. Vail, its railway engineer, it was agreed that only one of the two crossings mentioned above should be opened as public highway crossings. On April 5, 1919, a further inspection of the two sites proposed for the crossing was made by Commissioner J. W. Birkle of the County Board of Weld County and Commissioner Grant E. Halderman and Engineer Vail on behalf of this Commission. Final agreement was reached for the opening of a public highway crossing on the line between Sections 20 and 21 (the county to do the grading and the railroad to do the crossing, cattle guards and fence work); and that a private crossing be established for the use of land owners at a point contiguous to the present crossing on the line between Sections 20 and 29, aforesaid.

ORDER.

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of the Public Utilities Act of Colorado as amended April 16, 1917, a public highway crossing at grade be, and the same is hereby, permitted to be opened and established on the section line between Sections 20 and 21, Township 1 North, Range 65 West, Weld County, Colorado, where such section line intersects the main line of the Chicago, Burlington & Quincy Railroad.

IT IS FURTHER ORDERED, That the crossing at the point above described be constructed in accordance with plans and specifications prescribed in the Commission's order in *Re* Improvement of Grade Crossings in Colorado, 2 Colo. P. U. C. 128.

IT IS FURTHER ORDERED, That the Chicago, Burlington & Quincy Railroad shall open and establish said crossing and shall bear the expense necessary thereto, except that the County of Weld, Colorado, shall have performed the work of grading including such drainage as is necessary to the establishment of proper approaches to said crossing.

IT IS FURTHER ORDERED, That the private crossing between Sections 20 and 29 be permanently closed and that said railroad company open in lieu thereof a private crossing for the convenience of adjoining property owners at any point desirable but not less than 200 feet from the intersection of the section line between Sections 20 and 29 and the main line of the Chicago, Burlington & Quincy Railroad.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 13th day of June, 1919.

DECISION No. 256.

IN THE MATTER OF APPLICATION OF THE BOARD OF COUNTY COMMISSIONERS OF YUMA COUNTY FOR PERMISSION TO CONSTRUCT A PUBLIC HIGHWAY OVER THE TRACK OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD TWO MILES EAST OF WRAY.

Application No. 39.

June 13, 1919.

STATEMENT.

By the Commission:

This proceeding arises on application of the Board of County Commisisoners of Yuma County in compliance with Section 29 of the Public Utilities Act, as amended, for permission to construct a public highway over the tracks of the Chicago, Burlington & Quincy Railroad two miles east of Wray, Colorado, on the half section line in the NE¼ of Section 4, Township 1, Range 43 West, at mile post 378.54. Supplementary thereto is a statement of the Chicago, Burlington & Quincy Railroad concurring in the application. A blue print of the proposed crossing is also submitted.

From the inspection of the engineer of the Commission it appears that the proposed crossing will result in greater convenience to the residents of Yuma County, and will permit the abolishment of two private crossings. The crossing is at grade and there are no obstructions of any character in the vicinity.

It is the opinion of the Commission that the requested permission should be granted. There is no dispute as to the apportionment of the expense of construction or maintenance, the applicant

agreeing to bear the entire expense with the exception of establishing the necessary wing fences and cattle guards.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, the Board of County Commissioners of Yuma County, be, and it is hereby, permitted to construct a highway crossing at grade over the tracks of the Chicago, Burlington & Quincy Railroad two miles east of Wray, Colorado, on the half section line in the NE¼ of Section 4, Township 1, Range 43 West, at mile post 378.54, as specifically set out and indicated upon the plats filed with the Commission in this cause.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 13th day of June, 1919.

DECISION NO. 257.

APPLICATION OF THE MIDLAND TERMINAL RAILWAY COMPANY TO DISCONTINUE AGENCY AT ELKTON STATION.

Application No. 41.

June 13, 1919.

APPEARANCES: J. H. Rothrock of Colorado Springs for the Railway Company; S. E. Carver of Elkton for Protestants and Citizens of Elkton.

STATEMENT.

By the Commission:

The Midland Terminal Railway Company operates a standard gauge railroad from the City of Colorado Springs to the City of Cripple Creek, Colorado, a distance of about 58 miles. It is the only railroad now in operation to the Cripple Creek district.

The cities of importance in the district are Victor and Cripple Creek, both on said railroad and about five miles apart, Cripple Creek being the western terminus of the railroad. Elkton is a station on the railroad situate about half way between Cripple Creek and Victor. The railway company has an agent at this point, the only agency station at present maintained by the company between Victor and Cripple Creek. The population of Elkton and the territory tributary to it is approximately 200.

On December 31, 1918, the railway company applied to the Commission by letter for permission to discontinue the agency at Elkton station, giving as a reason that the expense of maintaining an agent at Elkton was not justified by the small volume of business derived by the company at said station.

An inspector of the Commission was sent to investigate the matter and on January 13, 1919, made a report as to the then existing conditions. Thereafter, and on February 3, 1919, a petition was filed by a number of residents of Elkton, protesting against the proposed discontinuance of Elkton as an agency station, on the grounds of inconvenience to the citizens of Elkton in receiving and forwarding freight, mail and express, as well as procuring tickets for passenger travel. Discontinuance of the agency and the closing of Elkton station would result in the depopulation of the town, the petition asserted. The petition also referred to a petition filed about a year prior by the residents of Elkton, when a similar request was made to the Commission by the railway company, upon which, however, there seems never to have been any action taken.

Upon notice given the matter was set down for formal hearing before the Commission on Wednesday, May 21, 1919, at 10:00 o'clock a. m. at the city hall in the City of Cripple Creek. At the hearing the company submitted evidence as to the volume of business transacted at Elkton for the months of January, February, March and April, 1919, and the revenue derived thereby, as well as of the expense of maintaining an agent at that station. The total revenue of the station during the above four months, as shown by the testimony, was as follows:

Received account freight forwarded	$1,323.03
Received account freight received	296.02
Received account ticket sales	135.53
Received account express service (estimated)	120.00
Total	$1,874.58
Monthly average for above four months	$ 468,64

The company contends that freight from Elkton, which consists almost entirely of ore in carloads and which produces the bulk of the revenue, could as well be handeld from its Bull Hill station, about five miles east of Elkton, and that for this reason the $1,323.03 received account of freight forwarded should not be credited to Elkton business. To accept this contention and to eliminate $1,323.03 as revenue from freight forwarded from Elkton would be to reduce to $551.55 the revenue from Elkton for said

four months. This would be an average of $137.89 per month, which would not be a very creditable showing. In a hearing of this character the Commission believes, however, that Elkton should properly be credited with *all* receipts of the station, regardless of whether a portion of such receipts could be as well collected and received at another station.

In view of the fact that freight rates on carloads are the same at all stations in the Cripple Creek district, it is quite possible to waybill carload shipments at any one point and thus materially decrease the revenue rightfully belonging to the several stations of the company in the district where the freight originates; for it is proposed that with Elkton station closed, shippers could order cars and have them forwarded from Bull Hill by means of telephonic communication with the agent at Bull Hill station.

While not formally introduced in evidence at the hearing, among the files of this application there appears a statement, compiled by the company, of the revenue of Elkton station for the seven months, June to December, 1918, both inclusive. This statement gives total receipts of $560.53 from both received and forwarded business from that station, but apparently it does not take into account revenue from ticket sales or express service. To adopt substantially the revenues from those sources as being the same as in the four-months period January to April, 1919, above stated, ticket sales and express service would average $30.00 per month each, or a total of $420.00, so that the total for the seven months, June to December, 1918, inclusive, would amount to $980.53. Upon this basis the total revenue of Elkton station for the eleven months period June, 1918, to April, 1919, both inclusive, would amount to $2,855.11, or an average of $259.55 per month.

Protestants did not question the accuracy of the figures submitted by the company concerning its receipts and expenses at Elkton station, but produced witnesses who testified as to the inconvenience and annoyance to which patrons of the road at Elkton would be subjected were the agent at said station removed, and it appears from such testimony that such inconvenience and annoyance would be by no means inconsiderable. Leasers and others desiring to ship carloads would have to get the Bull Hill agent by telephone both for empty cars at, and to remove loads from, Elkton station; receivers of freight would have to settle for shipments with the Bull Hill agent five miles away, while passengers, few though they may be, would pay fare to Victor in order to procure tickets. In general, it is apparent that, were the agent at Elkton removed,

the element of convenience and satisfactory service now and heretofore enjoyed by the residents of Elkton would become almost, if not entirely, negligible, not the least of which would be the inability of patrons to deal with the representative of the company in person, in most instances.

While the Commission realizes that the convenience alone of patrons will not suffice to warrant a continuance of the expense incurred by the railroad in maintaining an agent at what, otherwise, would be a flag station, yet when it is borne in mind that the total expense of the company in keeping an agent at Elkton is but about $120.00 per month, according to the testimony of the company's auditor, while the receipts at this station for a period of eleven months next prior to May 1, 1919, averaged $259.55 per month, and for the four months next prior to May 1, 1919, averaged $468.64 per month, the question of convenience and satisfactory service to the public is entitled to consideration.

The showing made by the company seems to indicate that business at Elkton in 1919 is better than it was in 1918; and now that the great world war is over and business is slowly regaining ground throughout the country, who shall say that the Cripple Creek district will not soon show increased business to the railroad.

In view of the facts, therefore, the Commission is of the opinion that no final order should now be entered in this case.

ORDER.

IT IS THEREFORE ORDERED, By the Public Utilities Commission of the State of Colorado, that, upon due consideration of all the facts and circumstances testified to and in evidence in this case, the application of The Midland Terminal Railway Company to discontinue the agency at Elkton station be, and the same is hereby, denied until the further order of the Commission; with leave to said company to petition for the reopening and reconsideration of such matter upon application therefor bearing the docket number of this proceeding, at such time as conditions will have so altered and changed with reference to its business at said station, as in its opinion the matter may again properly be brought to the attention of the Commission.

(SEAL)

LEROY J. WILLIAMS,
A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 13th day of June, 1919.

DECISION No. 258.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTERURBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

June 14, 1919.

STATEMENT.

By the Commission:

On the 15th day of January, 1919, the Commission issued its order in the above entitled cause suspending certain increases in fares as specified in said order and continuing to February 15, 1919, the hearing on the motion for rehearing filed herein by the City and County of Denver. Subsequently thereto orders were issued deferring the hearing on the motion for rehearing until June 16, 1919.

Necessity being shown for further continuance of said hearing, the foregoing orders are hereby further modified in the following particulars only:

ORDER.

IT IS HEREBY ORDERED, That the hearing on the motion for rehearing filed herein by the City and County of Denver be, and the same is hereby, further continued to August 15, 1919, at 2:00 o'clock p. m., without prejudice to the right of the City and County of Denver, The Denver Tramway Company or this Commission to call a hearing on the motion for rehearing prior to such date, or for a further continuance of the same, and without prejudice to the right of any party to obtain a writ of review in this cause upon its final decision.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 14th day of June, 1919.

DECISION NO. 259.

IN THE MATTER OF THE APPLICATION OF FRANK TITTER FOR CERTIFICATE TO OPERATE STAGE SERVICE BY AUTOMOBILE BETWEEN GREELEY, EATON AND AULT, COLORADO.

Application No. 31.

June 18, 1919.

APPEARANCE: Frank Titter in *propria persona.*

STATEMENT.

By the Commission:

This is an application on behalf of Frank Titter of Eaton, Colorado, for a certificate of public convenience and necessity made under provisions of Section 35 of the Public Utilities Act, Statutes of Colorado, as approved April 16, 1917.

A public hearing was held in the hearing room of the Commission in Denver Colorado, May 19, 1919. The matter was thereafter duly submitted and is now ready for decision.

The applicant proposes to operate as an individual an automobile line as a common carrier of passengers and express between Greeley, Eaton and Ault in the State of Colorado. The equipment consists of two Ford touring cars, consisting of engine No. 2663880, License No. 83274 and engine No. 1516935, License No. 83275. Applicant's investment is about $1,200.00.

The distance between Greeley and Ault is 13 miles, Eaton being about half way between said points. The only common

carrier in competition, it seems from the evidence, is the Union Pacific Railroad Company. Said railroad company was notified of this application and made no appearance at the hearing. The following operating schedule and schedule of fares and charges have been filed by applicant:

Week-Day Service.

Greeley to Eaton	Eaton to Greeley
9:00 a. m.	8:15 a. m.
11:00 a. m.	10:30 a. m.
1:00 p. m.	12:30 p. m.
3:30 p. m.	3:00 p. m.
5:30 p. m.	4:00 p. m.
Charge per passenger or package, 40c	40c
Greeley to Ault	Ault to Greeley
9:00 a. m.	10:00 a. m.
1:00 p. m.	12:15 p. m.
Charge per passenger or package, 60c	60c

Eaton to Ault

9:30 a. m.	11:30 a. m.	1:30 p. m.

Charge per passenger or package, 25c

Sunday Service.

Eaton to Greeley

10:00 a. m.	1:30 p. m.

Greeley to Eaton

11:00 a. m.	2:00 p. m.

Charge per passenger or package, 50c

At the hearing the applicant stated that the proposed service contemplated the receipt and delivery of small packages at the same rates as passengers; that the service was necessary on account of the infrequency of trains and the necessity of other means of transportation by those who desire to make the trips at hours between the movement of trains. As stated, the Union Pacific Railroad Company was notified of the hearing in this matter and made no protest against the issuance of the certificate as requested by the applicant.

After careful consideration of the evidence in this case, the Commisison is of the opinion and finds as a fact that the services

proposed to be established will furnish an adequate and convenient method of transportation for passengers and express between Greeley, Eaton and Ault.

ORDER.

A public hearing having been held in the above entitled proceeding and the case having been submitted, the same is now ready for decision. The Commission hereby declares that public convenience and necessity require and will require the operation by Frank Titter of the automobile stage line service between Greeley, Eaton and Ault; provided, that this declaration shall not become effective until the applicant has filed herein certified copies of permits granted by the cities and towns of Greeley, Eaton and Ault, or has filed with this Commission a certificate that no such permits are required by said cities and towns, in accordance with the provisions of Section 35 of the Public Utilities Act, as approved April 16, 1917.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 18th day of June, 1919.

DECISION No. 260.

IN THE MATTER OF THE APPLICATION OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD AND BOARD OF COUNTY COMMISSIONERS OF LOGAN COUNTY FOR THE OPENING OF A PUBLIC HIGHWAY CROSSING OVER THE TRACKS OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD 3.37 MILES WEST OF WILLARD IN LOGAN COUNTY, COLORADO.

Application No. 45.

June 23, 1919.

STATEMENT.

By the Commission:

This proceeding arises upon the application of the Chicago, Burlington & Quincy Railroad and the Board of County Commissioners of Logan County in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, for the opening of a public highway crossing at grade over the tracks of the Chicago, Burlington & Quincy Railroad between Sections 16 and 17, Township 7 North, Range 55 West, 3.37 miles west of Willard station, in Logan County.

An investigation into the necessity for the opening of a public highway crossing at this point was made by the Commission's engineer. In his report, the engineer advised that in his opinion the opening of this public highway crossing is necessary to the development of the country which will be served thereby.

The railroad and the Board of County Commissioners of Logan County having agreed upon a division of the expense of constructing the crossing, and no objection having been raised, a hearing in this matter is not necessary. The Commission will, therefore, issue its order granting permission for the construction of the crossing, as requested.

ORDER.

IT IS THEREFORE ORDERED, That in accordance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, a public highway crossing at grade be, and the same is hereby, permitted to be opened and established over the line of the Chicago, Burlington & Quincy Railroad between Sections 16 and 17, Township 7 North, Range 55 West, 3.37 miles west of Willard station, in Logan County.

IT IS FURTHER ORDERED, That the crossing at the point above described shall be constructed in accordance with plans and specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P. U. C. 128.

IT IS FURTHER ORDERED, That the Chicago, Burlington & Quincy Railroad shall open and establish said crossing and shall bear the expense necessary thereto, except that the County of Logan, Colorado, shall perform, or bear the expense of performing, the work of grading, including such drainage as is necessary to the establishment of proper approaches to said crossing.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 23rd day of June, 1919.

DECISION No. 261.

IN THE MATTER OF THE APPLICATION OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD AND BOARD OF COUNTY COMMISSIONERS OF LOGAN COUNTY FOR THE OPENING OF A PUBLIC HIGHWAY CROSSING OVER THE TRACKS OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD ONE-HALF MILE EAST OF BROWNARD IN LOGAN COUNTY, COLORADO.

Application No. 46.

June 23, 1919.

STATEMENT.

By the Commission:

This proceeding arises upon the application of the Chicago, Burlington & Quincy Railroad and the Board of County Commisisoners of Logan County in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, for the opening of a public highway crossing at grade over the tracks of the Chicago, Burlington & Quincy Railroad between Sections 9 and 10, Township 7 North, Range 53 West, one-half mile east of Brownard station, in Logan County.

An investigation into the necessity for the opening of a public highway crossing at this point was made by the Commission's engineer, who recommended that the crossing be established. He reported that the county road on both sides of the railroad track is now open to travel; that at present the railroad

is reached over a private road coming in from the south on the quarter section line, but that property owners on this private road have objected to its use as a public highway; that objections so raised were responsible for the filing of a petition for the opening of a public highway crossing in order that residents south of the Chicago, Burlington & Quincy track, in particular, may be afforded a means of loading produce at Brownard station.

The railroad and the Board of County Commisioners of Logan County having agreed upon a division of the expense of constructing the crossing, and no objection having been raised, a hearing in this matter is not necessary. The Commission will, therefore, issue its order granting permission for the construction of the crossing, as requested.

ORDER.

IT IS THEREFORE ORDERED, That in accordance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, a public highway crossing at grade be, and the same is hereby, permitted to be opened and established over the line of the Chicago, Burlington & Quincy Railroad between Sections 9 and 10, Township 7 North, Range 53, West, one-half mile east of Brownard station, in Logan County.

IT IS FURTHER ORDERED, That the crossing at the point above described shall be constructed in accordance with plans and specifications prescribed in the Commission's order In re Improvement of Grade Crossings in Colorado, 2 Colo. P. U. C. 128.

IT IS FURTHER ORDERED, That the Chicago, Burlington & Quincy Railroad shall open and establish said crossing and shall bear the expense necessary thereto, except that the County of Logan, Colorado, shall perform, or bear the expense of performing, the work of grading, including such drainage as is necessary to the establishment of proper approaches to said crossing.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 23rd day of June, 1919.

DECISION No. 262.

TOWN OF ORDWAY,

v.

MISSOURI PACIFIC RAILROAD COMPANY.

Case No. 153.

June 26, 1919.

STATEMENT.

By the Commission:

It appearing that the defendant herein has satisfied the complaint by the construction of a new depot building at Ordway, Colorado, and the complainant having filed its motion for dismissal of the cause, the Commission will issue an order dismissing same.

ORDER.

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

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 26th day of June, 1919.

DECISION NO. 263.

IN RE ADVANCE IN GAS RATES OF THE OTERO GAS COMPANY.

Investigation and Suspension Docket No. 33.

June 26, 1919.

APPEARANCES: T. H. Devine for the respondent company; Clyde T. Davis for the city of La Junta.

STATEMENT.

By the Commission:

On November 20, 1918, The Otero Gas Company, hereinafter called the Gas Company, filed with the Commission rate schedule 1st Revised Sheet No. 3, P. U. C. No. 1, cancelling rate schedule P. U. C. Original Sheets Nos. 3 and 4, by which it was proposed to advance the rates for general gas services in La Junta, Swink and Rocky Ford, Colorado, and by which it was further proposed that such rates should become effective on and after December 20, 1918.

It appeared that the Commission should enter upon an investigation and hearing concerning the propriety of the proposed rates, and on December 17, 1918, pending such investigation and hearing, and decision thereon, the proposed rates were suspended by order of the Commission until April 19, 1919. On April 15.

1919, the investigation not having been completed and hearing not having been had, the proposed rates were further suspended until October 19, 1919.

Protests were filed against the proposed increase in rates by the city of La Junta and the city of Rocky Ford.

The case came on for hearing in the city of La Junta on June 6, 1919. At the hearing, evidence was received by the Commission relative to the reasonableness of the present and proposed rates in the old and proposed schedules, and of additional increases claimed to be necessary by the Gas Company.

The rates now on file with the Commission and those proposed in the suspended tariff filed to become effective on December 20, 1918, are as follows:

PRESENT RATES.

Illuminating or Fuel Gas.

From 0 to 10,000 cubic feet, $1.60 per M. cubic feet gross.
10,000 to 15,000 cubic feet, $1.25 per M. cubic feet net.
15,000 and over cubic feet, $1.00 per M. cubic feet net.
Monthly minimum 75 cents gross, or 70 cents net.
Prompt payment discount, 20 cents per M. cubic feet on first 10,000 cubic feet.

Proposed Rates in Schedule First Revised Sheet No. 3, P. U. C. No. 1, Filed November 20, 1918.

First	5,000 cubic feet,	$1.70 per M. cubic feet gross.
Next	10,000 cubic feet,	1.40 per M. cubic feet net.
Next	15,000 cubic feet,	1.25 per M. cubic feet net.
Excess over	30,000 cubic feet,	1.00 per M. cubic feet net.

Monthly minimum, 75 cents per consumer or per meter.
Prompt payment discount, 10 cents per M. cubic feet on first 5,000 cubic feet.
At the hearing, the gas company contended for the following rates:

First	5,000 cubic feet,	$1.80 per M. cubic feet.
Next	10,000 cubic feet,	1.60 per M. cubic feet.
Over	15,000 cubic feet,	1.40 per M. cubic feet.

Penalty: Bills not paid in 10 days a penalty of 10 cents per M. cubic feet is added.
Minimum monthly guarantee: $1.00 per month per consumer or per meter. Minimum bills not paid in 10 days a penalty of 10 cents is added.

The Gas Company furnishes gas in La Junta, Swink and Rocky Ford, and its gas plant is located within the city of La Junta, being favorably situated relative to the distribution system for La Junta. The gas-making equipment consists of a water gas and a coal gas plant. Only coal gas is being produced at this time, although a portion of the water gas plant is being used with the coal gas equipment.

The company has 578 customers in La Junta, 253 in Rocky Ford and 14 in Swink. It appears that under new management since about March 1, 1919, the Gas Company has improved the quality of gas furnished and the service generally.

A tentative valuation of the Gas Company's gas property is found to be sufficient for the purpose of this case, as the rate allowed in the order will be no more than sufficient to provide for return and depreciation requirement on a valuation much lower than that shown by the valuation submitted.

The engineering department of the Commission submitted such a tentative valuation, the same being a summary of the approximate cost of reproducing this gas property under normal conditions, not including any allowance for going-concern value or other intangible elements of value. This tentative valuation follows:

Acct. No.	Classification	Normal Reproduction Cost
101	Organization	$ 3,500.00
102	Franchises	800.00
105	Land and Right of Way	1,427.00
106	Buildings, Fixtures and Structures	9,743.00
108	Coal Gas Apparatus	24,406.00
109	Water Gas Apparatus	5,390.00
111	Boilers and Boiler Plant Equipment	1,670.00
121	Mains	42,938.00
122	Services	6,147.00
123	Meters	6,575.00
124	Customers' Installations	1,345.00
140	General Office Equipment	1,432.00
142	Utility Equipment	691.00
143	Miscellaneous Equipment	148.00
145	Miscellaneous Construction Expenditures	5,882.00
	Working Capital	4,000.00
	Total	$116,094.00

Revenues and Expenses.

The revenues and expenses for the calendar years 1916, 1917 and 1918, as compiled from the books of the Gas Company by the statistician of the Commission, are as follows:

	Revenues:	1916	1917	1918
501	Commercial Earnings, Gross	$13,539.02	$19,307.77	$27,857.77
	Discounts	1,243.31	1,727.44	2,845.55
	Net	$12,295.71	$17,580.33	$25,012.22
509	Earnings from Residuals	.....	3,367.27	4,557.81
510	Profit on Merchandise Sales	881.56	800.94	815.60
511	Profit from Piping and Connections	911.75	*219.99	493.41
515	Miscellaneous Earnings	6.72	11.04	11.04
	Total Operating Revenues	$14,095.74	$21,539.59	$30,890.08
	Operating Expenses:			
600	Coal Gas Production	.....	$ 9,040.51	$15,910.40
620	Water Gas Production	$ 7,555.71	2,006.69	651.32
700	Distribution	434.86	961.35	2,107.02
730	Utilization	388.99	.....	.....
740	Commercial	2,547.89	2,785.80	3,319.15
745	New Business	.....	799.74	306.99
760	General Expense	864.74	2,753.29	6,857.65
	Total Above Items	$11,792.19	$18,347.38	$29,152.53
770	Taxes	800.00	250.00	475.00
	Total Operating Expenses	$12,592.19	$18,597.38	$29,627.53
	Net Operating Revenue	1,503.55	2,942.21	1,262.55
	Net Non-Operating Revenue	85.25	37.50	.....
	Gross Income	$ 1,588.80	$ 2,979.71	$ 1,262.55

*Indicates deficit.

By making the adjustment in account No. 760, as described in the statistician's report on page 14, this account would be reduced by $3,052.06, making the total operating expense in 1918, $26,575.47, thereby increasing the net return to like amount. This would give a net return of $4,314.61 for the year 1918 instead of $1,262.55 as shown by the books of the company.

From this statement, it is apparent that the amounts available for accruing depreciation and for a return on the investment in the property for the years under consideration were $1,588.80 for 1916, $2,979.71 for 1917 and, after applying the correction, $4,314.61 for 1918.

Rates.

After giving due consideration to the evidence in this case, the Commission is of the opinion that the following rates are fair and reasonable under conditions prevailing at this time and should be substituted for the rates now in effect and on file with the Commission:

Illuminating or Fuel Gas.

Rate.

$1.60 net, or $1.70 gross, per M. cubic feet for the first 5,000 cubic feet of monthly consumption.
$1.40 net per M. cubic feet for the next 10,000 cubic feet of monthly consumption.
$1.25 net per M. cubic feet for the next 15,000 cubic feet of monthly consumption.
$1.00 net per M. cubic feet for all consumption during the month in excess of 30,000 cubic feet.

Prompt Payment Discount.

Bill will be rendered at the gross rate and discounted to the net rate, if paid within the discount period.

Minimum Monthly Guarantee.

$1.00 net per consumer or per meter.

ORDER.

IT IS THEREFORE ORDERED, That the respondent company, The Otero Gas Company, be, and it is hereby, required to cancel on or before June 30, 1919, the schedule of gas rates and charges filed on November 20, 1918, and suspended by the Commission's orders of December 17, 1918, and April 15, 1919.

IT IS FURTHER ORDERED, That the respondent company, The Otero Gas Company, be, and it is hereby, permitted to file schedules effective as of June 30, 1919, providing for the following rates and charges to apply on all service rendered on and after that date:

Illuminating or Fuel Gas.

Rate.

$1.60 net, or $1.70 gross, per M. cubic feet for the first 5,000 cubic feet of monthly consumption.

$1.40 net per M. cubic feet for the next 10,000 cubic feet of monthly consumption.
$1.25 net per M. cubic feet for the next 15,000 cubic feet of monthly consumption.
$1.00 net per M. cubic feet for all consumption during the month in excess of 30,000 cubic feet.

Prompt Payment Discount.

Bill will be rendered at the gross rate and discounted to the net rate, if paid within the discount period.

Minimum Monthly Guarantee.

$1.00 net per consumer or per meter.

IT IS FURTHER ORDERED, That The Otero Gas Company shall file the foregoing rates in accordance with Section 16 of the Public Utilities Act.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 26th day of June, 1919.

DECISION No. 264.

IN THE MATTER OF THE APPLICATION OF THE DENVER, BOULDER AND WESTERN RAILROAD COMPANY FOR PERMISSION TO DISCONTINUE SERVICE, REMOVE ITS TRACKS AND WITHDRAW FROM THE PUBLIC SERVICE.

Application No. 12.

July 23, 1919.

APPEARANCES: Messrs. E. E. Whitted and J. Q. Dier, for the applicant company; John R. Wolff, Esq., for the protestants; Frank L. Moorhead, Esq., for the City of Boulder; Harry Casady and others, a committee, for the Boulder Commercial Association.

STATEMENT.

By the Commission:

On the 24th day of November, 1917, the above applicant filed its application and notice before the Commission for authority to discontinue its service, remove its tracks, dismantle its property and dispose of the same.

Some months prior thereto and on August 3, 1917, the said applicant filed before the Commission its application for an increase of rates which was heard and determined on October 13, 1917 (Case No. 140, 4 P. U. C. 449), whereby the increase of rates asked for was granted, with the exception of rates on ore and coal; thereafter the railroad company filed its petition for a

modification of the Commission's order of October 13, 1917, insofar as it applied to rates on ore and coal, which was heard and decided by the Commission on December 7, 1917 (decision 145, 5 P. U. C., p. ...), in which the order of October 13, 1917, was modified and the increase on ore and coal asked for by the petitioning railroad was granted.

By the terms of the order in the original Application No. 12, decision 149, the applicant, The Denver, Boulder and Western Railroad Company, was required to continue to operate its line of railroad in accordance with the rules, regulations and tariffs on file with the Commission, and in accordance with the increase in rates granted by the Commission in case 140 aforesaid, until the further order of the Commission; also that the applicant railroad company should not dispose of any of its property including its real estate, rights of way, rails, stations and equipment until the further order of this Commission.

On December 28, 1917, two days subsequent to the order entered in Application 12 aforesaid, the railroads of the country were placed under the control of the federal government by virtue of a proclamation of the President of the United States acting under authority of a resolution of Congress in that regard, and all roads taken over by the government were placed under the direction and control of W. G. McAdoo, designated by the President as Director General of the United States Railroad Administration. The applicant company was included and its railroad was taken over by the federal administration and continued to be under federal control until July 1, 1918, when by order of the Director General of Railroads, The Denver, Boulder and Western Railroad was released from federal control and became again operative under its own management.

By order of the Director General of Railroads, effective June 25, 1918, all classes of freight rates were increased on all federal controlled railroads approximately 25 per cent over the rates then in force and effect, so that for a period of six days from, to-wit, June 25 to June 30, 1918, both inclusive, the rates in effect on the line of the applicant railroad company were those fixed by the Commission plus 25 per cent additional as designated in the order of the Director General aforesaid.

On March 28, 1919, the applicant railroad company filed with the Commission another application and notice of its intention to discontinue service and surrender its charter, dismantle its property, remove and dispose of the same. Upon notice being

given to all parties interested of the filing of such application, a number of parties interested appeared by their attorney and filed a protest and motion to quash said application, on the ground that it was not a proper method of procedure, and should be upon an application for reopening and rehearing of the original Application No. 12, filed by said applicant railroad company in November, 1917. Said matter was heard by the Commission on May 23, 1919, and the motion of protestants was sustained, with the result that the applicant company on May 27, 1919, filed its petition before the Commission for the reopening of the original cause embodied in Application No. 12, and for the granting by the Commission of the relief prayed for therein.

In said petition the applicant railroad company alleges that it has not been able for two years last past, and particularly since the date of the former hearing on December 26, 1917, to earn its operating expenses and taxes, and that although having given a fair trial to the increased rates by the Commission, it is no longer possible to operate its railroad so as to pay operating expenses and taxes, and hence prays that the relief be granted to it as asked for in the original Application No. 12, that is to say, permission to discontinue its service, remove its tracks, dispose of the same, and withdraw from the public service.

Upon notice being given through the newspapers at Boulder, Colorado, and upon notice to the protestants in the original proceeding, a number of protests were received by the Commission, and an answer to applicant's petition was filed on June 5, 1919, by a number of mining companies and others, by their attorney. The answer denies that the applicant railroad company cannot, under present conditions, operate its property so as to pay operating expenses and taxes, and denies that the railroad company has given a fair trial to the increased rates granted by this Commission in Case 140 aforesaid. Protestants further allege that, by virtue of the road being under federal control during the first six months of 1918, and that by reason of the 25 per cent increase of rates specified by the Director General, effective June 25, 1918, the said applicant railroad wholly failed to give the rates granted by this Commission any trial whatever, except as between the 26th day of December, 1917, and the 25th day of June 1918, and that as to such period it was not possible to give said rates a fair trial, for the reason that during the winter and spring of each and every year the business of said railroad company is at its lowest ebb. Generally, the answer alleges that, because of war

conditions, the year 1918 was an abnormal period within which to give the Commission's rates, or any rates, a fair trial; that the increased rates granted by the Commission, plus the 25 per cent increase ordered by the United States Railroad Administration established rates that were prohibitive so far as a great many commodities transported over the lines of petitioner's railroad are concerned; that the same were higher than the rates of transportation established by motor vehicles, trucks and teams for said service; and that by virtue of the action of the applicant it (the railroad) suffered a great loss of revenue which it would have received and enjoyed had it continued in force and effect the schedule and rates heretofore granted and approved by this Commission.

For a second and further answer and protest to the applicant's petition, the protestants allege the respective values of their respective properties, which are situated along the line of the said The Denver, Boulder and Western Railroad; that they are engaged in the development of mines and timber claims; that each protestant has invested large sums of money in the development of his respective properties and is dependent upon said railroad for transportation of products to market and the carriage of coal and supplies, and that to allow the discontinuance and abandonment of service of the applicant railroad company would result in great and irreparable loss and damage to the investments of each of the said protestants.

Various other matters are set up in the answer—principally that the federal government discouraged travel during 1918, and that thereby the applicant company was deprived of a considerable revenue, because, it is alleged, one of its chief sources of revenue is its tourist business during the summer months, its line of railroad, which traverses wholly a mountainous territory, having become known as "The Switzerland Trail of America;" and also that bad business management and unpopularity of the general manager of the railroad with its patrons were features that occasioned the loss of considerable revenue to the railroad.

It will be observed that the increased rates allowed by order of this Commission were never interfered with by virtue of the taking over of The Denver, Boulder and Western by the federal railroad administration, except for a period of six days (June 25 to 30, 1918), so far as the rates on the line of railroad are concerned, that is to say, the purely local rates between the termini of said railroad—Boulder and Eldora and Boulder and

Ward—and between intermediate stations, were not affected by the 25 per cent increase ordered by the Director General of Railroads, except for the period of six days designated; so that in connection with whatever revenues were derived by the railroad from local business, or business entirely on its own line, the rates granted by the Commission were given a fair trial insofar as the element of time is concerned, for they have been in effect since December 26, 1917. All interline business, however, that is to say, business originating on the line of applicant company and destined to points on connecting lines of railroad, and from points on connecting lines to points on the line of the applicant company, was subject to the rates granted by the Commission plus the 25 per cent increase ordered by the Director General of Railroads.

By agreement of all parties, the matter was set down for hearing at the hearing room of the Commission, Capitol Building, Denver, Colorado, June 16, 1919, and was heard by the entire Commission. A vast amount of testimony was taken and at the conclusion thereof the applicant company filed a memorandum brief, to which protestants filed a reply brief, and the matter has been exhaustively argued from both standpoints.

On behalf of the applicant company there was submitted a table showing the gross revenue of said railroad from all sources, for the years 1907 to 1918, both inclusive, and for the first five months of 1919, which table also shows the operating expenses of the railroad, taxes and other deductions which result in the net income or net deficit of said railroad during the period of twelve years and five months aforesaid.

Year	Gross Revenue from all Sources	Operating Expenses	Taxes	Other Deductions	Net Income or Net Deficit
1907	$ 89,180.97	$80,044.08	$4,673.73	$ 623.27	$ 3,839.89
1908	84,222.87	72,681.51	3,389.21	852.08	7,300.07
1909	115,760.89	89,360.58	3,457.52	4,207.09	18,735.70
1910	133,272.99	99,460.88	4,158.34	2,512.39	27,141.38
1911	91,054.01	75,837.64	3,666.69	698.80	10,850.88
1912	65,806.19	61,940.64	2,666.63	594.15	604.77
1913	59,210.51	57,999.19	3,333.60	480.00	*2,602.28
1914	54,330.37	65,820.88	3,199.28	224.01	*14,913.80
1915	61,826.97	60,224.91	1,466.18	196.50	*60.62
1916	94,121.51	76,870.45	1,755.38	592.23	14,903.45
1917	68,993.98	64,758.17	2,274.10	699.69	1,262.02
1918	51,651.82	56,832.69	2,460.84	425.57	*8,067.28
5 mos. of 1919	11,062.70	16,764.43	964.53	.....	*6,666.26

*Deficit.

The figures embraced in the above exhibit were compiled from the books of the railroad company by its manager, L. R. Ford, who testified to the genuineness and accuracy thereof. It will be noted therefrom that in the years 1913, 1914 and 1918 substantial deficits appear, as well as for the five months of 1919 included in the table, and that but four of the remaining years, to-wit, 1909, 1910, 1911 and 1916, show a substantial net income. It appears from the evidence that The Colorado Central Power Company was engaged during the years 1909, 1910 and 1911 in the construction of a large power dam near Nederland along the line of this railroad, and that the revenue for those three years was materially augmented through the shipment of cement and other materials in the construction of the Nederland dam, while the revenue for the year 1916 was augmented materially by what is designated or denominated the "tungsten boom"—a period when great activity was manifested in the tungsten industry at Nederland, occasioned by the high prices of the metal by virtue of its demand in the manufacture of vast quantities of war armament for the allied governments.

The original cost of the railroad appears to have been approximately $767,000, that its bonded debt has always been and is at the present time $700,000, and that but $31,000 has been paid as interest upon the bonds during the entire period covered by the railroad's operation—approximately twenty years—and that no dividend has ever been paid to its stockholders. It also appears from the testimony at the hearing on the original application, and at the present rehearing that the road has twice suffered foreclosure proceedings because of default in interest payments, and has been twice reorganized under a different corporate name, and that the stockholders and bondholders of the first corporation, The Colorado Northwestern Railroad Company, remained the same throughout these reorganizations, simply exchanging the stocks and bonds of the defunct company for those of the reorganized company. The present company came into existence in 1909 and took over the property, and has been operating it since that time.

It will be noted that, according to the testimony, the most serious losses occurred during the year 1914 and 1918, that the loss during 1913 was not inconsiderable, while the loss for that part of 1919 accounted for is substantial.

The four remaining years, 1907, 1908, 1912 and 1917, show a net gain in each year, that of 1908 being much the most of any

of the four years—upwards of $7,000—so that but for the four years heretofore referred to, it is apparent that from the investor's standpoint the railway has been operating as a losing venture throughout its history. While the applicant in its petition has not specifically asked for a depreciation reserve, yet in the brief and in the testimony such an item was considered, and the Commission thinks properly so; for it must be borne in mind that the equipment of a utility has a certain period of usefulness and thereafter must be replaced; that under the rules applicable a certain amount is allowable each year for depreciation, so that the utility may keep its equipment in good repair to enable it to afford an adequate and safe service to the public. Such reserve is held to be in an amount from 2 to 5 per cent of the value of the property, varying according to the class of property owned and used by the utility. The protestants insist that inasmuch as no such depreciation reserve has ever been charged on the books of the applicant company, it therefore ought not to be taken into consideration in this proceeding, for the reason that the utility has maintained its equipment without a specific allowance for such purpose. While that may be true to a certain extent, yet the locomotives, rolling stock, roadbed, and in fact all the equipment of the company, must be renewed and kept in efficient repair, and the Commission is of the opinion that a depreciation reserve is properly allowable in proceedings of this kind, even though the utility has not charged such account upon its books.

This question came before the Georgia Railroad Commission in the application of the Georgia Railway and Power Company for an increase of rates. It appeared that no depreciation account had ever been kept by that company, and the protestant against the increased rates argued that "in view of the fact that the company has not in the past set up a depreciation reserve, and has gotten along without such, it cannot now claim that the necessity for a depreciation reserve is an emergent cause for an increase in rates." The commission allowed a depreciation reserve account as a proper charge of the company against its earnings in that case, and in so doing used the following language:

> "As to the advisability, if not the necessity, in the interest of good, continuing service to the public, as well as of the justice to the owners of the property of a fair

depreciation allowance, this Commission entertains no doubt."

Re Georgia Railway & P. Co. 1918 F., P. U. R. 630, 631.

Adopting that view, a depreciation reserve amounting to only 2 per cent upon the reasonable cost of duplicating the property of the applicant company, which may be safely considered to be in an amount equal to its original cost, would wipe out practically all of the net income of the railroad except for the years when unusual conditions brought in an unusual amount of revenue, to-wit: 1909, 1910, 1911 and 1916.

According to the showing made, no dividends have ever been declared in any year by the railroad company and, except $31,000, no interest has been paid upon its bonds since its formation. While the Commission realizes that to withdraw the road from the public service and allow it to be dismantled would affect a great many interests, some perhaps seriously, yet it does not feel that it can justly require the continued operation of a utility that has apparently proven to be an unprofitable financial undertaking.

In re Rates Western Colo. P. Co., 5 Colo. P. U. C. —.
In re Denver, Lar. & N. R. R. Co., 4 Colo. P. U. C. 316-346.
In re M. S. T. & T. Co., 3 Colo. P. U. C. 122-285.
In re Colo. Spgs. L. H. & P. Co., 1 Colo. P. U. C. 159-168.
In re New York States Rys. P. U. R. 1919 A. 755-759.
In re Ex. H. & A. St. Ry. Co., (N. H.) P. U. R. 1919 B, 251-252.
In re Emigration Canyon R. R. Co., (Utah), P. U. R. 1917 F, 464.
In re Jack v. Williams, 113 Fed. R., 823.
In re Smyth v. Ames, 169 U. S. 546; S. C. 42 L. Ed. 849.

While the increased rates granted by the Commission by its orders of October 13, 1917, and December 7, 1917, were to be given a fair trial, and while it is urgently pressed by the protestants that the year 1918 and up to June 1, 1919, was an unfair period within which to give such increased rates a fair trial, yet when consideration is given to the fact that according to the testimony in this record, the competition suffered by the railroad through automobile trucks and other vehicles for the transportation for both freight and passengers has proved formidable, and in view of the fact that it is a matter of common knowledge that with

the building of good roads throughout the state and in the territory served by this line of railroad such competition will increase rather than diminish, and in view of the further fact that according to the testimony in the record of the present and former hearing of this cause much of the revenues to be derived by the railroad from mining operations is entirely speculative and may never develop, who will have the temerity to say that the applicant company can reasonably anticipate to earn more than its bare operating expenses and taxes during the year 1919 and in the next year or two, even though the Commission require it to continue to operate?

A further matter to be borne in mind is that the railroad is being operated without payment of any compensation to its stockholders, and scarcely any payment of interest to those who furnished the money with which to build, equip and operate it. It is rather a serious matter to require one to continue to operate a business that does not pay a reasonable return upon the amount of money invested therein. The law does not require it, nor is it good morals; and the fact that those who have made investments in that territory did so in reliance upon the operation of said railroad does not justify it unless the revenues produced by the investors will sustain the utility. While the railroad's continued operation would be greatly to the convenience and advantage of the investors along its line, yet that fact alone will not justify the compulsory operation of a utility.

Re Coburn Steamboat Co., 1919 C., P. U. R. 71.
In re Failure to Operate Cape May, D. B. & S. P. R. R., 5 N. J., P. U. C., 528-530.
Cain v. Mono Lake Lumber Co., 1918 B, P. U. R., 292-297.

Counsel for protestants insistently urge that bad management of the railroad company and the unpopularity of its general manager are responsible for substantial losses of revenue which under a different management the railroad would have received; and this contention is somewhat supported by the testimony of the witnesses Ewing and Tomblin. However that may be the Commission doubts the wisdom, if not its power, to say to the owners of a utility who shall or shall not manage and control the business of such utility. Ordinarily the owners of a property who have their money invested therein are more capable and have more interest in choosing a management that will be successful than would any Commission or

Board. In view of the financial history of the road and much of the conceded facts surrounding it, to say in this case that had the management been other than it was, the applicant company would have been able to earn not only its operating expenses, taxes and a reasonable amount for depreciation and pay interest upon the money invested therein, is charging the present management with a great deal of responsibility; and had another manager been chosen, or were a different management to be chosen now, who will have the hardihood to argue that that fact alone would make a non-producing mine produce freight for transportation over the road, or would retard the building of good roads to be used by automobile concerns in the transportation of freight and passengers in competition with the railroad? At any rate the Commission does not feel that it has the power to dictate the management of any public utility, while it certainly does not seek that responsibility. If it were proven to the satisfaction of the Commission that the owners of a public utility deliberately installed a bad management and deliberately practiced and sought thereby to depress its earnings to such an extent as would accomplish permission to discontinue the operation of the utility, and to abandon the same, a different case would be presented. But, in the case at bar, the proof is far from satisfactory that such a condition exists.

Protestants further urge that to allow said railroad to discontinue its service, and tear up its tracks and dismantle the same, would inflict great and irreparable loss to their interests, inasmuch as they are dependent upon said railroad as a means of transporting their freight and supplies. The great trouble with this contention is that, insofar as the record discloses, there seems never to have been sufficient tonnage of freight offered the carrier to yield it sufficient revenue, with its other sources of income, to pay its legitimate operating expenses and taxes, and give the investor some return on his money. Furthermore there is testimony to the effect that several of the mining companies have heretofore used and are now using automobile trucks to transport their tonnage and supplies, and it is but reasonable to presume that such methods will continue where said service is at less cost, save in periods of very bad weather conditions when the railroad would be substituted for such purpose.

A further ground urged by protestants is that the 25 per cent increase of rates promulgated by the federal railroad administration added to the increased rates given by the Commission, resulted

in freight rates which were prohibitive in competition with auto-truck-transportation, and such in substance is the testimony of the witness Ewing. On all freight consigned beyond the line of the applicant company, called "interline freight," the applicant has no power to make another or different rate than that governing the connecting carrier until such time as the railroads of the country are released by the government to their respective owners, and the time when that even occurs is a matter to be determined by the future action of the Congress.

Some of the testimony at the former hearing and at the present hearing had reference to an attempt to purchase the property of said railroad company by the mine owners and others interested upon the basis of the fair scrap value of the property, but negotiations therefor do not seem to have arrived at any substantial or definite conclusion. The Commission feels that if this can be accomplished it will be a happy solution of the entire difficulty. The road is and always have been owned by non-residents of the State of Colorado, and no person whose property interests are directly affected by the operation of the railroad have ever had any money interest at stake in said railroad management and operation. It is quite possible that because ownership of the road has been elsewhere than in Colorado there has been more or less of indifference by the people along its line as to whether the road is financially successful or not. But as was stated in the Georgia Railway Power Company case, *supra*, a non-resident investor is entitled to the protection afforded by the law as well as a resident investor, and it was suggested in that case that a non-resident investor should be encouraged to bring in capital for the development of the industries of the country.

The Commission is reluctant to permit the applicant company to abandon its road, discontinue service and dismantle its property, for it realizes that in common with other railroad lines that have been permitted to abandon service and scrap their properties, such discontinuance of public utility operation affects the reliability and integrity of business methods in the state in the mind of the prospective investor; but under the facts as disclosed by the record, and under the law as the Commission reads it, it is its duty so to do. While it is not a matter testified to, yet it is a matter of common knowledge that the mining industry of this state, as well as of most of the mining states in the west, and particularly with reference to the mining of gold, silver, tungsten, and other similar types of

metals, has reached a very low ebb, to such an extent that very many, if not all, of the mining regions of this state are practically dormant. When, if ever, this condition of things will be changed and the mining of gold, silver, tungsten and other metalliferous ores shall again be revived to the basis of its former activity, is a matter for the future to demonstrate. While it is contended by protestants that the silver mining industry of Boulder County is at an upward trend, and while that may be true, yet the outstanding fact is that it so far has not developed in the way of furnishing freight tonnage to the applicant railroad to any great extent during the past years. Also, while it may be conceded that the tourist traffic of the applicant railroad is productive of a net revenue over and above the expenses of operation during the tourist season, that net revenue is ordinarily more than offset by the expense of operation during the remainder of the year when the tourist business is not available.

Counsel for protestants has charged a heavy overhead expense to the applicant railroad in times past by reason of the stated fact that its officers received very large salaries, as much as $8,000 a year; but so far as the Commission has been able to ascertain from the record, no testimony is submitted in support thereof, and there is no showing by the testimony or otherwise that at the present time the management of the road is conducted extravagantly, either in the matter of salaries of officials, maintenance of way, or wages of employes. Indeed, the testimony is explicit to the effect that with regard to wages paid employes—the enginemen, conductors, brakemen and other employes of the railroad company—they are much less than the prevailing wage scale upon other lines of standard railroads in Colorado and throughout the country, and so far as the Commission is advised by the testimony offered in this case, there appears to be no evidence of extravagance in the expenditures of the applicant company under its present management.

Let it be supposed for the sake of argument that this Commission would require the continued operation of the applicant railroad. In that event it would not be difficult to reasonably apprehend or anticipate the result. Everyone knows that the cost of materials, cost of living, cost of everything, has materially increased, ever since the signing of the armistice in November, 1918, and so far as the signs of the time seem to indicate, there is no probability that these costs will be lessened within the next few years. And this is also true of wages, for if living costs have

advanced, it is but a necessary consequence that wages should also advance; and while the employes of the applicant company are now working for less wages than the prevailing wage scale, it is not a thing for which the applicant company can be praised, nor is it a condition that it can reasonably anticipate will continue for any considerable length of time. In fact the Commission feels that this public utility should pay approximately the same wage as is paid to workmen employed by other similar utilities in the state, and if its revenue will not permit of its being able so to do, that is but an added and further reason why the applicant should not longer be required to continue in the public service.

As has been stated the Commission is reluctant to permit the applicant company to abandon its service and dismantle its property, and only does so in compliance with what it feels to be its duty under the law and the testimony submitted in connection with this application. It will not, however, permit the applicant company abruptly to terminate the rendition of service for that would be to subject the various mining interests, and the persons who have hitherto relied upon the service, to be discommoded unnecessarily, if not to financial loss. For this reason the applicant company will not be permitted to discontinue its service and remove its tracks until after a sufficient length of time has elapsed so that all persons and parties in interest may have notice thereof and opportunity to adjust themselves to the changed conditions. Furthermore, if there be any possibility or probability of local interests effecting the purchase of the property of the applicant company, such length of time will be necessary to begin and complete negotiations therefor.

The Commission finds from the evidence that The Denver, Boulder and Western Railroad as a whole does not earn sufficient revenue with which to meet its legitimate operating expenses and taxes, nor anything for depreciation. The Commission, therefore, finds that there is not sufficient public demand for the continued operation of said railroad and that it should be permitted to discontinue its operations, withdraw its property from the public services, and dismantle the same. The Commission also finds that it is impracticable further to increase the rates of the railroad for the reason that a further increase in rates sufficient to bring the revenues to a point where operating expenses, taxes and depreciation can be met, would be so prohibitive as to restrict and depress traffic.

Under all the circumstances surrounding this case the Commission will, therefore, enter an order that the applicant, The Denver, Boulder and Western Railroad Company, upon giving the notice required by Section 16 of the Act, and in the manner prescribed therefor, may discontinue its service, withdrew its tariffs, dismantle its property and remove the same, which said order will become effective at twelve o'clock midnight, on the 15th day of September, A. D. 1919.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, The Denver, Boulder and Western Railroad Company may, effective at twelve o'clock midnight, September 15, 1919, discontinue its service, withdraw from the public service and cease to operate its line of railroad and remove, dismantle and dispose of its property, upon giving the notice therefor required under Section 16 of the Public Utilities Act, and in the manner prescribed;

IT IS FURTHER ORDERED, That until September 15, 1919, said applicant shall continue the train service now in force, and shall be governed by the tariffs on file in this office with reference to the transportation of the traffic over said railroad, both freight and passenger, and that none of its property, real estate, rights of way, track, side tracks, rolling stock, or any of its property of any description shall be withdrawn from the public service until after the effective date of this order.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 23rd day of July, 1919.

DECISION NO. 265.

IN THE MATTER OF THE APPLICATION OF THE LINCOLN LIGHT & POWER COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

Application No. 44.

July 30, 1919.

APPEARANCES: John G. Reid, attorney at law, Hugo, Colorado, for and on behalf of The Lincoln Light & Power Company.

STATEMENT.

By the Commission:

This matter comes on for decision upon the application of The Lincoln Light and Power Company for a certificate of public convenience and necessity, to exercise the rights and privileges granted by the town of Hugo under ordinance No. 41 passed and adopted by the mayor and board of trustees of said town on April 9, 1919.

On June 16, 1919, the applicant, The Lincoln Light & Power Company, by B. K. Wilson, President, and John G. Reid, attorney, filed its application with the Commission.

Public hearing of the above application was duly had July 25, 1919, at 10 a. m., in the hearing room of the Commission, Denver, Colorado, of which all parties hereto were duly notified.

Mr. John G. Reid appeared for The Lincoln Light & Power Company. There were no other appearances.

The testimony shows that The Lincoln Light & Power Company was organized under the laws of Colorado to manufacture, generate, produce, supply, distribute and sell gas, electricity, steam and steam heat to the town of Hugo and the County of Lincoln, in the State of Colorado, and the municipalities and counties adjacent to the said town of Hugo and the County of Lincoln, and to any and all persons and corporations dwelling or doing business in the said town of Hugo and County of Lincoln and in the municipalities and counties adjacent thereto, and to construct, purchase, lease or otherwise acquire, maintain, and operate plants and works for the manufacturing, generating, producing, supplying and distributing gas, electricity and steam; that there is no other company engaged in the public service of supplying electricity for said purposes in the said town of Hugo, or territory adjacent thereto; that there is no means by which a supply of electricty for light and power may be obtained in said town and territory except from a few small private plants; that the owners of these private plants desire to discontinue their operations and to obtain their supply of electricity for lighting and power purposes from said The Lincoln Light & Power Company; that the said town of Hugo through its mayor and board of trustees on April 9 ,1919, under Ordinance No. 41, granted to one C. C. Bogue, his successors and assigns, a franchise permitting him to engage in the business of supplying electricity for the purpose above stated within the town of Hugo; that thereafter the said franchise was duly assigned by the said C. C. Bogue to said The Lincoln Light & Power Company, the said C. C. Bogue becoming a director and stockholder in The Lincoln Light & Power Company.

A certified copy of the certificate of incorporation of The Lincoln Light & Power Company, together with a certified copy of said Ordinance No. 41 of said town, were duly filed with the Commission by The Lincoln Light & Power Company at the time of its making application herein.

The testimony also shows that the construction and operation by The Lincoln Light & Power Company of its electric light plant will be a great convenience to said town and to the inhabitants thereof; that at the present time the town has no system of street lighting whatsoever; that the town of Hugo is a properous and growing community and that in all probability there will be more

necessity for this plant in the future than there is now; that the construction of the said plant will in no manner interfere with the operations of any other plant within said territory; that the probable amount to be expended in the erection of the said plant will be from $25,000 to $32,000; that the applicant proposes to furnish electricity for lighting and power purposes to elevators, round houses, garages, machine shops, printing offices, and other enterprises located within said town, and that the supply of electricity to said enterprises will be of great public convenience and necessity.

The testimony introduced at the hearing also shows that there is now a demand for an adequate supply of electricity for light and power purposes in said town of Hugo and that the public convenience and necessity thereof will be subserved and promoted by the granting of the certificate applied for herein.

ORDER.

The Lincoln Light & Power Company having applied to this Commission for a certificate of public convenience and necessity to exercise the rights granted under Ordinance No. 41 of the said town of Hugo, and a public hearing having been held thereon, and The Public Utilities Commission of the State of Colorado being fully advised in the premises:

IT IS HEREBY ORDERED AND DECLARED, That the present and future public convenience and necessity require and will require the exercise by said The Lincoln Light & Power Company, its successors and assigns, of the rights and privileges conferred by said Ordinance No. 41 of the town of Hugo passed and adopted by its mayor and board of trustees on the said 9th day of April, 1919.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 30th day of July, 1919.

DECISION No. 266.

IN RE ADVANCE IN ELECTRIC POWER RATES OF THE TRINIDAD ELECTRIC TRANSMISSION, RAILWAY & GAS COMPANY.

Investigation and Suspension Docket No. 34.

July 31, 1919.

STATEMENT.

By the Commission:

On December 21, 1918, there was filed with the Commission by The Trinidad Electric Transmission, Railway & Gas Company, hereinafter called the Electric Company, its electric schedule Colorado P. U. C. No. 3, cancelling its Colorado P. U. C. No. 2, proposed to become effective January 21, 1919, and providing for certain increases in the rates for electric power service.

On January 17, 1919, the Commission entered upon an investigation concerning the propriety of the increases contained in the said schedule, and issued an order deferring the operation of the rates until May 21, 1919. On May 12, 1919, the investigation not being concluded, an order was issued further deferring the operation of the rates until November 21, 1919, unless otherwise ordered by the Commission. Subsequent to the filing of such schedule, various parties interested therein and in the rates prescribed thereby filed protests against certain proposed rates for mining power service.

The case was set for hearing at Trinidad, Colorado, for July 31, 1919. On July 30, 1919, the Electric Company applied to the

Commission for permission to file certain new schedules relating to mining power service, these schedules to be known as First Revised Sheets Nos. 15, 16, 17 and 18, cancelling Original Sheets Nos. 15, 16, 17 and 18 in Colorado P. U. C. No. 3, which permission was granted. At the same time there was also filed the written request of the Electric Company and the committee representing the protestants that Revised Sheets Nos. 15, 16, 17 and 18 be filed and that the same become effective as of July 1, 1919. This written request contained the further statement that there were no objections on the part of the protestants to the schedules as revised.

The Commission, therefore, vacated the order for hearing, and, upon consideration of the Electric Company's Colorado P. U. C. No. 3 as revised and of the request of the parties interested aforesaid, finds and concludes that said revised schedule may and shall become effective as of July 1, 1919.

ORDER.

IT IS THEREFORE ORDERED, That the Commission's order of May 12, 1919, suspending the effective date of the schedule of The Trinidad Electric Transmission, Railway & Gas Company, designated as its Colorado P. U. C. No. 3, be, and the same is hereby, set aside.

IT IS FURTHER ORDERED, That the schedule of The Trinidad Electric Transmission, Railway & Gas Company, designated as its Colorado P. U. C. No. 3, as revised through the filing on July 30, 1919, of First Revised Sheets Nos. 15, 16, 17 and 18, be, and the same are, effective as of July 1, 1919.

IT IS FURTHER ORDERED, That the Electric Company shall immediately file the actual substation capacity agreed upon with each consumer, together with the actual installed substation capacity, and shall furnish, as requested by the Commission, the actual readings of ten-minute demand meters covering such service.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 31st day of July, 1919.

DECISION No. 267.

THE GREAT WESTERN ALFALFA MILLING COMPANY, THE COLORADO ALFALFA MILLING COMPANY, THE MILLIKEN ALFALFA MILLING COMPANY, THE NIWOT ALFALFA MILLING COMPANY, THE FARMERS' ALFALFA MILLING COMPANY, HILL BROTHERS, A CO-PARTNERSHIP,

v.

THE WESTERN LIGHT & POWER COMPANY.

Case No. 163.

August 5, 1919.

APPEARANCES: C. F. Morris, Carle Whitehead and A. L. Vogl for the complainants; Lee and Shaw for the defendant.

STATEMENT.

By the Commission:

Complaint was filed by the above named parties, hereinafter called the Milling Companies, on November 13, 1918, against The Western Light & Power Company, hereinafter called the Power Company, alleging in substance: That the Milling Companies have mills at various places in northern Colorado for the purpose of manufacturing alfalfa meal and are engaged in that business; that the Power Company is a public utility corporation engaged in supplying electric service and power to the public; in the third

paragraph thereof it was alleged that the Power Company's schedule Original Sheet No. 18 Colo. P. U. C. No. 6 became effective on October 3, 1918; protest is made against the same as being unreasonable, unjust and an unfair basis for charges, and a much higher charge than that made by other public utilities selling the same class of service under the same conditions in the State of Colorado; that the Milling Companies are the only consumers of electricity for alfalfa meal mills served by the Power Company, and prayed that a hearing be had as to the reasonableness of the rates set forth in such schedule.

On November 23, 1918, the Power Company filed its answer, and alleged in substance that The Milliken Alfalfa Milling Company, The Farmers' Alfalfa Milling Company, and Hill Brothers, are not parties in interest and not consumers of the Power Company. The Power Company admitted that the present schedules became effective on October 3, 1918, but denied that the schedule on Original Sheet No. 18 is either unreasonable, unjust or an unfair basis for charges, or that same is a higher charge than that made by other utilities in Colorado under the same or similar conditions. The Power Company further alleged that the sheets of its Colo. P. U. C. No. 6 applicable to the Milling Companies are sheets Nos. 20 and 21, and assumed that these are the schedules of which the Milling Companies are complaining, and alleged that the rates contained therein are reasonable, just and fair, and could not be reduced without making the same non-compensatory to the Power Company and discriminatory against all other classes of consumers of the Power Company.

The cause came on for hearing at the hearing room of the Commission in the State Capitol Building, Denver, Colorado, on April 9 and 10, 1919.

Thereupon the Milling Companies applied for and obtained leave to amend their petition so that the third paragraph and prayer thereof stated in substance, that on August 30, 1918, the Power Company issued its schedule effective October 3, 1918, designated as Colo. P. U. C. No. 6, original sheets Nos. 20 and 21, in and by which it was attempted to establish certain rates, charges, rules and regulations for the furnishing of commercial power to its patrons; that the rates, charges, rules and regulations so attempted to be established are unjust, unreasonable and excessive, and unreasonably in excess of rates charged for similar services in other localities within the State of Colorado, and subject the Milling

Companies to undue and unreasonable discrimination contrary to Chapter 127, Laws of Colorado 1913, and amendments thereto; that the Milling Companies are all consumers of electricity for alfalfa mills served by the Power Company; a formal hearing was prayed for and that the tariff be cancelled, the Power Company be required to file a new tariff in lieu thereof, establishing just, reasonable and lawful rates and regulations, and that the Power Company be required to adjust all charges for current furnished to the Milling Companies on the basis of the tariff so established.

The tariffs complained of were filed with this Commission September 3, 1918, became effective October 3, 1918, and are as follows:

P. U. C. Colo. No. 6.

Original Sheet No. 20.

THE WESTERN LIGHT & POWER COMPANY.

COMMERCIAL AND INDUSTRIAL POWER.

Commercial Power Rates.

Availability.

For alternating current power service for installations aggregating more than 5 horsepower at the voltage and phase of the company's established distribution system. Power will be supplied under this schedule only to the extent that the company shall have available power in excess of its requirements for other consumers of which fact its determination shall be final.

Rate.

For the first 20 K. W. H. used per month per horsepower of contract power, per K. W. H., 7c net A.

For the next 40 K. W. H. used per month per horsepower of contract power, per K. W. H., 4c net A.

For all current consumed in excess of 60 K. W. H. used per month per horsepower of contract power, per K. W. H., 2c net.

Determination of Contract Horsepower.

On installation of 1 motor the contract horsepower shall be taken as the manufacturers' name plate rating.

On installation of 2 motors the contract horsepower shall be taken as 80% of combined manufacturers' name plate rating.

On installation of 3 motors the contract horsepower shall be taken as 70% of combined manufacturers' name plate rating.

On installation of 4 motors the contract horsepower shall be taken as 60% of combined manufacturers' name plate rating.

On installation of 5 motors the contract horsepower shall be taken as 50% of combined manufacturers' name plate rating.

On installation of 6 or more motors the contract horsepower shall be taken as 45% of combined manufacturers' name plate rating.
Each installation served from one meter or service shall be considered as a separate installation.
Provided on any installation the contract horsepower may at the option of the company be determined by maximum demand meter.

Contract Period.

All contracts under this schedule are for a minimum period of 12 months automatically renewable for a like period and terminable on 30 days' written notice before end of such period.

("A" indicates advance.)

P. U. C. Colo. No. 6.

Original Sheet No. 21.

THE WESTERN LIGHT & POWER COMPANY.

Commercial and Industrial Power.

Delayed Payment Penalty.

A penalty of ½c per K. W. H. will be added to bill if not paid within 10 days after the same is due.

Minimum Monthly Guarantee.

The consumer shall guarantee a minimum monthly charge of $1.00 net per H. P. or fraction of contract horsepower for each month in which service is connected and for a period of at least 5 consecutive months of each year.

Hours of Service.

Consumers who do not guarantee to use service for 12 months each year shall not operate motor or motors between the hours of 4:30 p. m. and 9.30 p. m. during the months of November, December, January and February, except in case of absolute necessity to protect life or property.

Transformers.

Consumers who do not guarantee to use service for 12 months each year shall be required to furnish and maintain transformers for stepping down voltage from that furnished by company's established distribution voltage to that required by consumers' installation.
Company shall not be required to furnish transformers in any case unless they are of standard size and voltage.

Point of Measurement.

All current shall be considered as measured at the voltage of the company's established distribution system. Where the current is not metered at the company's established voltage, an amount shall

be added to monthly bill for electric service equivalent to 25 cents per month for each K. W. capacity of the aggregate rating of consumer's transformers connected.

Power Factor.

Should the power factor of consumer's installation fall below 80% for periods of one hour or more the energy as metered shall for purposes of billing be subject to an increase in the ratio of 80% to the actual power factor.

("A" indicates advance.)

The objections to this tariff specified at the hearing may be summarized as follows:

1. The rates are excessive.

2. The method of stating the rate is unfair.

3. That it is possible for plants to change the name plate rating.

4. That a discount should be allowed, instead of a penalty added; that the amount of the penalty is excessive.

5. The tariff is wrong in providing that all current shall be considered as measured at the voltage of the Power Company's established distribution system, and objection is made to the charge of 25 cents per month for each K. W. capacity of the aggregate rating of consumers' transformers connected.

6. The power factor clause should be omitted.

7. Complaint is made of separate bills for power and light.

8. Complaint is made that several mills owned by one company under a former contract are not permitted to have their power charged for as one mill.

The evidence of the Milling Companies attempted to sustain these objections, largely by showing the charges and practice of other utility companies in other districts of the state furnishing power to alfalfa meal mills. The evidence of the Power Company's representatives attempted to refute the alleged unfairness of the tariffs in the particulars stated in the objections of the Milling Companies, and to sustain the tariffs as just and reasonable.

The Power Company introduced evidence to show its need of additional funds at the time and since this schedule was filed, and that increases were not confined to this schedule; that to meet its increased operating expenses and bond interest and to keep the Power Company from a receivership it was necessary

to secure additional revenue of $104,000 per annum; that upon a study being made of the Power Company's income and operating expenses and a complete analysis of the revenue from each class of business, the relation of each class to the gross business, the amount of revenue from each class of business and the relative capacity required by different classes of business, it was determined that lighting rates were carrying almost their full share of overhead, operating expenses and cost, and they were increased approximately twelve per cent as the limit of increase they ought to receive; that it was necessary then to allocate the remainder of the increase to the power business. The evidence showed that for the year ending March 31, 1919, certain power consumers gave returns as follows:

	Revenue Received	Horsepower Connected	Annual Revenue Per Horsepower Connected
Plaster Mills	$ 6,147.40	130	$47.28
Flour Mills	4,863.50	125	38.90
Coal Mining	69,102.24	2221	31.08
Alfalfa Mills	13,644.39	1104	12.35
Irrigation Pumping	12,042.55	1600	7.52

It appears that irrigation pumping comes in four months of the summer at a period not requiring a peak load capacity on the power house, whereas the alfalfa mills operate largely during the winter season at a time of large demand on the power plant and require a certain portion of plant capacity. It, therefore, appears from the above table that even after the application of the rates in question from October 3, 1918 to March 31, 1919, the alfalfa mills with fifty per cent of horsepower connected as compared with coal mines, return to the Power Company but twenty per cent of the amount of revenue derived from coal mining.

The revenue from alfalfa mills per connected horsepower as shown above is $12.35. The general manager of the Power Company testified that the total investment of the Power Company in power houses, substations and main transmission lines between power houses is $1,308,524.00, the power plant capacity is 5,000 horsepower, and the total investment in power house, substations and main transmission lines per horsepower is $261.70; that the net horsepower demand of alfalfa mills is 552 horsepower, and the total investment for alfalfa mills $180,018.40; the fixed charge to these mills of fifteen per cent to cover taxes, depreciation and extraordinary maintenance, on a basis of nine months' use per

year is $20,252.07; the amount of this charge to alfalfa mills per horsepower connected is $18.34. If this amount be regarded as excessive, still if reduced about one-third, it merely equals the return per horsepower connected of $12.35 mentioned above.

It was further shown by the Power Company that to yield the cost of service and a reasonable profit it should receive 4.7 cents per K. W. H. for this service; that the service costs the Power Company 4.25 cents per K. W. H.; that the amount received therefor is 3.75 cents per K. W. H. and that the service is given at a loss.

The character of the service to alfalfa mills is shown to be one of the most difficult handled by the Power Company, as testified by the general manager of the Power Company:

> "Mr. Semrad: My observations show that the alfalfa mill, on the basis of return for capacity required, is the poorest class of industry which we serve by far.
>
> "Mr. Lee: Any special features in connection with interruptions by that use to your other customers?"
>
> "Mr. Semrad: Yes, sir. On account of their fluctuating demand, which I might say was almost from nothing to two or three times the capacity of the mills, and that fluctuation being almost instantaneous, it is very difficult to maintain good voltage regulation, and the communities which are in the neighborhood of these mills suffer considerably from this voltage fluctuation; in other words, their service is not up to what we would like to have it; and furthermore we have had cases of serious outages to our entire system due to poor handling of the equipment in these mills. For instance, the men would feed in a heavy piece of wet hay, which would practically stop the motor, and the motor, when the speed is materially reduced, takes a tremendous amount of power for that instant trying to overcome this, and those surges have been so severe on our service that in some cases we have had they knocked out of commission circuit breakers at the main power house."

It appears from the evidence that the increase in revenue sought by the Power Company was needed and justified, and that the increase in rates was fairly apportioned as between the consumers. While it has increased the cost of production to the alfalfa mills, it appears that their other expenses have not been

kept down to former costs and the evidence is that The Great Western Alfalfa Milling Company has been able to make considerable profits. Evidence was introduced to show the expense of milling by steam power to be considerably less than by electrical power, but it is not clear that in such estimated cost interest on steam plant investment or depreciation thereof was considered. It is conceded that there is considerable convenience to the alfalfa mills in using electrical power over steam power.

The Power Company's rate, Original Sheet 20, Colo. P. U. C. No. 6, is a combined demand and energy charge and is scientifically correct in form. For each "contract" H. P. of motors connected there is a sliding energy charge, and since the amount of energy which must be used in each step of the rate depends directly upon the amount of connected load, this is in effect the same as a demand charge.

"Contract" horsepower as defined in the schedule enables any consumer to take advantage of the diversity factor in his own plant if there are several motors. It is a recognition of the fact that in such cases the chance of all the motors running full load at the same time is quite improbable.

The transformer charge of 25 cents per month per K. W. capacity of connected transformers is entirely fair since it is based on the usual average loss per K. W. in transformers and charged at the lowest step of the rate. This loss is not to be avoided if the transformer remains connected to the line, and the power is paid for in case of primary metering because the meter records this power as well as the power used in motors. Switches as suggested would prevent this loss, but there is no practical method assuring the Power Company that the switches will be opened when power is not being used. While secondary metering was probably more convenient in the cases mentioned in the evidence, it appears that primary meters are being installed which will eliminate this charge.

The power factor clause is entirely proper and should be enforced. At present it is merely a safety clause to prevent, or penalize, abuse of the service. Power factor is entirely within the control of the consumer, as the character of his installation and the manner of its use govern it. An 80 per cent power factor produced by the load reduces the capacity of the power plant in proportion. There are additional losses in economy of operation and poorer quality of service as the power factor is lowered.

The schedule, except as modified in one particular, appears to use the most approved factors which should enter into an equitable power rate, and the schedules in question are in accord with good practice and engineering requirements.

The Commission has considered all of the evidence produced at the hearing, including the comparisons made, the cost, value and character of the service, and finds the rate as established in the schedules above set forth to be just, reasonable and not discriminatory.

The schedules are approved as just and reasonable, except that "Delayed payment penalty clause," Colo. P. U. C. No. 6, Original Sheet No. 21, should be, and the same is hereby, amended to read as follows:

> "A penalty of one-half cent per K. W. H. will be added to monthly bill if such bill is not paid within ten days after the same is due; provided, that such penalty shall not exceed $5.00 on any month's bill."

ORDER.

IT THEREFORE IS ORDERED, That, effective as of September 1, 1919, the defendant, The Western Light and Power Company, shall revise Original Sheet No. 21 of its Colo. P. U. C. No. 6, by incorporating as a part of such schedule the following amendment:

> "A penalty of one-half cent per K. W. H. will be added to monthly bill if such bill is not paid within ten days after the same is due, provided that such penalty shall not exceed $5.00 on any month's bill."

IT IS FURTHER ORDERED, That in all other respects schedules of The Western Light and Power Company, P. U. C. Colo. No. 6, Original Sheets Nos. 20 and 21, are just, reasonable and not discriminatory.

IT IS FURTHER ORDERED, That except as to the amendment to "Delayed payment penalty clause," the amended complaint herein be, and the same is hereby, dismissed.

(SEAL)

LEROY J. WILLIAMS,
A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 5th day of August, 1919.

DECISION No. 268.

IN RE ADVANCE IN RATES OF THE CASPER SCHUMM ELECTRIC LIGHT & POWER COMPANY.

Investigation and Suspension Docket No. 36.

August 13, 1919.

APPEARANCES: J. L. Noonan, Esq., for respondent; John A. Ewing, Esq., and L. R. Thomas, Esq., for the Town of Eagle; H. L. Van Horn, Esq., for the Town of Gypsum.

STATEMENT.

By the Commission:

On February 1, 1919, The Casper Schumm Electric Light & Power Company filed with the Commission first revised sheets Nos. 3, 5, 6 and 7 to its schedule Colo. P. U. C. No. 2, providing for increases in flat and metered rates for commercial lighting and establishing service connection charges in the towns of Eagle and Gypsum and contiguous territory, to become effective March 3, 1919. Eagle and Gypsum lie about seven miles apart, on the Eagle river in Eagle county. Each has a population of several hundred.

The rates now in effect and those proposed in the new schedules are as follows:

Commercial Lighting.

Present Rates		Proposed Rates	
Eagle—			
Meter rates, per K. W. H..	12c	First 50 K. W. H.....	14c
		Over 50 K. W. H.....	13c
Minimum, per month.....	$1.50	Minimum, per month..	$1.50
Gypsum—			
Meter rates, per K. W. H..	12½c	First 50 K. W. H.....	17½c
		Over 50 K. W. H.....	16c
Minimum, per month.....	$1.50	Minimum, per month..	$1.50
Eagle—			
Flat rates.		Flat rates.	
Churches, per month....	1.00	Churches, per month..	1.25
		Moving picture theatre, per night.....	1.00
Gypsum—			
Flat rates.		Flat rates.	
Churches, per month....	1.00	Churches, per month..	1.50
Ladies Aid Society, per month	1.00	Ladies Aid Society, per month	1.50
		Moving picture theatre, per night.....	1.00

Installation and Connection Charges Applying to Eagle and Gypsum.

Present Rates		Proposed Rates	
Meter deposit (refundable)...	$5.00	Meter deposit, (refundable)	$5.00
		Connecting meters or flat rate consumers, each	2.00

No change in power rates or street lighting rates is proposed.

Upon the filing of the schedules for the increased rates above specified the Commission gave notice thereof to the communities affected, and on February 24, 1919, there was lodged with the Commission a protest by a committee representing the patrons of the respondent company at Eagle in and by which protest it was asked that the Commission set a date for a hearing and that the patrons of the company be notified of the time the matter would be heard. Thereupon an order was entered by the Commission suspending the effective date of the proposed rates and the matter was set for hearing at Eagle, Colorado, at the town hall, at 10:00 a. m., June 10, 1919.

Prior to the hearing the statistical and the engineering departments of the Commission entered upon an investigation of the affairs of the respondent company and rendered their respective reports herein to the Commision. At the hearing at Eagle the reports of the Commission's statistician and engineer were read in evidence, and testimony was received on behalf of the respondent company whereby it sought to justify the proposed increase of rates. No testimony was offered by any of the patrons of the company, either at Gypsum or Eagle, they being represented at the hearing, however, and participating in the examination of witnesses for the respondent and interrogating the representatives of the Commission with reference to the matters embraced in their respective reports. At the conclusion of the hearing time was given for the filing of briefs in opposition to the proposed increase of rates and in support thereof by the respondent company. The matter was submitted to the Commission for decision July 25, 1919. In the meantime the proposed increase of rates was further suspended by order of the Commission pending a decision of the matter upon the testimony submitted at the hearing.

From the testimony it appears that Casper Schumm purchased an old mill-site near the mouth of Gypsum Creek where the same empties into the Eagle river and in the outskirts of the town of Gypsum, and in about 1912 proceeded to construct a hydro-electric light plant thereon, primarily for his own use. The plant consisted of a 37½ K. W. hydro-electric installation, consisting of a single runner, James Leffel & Co. horizontal turbine under a static head of 35 feet, belted to a Fort Wayne 3-phase, 60-cycle, 2,300-volt, revolving armature, alternator; a Westinghouse exciter with an extra armature and a marble switchboard, with its complement of switches, meters, lightning arresters, etc., comprising a suitable and well arranged equipment for the purpose designed.

It appears that shortly after this plant (hereafter referred to as the lower plant) was built, a contract was entered into with the town of Gypsum for street lighting, the town agreeing to pay a certain monthly compensation therefor. No franchise seems to have been granted the respondent by the town of Gypsum. For the past few years no energy for street lighting purposes has been procured by the town of Gypsum from the respondent, probably through an effort to curtail the expenses of the municipality. It further appears that during the summer of 1912 a transmission line of 6,600 volts from the lower plant was built to the town of Eagle

to supply that town with electric light facilities, and that upon application being made therefor, a franchisee was granted the respondent by the authorities of said town of Eagle. It soon developed that not sufficient water was available during the irrigating season to enable the lower plant to generate sufficient electrical energy to supply the needs of the patrons of the respondent company, so that in the summer and fall of 1914 another plant (hereinafter referred to as the upper plant) was built at the head of Gypsum Creek, with which to augment and make certain a continuous and satisfactory service. The upper plant is located about seven miles up Gypsum Creek in the Holy Cross National Forest Reserve, and is quite similar to the lower plant except that the upper plant is about double the capacity of the lower plant. The upper plant is described by the engineering department as being a much better plant than the lower plant and admirably adapted for the purpose for which it was constructed. A transmission line at 6,600 volts from the upper plant, seven miles in length, meets the line between Gypsum and Eagle near Gypsum and is described as being in excellent condition and properly maintained. Along this line between Gypsum and Eagle are a number of rural consumers using electric power for irrigation and domestic purposes as well as for lights, which service requires a considerable investment in distribution lines, transformers and other equipment.. On the line between the upper plant and Gypsum there also appears to be a number of these consumers' branches.

The value of the property of the respondent company for rate-making purposes—that is, its reproduction cost under normal conditions—was found by the engineer of the Commission, on investigation and appraisal, to be $43,471.00, which includes all the property of the company, the upper and lower plants, transmission lines, branch lines and distribution systems.

The testimony of the witnesses of the company as to value was almost entirely speculative and largely in the nature of guess, owing evidently to the fact that this electric property was built and is owned by Casper Schumm and William Schumm, father and son, and no attempt was made to keep account of construction or other costs; but the Commission has no doubt of the fairness of the value of the plant as found by its electrical engineer in the amount above stated.

Serious objection is made by protestants to the inclusion of the value of the lower plant in this proceeding, for it is claimed

that the lower plant is an unnecessary investment; that since the construction of the upper plant was made necessary by the inefficiency of the lower plant because of the small quantity of water available during irrigation seasons, the most that can be said is that the lower plant is but a "standby" plant for use in emergency, and that no emergency of sufficient importance can or will ever occur in these agricultural communities to justify the inclusion of the cost of the lower plant in the value of the entire plant for rate-making purposes.

This contention is supported by the undoubted weight of evidence, and the Commission feels that, under all the circumstances and in view of the evidence, the reproduction cost or value of the lower plant should be excluded from the value of the property for rate-making purposes. The value of the entire plant as determined by the engineer's inventory and appraisal is $43,471.00. Based on the details of the appraisal, the engineeer gives the investment cost of the plant, excluding all investment in the lower plant and its corresponding overheads, of $31,207.00. That value will, therefore, be the value of the entire plant allowed by the Commission for rate-making purposes.

Obeection is made by protestants to the amount of salary paid by the company to William Schumm, its president and general manager. The testimony discloses that this plant is being conducted by two men—a foreman or superintendent, at a salary of $100.00 per month, and Williams Schumm, general manager, at $125.00 per month; that said Schumm devotes all time necessary to the efficient operation of the plant in going over the line, reading meters, collecting and paying accounts and various other duties. Bearing in mind that the plant covers a large territory, embracing two towns seven miles apart, as well as rural lines and rural customers, the Commission is of the opinion these services are needed, if not absolutely necessary, and that $125.00 per month is a reasonable salary to be paid therefor; and especially is this true when there is an entire lack of evidence to show that the plant, and quality of service furnished thereby, suffered through Mr. Schumm's management. And it goes without saying that a really competent man to look after the affairs of and manage this company would command the amount of salary objected to, and it is surely immaterial that such salary is paid to Mr. Schumm by the company, instead of to one who has no monetary interest therein.

Under the schedules filed by respondent company for increase of rates, the rate proposed is based on a first step of 50 K. W. H.

at 14 cents net in Eagle, and 17½ cents net in Gypsum; and also a flat rate of $1.25 per month for churches in Eagle, and $1.50 per month for churches in Gypsum. Objection is made to this proposed increase and inequality, and to the high consumption embraced in the first step of the proposed rate. No valid reason is apparent to justify this discrimination in charges proposed for consumers in these municipalities, nor is it apparent that the consumption of 50 K. W. H. embraced in the first step of the proposed rate is reasonable and just, for the evidence discloses the fact to be that but few of the patrons at Eagle, and practically none at Gypsum, actually consume in excess of 50 K. W. H. per month. As the law expressly provides that all rates shall be reasonable and just and not discriminatory, these objections are, therefore, well taken.

Other discriminations on the part of respondent company include flat rates to churches, which appear in the proposed schedule, and the practice of charging 75 cents per month where one light is used and no meter is installed, and the minimum of $1.50 where more than one light is used but no meter is installed. These practices should be rectified and every consumer placed upon a metered consumption, with uniform minimum charge; and this applies to the users of electricity on rural lines as well as to other consumers. An exception to this rule is permissible, however, when applied to moving picture theatres on account of the character of use which is more nearly the same in amount in the ordinary moving picture theatre of small communities. The proposed schedule fixes a moving picture theatre rate of $1.00 per night in each of these communities, and this rate will not be disapproved.

The final serious objection is made to any increase of rates at all as not being justified. The facts in evidence do not bear out this contention. On page 9 of his report, the statistician for the Commission gives a statement of the income of the company for the year 1918, which shows a net income for that year of $387.51. The engineering department fixes the fair reproduction cost of the plant, exclusive of the cost of the lower plant, as $31,207.00 as of normal times. Both reports, that of the statistician and of the engineer, are conceded to be conservative and fair to all parties concerned. Indeed, these officials have no interest in the controversy save to give to the Commission and all interested parties, reliable information as to the status of and conditions surrounding the utility being made subject of inquiry. This is the purpose of the law in providing the Commission with such officials, who are specially trained

and qualified to perform the functions mentioned; and it is not attempted in this case to disprove the correctness of the showing made in their reports.

Hence the testimony shows an investment of $31,207.00 earning a net income of $387.51—about 1.2 per cent. Merely stating this result conclusively shows that an increase of rates is not only justified, but is necessary if these communities shall continue to enjoy the advantages of the modern and convenient light—electricity. And in this connection, the Commission feels constrained to suggest that these communities are especially fortunate and favored in having the advantage of electrical energy for light and power when their location and population are considered—a thing but few localities in the state similarly situated and circumstanced do enjoy.

The rate which should be adopted is a question of some difficulty when the desire is to treat the respondent and its patrons fairly. To adopt a rate sufficiently high to give the company a net return of 6 per cent or even 5 per cent upon the capital investment, plus depreciation and taxes, would mean a rate so high as to be prohibitive to the use of the service by many of the patrons, and would thus serve to decrease the revenue of the company.

Upon careful consideration of the entire situation and of the testimony submitted, the Commission has arrived at the conclusion that it will be more equitable and just to treat the field of the respondent company as a single unit, and to require the adoption of lighting rates to be charged upon a uniform basis throughout the district, regardless of the situs of the patron or the character of the use, and also to require a lower and uniform first step of the rate as being calculated to encourage a greater use of electricity. The engineer has worked out such rates based upon the actual meter readings for the months of December, 1918, and January, February, March and April, 1919, grouped and applied to such rates as follows:

> For the first 15 K. W. H., per month, 16c per K. W. H.
> For all over 15 K. W. H., per month, 13c per K. W. H.
> Monthly minimum charge, $1.50.

The effect of the above rates applied uniformly throughout the district will yield an approximate return of 2.94 per cent upon the capital investment of $31,207.00, including revenue derived from street lighting in Eagle and energy sold for irrigation power purposes, assuming the meter readings are the same as those of the five months aforesaid.

It is the opinion of the Commission, therefore, that the following schedule of rates should be filed by respondent, to become effective September 1, 1919:

Commercial Lighting.

Eagle, Gypsum and Adjoining Territory.

Meter rates—

For the first 15 K. W. H., per month..... 16c per K. W. H.
For all over 15 K. W. H., per month..... 13c per K. W. H.
Monthly minimum charge, $1.50.

Moming picture theatres.....$1.00 per night

Meter Deposit.

Upon installation of meter.....$5.00, refundable

Under the above schedule no provision is made for service at a flat rate except as to the moving picture theatres, and it will be necessary for the company to install meters to all consumers immediately to avoid discrimination. A flat rate is not in harmony with good practice, and unless made uniform to all users of energy of the same class, is directly in conflict with and contrary to the provisions of the statute regulatory thereof.

ORDER.

IT IS THEREFORE ORDERED, That the respondent, The Casper Schumm Electric Light & Power Company, be, and it is hereby, required to cancel, on or before August 30, 1919, First Revised Sheet No. 3, First Revised Sheet No. 5, First Revised Sheet No. 6, and First Revised Sheet No. 7, all of its schedule Colo. P. U. C. No. 2;

IT IS FURTHER ORDERED, That the respondent, The Casper Schumm Electric Light & Power Company, be, and it is hereby, required to make effective September 1, 1919, by filing and posting in the manner prescribed in section 16 of the Act, the following rates and charges for electric service:

Commercial Lighting.

Eagle, Gypsum and Adjoining Territory.

Meter rates—

For the first 15 K. W. H., per month..... 16c per K. W. H.
For all over 15 K. W. H., per month..... 13c per K. W. H.
Monthly minimum charge, $1.50.

Moving picture theatres.....$1.00 per night

Meter Deposit.

Upon installation of meter.....$5.00, refundable

Street Lighting.

Eagle ..... 8c per K. W. H.
Gypsum ..... 8c per K. W. H.

IT IS FURTHER ORDERED, That when so filed the said schedules shall supersede all schedules containing rates for similar service heretofore filed by said respondent company, and the rates fixed herein shall be the lawful rates to be charged and collected from its patrons by the said respondent company.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 13th day of August, 1919.

DECISION No. 269.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTERURBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

August 14, 1919.

STATEMENT.

By the Commission:

On the 15th day of January, 1919, the Commission issued its order in the above entitled cause suspending certain increases in fares as specified in said order and continuing to February 15, 1919, the hearing on the motion for rehearing filed herein by the City and County of Denver. Subsequently thereto orders were issued deferring the hearing on motion for rehearing until August 15, 1919.

Necessity being shown for further continuance of said hearing, the foregoing orders are hereby further modified in the following particulars only:

ORDER.

IT IS HEREBY ORDERED, That the hearing on the motion for rehearing filed herein by the City and County of Denver be, and the same is hereby, further continued to October 15, 1919 at 2:00 p. m., without prejudice to the right of the City and County of Denver, The Denver Tramway Company, or this Commission to call a hearing on the motion for rehearing prior to such date, or for a further continuance of the same, and without prejudice to the right of any party to obtain a writ of review in this cause upon its final decision.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 14th day of August, 1919.

DECISION NO. 269A.

CITIZENS OF FOSSTON,

v.

UNION PACIFIC RAILROAD.

Case No. 179.

August 14, 1919.

APPEARANCES: C. C. Barnard, trainmaster, for Union Pacific Railroad; H. C. W. Borsberry, for Citizens of Fosston, Osgood, and Farmers' Union; E. J. Miller, for Citizens of Cornish.

STATEMENT.

By the Commission:

On June 23, 1919, in compliance with General Order No. 7, the Union Pacific Railroad Company through its attorney, Thomas R. Woodrow, filed with the Commission a notice of intention to close Fosston station as a reporting station and to open Cornish as a reporting station. Upon filing of said notice the Commission had its inspector visit the two communities and on July 2, 1919, he filed his report to the Commisison in which was shown the volume of business done at both stations and the general conditions surrounding the matter, with the recommendation of the inspector that the railroad be permitted to close Fosston as a reporting or agency station and in lieu thereof open Cornish as a reporting station so soon as satisfactory arrangements should be made by the carrier to take charge of freight shipments consigned to Fosston.

On July 7, 1919, there was filed with the Commisison by the citizens of Fosston a complaint protesting against the removal of the agent from Fosston and petitioning the Commission to order the retention of the reporting station at Fosston, and on the same date there was filed with the Commission by the citizens of Cornish a petition asking that Cornish be opened as an agency station.

Thereafter upon notice to all parties concerned the matter was set down for formal hearing at Fosston, Colorado, and heard by the Commissioon at 11:30 a. m., on July 29, 1919.

A great deal of testimony was heard on behalf of the citizens of both communities affected—to support, in the case of Fosston, the petition that the agency or reporting station be retained, and in support of the petition of Cornish that an agency station be established at that place. The testimony on behalf of the railroad company was from an economical and operating standpoint, favoring the closing of Fosston as a reporting station and opening Cornish as a reporting station.

The testimony discloses that these two towns are located on what is termed the Briggsdale branch of the Union Pacific Railroad, extending northeast from Greeley to Briggsdale, a distance of 28 miles; the Briggsdale branch connects with the Union Pacific main line at Greeley. The first station west of Briggsdale is Fosston, 4.7 miles distant; then Cornish, 4.7 miles west of Fosston; Barnesville, 4 miles west of Cornish; and Gill, 5 miles west of Barnesville. The railroad maintains an agency or reporting station at Briggsdale, Fosston and Gill at present, so that Cornish and Barnesville are both non-reporting stations. The testimony of the trainmaster of the Union Pacific Railroad is to the effect that from an economical and operating standpoint it is desirable to have a reporting station at every other station rather than two successive reporting stations as in the case of Briggsdale and Fosston and then two successive non-reporting stations as in the case of Cornish and Barnesville; and that the business does not, has not, and will not justify the maintenance of an agent at all these stations located in such close proximity.

At the conclusion of the hearing and at the request of the Commission the railroad furnished a statement prepared by its auditing department of the business done at Fosston and Cornish covering the period from July 1, 1918, to July 1, 1919.

This report shows the total tonnage of freight received and forwarded at Fosston during said period to be 2,155,820 pounds,

which gave a total revenue to the railroad of $4,612.79, while the total tonnage of freight received and forwarded at Cornish amounted to 2,875,919 pounds, producing a total revenue of $6,-873.35. In the matter of carloads said statement shows a total of 32 carloads received and forwarded at Fosston during said period and a total of 65 carloads received and forwarded at Cornish; so that from the standpoint of the amount of business transacted at these respective stations the balance is very much in favor of Cornish station.

The evidence discloses the fact that Fosston has been a reporting station for the past four or five years, and that during said period Cornish has developed into a community of equal size and importance regarding population and business. Prior to the establishment of an agency at Fosston the patrons of the railroad now using Fosston as a place to receive and dispatch freight, were required to transact business with the Briggsdale station, and since the establishment of Fosston as a reporting station, the patrons of Cornish have been required to transact their business with the Fosston station.

It appears from the evidence that inbound freight to a non-reporting station must be prepaid and that outbound freight from a non-reporting station is billed and consigned from the next reporting station; that is to say, freight outbound from Cornish is billed from Fosston station at present, while inbound freight, though discharged at Cornish when prepaid, is reported and accounted for by the agent at Fosston. The same is true of all express matter handled. In the matter of passenger traffic no excess is required of a passenger who boards a train at a non-agency station, though he is required to purchase a ticket at the next nearest agency station to avoid payment of the ten per cent excess cash fare.

While under the evidence it cannot be questioned that it is more convenient to do business at a station having an agent, yet it appears that the railroad may not justly be required to maintain an agent at all stations, where but a few miles intervene between stations, and especially so when the business of the road does not justify such course and such business conditions exist, as shown by the testimony of the trainmaster, that the net income of the Briggsdale branch for the month of June, 1919, was but $1.25.

There was some attempt made to urge that the limited revenue produced by the Briggsdale branch should not be permitted to limit the number of agency stations on the line, because the entire Union

Pacific system might show an increased business and therefore the profits of one part might be applied to the loss of another in order to accommodate and convenience the public served by that part of the system which does not pay. In the opinion of the Commission, however, this theory is not tenable with reference to operating expense and revenue, although this principle has been applied with reference to the entire discontinuance of service upon a branch line, the authorities holding that when the entire discontinuance of service is sought, the railroad as a whole must show that it is not upon a paying basis before it may be allowed to discontinue service upon a branch thereof.

It appears that Osgood is a prosperous farming community located about 7 miles distant from Fosston and Cornish, and that the patrons of the railroad shipping from Osgood and vicinity generally speaking have been using Fosston station, the reason being, according to the testimony, that there are better highways between Osgood and Fosston than between Osgood and Cornish. In the event of the agent at Fosston being removed to Cornish the people from Osgood may still ship and receive freight at Fosston as in the past, the only difference being that they would deal with the company's representative at Cornish, 4.7 miles away.

The whole matter appears to the Commission to be merely one of convenience to the people of these communities. Inasmuch as the business offered does not warrant the maintenance of agents at both places, and when it is considered that the convenience and economy of the railroad will be best subserved by the allowance of the proposed change of agency stations, the equity of the matter is resolved in favor of the railroad, for its economy and convenience is a matter of constant daily occurrence, while the convenience of the shipper is but occasional as he may have need of the service.

It further appears from the evidence that at the depot at Cornish there are living rooms for the company's agent, that the section men are stationed at Cornish and that somewhat better facilities for the loading of livestock are offered at Cornish than Fosston.

Under all of the circumstances therefore the Commission is of the opinion that said railroad should be permitted to close Fosston as a reporting station and open Cornish as a reporting station; provided, that it makes some arrangement for the safety and delivery of all perishable freight and commodities consigned to its patrons at Fosston. Representatives of the railroad have given assurance that this will be done, but if it be not done within a reasonable

time and in a reasonably satisfactory manner, the patrons of the company at Fosston will have just cause of complaint to the Commission to compel the railroad to comply with such requirements.

ORDER.

IT IS THEREFORE ORDERED, That the Union Pacific Railroad may close Fosston station as a reporting or agency station and open Cornish as a reporting or agency station.

IT IS FURTHER ORDERED, That said railroad shall properly safeguard and protect all perishable freight and other commodities consigned and received by it at said Fosston station.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 14th day of August, 1919.

DECISION No. 270.

THE BURLINGTON GAS & ELECTRIC COMPANY,

v.

THE TOWN OF BURLINGTON,
THE THOMAS S. HAYDEN REALTY COMPANY,
Intervenor.

Case No. 165.

August 14, 1919.

STATEMENT.

By the Commission:

On the 3rd day of June, 1919, the complainant filed with the Commission its petition for a rehearing in the above entitled cause, alleging numerous grounds therefor. Subsequently, at the request of complainant, the matter was set down for oral argument at the hearing room of the Commission, Capitol Building, Denver, Colorado, at 10:00 o'clock a. m., August 4, 1919, and the matter was heard by the entire Commission.

Complainant was the only party to the proceeding that appeared and presented argument upon the petition for rehearing; and the Commission, having fully considered the matter, and being now sufficiently advised in the premises, is of the opinion that the petition for rehearing should be denied.

ORDER.

IT IS THEREFORE ORDERED, That the petition for rehearing filed with the Commission on June 3, 1919, by complainant, The Burlington Gas & Electric Company, be, and the same is hereby, denied.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 14th day of August, 1919.

DECISION No. 271.

IN THE MATTER OF THE APPLICATION OF THE DENVER, BOULDER & WESTERN RAILROAD COMPANY TO ABANDON SERVICE AND CEASE OPERATIONS.

Application No. 12.

August 19, 1919.

APPEARANCES: J. Q. Dier for The Denver, Boulder & Western Railroad Company; John R. Wolff for protestants.

STATEMENT.

By the Commission:

On July 23, 1919, the Commission rendered its decision in the above matter, wherein the applicant railroad company was permitted to discontinue and withdraw from the public service and cease to operate its line of railroad and to remove, dismantle and dispose of its property, effective September 15, 1919, at 12 o'clock midnight; and further that until said date it should continue to operate its train service then in force and that none of its property should be withdrawn from the public service until after the effective date of said order. 5 P. U. C. —, Decision No. —.

On August 6, 1919, said railroad company filed its application in the nature of a motion with the Commission asking that the order of July 23, 1919, be modified and that it be permitted to discontinue service at once, alleging as ground therefor that a

flood in the nature of a cloudburst has washed out a considerable portion of its tracks in the mountains above the city of Boulder on the night of July 31, 1919, and that it had no funds with which to repair its tracks and to continue the operation of its line of railroad; and that it had ceased the operation of its road and prayed that the Commission make the order of abandonment and cancellation of tariffs effective as of that date, August 6, 1919, instead of September 15, 1919.

Thereupon the Commission set the matter for hearing at the hearing room of the Commission, Capitol Building, Denver, Colorado, on August 15, 1919, at 10 o'clock a. m., and all parties to the original application were given notice by the secretary of the time and place of such hearing; and also notice was given of the time and place of such hearing by publication in the newspapers of the city of Boulder.

At the hearing held on August 15, 1919, the applicant company appeared by its attorney, and the protestants in the proceeding of June 16, 1919, appeared by John R. Wolff, their attorney; no other appearances were entered by any of the parties to the proceeding of last June.

The matter at issue was as to the extent of the damage done by flood to the tracks of the applicant company and the approximate cost of repairing the tracks to make the line reasonably safe for traffic, and the length of time within which such repairs could reasonably be made. Evidence on behalf of the railroad was to the effect that it would cost about $3,500.00 to put its tracks and culverts in as good condition as they were before the flood; that this did not take into consideration any damage to tracks that might have occurred on other sections of the track west of and beyond the station of Crisman, about six and one-half miles west of Boulder, it appearing that practically all of the serious damage was suffered in what is known as Boulder Canon and within five or six miles of the city of Boulder. The evidence submitted by the protestants was to the effect that the damage was not as great as testified to by the general manager of the railroad, and that in consequence thereof the track could be restored to about its former state of safety at an expense of approximately $1,500.00.

The railway engineer for the Commission was dispatched to the scene of this flood and made an investigation thereof a few days before the hearing, and at the request of both parties he was called by the Commission to give his estimate of the amount

of damage and the cost to be incurred in repairing the same. According to his testimony, the track had been washed away at some 18 or 19 places, the largest of which extended over a distance of about 125 feet, and that to replace the dirt and rock to about the condition of the track before it was damaged and to remove the debris from other portions of the track so as to permit of trains being operated thereon with reasonable safety, would cost approximately $3,000.00. All parties were agreed that such repairs could not be made short of a period of time of at least two weeks.

It was strenuously insisted by protestants that in order to get the property of the applicant company, its rails, depots and the like, down out of the mountains, in the event of the same being sold as originally contemplated by the applicant company, it would be necessary to sufficiently repair the damaged tracks to permit the operation of trains, inasmuch as some 37 or 38 miles of trackage was beyond or west of the washout. This is conceded by the general manager of the railroad, except that he takes the position that it is a business proposition and really a matter for the purchaser of the railroad property to determine. He frankly concedes, however, that it would be necessary for someone to furnish the money to repair the damage to the tracks in order that the railroad property may be brought out of the mountains.

As the Commission views the matter, it is only concerned with the question at issue, to-wit: Shall the order of July 23, 1919, be modified to the extent that said railroad may be permitted to discontinue, withdraw from the public service and cease to operate its line of railroad as of August 6, 1919, instead of September 15, 1919; and only such evidence as is relevant to that question may be properly considered by the Commission. On this point the facts are, as disclosed by the testimony, that the amount of money necessary to be expended to repair the damage to the tracks caused by the flood may be safely placed at not less than $2,500.00, and that not less than two weeks' time will be necessary to make such repairs. This being true, if the repairs should be ordered to be made now, it will be at least September 3rd before trains may be safely operated over said line of railroad. In that event, the railroad would have a life of 12 days, or until September 15th, the date fixed in the order of July 23, 1919, upon which it may legally discontinue, withdraw from the public service and cease to operate its railroad.

At the hearing in June, which preceded issuance of the order of July 23, 1919, the city of Boulder appeared and offered testimony to the effect that in event the water works bond election to be held in the city of Boulder on July 1, 1919, carried, then in that case, the city of Boulder would have quite a tonnage of freight, mostly vitrified pipe, for the extension of its water works system to be shipped over this line of railroad, and the city manager estimated that such tonnage would yield to said railroad approximately $4,000.00 of revenue. This testimony was taken seriously into consideration by the Commission when the applicant company, by the order of July 23rd, was directed to continue operation of its railroad until September 15, 1919, the testimony disclosing that the pipe would be transported to the point of the pipe line extension by not later than September 10th. At the present hearing the city of Boulder entered no appearance, and the applicant company offered to prove that said vitrified pipe had not been and would not be shipped over its line of railroad at all, inasmuch as the city of Boulder had let the contract to persons who contemplated shipping the pipe from Denver over the Denver & Salt Lake Railroad to Rollinsville and then trucking it to destination. This line of testimony was objected to by protestants on the ground that it was irrelevant and immaterial, and that they were not prepared to meet it in the absence of the city manager of Boulder, and an extended colloquy took place between the attorney for the railroad and the attorney for the protestants, with the result that the offer of proof above mentioned was withdrawn. Bearing in mind, however, that the city of Boulder had been notified of the hearing, added to the inference to be gathered from the colloquy of the attorneys, it is but fair to assume that were the railroad now ordered to repair its tracks, such repair work would not be completed in time to permit the applicant company to derive any revenue from shipments of pipe by the city of Boulder; and for that matter a reasonable inference from the entire situation is that the applicant company would not have received this revenue even though its tracks had not been washed out and its service had not been interrupted.

Under all the circumstances surrounding this case as testified to at the former hearing and at this hearing, the Commission entertains the view that it may not justly order the applicant company to incur an expense of approximately $2,500.00 in order to operate the railroad for a period of 12 days, when it is apparent that not sufficient revenue will be derived by the company to

overcome the expense of repair. As a good business proposition, the railroad might properly consider making the repairs to its tracks, but with this element the Commission has nothing to do; nor may the Commission under the powers conferred upon it by the Public Utilities Act attempt to fix any value of property of said railroad company, commonly termed its "junk" value, that being a matter of private bargain and sale.

The good faith of the railroad management in not promptly repairing its tracks after the flood of July 31, 1919, may be and probably has been the subject of question, but in view of the entire history of the railroad from a financial standpoint, as disclosed by the records of the two prior proceedings in December, 1917, and in June, 1919, it is quite apparent that the owners of the property would not be overly anxious to incur any further expense than they were required to do, and particularly when the time for cessation of operation was but 45 days from the date of the flood.

The Commission, having carefully considered the testimony submitted upon the application for modification of its prior order, and being now fully advised in the premises, concludes that said railroad should not be required to continue its operations under the prior order, owing to the act of God aforesaid and the damage occasioned to its tracks thereby.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, The Denver, Boulder & Western Railroad Company, may, and it is hereby authorized to, discontinue its service, cancel its tariffs and withdraw its line of railroad from the public service, effective as of August 6, 1919.

IT IS FURTHER ORDERED, That The Denver, Boulder & Western Railroad Company be, and it is hereby, required to submit a report of the operations of its railroad from January 1, 1919, to the time of discontinuing operations, upon forms to be furnished by the Commission.

LEROY J. WILLIAMS,
(SEAL) A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 19th day of August, 1919.

DECISION No. 272.

IN THE MATTER OF THE APPLICATION OF C. E. KNUTSON, ET AL., FOR THE OPENING OF A PUBLIC HIGHWAY CROSSING OVER THE TRACKS OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD BETWEEN SECTIONS 24 AND 19, ON THE COUNTY LINE BETWEEN YUMA AND WASHINGTON COUNTIES.

Appication No. 34.

August 20, 1919.

STATEMENT.

By the Commission:

The proceeding arises upon the application of C. E. Knutson and other citizens of Washington and Yuma Counties in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, for the opening of a public highway crossing at grade over the tracks of the Chicago, Burlington & Quincy Railroad, between Sections 24 and 19 on the county line between Yuma and Washington counties, 3.5 miles west of Yuma.

An investigation into the necessity for the opening of a public highway crossing at this point was made by the Commission's engineer who recommended that the crossing be established. Washington and Yuma counties and the Chicago, Burlington & Quincy Railroad having agreed upon a division of the expense of constructing the crossing and no objections having been filed, the Commission will, therefore, issue its order granting permission for the establishment of the crossing as requested.

ORDER.

IT IS THEREFORE ORDERED, That in accordance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, a public highway crossing at grade, be, and the same is hereby, permitted to be opened and established over the line of the Chicago, Burlington & Quincy Railroad between Sections 24 and 19 on the county line between Washington and Yuma counties at a point about 3.5 miles west of Yuma, Colorado.

IT IS FURTHER ORDERED, That the Chicago, Burlington & Quincy Railroad shall open and establish said crossing and shall bear the expense necessary thereto, except that the counties of Washington and Yuma, Colorado, shall perform, or bear the expense of performing, the work of grading, including such drainage as may be necessary to the establishment of proper approaches to said crossing.

IT IS FURTHER ORDERED, That the crossing at the point above described shall be constructed in accordance with plans and specifications prescribed in the Commission's order, In re Improvement of Grade Crossings in Colorado, 2 Colo. P. U. C. 128.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 20th day of August, 1919.

DECISION No. 273.

IN THE MATTER OF THE APPLICATION OF J. A. BROOKS, FOR PERMISSION TO EXTEND THE LINES OF THE HAXTUN TELEPHONE COMPANY (NOT INCORPORATED) EASTWARD TO HOLYOKE, COLORADO, AND WESTWARD TO FLEMING, COLORADO.

Appication No. 37.

August 20, 1919.

APPEARANCES: Elmer Brock, Esq., for The Mountain States Telephone and Telegraph Company; J. A. Brooks and A. T. Searle, for the applicant company.

STATEMENT.

By the Commission:

On March 10, 1919, J. A. Brooks on behalf of the Haxtun Telephone Company (not incorporated) filed with the Commission his application for an order authorizing him to extend his telephone lines from the town of Paoli to the town of Holyoke over the route indicated on a map filed therewith; also from the town of Haxtun over the route indicated on said map to the limits of the town of Fleming; and at Holyoke to connect with the local lines of the Holyoke Mutual Telephone Company and at Fleming with the local lines of the Fleming Telephone Company. The application states that applicant is engaged in the business of furnishing telephonic communication within the ter-

ritory contiguous to Haxtun in Phillips, Logan, Sedgwick and Yuma counties, in the state of Colorado, applicant's lines extending eastward ten miles to Paoli in Phillips county and westward eight miles to within four miles of the town of Fleming in Logan county, Colorado, as well as northward about 14 miles and southward about 20 miles; that he is sole owner and proprietor of the Haxtun Telephone Company; that the proposed new construction is now and will be required by public convenience and necessity, and that there is no competition between the telephone systems of the said towns of Haxtun, Holyoke and Fleming, for the reason that each system serves an entirely separate territory and said systems do not overlap.

On March 26, 1919, The Mountain States Telephone and Telegraph Company, by Milton Smith, its vice-president and general counsel, filed its petition of intervention and protest with the Commission. In its protest The Mountain States Telephone and Telegraph Company alleges that it would be unjust and inequitable to allow the applicant herein to construct the lines proposed in the application, and thereupon enter into competition with the intervenor, for the reason intervenor has already constructed and in operation its plant furnishing long distance telephone service between the points involved and named in the application and that neither public convenience or necessity would justify this Commission in issuing the order prayed for.

The case was set down for hearing and hearing was held at Haxtun, Colorado, June 20, 1919, at which time various witnesses were sworn and testified and other evidence was introduced. However, while the case was still under consideration by the Commission, and on August 8, 1919, a stipulation was agreed to and entered into between the applicant and The Mountain States Telephone and Telegraph Company, which stipulation was signed by them and filed with the Commission. In the stipulation it is recited that * * *

> "Since the hearing on this application the applicant has acquired by purchase from The Mountain States Telephone and Telegraph Company, the intervenor herein, that part of the Sterling-Holyoke toll line between Haxtun Junction and Holyoke, and the applicant intends to construct a line between Haxtun and Haxtun Junction to connect with the said toll line so purchased so that communication may thereafter be had between Haxtun and Holyoke entirely over the lines of the applicant; and

"Whereas, in view of the improvements made in the facilities of the intervenor, it is now possible to have satisfactory communication between Haxtun and Fleming and therefore it is deemed unnecessary by the applicant to extend its lines either eastward or westward as contemplated by his application herein;

"It is hereby stipulated by and between the applicant and the intervenor, that this application may be dismissed."

ORDER.

IT IS THEREFORE ORDERED, That this case and the application herein be, and the same are hereby, dismissed.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 20th day of August, 1919.

DECISION NO. 274.

IN THE MATTER OF THE APPLICATION OF THE TOWN OF KEOTA FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

Application No. 49.

August 20, 1919.

STATEMENT.

By the Commission:

This is an application by the town of Keota for a certificate that public convenience and necessity require the furnishing by the applicant of water to the town of Keota and to the inhabitants thereof.

It appears from the application and the evidence in this cause that Keota has never at any time had a water works system. On May 1, 1919, the Board of Trustees passed an ordinance calling a special election to determine the question of authorizing the Board of Trustees to erect and construct a system of water works for fire and domestic purposes, to be owned, managed and operated by the town.

At the election, which was held May 26, 1919, it was decided by vote of the taxpayers that a water works system should be constructed and operated in accordance with the provisions of the ordinance aforesaid. The officials of the town thereupon filed this application with the Commission under the provisions of Section 35 of the Act, as amended.

There being no water works or system with which the proposed plant will compete and no reason appearing why the appli-

cation should not be granted, an order will be entered declaring that the public convenience and necessity require the construction and operation of a municipal water works system in the town of Keota.

ORDER.

The Public Utilities Commission of the State of Colorado therefore declares that present and future public convenience and necessity of the inhabitants of the town of Keota and of said town require and will require the construction and operation by said town of a water works system.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 20th day of August, 1919.

DECISION No. 275.

IN THE MATTER OF THE APPLICATION OF THE TOWN OF GROVER FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

Application No. 50.

August 20, 1919.

STATEMENT.

By the Commission:

This is an application by the town of Grover for a certificate that public convenience and necessity require the furnishing by the applicant of water to the town of Grover and to the inhabitants thereof.

It appears from the application and the evidence in this cause that Grover has never at any time had a water works system. On March 6, 1919, the Board of Trustees passed an ordinance providing for the submission at the general election on April 1, 1919, of the question of authorizing the Board of Trustees to erect and construct a system of water works for fire and domestic purposes, to be owned, managed and operated by the town.

At the election it was decided by vote of the taxpayers that a water works system should be constructed and operated in accordance with the provisions of the ordinance aforesaid. The officials of the town thereupon filed this application with the Commission under the provisions of Section 35 of the Act, as amended.

There being no water works system with which the proposed plant will compete and no reason appearing why the application should not be granted, an order will be entered declaring that

the public convenience and necessity require the construction and operation of a municipal water works system in the town of Grover.

ORDER.

The Public Utilities Commission of the State of Colorado therefore declares that present and future public convenience and necessity of the inhabitants of the town of Grover and of said town require and will require the construction and operation by said town of a water works system.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 20th day of August, 1919.

DECISION No. 276.

IN THE MATTER OF THE APPLICATION OF THE CRYSTAL RIVER & SAN JUAN RAILROAD COMPANY TO DISCONTINUE OPERATIONS.

Application No. 5.

August 25, 1919.

APPEARANCES: S. D. Crump, Esq., for the Applicant Company.

STATEMENT.

By the Commission:

An order was entered in the above application on October 27, 1917, that The Crystal River & San Juan Railroad Company be permitted to discontinue operations upon its line of railroad until April 1, 1918; and by subsequent orders this permission was extended to May 1, 1919.

On August 22, 1919, the applicant filed verified petition, alleging that the same conditions respecting the financial affairs and general condition of the applicant's railroad still exist, except that applicant is now engaged in making all necessary repairs to the roadbed, rails, ties, bridges, and rolling stock owned by it, and at this time has a force of employes engaged in making such repairs as rapidly as possible; that it is the intention of the applicant to resume operations and commence the running of trains so as to serve the public in both freight and passenger business

on or about December 31, 1919, and requests that the last order permitting discontinuance of service be extended to December 31, 1919.

The Commission finds that the permission for the extension of the order heretofore made should be granted.

ORDER.

IT IS THEREFORE ORDERED, That the permission for discontinuance of operation heretofore granted to The Crystal River & San Juan Railroad Company of its line of railroad, be, and is hereby, extended from May 1, 1919, to December 31, 1919, unless this order be modified or extended by the Commission, or unless the said company be sooner able to operate its trains, in which event train service shall be resumed.

IT IS FURTHER ORDERED, That The Crystal River & San Juan Railroad Company shall not remove its line of railroad or any part thereof.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 25th day of August, 1919.

DECISION NO. 277.

IN THE MATTER OF THE APPLICATION OF THE GREEN TRANSFER COMPANY FOR A CERTIFICATE TO OPERATE FREIGHT SERVICE BY AUTOMOBILE TRUCK BETWEEN DENVER, BROOMFIELD, LAFAYETTE, LOUISVILLE, BOULDER, NEDERLAND, LAKEWOOD AND ELDORA.

Application No. 51.

August 28, 1919.

APPEARANCES: Tedrow and Fitzgerald for The Green Transfer Company.

STATEMENT.

By the Commission:

On July 18, 1919, an application was filed with the Commission by The Green Transfer Company, a copartnership composed of Bert Green, Elizabeth Green, J. Earl Green and Helen Green, for a certificate from this Commission that public convenience and necessity require the operation by said company of an automobile truck line as a common carrier of freight between Boulder, Louisville, Lafayette, Broomfield and Denver, and to and from intermediate towns and places. On August 6, 1919, the applicant company filed an amended application for a certificate to operate between Boulder, Louisville, Lafayette, Broomfield and Denver, and, in addition to those points, between the towns of Boulder, Nederland, Lakewood and Eldora.

It is alleged in the application that the applicant proposes to operate an automobile truck line, the equipment to be one or more motor-driven vehicles operating each day of the week, except Sundays, in each direction; that the public convenience and necessity required the proposed operation; that at the present time there is not in operation any automobile truck line as a common carrier between the points above named, for the operation of which this Commission has granted a certificate; that no franchises or permits have been obtained in the territory through which it is proposed to operate for the reason that there is no requirement for the same; that the applicant has filed a schedule of rates and charges for freight, including delivery, which is attached hereto and marked exhibit "A"; that the applicant will not compete with any other automobile truck line operating between the points above named.

Due notice was given to all parties herein concerned that this case was set for hearing, and a public hearing was had on August 14, 1919. The testimony was that the applicant company had been in the freight business in and out of Boulder for about two years; that its present equipment consists of seven trucks, including one touring car; that there are usually about four cars en route between Denver and Boulder at a given time; that the valuation of all the equipment of the applicant company is about $25,000.00, including repair shops; that applicant company carries hardware, machinery, repair parts and other heavy freight, as well as vegetables and perishable goods which are delivered direct; that the service is much better than the railroad service, as applicant's trucks begin to leave Boulder for Denver at 5:30 a. m.; that all goods are called for and delivered direct to destination; that there are no other lines operating in the freight and truck service on a regular schedule between Denver and Boulder; that two other lines operate part of the time only, but are not on schedule; that applicant operates each day in the week, except Sundays. As to the volume of business handled, applicant's receipts for six months were shown to have been $16,895.24; that applicant's monthly payroll is about $1,400.00 for services between Boulder and Denver. The testimony further showed that applicant has licenses for his cars from the state and from the city of Denver, no other towns requiring a license; that applicant would file with the Commission a list of the numbers of all its automobile trucks, together with the license number of each car.

After a careful consideration of the evidence in this case, the Commission is of the opinion and so finds, that as to the service proposed to be established on that portion of the route named in the first application, viz., between Denver, Broomfield, Lafayette, Louisville and Boulder, the operation of this route will furnish an adequate and convenient method for the transportation of freight; that public convenience and necessity require its operation, and that a certificate of public convenience and necessity should issue. As to that specific portion of the route, for which a permit was asked and which is described in the amended application herein, viz., between Boulder, Nederland, Lakewood and Eldora, the Commission is of the opinion that no certificate should issue. The Colorado Public Utilities Act, Section 35 (a), as amended in 1917, effective July 16, 1917, provides as follows:

> "No public utility shall henceforth begin the construction of a new facility, plant or system, without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction; * * *"

Section 1, Chapter 133, Laws of 1915, provides as follows:

> "Any person, firm, association of persons or corporation, now or hereafter engaged in transporting passengers, freight or express for hire in this state in any automobile or other vehicle whatever, and operating for the purpose of affording a means of transportation *similar to that afforded by railroads or street railways, and in competition therewith,* by indiscriminately accepting, discharging and laying down either passengers, freight or express, between fixed points or over established routes, is hereby declared to be affected with a public interest, and to be a public utility, and subject to the laws of this state now in force and effect or that may hereafter be enacted pertaining to public utilities."

It will be noted that Section 35 (a) of the law of 1917, quoted above, requiring carriers to obtain a certificate of public convenience and necessity from the Commission imposes this requirement only upon public utilities. It will also be noted that Section 1, Chapter 133, of the law of 1915, quoted above, defines as public utilities only those automobile firms, associations, corporations (or persons so engaged) operating for the purpose of afford-

ing a means of transportation similar to that afforded by railroads or street railways *and in competition therewith.*

On August 19, 1919, the Commission entered its order in Application No. 12, permitting The Denver, Boulder & Western Railroad Company to cease operation, abandon its lines, dispose of its equipment and withdraw from the public service. This line under the said order has ceased operation. There is no other railroad now operating between the points above described, viz,, between Boulder and Eldora, or intermediate points, and hence the proposed automobile route for which a certificate is applied for herein, would not be in competition with any railroad or street railway as contemplated by the statute, and it would not be necessary for applicant to obtain a certificate to operate between these points. For this reason, the Commission believes that it should not issue a certificate for that part of the route between Boulder and Eldora.

ORDER.

A public hearing having been held in the above entitled proceeding and the case having been submitted, the Commission hereby declares that public convenience and necessity require and will require the operation by The Green Transfer Company of the automobile truck line service between Denver, Broomfield, Lafayette, Louisville and Boulder; provided, that this declaration shall not become effective until the applicant has filed herein certified copies of permits granted by the cities and towns of Denver, Broomfield, Lafayette, Louisville and Boulder, or has filed with this Commission a certificate that no such permits are required by said cities and towns, in accordance with the provisions of Section 35 of the Public Utilities Act, as approved April 16, 1917.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 28th day of August, 1919.

DECISION No. 278.

IN THE MATTER OF THE APPLICATION OF THE PAOLI TELEPHONE COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION AND OPERATION OF A TELEPHONE SYSTEM TO SERVE THE TOWN OF PAOLI AND CONTIGUOUS TERRITORY.

Application No. 43.

September 5, 1919.

APPEARANCES: Avery T. Searle, for applicant.

STATEMENT.

By the Commission:

On June 2, 1919, The Paoli Telephone Company filed its application with the Commission in which, by appropriate averment, it is alleged that the public convenience and necessity require and will require the construction of a telephone line, plant or facility in the town of Paoli, Phillips county, Colorado, and territory contiguous thereto. Applicant asks that the Commission issue to it a certificate of public convenience and necessity for the construction of such telephone plant or facility as provided by Section 35 of the Public Utilities Act approved April 16, 1917.

The application alleges *inter alia* that The Paoli Telephone Company is a domestic corporation with a capital of $10,000,

and there is submitted with the application a certified copy of its articles of incorporation; that the postoffice address of applicant is Paoli, Phillips county, Colorado; that applicant is desirous of constructing its telephone lines, plant or system in Paoli, radiating therefrom to the north, east, south and west, as shown by red lines drawn upon the map or plat attached to said application; that there are no lines of telephone in the territory described, and that the public convenience and necessity require and will require such telephone lines, plant or facility.

The above application was set down for hearing at the court house in Sterling, Colorado, for Thursday, August 21, 1919, at the hour of 2 o'clock p. m., and upon said day the same was heard by the Commission.

Notice of the time and place of such hearing was duly served upon The Mountain States Telephone and Telegraph Company, Denver, Colorado, The Haxtun Telephone Company, Haxtun, Colorado, The Phillips County Telephone Company, and The Holyoke Mutual Telephone Company, both of Holyoke, Colorado, by the secretary of the Commission on August 13, 1919, and in the manner provided by the Act. Prior to the time of the hearing aforesaid, The Mountain States Telephone and Telegraph Company and The Haxtun Telephone Company gave written notice to the Commission that no appearance would be made by either of said companies, and neither of the Holyoke companies aforesaid appeared at the hearing.

Testimony was introduced at the hearing sustaining the allegations of the application and also to the effect that the proposed telephone construction does not interfere with any existing telephone line, plant or facility; that about $5,000 had been invested by applicant in poles, lines and other telephone appliances, and that about $5,000 more would be invested by the applicant in the completion of its said proposed telephone system.

As to the question of public necessity, it is hardly necessary at this priod of modern progress seriously to consider it, for it is a matter of common knowledge that a telephone is a convenience, if not a necessity, to the public in this day and mode of living as regards means of transportation and communication.

ORDER.

IT IS THEREFORE ORDERED, That the public convenience and necessity require and will require the construction and

operation of the telephone line, plant or facility proposed by The Paoli Telephone Company, in the town of Paoli, Colorado, and the territory contiguous thereto as shown by the testimony, application and plat thereof submitted by said applicant at the hearing upon its said application, and this order shall so certify as to the public convenience and necessity, and be held and deemed the certificate therefor.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 5th day of September, 1919.

DECISION No. 279.

IN THE MATTER OF THE APPLICATION OF THE DENVER, BOULDER & WESTERN RAILROAD COMPANY TO ABANDON SERVICE AND CEASE OPERATIONS.

Application No. 12.

September 9, 1919.

STATEMENT.

By the Commission:

On August 28, 1919, protestants, by their attorney, filed a petition for a rehearing of the matters involved in the above entitled cause. There are 12 specific grounds embraced in the petition for rehearing.

The Commission has given the petition careful consideration and has gone over the grounds alleged in detail. The grounds embraced in Nos. 1, 2, 3, 6 and 7 are clearly untenable in our view, when the testimony submitted at the hearings of the cause is unprejudicially reviewed.

The 4th and 5th grounds of error contained in the petition do not clearly state the premise of the Commission's decision concerning the matter embraced therein. Nowhere was it "conceded" by the Commission that "the management of said railroad was proven to be bad" nor did the Commission find that "it had no power to compel the applicant railroad to place its railroad in the hands of an efficient management." The most that the Commission found was that the contention that the business management of the road was bad "is somewhat supported by the testimony" of two wit-

nesses, and that it doubted "the wisdom, if not the power" of the Commission to dictate to the owners of a utility who should, or should not, manage the property. See opinion of July 23, 1919. The Commission adheres to the position taken in such matter in its decision of July 23, 1919, and is confident is not in error in so doing.

The 8th ground of error concerns the question of whether, under the facts in evidence, the rates granted the railroad on December 26, 1917, had been given a fair trial. A review of the evidence discloses conclusively that such rates had been in effect from December 26, 1917, until the hearing in June, 1919, a period of approximately 18 months, as to rates on the Denver, Boulder & Western Railroad proper, and the Commission decided that such rates had been given a fair trial "insofar as the element of time is concerned." On the interline business of the railroad, the United States Railroad Administration granted a further increase of 25 per cent, effective June 25, 1918, and in the petition for rehearing it is charged the Commission erred in not requiring the railroad to apply to the Director General of Railroads to exempt the interline business of the Denver, Boulder & Western Railroad from the operation of the government rate increase insofar as it affected rates on interline business of said railroad. The Commission cannot concede this position in an application of this character, nor can it concede that it was the duty of the Commission to make "direct application to the United States Railroad Administration," charged in ground 10 of the petition, to reduce rates established by it in a proceeding of this character.

One further ground of the petition, No. 12, which assigns error in making the effective date of the order of discontinuance of August 19, 1919, as of August 6, 1919, because of its being retroactive in its scope and effect, may be noticed. The record is that on July 31, 1919, a cloudburst washed away and damaged a considerable portion of the railroad's track. On August 6, 1919, application was made to the Commission to modify its order of July 23, 1919, and permit cessation of operation of said railroad on that date, August 6, 1919, instead of September 15, 1919, as fixed in the order of July 23. The Commission is satisfied that the order of August 19, 1919, permitting discontinuance of operation of the railroad as of August 6, 1919, is not retroactive in its effect, since the evidence clearly discloses that no trains had been run nor had the railroad been operated in any way since the date of the washout on July 31

up to the time of the application on August 6; and that the application for modification of the original order was not actually heard until August 15, 1919, and not decided by the Commission until August 19, 1919, surely does not render the result retroactive. Beside, no objection of this character was called to the attention of the Commission until the petition for a rehearing was filed herein. This amounts to a waiver of this objection by protestants under the well established and settled rules of procedure in courts of record of this state, and the Commission is governed by such procedure unless the Act specifically provides to the contrary.

Having given all matters alleged in the petition for rehearing careful consideration and in connection therewith having reviewed the prior decisions and much of the evidence as contained in the original record, the Commission is of the opinion that the petition for rehearing should be denied.

ORDER.

IT IS THEREFORE ORDERED, That said petition for rehearing filed by protestants on August 28, 1919, be, and the same is, hereby denied.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 9th day of September, 1919.

DECISION No. 280.

IN THE MATTER OF THE APPLICATION OF THE DENVER, BOULDER & WESTERN RAILROAD COMPANY TO ABANDON SERVICE AND CEASE OPERATIONS.

Application No. 12.

September 18, 1919.

STATEMENT.

By the Commission:

This matteer comes on for decision on the motion of the protestants for a modificaction of the orders of this Commission of July 23, 1919, and August 19, 1919, in which said orders the Commission permitted the abandonment and dismantling of the Denver, Boulder & Western Railroad.

On July 23, 1919, the Commission, after a full hearing and careful consideration of the evidence, issued its order permitting the abandonment and dismantling of said road on September 15, 1919.

On August 6, 1919, the said railroad company filed its application in the nature of a motion asking that the order of July 23, 1919, be modified and that it be permitted to discontinue service at once, alleging as ground therefor, that a flood in the nature of a cloudburst had washed out a considerable portion of its tracks in the mountains above the City of Boulder on the night of July 31, 1919, and that it had no funds with which to repair its tracks and continue the operation of its line of railroad. It prayed that the Commission make its order of abandonment and cancellation of

tariffs effective as of the date, August 6, 1919, instead of September 15, 1919, as in the original order. After careful consideration of the evidence and the conditions entering into the case, the Commission on August 19, 1919, entered its order permitting such abandonment as of August 6, 1919.

On August 28, 1919, the protestants filed their motion for a rehearing in the above entitled cause, and after due consideration of the same, the Commission on September 9, 1919, made and entered its order denying said motion for a rehearing. On September 9, 1919, and subsequent to said order denying the motion for a rehearing, the protestants filed their motion for a modification of said orders of July 23, 1919, and August 19, 1919, which is the motion of the Commission is now called upon to consider.

In this last motion the protestants set up bad faith on the part of the railroad company, alleging that directly after the entry of the order by the Commission on August 19, 1919, permitting the abandonment of said road, as of August 6, 1919, the railroad company began work of repairing its roadbed and has now practically finished the repair of the damage done by said washouts, notwithstanding the fact that in the testimony of the company at the hearing on the application, wherein it asked permission to abandon as of August 6, 1919, said company by its witnesses testified that there were no funds belonging to the company with which to repair the road. Protestants ask that the railroad company be now compelled to continue to operate its railroad for a period of 45 days longer.

The motion of the protestants is not verified and none of the allegations in this motion are supported by the affidavit of any person or persons that the statements therein contained are true or correct. The statements are simply ex parte statements, and, if true, could easily have been supported by some sort of an affidavit. The Commission is also aware that at the time of the hearing on the application to abandon as of August 6, 1919, it was admitted by the railroad company that if it wished to assemble the rails and other property lying along the line at a common point below the washouts, it would be necessary for the owners of the road to advance sufficient funds to repair the roadbed at least sufficiently to temporarily haul the material out, or else the railroad would be compelled to dispose of the property as it lay, at such a price as would warrant the purchasers in advancing the necessary funds to do this.

The Commission in the original case after careful consideration found as facts from the evidence "that the Denver, Boulder & Western as a whole does not earn sufficient revenue with which to meet its legitimate operating expenses and taxes nor anything for depreciation; that there is not sufficient public demand for the continued operation of said railroad, and that it should be permitted to discontinue its operations, withdraw its property from the public service and dismantle the same." In the order of August 19, 1919, the Commission found as a fact that "under all the circumstances surrounding this case as testified to at the former hearing and this hearing, the Commission entertains the view that it may not justly order the applicant company to incur an expense of approximately $2,500.00 in order to operate the railroad for a period of 12 days, when it is apparent that not sufficient revenue will be derived by the company to overcome the expense of repair."

The purpose of asking a reopening of this case is that the Commission may thereafter order a resumption of the operations of the road as a common carrier for the period of 45 days. This the Commission will not do on the unsupported statements contained in this motion to the effect that someone had furnished sufficient funds to temporarily repair said road, as the facts alleged, even if true, would not affect the status of the railroad company as to its earning capacity or its ability to meet its operating expenses. The motion will, therefore, be denied,

ORDER.

IT IS THEREFORE ORDERED, That the said application of the protestants for a modification of the Commission's orders heretofore entered herein be, and the same is hereby, denied, and the motion is dismissed.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 18th day of September, 1919.

DECISION No. 281.

J. P. ADAMS, *et al*,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Case No. 170.

September 24, 1919.

APPEARANCES: Frank McLaughlin, for the complainants; J. L. Rice, for the defendant.

STATEMENT.

By the Commission:

Complaint was filed by J. P. Adams and 31 other residents of Weld County, Colorado, on February 3, 1919, petitioning for the location of a railroad station to be known as Omar, at or near the intersection of the railroad of defendant with the section line between Sections 35 and 36, Township 2 North, Range 61 West, in Weld County, Colorado. The complaint further stated in substance that complainants live within a distance of 20 miles north and south of the above point of intersection; that a public highway has been recently established running north from the Adams County line to the Platte river through the above point eight miles west of Wiggins, and is now being used by the public; that in the territory adjacent to this point there is more cultivated land, farming and cattle raising than in any other area between Hudson and Fort Morgan, and the inhabitants of such district desire a station

at this point, it being about half way between Roggen and Wiggins; that the ground at the proposed station is hard, with no sand hills or bogs, or other things to interfere with this being made one of the best paying stations on defendant's line between Denver and the state line east; that the station of Crest is about four miles west of this point, and is located in sandy, hilly ground, making it impossible to haul freight to or from that station; that the same is true of Bronco, the station about two miles east of the proposed station; that cattle and other livestock cannot be driven to or loaded at Bronco or Crest, and freight cannot be hauled to or from those stations on account of the sand.

The defendant filed its answer alleging in substance, that there is located on its railroad the station of Crest, a short distance west of the proposed station of Omar, and also the station of Bronco, a very short distance east of the proposed station; that these stations now established are in location, equipment and facilities in every way ample and sufficient to, and do, serve in a reasonable, proper, sufficient and convenient manner, for railroad purposes, all the territory and people which the proposed station of Omar could or would serve if established; that the complainants, the territory and persons mentioned in the complaint now have adequate, sufficient and convenient railroad facilities under existing conditions, and the proposed new station is not necessary or required by or for the needs of the community; that materials and labor necessary for the location of the proposed station are difficult to obtain and the cost thereof very high; that the location of the proposed station would require the expenditure of a large sum of money; that in view of the adequacy of the present facilities and shortage of available funds, it would be unjust to require the establishment of such station at this time. The defendant denies that it is impossible, impracticable or inconvenient to haul freight to or from said stations of Crest and Bronco because of sandy, hilly ground or other cause, and denies that livestock cannot be driven to or from or loaded at either of said present stations. Other allegations of the complaint not admitted are denied. It is further alleged that since December 28, 1917, the railroad and all of defendant's property has been and still is in the possession and control of the government of the United States by and through the Director General of Railroads; and since that date has been, and still is, being operated by the Director General of Railroads, and defendant is without authority or power in the matter of locating, opening or operating

new stations on the line of its railroad; that the complaint and proceedings be dismissed.

The cause came on for hearing at the hearing room of the Commission in the State Capitol Building, Denver, Colorado, on August 19, 1919.

At the hearing, the complainants abandoned their contention for the proposed station at or near the intersection of the railroad with the section line between Sections 35 and 36, Township 2 North, Range 61 West, in Weld County, Colorado, and in lieu thereof, requested that it be located at or near the center of Section 25, Township 2 North, Range 61, West, Weld County, Colorado, as being a more desirable location than the one originally proposed. The evidence, both of complainants and defendant, was concerning the location of the station on defendant's line at or near the center of Sectio 25.

C. D. Vail, railway engineer for the Commission, was called as a witness for the complainants and testified, in substance, that he had investigated the point at which the proposed station was originally sought to be located and the adjacent territory; that the point originally asked for was not as desirable on account of grades and other reasons, as the point in or near the center of Section 25; that the stations of Crest and Bronco, being the nearest points west and east, respectively, to the proposed location, are each located in very sandy country, whereas the proposed location was the most desirable point intermediate between Crest and Bronco.

It appears that the point where the proposed station is sought to be located is about 57 miles east of Denver; that the nearest places of any size are Roggen, 11 miles by railroad on the west, and Wiggins, 5 miles on the east; that between the proposed station and Roggen is the station of Crest, 6 miles east of Roggen and 5.13 miles west of the proposed station; that the siding called Bronco is about 2 miles east of the proposed station.

The complainants also introduced the testimony of 13 witnesses, who testified, in substance, that they were residents of Weld County, residing in the vicinity of the proposed station; that all the land necessary for right of way for the proposed station and side tracks would be donated to the defendant by the owners of such land; that their business is farming, and they are engaged in raising wheat, rye, corn, potatoes and grain; that the territory for 5 miles north, 4 miles east and 5 miles west is tributary to the proposed station; that it is about 35 miles to the south to any other shipping point; that country to the north is largely used for cattle

raising, but that the territory to the south is more cultivated, with a much greater number of settlers. These witnesses further stated that they cannot get into or out of Crest or Bronco on account of the sand, the country around those stations being described as "sand hills, sand dunes and sand bogs—as nearly impassable as it could be"; that the distance impassable is over a mile; that it is a slipping, shifting sand, so bad that those stations are useless so far as traffic is concerned, and it is not possible to haul over the sand; that at the middle of Section 25 the ground is flat and hard, and if the station is located there the complainants will open up a good road leading to the station; that if this station is opened, it will be 8 or 9 miles nearer than Roggen or Wiggins for the people in the country south of the proposed station; that there would be a hard road for 20 miles south and the station would draw from territory as far as 20 miles south. A sketch, complainants' exhibit "C", was said to fairly represent the extent of the sand about Crest and Bronco; that the sand hills extend south a mile or so from Bronco, and 4 or 5 miles south of Crest, and also extend some distance north of these points. It was admitted by the defendant that about 50 per cent of the territory on the south of the railroad was cultivated and about 10 per cent on the north.

The defendant company introduced evidence of its engineer, T. F. Darrow, to show that it would be necessary, if the new station were located as proposed by complainants' witnesses, to do grading, change track, construct new track, (passing track 4,000 feet, industrial track 1,600 feet), put in signals, fix fences, road crossings, telephone and telegraph lines. It was testified that this work would cost twice as much as it would three years ago; and more than twice as much as to labor and some other items; that the total cost would be $16,000.00, covering the following items:

Taking up 4 switches	$ 240.00
Taking up and laying 4,200 ft. track	1,470.00
Moving and setting up new depot, $1,400.00 or	1,500.00
Stockyards	650.00
Water plant	350.00
Signal changes	2,500.00
Fences and telegraph changes	150.00
Engineer	200.00
New track laying	1,400.00
15,000 cu. yds. concrete, grade work, hauling, excavating, etc.	6,000.00
Additional 100 ft. land—7 acres @ $250.00 per acre	1,750.00
	$16,210.00

The engineer for the defendant further testified that 500 or 600 feet of the present passing track at Bronco could be used as part of the permanent new track; that this had been considered in his estimate. He also testified that it was practicable to cover the sandy portion of road with hard dirt at an expense of $3,000.00 or $4,000.00 a mile to make a good, serviceable road; that the grade at the proposed station will make it more difficult to start trains passing at that point. Other evidence of the railroad company was generally to the same effect as that of complainants' with regard to the farming conditions in the vicinity of the proposed station, and as to the sandy condition of the roads leading to Crest and Bronco. The assistant general freight agent of defendant, J. F. Vallery, estimated the gross revenue of the proposed station at $7,000.00 or $8,000.00 per annum. In testifying regarding a trip he had recently taken in that vicinity, Mr. Vallery stated:

> "We also tried to get over to Bronco with an automobile, but the sand was so heavy that we could not get in there. We had to turn around and go back. I do not know as there is any use of denying the conditions in and around Bronco—or Crest, for that matter—it is very sandy around there, and inaccessible at this time; whether or not the company should go to the expense of building up this siding, or whether or not the road could be hard-dirted, approaching Bronco—these are questions that ought to be taken into consideration."

Another witness for defendant testified that 1,000 feet of the present passing tracks at Bronco could be used without being moved and 3,000 feet would have to be moved. In short, the evidence of the defendant was directed, not at seriously disputing the correctness of the physical conditions testified to by complainants, but to showing the improvements to be unnecessary and the practicability of making hard dirt roads to the present points of Crest or Bronco, and that it was unreasonable to put the defendant to the expense of this station. In this connection, J. F. Vallery made the following statement:

> "I wish to state to the Commission that I will agree that there is sand—at least some sand around both Crest and Bronco; that there is some sand in this road that goes north; but I do not know that this prevents the road being fixed but whether it is our duty so to do is the question; that is a matter for the citizens, we furnish the stations, the buildings and the

accommodations, and we rather think it is up to the community to make the roads to our stations. There are many things we have to take into consideration and we cannot well abandon Bronco, as the grade is right there for the movement of our trains. From my investigation of affairs I would say that it is up to the community to fix that road up. We have placed our stations there for the accommodations of the public and they should fix up their roads."

Section 24, Laws of Colorado 1913, page 475, provides:

"Whenever the Commission after a hearing had upon its own motion or upon complaint, shall find that the rules, regulations, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced or employed and shall fix the same by its order, rule or regulation."

Section 25:

"Whenever the commission after a hearing upon its own motion or upon complaint, shall find the additions, extensions, repairs, or improvements to, or change in the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected to promote the security or convenience of its employes or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order directing that such additions, extensions, repairs, improvements, or changes be made or such structure or structures be erected in the manner and within the time specified in such order."

The Supreme Court of Oklahoma in the case of Atchison, T. & S. F. Ry. Co. v. State, —— Okla. ——, 176 Pac. 394, held:

"The Corporation Commisison is vested with power, under Section 18, Art. 9 of the Constitution, to require all public

service corporations to establish and maintain all such facilities and conveniences as may be reasonable and just. The term 'reasonable and just', or 'reasonable and adequate' when applied to facilities or service required of public service corporations, is not capable of exact definition; but the terms are relative, and must be interpreted in the light of conditions existing at the time and in relation to all the surrounding circumstances * * *

"The question of expense in requiring facilities by a carrier is not always conclusive. United Express Co. v. State, 47 Okla. 656, 150 Pac. 178. But where adequate and sufficient facilities have already been furnished, and the order requiring additional facilities is not necessary for proper and convenient accommodation of the traffic to be benefited, the question of expense becomes an important criterion to be considered in determining the reasonableness of the order. Oregon R. & N. Co. v. Fairchild, 224 U. S. 510."

The attitude of the defendant seems to be that, having placed facilities in the sand hills at Crest and Bronco, it is up to the patrons of defendant to get there as best they can, whether the stations named are easily accessible or not, and if the roads are inaccessible the patrons should put them in proper shape. While there may be cases where this contention holds good, the Commission does not believe it applies to the present case. It appears that a territory 9 to 10 miles wide and 20 miles to the south of defendant's line, and a less territory to the north, is naturally tributary to the proposed station, and that the present facilities at Crest and Bronco are nearly inaccessible on account of sandy roads leading thereto. While there is evidence that hard dirt could be placed on these roads to make it possible to use them, it does not appear that such improvement has been tried out in that vicinity to insure its success, and the practicability of the plan is strongly disputed by the residents of the locality. It appears that a considerable number of people would be benefited by the proposed new station, both as to passenger and freight business, who are now compelled to go an additional 8 or 10 miles to Roggen or Wiggins.

The Commisison finds that the facilities and service furnished by the defendant to the inhabitants of the territory tributary to its line of railroad, at or near the center of Section 25, Township 2 North, Range 61 West, Weld County, Colorado, are unjust, unreasonable, improper, inadequate and insufficient, and determines that

the just, reasonable, proper, adequate and sufficient facilities and service to be placed, observed, furnished and constructed at such point are as follows:

An agency station, with a suitable depot building; an industrial track not less than 1,000 feet long, and stock yard facilities customary at such stations, which station shall be placed at a point on defendant's line of railroad near the center of Section 25, Township 2 North, Range 61 West, Weld County, Colorado, at Mile Post 484, approximately as shown on defendant's Exhibit 1, with leave to defendant to remove the present industrial track at siding known as Bronco, and to extend or use a portion of passing track at Bronco Siding in event it desires to extend such passing track to the new station; conditioned upon the complainants securing the donation to defendant of additional right of way south of track at said place, consisting of a strip of land 100 feet wide and 7 acres in area south of and parallel to the present right of way through the southeast and northeast quarters of Section 25, Township 2 North, Range 61 West; also conditioned upon the complainants having opened a public road beginning at the center of Section 36, Township 2 North, Range 61 West, Weld County, Colorado, at a point in the road now running east and west across the center of Section 36, thence running north to the center of Section 25, Township 2 North, Range 61 West, Weld County, Colorado; and further conditioned upon complainants, if requested by the defendant, doing the necessary grading for passing track, siding or other grading required at this new station at 20 cents per cubic yard.

The complainants stated, by their attorney, that if this station is established they would do the grading necessary at one-half the estimate of the defendant, and further testified that they would secure the donation of the right of way required, and also secure the opening of the highway from the south to this station. The order is conditioned accordingly, and this should materially reduce the expense involved.

The Commission further finds that the foregoing additions, extensions and improvements to, and changes in, the existing facilities and physical property of the defendant ought reasonably be made; and that the above new structures should be erected to promote the convenience of the public, and to secure adequate service and facilitis. The Commission will consider the closing of the station of Crest permanently, or making it a non-agency station, on application by the defendant.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, the Chicago, Burlington & Quincy Railroad Company, on or before 90 days from the date of this order, shall erect a suitable station building, install an agent therein, maintain an agency station, and construct an industrial track not less than 1,000 feet long and stock yard facilities usual at such stations, at a point on defendant's line of railroad near the center of Section 25, Township 2 North, Range 61 West, Weld County, Colorado, at Mile Post 484, approximately as shown on defendant's Exhibit 1, with leave to defendant to remove the present industrial track at the siding known as Bronco, and to extend or use a portion of the passing track at Bronco Siding in event it desires to extend such passing track to the new station; conditioned upon the complainants securing the donation to defendant of additional right of way south of track at said place, consisting of a strip of land 100 feet wide and 7 acres in area south of and paralled to present right of way through the southeast and northeast quarters of Section 25, Township 2 North, Range 61 West; also conditioned upon complainants having opened a public road beginning at the center of Section 36, Township 2 North, Range 61 West, Weld County, Colorado, at a point in the road now running east and west across the center of Section 36, thence running north to the center of Section 25, Township 2 North, Range 61 West, Weld County, Colorado; and further conditioned upon complainants, if requested by the defendant, doing the necessary grading for the passing track, siding or other grading required at this new station at 20 cents per cubic yard.

IT IS FURTHER ORDERED, That plans and specifications for the station building herein ordered shall be submitted to the Commission before construction thereof is begun.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 24th day of September, 1919.

DECISION No. 282.

THE FARMERS' ELECTRIC & POWER COMPANY,

v.

THE TOWN OF AULT, COLORADO.

Case No. 167.

September 25, 1919.

STATEMENT.

By the Commission:

Whereas the above named complainant filed before this Commission on January 22, 1919, its complaint where in it was prayed that this Commisison make and enter an order prohibiting defendant from constructing and continuing to construct and operate an electric system in the town of Ault and prohibiting the defendant from in any manner, or at all, constructing, installing, operating or maintaining any electric light system in the town of Ault except and until said defendant shall have applied to this Commission and obtained a permit so to do; and, whereas on July 6, 1919, the complainant filed its motion for a restraining order against defendant municipality for the purpose of enjoining and restraining said town from further continuing to operate its electric plant for the furnishing of street lights within the town of Ault or electric light to private consumers, or furnishing light or power for any purpose; and, whereas certain hearings have been had on the above matters; and

Whereas, On September 25, 1919, the defendant town of Ault filed with this Commission its amended answer and cross-complaint in which it prays for the issuance of a certificate of public convenience and necessity for the operation of its electric light plant, and it appearing to the Commisson, that although the defendant is now furnishing street lighting for the town of Ault, and also elec-

tric service to certain consumers in said town, early hearings of the matters involved in this cause can be had, and to order a total discontinuance of service by defendant would cause considerable inconvenience to the public;

Therefore, The Commission finds that under all of the circumstances of this case, the defendant should and it is hereby commanded from this date absolutely to refrain and desist from furnishing light or power to any person or corporation other than those who are now being served by said system constructed by said town of Ault, and that the defendant shall not in any particular extend its system further than the same is now constructed, and that defendant shall do no more construction work save and except such as is necessary to keep its system as now constructed in a safe condition, and that defendant shall not connect any additional customers or consumers of light or power to its present plant, or in any manner, or at all, extend the operations of its present system and plant for furnishing light or power, pending the final determination of this cause.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, the Town of Ault, Colorado, its officers, agents, attorneys, and employes, or anyone acting by, through or under it, be, and they are hereby commanded and enjoined absolutely to refrain and desist from in any manner furnishing light or power to any person or corporation whatsoever other than those who are now being served by said system constructed by said town of Ault, and that the defendant shall not in any particular extend its system further than the same is now constructed and that defendant shall do no more construction work save and except such as is necessary to keep its system as now constructed in a safe condition, and that after the date hereof defendant shall not connect any additional customers or consumers of light or power to its present plant, or in any manner or at all extend the operations of its present system and plant for furnishing light and power, pending the final determination of this cause.

(SEAL)

LEROY J. WILLIAMS,
A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 25th day of September, 1919.

DECISION No. 283.

IN RE APPLICATION OF THE WESTERN COLORADO POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN THE CITY OF OURAY.

Application No. 53.

September 25, 1919.

STATEMENT.

By the Commission:

This is the application of The Western Colorado Power Company for a certificate of public convenience and necessity to exercise the rights and privileges granted to it by the City of Ouray under Ordinance No. 2 passed and adopted July 7, 1919, by the mayor and city council of the City of Ouray.

The application was filed with the Commission on August 13, 1919, and on September 15, 1919, the applicant, The Western Colorado Power Company, was duly notified that the hearing in this case had been set for September 22, 1919, at 10 o'clock a. m. in the hearing room of the Commission, State House, Denver, Colorado, and on the same date notice of said hearing was also served on the mayor and city council of the City of Ouray.

Public hearing in this case was held before Commissioner Anderson in the hearing room of the Commission on Monday, September 22, 1919, at 10 o'clock a. m. J. F. MacLane, Esq., attorney and counsellor-at-law, Salt Lake City, appeared for the applicant company. There were no other appearances. The testimony was that The Western Colorado Power Company is engaged in furnishing

electric current for lighting, heating and power purposes in the City of Ouray; that there is no other company now engaged in the public service of supplying electricity for said purposes in said territory; that there are no other means by which the City of Ouray or its inhabitants or the surrounding country could be supplied with electricity for said purposes, except by the construction of a new plant; that the applicant, The Western Colorado Power Company, on July 7, 1919, obtained a franchise from the City of Ouray, granting it permission to engage in the business of supplying electricity for the purposes above stated; that the applicant company had been engaged in supplying electricity for said purposes in the City of Ouray for some years past, but that the present franchise was obtained and granted because the former franchise in said city had expired or was about to expire.

The applicant has filed with the Commission according to law a copy of its charter, together with a copy of the franchise granted to it by the City of Ouray.

The testimony shows that there is now a demand and necessity for a supply of electricity for lighting, heating and power purposes in the City of Ouray.

ORDER.

The Western Colorado Power Company having applied to this Commission for a certificate to exercise the rights granted to it by Ordinance No. 2 of the City of Ouray and a public hearing having been held thereon and the Public Utilities Commission being fully advised in the premises, it is hereby declared that the present and future public convenience and necessity require, and will require, the exercise by The Western Colorado Power Company, its successors and assigns, of the rights and privileges conferred by Ordinace No. 2 of the City of Ouray, adopted by the mayor and city council on the 7th day of July, 1919.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 25th day of September, 1919.

DECISION NO. 284.

IN THE MATTER OF THE APPLICATION OF CITIZENS OF PLATTEVILLE FOR THE OPENING OF THE PUBLIC HIGHWAY CROSSING AT GRADE OVER THE TRACKS OF THE UNION PACIFIC RAILROAD AT MARION AVENUE, PLATTEVILLE, COLORADO.

Application No. 54.

September 25, 1919.

APPEARANCES: John Cutler, Esq., of Platteville, Colorado, in *propria persona,* for applicants; Thomas R. Woodrow, Esq., of Denver, Colorado, general attorney, Union Pacifiic Railroad Company, for respondent.

STATEMENT.

By the Commission:

On August 4, 1919, a petition was filed with the Commisison by a number of residents and property owners residing east of the town of Platteville, Weld County, Colorado, whereby it was sought to open a public highway crossing at grade over the tracks of the Union Pacific Railroad at Marion Avenue, Platteville. Service of said petition was made upon the Union Pacific Railroad, and, on August 30, 1919, the railroad filed its answer, in which is alleged, *inter alia,* that before March 6, 1917, a public crossing was main-

tained by the town of Platteville across the tracks of the Union Pacific Railroad at Marion Avenue, but that on March 6, 1917, by resolution duly passed by the Board of Trustees of Platteville, the Marion Avenue crossing was closed, to take effect at such time as the Union Pacific Railroad would open a crossing across its tracks on Grand Avenue in the town of Platteville; and that thereafter the crossing at Grand Avenue was opened by the railroad company and that the crossing at Marion Avenue was closed and has remained closed since the summer of 1917.

The answer further alleges that the public necessity and the convenience of the citizens of Platteville do not require the opening of the crossing at Marion Avenue, nor does the traffic of said town and vicinity justify the opening of the Marion Avenue crossing; and, further, that there is a good crossing maintained at Grand Avenue in the town of Platteville which is ample to handle the traffic crossing the railroad tracks; that neither the municipal authorities nor the great majority of the citizens of Platteville are in favor of the reopening of the Marion Avenue crossing. As a final allegation it is alleged that the crossing at Marion Avenue, if opened, would be dangerous to the public using the same, and that from a safety standpoint it would be inadvisable to reopen the crossing.

The above matter was set down for hearing by the Commission for Wednesday, September 17, 1919, at 10 o'clock a. m. at Platteville, Colorado, and was heard on that day at the Town Hall, Platteville, all parties to the proceeding having been given notice of the time and place of hearing.

The issue involved here is simply whether the public security or convenience demands and would require the opening of the crossing on Marion Avenue in said town of Platteville.

The testimony of the applicants was limited to that of John Cutler, no other person offering any testimony for the opening of the Marion Avenue crossing; and it appears from the testimony that Mr. Cutler lives immediately east of the depot and across the tracks and right-of-way on Marion Avenue, extended. It also appears that two blocks north is the Grand Avenue crossing, which was installed in 1917 at the time Marion Avenue was closed. On cross-examination of Mr. Cutler it developed that of the nine names appearing on the petition filed, no person but Mr. Cutler resided in

Platteville, and that the eight others resided in the country distant from two to five miles from Platteville and, according to Cutler's admission, each of said eight other persons could, and do, reach the town of Platteville by existing routes of travel equally as convenient as though the crossing at Marion Avenue were established. Indeed, there was an entire failure of proof that the public would be convenienced by the reopening of the Marion Avenue crossing. It clearly appeared from the testimony that the only person who would be convenienced by the opening of said crossing is Mr. Cutler; and, inasmuch as the law does not contemplate the convenience of any particular person in such matters, but the convenience of the public as a whole, the matter fails for the want of proof.

The Commission might well have dismissed the application without any proof from the respondent railroad had it been requested so to do; but the testimony as submitted by respondent railroad quite clearly proves not only that the public convenience would not be subserved by the opening of a crossing at Marion Avenue, but also that the citizens of Platteville are opposed to the opening of such a crossing and are quite satisfied with the present crossing arrangement and the safety appliances now existing at Grand Avenue; also, that the Marion Avenue crossing when it was opened was a dangerous crossing on account of its being obstructed by the proximity of the depot, water tank, beet dump, and other obstructions to the south of said crossing, and by buildings to the north on the west side of the tracks; and, as a matter of fact, some time prior to the closing of the Marion Avenue crossing two persons were killed at that crossing.

The records of the town of Platteville were submitted, showing the closing of the Marion Avenue crossing and the refusal of the town authorities to reopen it upon the petition of Mr. Cutler.

While it may be an inconvenience to Mr. Cutler in driving from his residence to the business part of Platteville to have to drive north two blocks in order to cross the railroad tracks, yet his inconvenience must yield to the public convenience, and it is proved to the satisfaction of the Commission that the public is amply served by the crossing that now exists.

The application of petitioners for the opening of said Marion Avenue crossing will, therefore, be denied, and the application dismissed.

ORDER.

IT IS THEREFORE ORDERED, That the application herein for the opening of a public highway crossing at grade over the tracks and right-of-way of the Union Pacific Railroad at Marion Avenue in the town of Platteville, Weld County, Colorado, be, and the same is hereby denied; and the application therefor filed herein be, and the same is hereby, dismissed.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 25th day of September, 1919.

DECISION NO. 285.

L. K. PARR, C. M. HARRIS AND H. H. WHITE,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Case No. 175.

September 26, 1919.

APPEARANCES: Coen and Sauter of Sterling, Colorado, for complainants; E. E. Whitted and J. L. Rice of Denver, Colorado, for defendant.

STATEMENT.

By the Commission:

Complainants filed their verified complaint before the Commission on May 22, 1919, setting forth that complainants are residents of, and engaged in business in the town of Padroni, Colorado; that the defendant is a corporation engaged in the transportation of passengers and freight for hire, operating lines of railroad within this state, and that it has a branch line of its railroad running through said town of Padroni, Logan County, Colorado.

It is further alleged that for several years the defendant has used and maintained a station at said town of Padroni, consisting of "converted" box car bodies, and that the same is totally inadequate for depot purposes at said station; that there is no provision at said station for passengers awaiting trains; that the station is unsanitary and wholly unsatisfactory for the purpose for which it is used; and that though often requested to remedy such conditions and to erect a new station building at said town, the defendant company has failed so to do. Complainants ask that upon final hearing the Commission make and enter its order requiring defendant to construct an adequate depot or station building at said Padroni station.

Defendant filed its answer to the complaint on June 16, 1919. The answer admits defendant's corporate capacity and business as alleged by complainants, but denies that the station at Padroni was inadequate in any manner for its business purposes; denies that during the time defendant operated its railroad through Padroni there was no provision at said station for the accommodation of passengers awaiting its trains; and denies that during said time its station was unsanitary or in any manner unsatisfactory for any of the purposes for which it was used. The answer alleges that said station was at all times, while in the possesion, control and operation of defendant, in every way adequate, sufficient, fit and suitable for any and all purposes for which it was then used, required or intended, and denies all allegations of complaint not specifically admitted.

It is further alleged in paragraph 5 of the answer that by virtue of the proclamation of the President of the United States and Acts of Congress in that behalf made, the defendant's railroad, equipment and property, including its road, right of way, station, station grounds and other property in and through said town of Padroni have been since December 28, 1917, and now are, when this proceeding was begun were, in the possession and control of, and being operated by, the government of the United States by and through the United States Railroad Administration and the Director General of Railroads; and that defendant has at no time since December 28, 1917, had anything to do with providing, furnishing, managing or controlling the station or other railroad facilities at the town of Padroni, and is without power or authority in the premises.

Defendant further alleges in paragraph 6 that the Director General of Railroads has recently increased, added to and improved the railroad station on defendant's road at Padroni; and that said station has now a waiting room and all necessary and proper office space and space for storage of express and freight, and that all of same is clean and sanitary and is so kept; and that the station facilities are adequate and sufficient for all present needs.

In the 7th and final paragraph of the answer, defendant alleges the high cost of labor and material at present existing and the difficulty of obtaining same, and alleges that in view of abnormal conditions in those respects and of adequate station facilities now existing at Padroni and the expense incurred in providing the present facilities, it is impracticable and would be unjust to

require further buildings or changes at this time in regard to the station facilities now provided at said town of Padroni.

Replication was filed by complainants at the hearing in which is denied all affirmative matter of the answer; and the allegations contained in paragraph 5 of the answer are denied upon information and belief.

It is further alleged in the replication that the United States Railroad Administration through the Director General of Railroads recently surrendered any control or supervision of the railroads under government control theretofore had or claimed by the Railroad Administration over the capital expenditures of defendant railroad; and that said Railroad Administration has not now, nor at the time of commencement of this proceeding had, any control over the capital expenditures account of the defendant; and further that investments and expenditures of defendant railroad for stations on its line are charged to the capital account of the defendant; that any expenditures made for the construction of station buildings are made by it as a capital expenditure, and that such expenditures are such as are not controlled or in any wise connected with the operation of defendant's railroad and are not in any event under the supervision and control of the United States Railroad Administration.

The case was set for hearing at the city of Sterling, Logan County, Colorado, at 10 o'clock a. m., on Thursday, August 21, 1919, and was heard by the Commision in the district court room of the Logan County court house in Sterling on said date, all parties in interest having been given notice thereof on August 4, 1919.

At the hearing testimony was submitted on behalf of complainants to the effect that Padroni has a population of about 150; that it is situated about 28 miles north of Sterling in Logan County, Colorado, on the line of defendant's railroad, and that a population of about 500 is tributary to this station; that Padroni is in the north Sterling irrigation district, and that about 16,000 acres of irrigated land surround the town; that there are about 1,600 acres of sugar beets in said territory this year to be shipped to the beet sugar factory at Sterling; that Padroni has numerous lines of business represented, including a bank having deposits of about $40,000.00; that it is a progressive community, and has a school house costing about $20,000.00, and that the assessed valuation of the lands in the Padroni school district is upwards of $1,000,000.00; that a general store conducted by witness Harris did upwards of

$50,000.00 of business in 1918 and that said store alone had paid defendant railroad $1,050.00 in freight in 1918, beside receiving a good deal of freight prepaid.

The evidence discloses that prior to about 30 days of the date of hearing, the depot facilities at Padroni, of which complaint is made, consisted of two ordinary box car bodies, placed end to end, and that a third box car body was placed to the end of the two some time in July, 1919; so that at the present time the depot facilities comprise three ordinary box car bodies placed end to end. The north car body is fitted up for a passenger waiting room; the center one is used in part as the station agent's office and in part as an express and baggage room; the south car body answers for a freight room. Each car body is about 33½ feet long by 8¼ feet wide. The waiting room car has four benches along its side walls for seats, is sealed, has six windows, and is equipped with a stove. The office or center car body has five windows, is sealed, and has a stove, while the car body used for a freight room contains two doors only. See defendant's exhibit 1.

The evidence introduced by defendant did not controvert that of complainants' in any serious particular, the position assumed by defendant being that the depot facilities at Padroni are ample for the transaction of business at that point and for the convenience of the public, and that furthermore the prevailing high prices of materials and labor make it burdensome and unjust to require the defendant to better its existing facilities; also that because of its property being under government control it was without power or authority in the premises at this time.

The testimony of defendant as to the volume of business transacted at Padroni for the 12 months, May, 1918, to April, 1919, both inclusive, shows the following:

Received	CL	2,356 tons
Received	LCL	411 tons
Forwarded	CL	4,302 tons
Forwarded	LCL	27 tons
Total		7,096 tons

Ticket sales during the same period amounted to $1,197.71. See defendant's exhibit 2. In addition to this $1,500.00 a year is received on account of express revenue, a percentage of which is earnings of defendant at this station.

From the foregoing, it will be seen that the total revenue and business of defendant at Padroni station is not inconsiderable; and from all the testimony it is apparent that the business at this station will increase rather than diminish.

As stated, the position assumed by defendant as a defense to the complaint is as follows:

1. That the facilities provided at said station for its patrons now, i. e., at the time of hearing, are governing, and that such facilities have been so improved and bettered since complaint that they are adequate and ample for all purposes for which they are required.

2. That on account of abnormal costs for material and labor, it would be unjust to require defendant to further improve its depot facilities at this station at the present time, even though such facilities may not be entirely ample and adequate.

3. That it has no power or authority in the premises owing to its property being in the possession and under the control of the United States Railroad Administration.

The Commission will review these conditions in the order named.

1. It is practically conceded that the facilities existing at this station at the time of complaint made consisted of two box car bodies placed end to end. That conditions existed at the time complaint is made is the issue to be determined has been decided on principle by commission generally and has been followed by this Commission. 1 R. R. Com. Calif. 210. Idaho Com. R. 57. (7-1-14 to 6-30-15). Re City of Lamar, 1919, C. P. U. R. 310-317 (Colo.). That depot facilities of two box car bodies are inadequate and inconvenient to the needs of patrons of defendant at Padroni is apparent when the volume of business transacted there is considered, and the fact that it is a rapidly growing community, progressive as indicated by a $20,000.00 school house, a bank and most all lines of business represented. It occurs to the Commission that the citizens of Padroni may justly be proud of their town and properly resent a box car arrangement for a depot as tending to belittle and besmirch the character of the town in the eyes of strangers coming to or passing through their community. The addition of the third box car body to the depot facilities about 30 days prior to the hearing does not much relieve the situation in this respect certainly. While it is

contended by defendant that the third box car renders the facilities adequate and ample and thereby satisfied the complaint, the Commission cannot agree to this contention. To "satisfy" a complaint is to concede substantially the demand for the complaint, and if a new depot structure had been built by defendant after complaint made and before hearing, the complaint would no doubt have been withdrawn, and if not would have been dismissed on showing by the Commission.

2. The second contention of defendant is untenable. While it is true that labor and material costs are high in comparison with pre-war prices, for aught that is known present conditions in that regard will continue, and if all building and improvement is to be stopped because of high prices of materials and labor, is but to invite general disaster upon the country. It is a matter of common knowledge that for upwards of two years last past the building industry was practically at a standstill, and now it has been resumed as a matter of necessity to house the nation and to encourage and stimulate trade and commerce.

Testimony was introduced by complainants to the effect that about four years ago a new depot was desired by the citizens of Padroni, that the citizens were told that the railroad company did not have suffifficient ground upon which to build a new depot, and that thereupon the defendant was furnished a strip 1,320 feet long by 100 feet wide for depot facilities by the citizens of the town. This testimony was uncontradicted, and in face of that fact it ill becomes the defendant to further attempt to postpone the construction of the depot facilities shown on the plea of high cost of materials and labor.

3. The contention that defendant has no power or authority in the premises by reason of its property being in the hands of the United States Railroad Administration is not well taken, in view of the evidence, which is to the effect that expenditures for new depots would be classified as capital expenditures rather than operating expenditures; and that the Director General of Railroads had issued his order prior to the hearing that moneys charged to capital expenditures should be taken care of by the railroad corporation and should not be taken into account by the government in its operation of the roads. The evidence is not strong or positive on this point, but the Commission has received such a pamphlet or circular from the Director General of Railroads, which is now on file and to that

effect, and the superintendent of the defendant railroad testified on cross examination of having received a circular letter from governmental authority of the above nature and effect. If the Commision understands the ruling of the Railroad Administration, it is that if the expenditure is for improvement to the property, and proper to be charged to capital account, it shall be borne by the railroad corporation, as though the property had not been taken over by the United States Railroad Administration for purposes of operation as a necessity growing out of war conditions.

Section 24 of the Public Utilities Act provides *inter alia* that:

> "Sec. 24. Whenever the commission after a hearing had upon its own motion or upon complaint, shall find that the * * * appliances, facilities, or service of any public utility, * * * are * * * unreasonable, * * * improper, inadequate or insufficient, the commission shall determine the just, reasonable * * * proper, adequate, or sufficient * * * facilities, service, or methods to be * * * furnished, constructed, * * * and shall fix the same by its order, rule or regulation."

Section 25 of the Act provides that:

> "Sec. 25. Whenever the commission after a hearing upon its own motion or upon complaint, shall find the additions, * * * or improvements to, or change in the existing * * * equipment, * * * facilities or other physical property of any public utility * * * ought reasonably to be made, or that a new structure * * * should be erected to promote the security or convenience of its employes or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such * * * improvements or changes be made or such structure * * * be erected in the manner and within the time specified in such order. If the Commission orders the erection of a new structure, the selection of the site for such structure shall be subject to the approval of the commission."

The Commision finds from a consideration of all the evidence that the facilities and service at Padroni furnished by defendant are unreasonable, improper, inadequate and insufficient to the needs of the public, and further finds that a new depot structure should

be erected to promote the security and convenience of its employes and of the public at said Padroni station, and that what is known as the "uniform standard style" of depot constructed by defendant at stations of the size and importance of Padroni, to-wit, 20x40 feet in dimensions, as shown by Commissioners' exhibit No. 1, should be erected or constructed by defendant at said station of Padroni.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, The Chicago, Burlington & Quincy Railroad Company, shall build, erect, and construct a new depot structure at Padroni station, Logan County, Colorado, of the uniform standard style, 20x40 feet in size, as shown upon Commissioners' exhibit No. 1, the same to be placed at or near the site of the box car bodies now used for depot purposes by defendant at said town.

IT IS FURTHER ORDERED, That said new depot structure shall be built, erected or constructed at said site by defendant within a period of 90 days of the issuance and service of this order.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 26th day of September, 1919.

DECISION No. 286.

APPLICATION OF CITIZENS OF PEETZ FOR OPENING OF HIGHWAY CROSSING AT GRADE OVER TRACKS OF CHICAGO, BURLINGTON & QUINCY RAILROAD AT PEETZ.

Application No. 52.

October 1, 1919.

APPEARANCES: Coen and Sauter, Sterling Colorado, for the citizens of the town of Peetz, complainants; E. E. Whitted and J. L. Rice, Denver, Colorado, for Chicago, Burlington & Quincy Railroad, defendant.

STATEMENT.

By the Commission:

This matter comes before the Commission upon an application filed April 21, 1919, by citizens of the town of Peetz, Logan county, Colorado, which application alleges that the signers are residents, freeholders and taxpayers residing within the corporate limits of said town, and petitions the Commission to open a crossing at grade over the tracks of the Chicago, Burlington & Quincy Railroad on Main Street in the town of Peetz. The application shows that there is no means of access by vehicle traffic on said Main Street across the railroad tracks to the east part of said town, owing to the railroad company's station platform being located in the center of Main Street, and that the east

portion of the town of Peetz is thereby practically isolated from said town. The application further alleges that in addition to the above, the lack of a crossing on Main Street is a hardship on persons who have purchased property on the east side of said railroad, and that building on the east side of the railroad in the town of Peetz has been suspended and will be suspended until such time as the proper crossing is opened on Main Street.

Upon the filing of the application, it was served upon the defendant railroad company, and the railway engineer for the Commission was sent to Peetz to look over the situation. On June 17, 1919, the engineer for the Commission rendered a report, wherein he suggested that the proposition should be referred to the town authorities of Peetz with a view to opening a crossing at Logan Street instead of Main Street, Logan Street being one block north of Main Street. The engineer expressed the opinion that, the Main Street crossing being located in close proximity to the depot, the Logan Street crossing would be safer for the public to use. Upon such suggestion, the matter was referred to the town authorities of Peetz, and on July 18, 1919, a written communication signed by the mayor and board of trustees under the hand and seal of the town clerk was filed with the Commission, whereby the suggestion to open Logan Street instead of Main Street was rejected, giving as the reason therefor that the opening of Logan Street would be detrimental to the progress of the town and a great inconvenience to the residents living on the east side of the railroad tracks. The communication further called the attention of the Commission to the stated fact that pedestrians and drivers of vehicles could obtain a complete and unobstructed view of trains approaching both from the north and south for approximately one and one-half miles from the Main Street crossing, and that in the opinion of the town authorities no additional danger would be incurred by the people in opening the crossing on Main Street; that Main Street is the logical place for a crossing, and requested that the relief originally asked for in the application be granted.

Upon notice to all parties concerned, the matter was set down by the Commission for hearing on Friday, August 22, 1919, at 9 o'clock a. m., at the town hall in Peetz, and the same was heard on said day at said time and place by Commissioners Williams and Halderman.

Before the introduction of any testimony, the defendant railroad filed an answer to the application, wherein it is alleged

that there is no necessity for the construction or establishment at the present time of the crossing asked in said application; and that the establishment of a crossing at the place asked would result in great danger to those using the same, and would greatly hamper, interfere with and delay the handling, loading and unloading of freight and switching at the station of Peetz. The answer further alleged that there are other streets and points in said town upon said railroad where a crossing may be established with greater safety to the public and with much less cost, expense, inconvenience and delay to the railroad, and which would adequately serve all the purposes for which a crossing in said application is asked; and further that the present crossings in said town are adequate for all the needs of the community; and that under present conditions, in view of the cost of labor and material and the scarcity of the same and the fact that adequate crossing facilities now exist in said town, no order ought to be made by the Commission such as is sought by the applicants.

It appears from the testimony and also from complainants' Exhibit 1 that the depot of the Chicago, Burlington & Quincy Railroad is located parallel with the south line of Main Street in the town of Peetz, and that the depot platform, which is constructed of sand and cinders kept in place by a wooden frame, extends practically across Main Street, and that this cinder platform is about two and one-half feet in height, so that the platform entirely obstructs and closes all vehicle traffic across the tracks on Main Street and renders it necessary for pedestrians to climb over or walk around the north end thereof. It also appears that this condition of affairs existed at the time the town of Peetz was originally platted many years ago. There appears to be but one crossing in said town across defendant's tracks, that being situated on North Street two blocks north of the depot and which is the county road, although for some little time the citizens have been using a crossing located at the alleyway between Main and Logan Streets, a half block north of the depot, which alleyway crossing is imperfectly constructed and is tolerated by common consent of the citizens and railroad company and can in no sense be regarded as a railroad crossing in compliance with the rules governing the same as provided by the Commission for railroad crossings.

The issue involved is very simple, that is to say, whether or not the opening of the crossing at Main Street under the testi-

mony will be a just and reasonable requirement and would promote the convenience of the public, having due regard for the safety of the users of such crossing and the expense and inconvenience to the railroad by making the change requested.

On behalf of the citizens of Peetz, the testimony is quite clear that not only the municipal authorities, but practically all of the citizens are unanimous in favor of the opening of the Main Street crossing. A few years ago an addition to the town of Peetz was platted to the east of the railroad tracks, called Park Addition, in which is located a block of ground dedicated to the town as a City Park. Four or five houses, which front on Main Street, have been built in the Park Addition, and it is the contention of the citizens of Peetz that on account of imperfect titles in that portion of the town west of the tracks, the Park Addition is the natural and logical place for further extension and development of the town and is naturally adapted to become an excellent residence district. Main Street is the wide and principal street extending for about three blocks west of the depot and has located upon it most of the business houses of the town.

With the question of imperfect titles the Commission is not concerned; but it is patent, as shown by applicants' Exhibit 1 and as disclosed by the testimony of applicants, that the town will not develop and grow to the east of the railroad, except there be another crossing over the tracks and right of way of the defendant railroad in addition to that at North Street on the county road.

The objection made by the defendant railroad to the Main Street crossing being opened is largely one of expense to it; also by reason of removal of the existing platform in the street, the inconvenience to the railroad in receiving and discharging freight, and further that its trains will block the Main Street crossing while standing at the depot, and lastly that the Main Street crossing will prove to be much more dangerous to the public than would the Logan Street crossing, were it opened, on account of the obstructions to the view existent at the Main Street crossing.

These contentions of the railroad are supported by the testimony of its superintendent, its roadmaster and, so far as the element of additional danger is concerned, by the railway engineer for the Commission. The testimony of applicants is to the effect that the public will be subjected to no serious danger by the

opening of the Main Street crossing, for the reason that a view of approaching trains from either direction is obtainable for a long distance.

Keeping in mind the fact that the town of Peetz has grown to a community of about 500 in population, that it takes a natural pride in things of civic betterment, it is apparent that a railroad platform entirely blocking the crossing on its principal and main street is a thing not to be desired by its citizens, and that the convenience of the citizens of Peetz who desire to live across or go across to the east side of said town to the City Park would be greatly convenienced by the opening of said Main Street crossing. True, the opening of the Logan Street crossing, one block north, would improve conditions, but that proposal is strenuously objected to by the citizens and the municipal authorities of Peetz.

Upon the issue of safety of the public, the evidence is far from convincing that the public safety would be seriously menaced by the opening of a crossing at Main Street. Similar conditions exist in many towns and cities where the main street or a well traveled street passes in close proximity to the railroad depot; and generally speaking, no greater danger to the traveling public is incurred thereby than upon the ordinary country roadway crossing that is much traveled. A railroad company is a common carrier and a public utility, and as such is obligated to reasonably accommodate and serve the public, its patrons. In the development of the territory along its line, it derives revenue and profit, and but for such development it would not long exist. The interests of a railroad and of the various communities along its line are, or at least should be, mutual in looking toward the upbuilding and development of the country.

In this particular case, the railroad company has enjoyed the use of the main street for its depot facilities for years and it probably cannot be censured for its desire to continue such use, but on the other hand the citizens of the community who have invested their money and their time and their all in building up and developing the town and country surrounding it are entitled to consideration, and when as in this case, the platform obstruction will undoubtedly tend to hinder further development and expansion to the east of said railroad in the town of Peetz, the Commission is of the opinion that the railroad should bow to the public demand and that there is nothing unreasonable or

unjust to it in the request asked of the Commission at the hands of the applicants.

The Commission will therefore enter an order that the crossing on Main Street in the town of Peetz be opened by said railroad company by the removal of its depot platform across said Main Street and by the installation of crossing planks or other materials as will afford a safe, adequate and convenient crossing over and across its railroad tracks and right of way on said Main Street; and that the same be done at the expense of said railroad company within 90 days from and after the service of a certified copy of this decision and order upon it.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, Chicago, Burlington & Quincy Railroad Company, be, and the same is hereby, ordered and required to remove its station platform from across Main Street in the town of Peetz, Logan county, Colorado, and to install across its tracks and right of way a safe and adequate crossing on said Main Street within 90 days from the service of a certified copy of this decision and order upon it.

IT IS FURTHER ORDERED, That the crossing above described shall be constructed in accordance with plans and specifications prescribed in the Commission's order *In re* Improvement of Grade Crossings in Colorado, 2 Colo. P. U. C. 128.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 1st day of October, 1919.

DECISION No. 287.

CITIZENS OF PAOLI, COLORADO,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Case No. 177.

October 3, 1919.

APPEARANCES: Avery T. Searle, Esq., for complainants; J. L. Rice, Esq., for defendant, Chicago, Burlington & Quincy Railroad Company.

STATEMENT.

By the Commission:

On July 10, 1919, there was filed with the Commission a complaint signed by eleven citizens of Paoli, Colorado, requesting an order of the Commission directing the defendant carrier to install adequate depot facilities at Paoli. On the same date the Paoli Commercial Club filed a similar complaint.

On August 8, 1919, the defendant filed its answer to the complaint, stating in substance that at the present time there is no necessity for the construction of a new station building or depot at Paoli; that the present depot facilities are adequate for the transaction of the business conducted at Paoli; that under present conditions, considering the cost of constructing said station building and the fact that adequate facilities are now provided, no order ought to be made such as is sought by complainants.

The above cause was heard by the Commission on August 21, 1919, at the hour of 2:30 o'clock p. m. at the District Court Room in the Court House, at Sterling, Colorado.

Paoli is located on the Holdredge-Curtis-Sterling branch of the Chicago, Burlington & Quincy Railroad in Phillips county, Colorado, 41 miles east of Sterling; it has a population of about 100 and is exclusively a farming community with about 200 people in the territory outside and tributary to the town. The business places in the town are a general merchandise store, garage, bank, hardware store, lumber yard, hotel, pool hall, barbershop and two elevators. The nearest station east of Paoli is Holyoke, nine miles by railroad, and on the west, Haxtun, nine miles by railroad. The defendant's railroad is the only line serving the town of Paoli. Prior to July 7, 1919, the depot facilities consisted of three box cars. On that date these cars were destroyed by fire and on the date of the hearing, August 21, 1919, the depot consisted of two box cars, made over for that purpose, one used for freight, and the other for express, passenger and agent's office combined. It appeared that the defendant had ordered and was about to place an additional box car to enlarge the present depot.

Several witnesses for the complainants testified that the structures now used as a depot at Paoli are inadequate to handle the business required; that a large amount of wheat, corn and millet seed is shipped from this station and that considerable merchandise, lumber, coal and machinery are shipped in; that during the last year the general merchandise store did a business of $50,000.00 and paid $2,400.00 for freight on shipments during the year; that prior to the fire when three box cars were in use, perishable goods were frequently not properly housed, and suffered from exposure to cold or heat; that up to the date of the hearing about 48 cars of wheat had been shipped this season, with a large quantity yet to be shipped. One witness estimated that 125 cars of wheat, 40 cars of corn and 60 cars of millet seed were billed out of this station in a season.

The evidence of defendant was directed largely to show that the box cars now installed, and the one additional car body to be placed at this station, comprise adequate and ample depot facilities.

Figures furnished by the defendant as to the freight service at this station from May 1, 1918, to April 30, 1919, are summarized as follows:

RECEIVED BUSINESS.

Local	$13,916.62
Foreign or interline	7,208.11

FORWARDED BUSINESS.

Local	$41,617.28
Foreign or interline	1,488.68
	$64,230.69
Ticket sales	$ 1,659.08
Express revenue	2,200.00
Total revenue for such period	$68,089.77

The summary of freight tonnage for the same period is as follows:

Received	Tons
C. L.	1,897
L. C. L.	406
Forwarded	Tons
C. L.	7,650
L. C. L.	36
Total tons	9,989

The Commission finds from a consideration of all the evidence that the facilities and service at Paoli furnished by defendant are unreasonable, improper, inadequate and insufficient to the needs of the public, and further finds that a new depot structure should be created to promote the security and convenience of its employes and of the public at said Paoli station, and that what is known as the "uniform standard style" of depot constructed by defendant at stations of the size and importance of Paoli, to-wit: 20 x 40 feet, in dimensions, as shown by Commission's Exhibit No. 1, as filed in Case No. 175, L. K. Parr, et al., v. C. B. & Q. Railroad Company, to which reference is here made, should be erected or constructed by defendant at said station of Paoli.

Evidence was introduced showing objection to the place at which the present depot is situated. The Commission has given consideration to this matter and finds that the depot should be placed on the south side of the defendant's main line track, 250 feet west of the intersection of the north and south county road on the west side of the town of Paoli with above main line.

ORDER.

IT IS THEREFORE ORDERED, That the defendant, the Chicago, Burlington & Quincy Railroad Company, shall build, erect, and construct a new depot structure, at Paoli station, Phillips county, Colorado, of the uniform standard style, 20 x 40 feet in size, as shown upon Commissioner's Exhibit No. 1 as filed in Case No. 175, L. K. Parr, et al., v. C. B. & Q. Railroad Company, to which reference is here made, the same to be placed on the south side of the defendant's main line track, 250 feet west of the intersection of the north and south county road on the west side of the town of Paoli with above main line.

IT IS FURTHER ORDERED, That said new depot structure shall be built, erected or constructed at said site by defendant within a period of 90 days of the issuance and service of this order.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 3rd day of October, 1919.

DECISION No. 288.

THE FARMERS' ELECTRIC & POWER COMPANY,

v.

THE TOWN OF AULT, COLORADO.

Case No. 167.

October 9, 1919.

STATEMENT.

By the Commission:

On September 25, 1919, the above named defendant filed its amended answer upon permission had of the Commission. The amended answer so filed admits allegations contained in paragraphs 1 and 2 of complainant's complaint and makes denial of the residue thereof, with the exception that it admits that defendant is constructing and has constructed an electric light system within the limits of the town of Ault, and that it has not heretofore made application to the Commission for a certificate of convenience and necessity as prescribed by the Act.

Said amended answer further alleges by what is denominated its "Further Answers, Cross Complaints and Affirmative Defenses," four in number, beginning about the middle of page 2 of said amended answer and ending near the bottom of page 5 thereof, as to its first further answer and cross complaint; and beginning near the bottom of page 5 and ending near the center of page 6, its second further answer and cross complaint; and its third answer and cross complaint beginning near the center

of page 6 and ending at the bottom thereof; and the fourth further answer and cross complaint beginning at the top of page 7 and ending at the bottom of page 9; and the defendant prays for an order dismissing complainant's complaint; and asks that the complainant be forbidden to further interfere with defendant in the construction and operation of its said electric light system and that the Commission issue to the defendant a certificate of convenience and necessity.

The complainant on September 30, 1919, filed its motion to strike and its demurrer to said amended complaint. The motion to strirke embraces all matters contained in the four so-called further answers and cross complaints contained in said amended answer, while the demurrer goes to that portion of said amended answer beginning with the last paragraph on page 9 and ending with the prayer thereof, except as to that part of the prayer which asks that complainant's complaint be dismissed.

Said motion and demurrer was set down for hearing by the Commission at the hearing room, Capitol Building, Denver, Colorado, on October 8, 1919, at 10 o'clock a. m. for oral argument, and upon said date the same was heard by the Commission, complainant appearing by H. E. Churchill, Esq., its attorney, and defendant by Lilyard & Simpson, its attorneys.

The Commission will first address itself to the matters embraced in the motion to strike aforesaid. Bearing in mind the character of the action, an application for a certificate of convenience and necessity as defined by the Act have now become an important issue therein, the Commission is of the opinion, after hearing the arguments adduced thereon by the respective counsel upon oral argument, that the allegations contained in the first so-called further answer, cross complaint and affirmative defense beginning at the middle of page 2 and ending near the bottom of page 5 contained in said amended answer, may properly be considered upon such issue, and that the same is true with reference to the allegations contained in the fourth so-called further answer and cross complaint beginning at the top of page 7 and continuing to page 10, contained in said amended answer; as to the allegations contained in the second and third so-called further answers and cross complaints of the defendant, embraced in said amended answer beginning near the bottom of page 5 and ending at the bottom of page 6, that the allegations contained therein are immaterial and irrelevant upon the issue in this case.

Therefore, the motion to strike will be sustained as to the said second and third so-called further answers and cross complaints, and denied as to the first and fourth so-called further answers and cross complaints.

With reference to the demurrer interposed by complainant to that portion of the amended answer embraced within the last paragraph thereon on page 9 and that portion of the prayer hereinabove referred to, the Commission is of the opinion that the same should and must be overruled. In reaching this conclusion, however, the Commission is not unmindful of the force of the argument advanced so urgently by the attorney for the complainant, but reaches this conclusion believing that a liberal rule of pleading should govern the deliberations of the Commission.

The Commission, having considered the matters and things embraced in complainant's motion to strike and demurrer, and being now fully advised in the premises, will enter an order that the second and third so-called further answers and cross complaints of the defendant, the town of Ault, be stricken from its amended complaint; that the motion to strike the first and fourth so-called further answers and cross complaints be denied; and that the demurrer of the complainant be overruled.

ORDER.

IT IS THEREFORE ORDERED, That the motion to strike the second and third further answers and cross complaints contained in the amended answer of the defendant, the town of Ault, filed September 25, 1919, be, and it is hereby, sustained, and that the motion to strike the first and fourth answers and cross complaints be, and the same is hereby, denied.

IT IS FURTHED ORDERED, That the demurrer of complainant be, and the same is hereby, overruled.

The complainant is hereby given time and 15 days from the service of this order upon it within which to reply to said amended answer and cross complaint.

LEROY J. WILLIAMS,
(SEAL) A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 9th day of October, 1919.

DECISION No. 289.

IN THE MATTER OF THE APPLICATION OF THE DENVER TRAMWAY COMPANY FOR THE DETERMINATION BY THE COMMISSION OF THE JUST AND REASONABLE RATES, FARES AND CHARGES TO BE HEREAFTER PAID AND ENFORCED ON ITS STREET AND INTER-URBAN RAILWAY LINES, AND ALSO FOR AUTHORITY TO CHANGE ITS EXISTING TRAFFIC SCHEDULE RATES, FARES AND CHARGES, AND TO MAKE AND COLLECT SUCH FARES, RATES AND CHARGES IN ACCORDANCE WITH THE DETERMINATION AND RULING OF THE COMMISSION.

Application No. 17.

October 11, 1919.

STATEMENT.

By the Commission:

On the 15th day of January, 1919, the Commission issued its order in the above entitled cause suspending certain increases in fares as specified in said order and continuing to February 15, 1919, the hearing on the motion for rehearing filed herein by the City and County of Denver. Subsequently thereto orders were issued deferring the hearing on the motion for rehearing until October 15, 1919.

Necessity being shown for further continuance of said hearing, the foregoing orders are hereby further modified in the following particulars only:

ORDER.

IT IS HEREBY ORDERED, That the hearing on the motion for rehearing filed herein by the City and County of Denver be, and the same is hereby, further continued to January 15, 1920, at 2:00 o'clock p. m., without prejudice to the right of the City and County of Denver, The Denver Tramway Company or this Commission to call a hearing on the motion for rehearing prior to such date, or for a further continuance of the same, and without prejudice to the right of any party to obtain a writ of review in this cause upon its final decision.

LEROY J. WILLIAMS

(SEAL) A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 11th day of October, 1919.

DECISION No. 290.

IN THE MATTER OF THE APPLICATION OF FRANK TITTER OF EATON, COLORADO, FOR A CERTIFICATE TO OPERATE FREIGHT AND EXPRESS SERVICE BY AUTOMOBILE TRUCK BETWEEN DENVER, GREELEY AND NUNN, COLORADO.

Application No. 42.

October 11, 1919.

APPEARANCES: Frank Titter for himself.

STATEMENT.

By the Commission:

The applicant filed his application herein with the Commission May 20, 1919, alleging that as an individual he proposes to operate an automobile truck line as a common carrier of freight and express between Denver, Greeley and Nunn, and to and from said points; that at the present time there is not in operation any automobile truck line as a common carrier between said points for which application has been made or a certificate granted by the Commisison for such operation; that the public convenience and necessity require the proposed operation; that no franchise or permits are required by any towns from the applicant in any territory through which it is proposed to operate; that applicant has filed with the Commission a schedule of the rates which he proposes to charge; that the equipment to be used in the proposed service consists of motor-driven vehicels; that applicant will not compete with any line

operating between the points named for which a certificate has been issued. The applicant asks that the Commission make its order authorizing applicant to operate an automobile truck line as a common carrier of freight and express between the above named points.

At the hearing, which was held in the hearing room, State Capitol Building, Denver, Colorado, on September 26, 1919, the applicant, Frank Titter, testified that he had not yet engaged in the business proposed in his application; that he is now engaged in operating an automobile for the purpose of carrying passengers between Greeley, Eaton and Ault under a certificate heretofore granted by this Commission; that he had written letters to persons interested in The Denver & Northern Transportation Company proposing to take shares in said company or that they should drop out and allow him to organize the said company, but that he had never received an answer to said letters and had never heard from the company; that he is not now ready to go into the business and has no trucks available; that he does not now contemplate running a line between Denver and Greeley, as he has no equipment; that all of his equipment now is on another line.

After considering the evidence in this case, the Commission is of the opinion and so finds as to the service proposed to be established on the route named in the application herein that public convenience and necessity do not require its operation, as there are other similar lines now in operation adequate to take care of all the business; that a certificate of public convenience and necessity should not issue.

ORDER.

A public hearing having been held in the above entitled cause and the cause having been submitted, for the reasons above assigned the Commission hereby declares that public convenience and necessity do not now require and will not require the operation by the applicant, Frank Titter, of the automobile truck line service proposed in the application herein. The application is therefore denied.

LEROY J. WILLIAMS,
(SEAL) A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 11th day of October, 1919.

DECISION NO. 291.

IN THE MATTER OF THE APPLICATION OF J. H. FRANKLIN AND M. C. COFFEY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE OPERATION OF AN AUTOMOBILE TRUCK LINE BETWEEN DENVER, FREDERICK, FIRESTONE AND FORT LUPTON.

Application No. 47.

October 11, 1919.

APPEARANCES: M. C. Coffey for applicants.

STATEMENT.

By the Commission:

On June 13, 1919, application was filed herein by J. H. Franklin and M. C. Coffey praying that a certificate of public convenience and necessity be granted to them to operate an automobile truck line between Denver, Frederick, Firestone and Fort Lupton, Colorado. The application alleges that applicants are now engaged in the business of a common carrier between said points; that at present there is not in operation any automobile truck line as a common carrier between the points to and from which applicants propose operating for which application has been made or a certificate granted by the Commission; that the public convenience and necessity require such operation; that no franchises or permits have been obtained by applicants from the various towns on the route, as there are no requirements for the same in such towns.

Applicants propose to charge rates on freight and express, including delivery charges, similar to those now charged by express companies on commodities of a similar nature and for delivery at the same points, which schedule is on file with the Commission, and propose to operate on a schedule as shown by Exhibit "A" attached thereto. The equipment to be used in the proposed service consists of motor-driven vehicles. Applicants will not compete with any line operating between the points named for which a certificate has been applied for or granted by the Commission for such operation.

Due notice was given to all parties herein concerned that this cause was set for hearing and a public hearing was held on August 14, 1919.

The testimony on behalf of applicants was that the applicants, J. H. Franklin and M. C. Coffey, comprise a partnership; that applicants are now operating automobile trucks on a regular schedule between Denver, Frederick, Firestone and Fort Lupton, leaving Denver Mondays, Wednesdays and Fridays and returning the same days—three round trips a week; that the above towns are all railroad points; that the applicants have now invested the sum of $1,800.00 in motor truck equipment; that applicants have a license from the City and County of Denver, the only town on their route which requires a license. At the hearing Mr. A. W. Fitzgerald, attorney for The Green Transfer Company in Application No. 51, stated that there was no conflict between the applicants' proposed line and the line of The Green Transfer Company, which he represented, and that his clients had no objection to the issuing of the certificate asked for. Mr. Earl M. Cranston, also being present and representing The Denver & Northern Transportation Company in Application No. 48, also stated that there was no conflict between the line of The Denver & Northern Transportation Company and the proposed line. The evidence, however, disclosed that Fort Lupton, which is the northern treminus of the route herein proposed, is also an intermediate point on the route for which a certificate is applied for by The Denver & Northern Transportation Company in Application No. 48. However, the town of Fort Lupton is to be reached by the two companies by different routes from Denver. The evidence also discloses that the applicants have been operating their line continuously since about June 23, 1919.

After considering the evidence in this case, the Commission is of the opinion and so finds as to the service proposed to be estab-

lished on the route named in the application herein, viz., from Denver to Frederick, Firestone and Fort Lupton, that the operation of this route will furnish an adequate and convenient method for the transportation of freight, and that public convenience and necessity require its operation, and that a certificate of public convenience and necessity should issue.

ORDER.

A public hearing having been held in the above entitled cause and the case having been submitted, the Commission hereby declares that public convenience and necessity require and will require the operation by J. H. Franklin and M. C. Coffey of an automobile truck line service between Denver, Frederick, Firestone and Fort Lupton; provided, that this declaration shall not become effective until the applicants have filed herein certified copies of permits granted by the cities and towns above named or have filed with this Commission a certificate that no such permits are required by the said cities and towns, in accordance with the provisions of Section 35 of the Public Utilities Act, as approved April 16, 1917.

LEROY J. WILLIAMS

(SEAL)

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 11th day of October, 1919.

DECISION No. 292.

IN THE MATTER OF THE APPLICATION OF THE DENVER & NORTHERN TRANSPORTATION COMPANY FOR A CERTIFICATE, IN ACCORDANCE WITH SECTION 35 OF THE PUBLIC UTILITIES ACT, FOR THE OPERATION OF FREIGHT AND EXPRESS SERVICE BY AUTOMOBILE TRUCK BETWEEN DENVER AND GREELEY AND EATON, COLORADO.

Application No. 48.

October 11, 1919.

APPEARANCES: Earl M. Cranston, for the applicant; A. T. Monson, for The Denver-Greeley Motor Express; J. L. Hollingsworth, for The Liberty Transportation and Express Company.

STATEMENT.

By the Commission:

On June 28, 1919, an application was filed herein by The Denver & Northern Transportation Company praying that a certificate of public convenience and necessity be issued to it to operate an automobile truck line as a common carrier of freight and express between Denver, Colorado, and Greeley and Eaton, Colorado, and to and from towns and places intermediate and in the vicinity of those named. The applicant alleges that The Denver & Northern Transportation Company is a corporation duly organized and exist-

ing under and by virtue of the laws of the State of Colorado; that a certified copy of the articles of incorporation is attached to the application; that the equipment proposed to be used consists of one or more mortor-driven vehicles operating each day of the week, except Sundays, in each direction; that the public convenience and necessity require the proposed operation; that at the present time there is not in operation any automobile truck line as a common carrier between the points to and from those above named for the operation of which this Commission has granted a certificate; that no franchise or permits have been obtained by the applicant from any towns or cities for the reason that there is no requirement for the same in the territory through which it is proposed to operate; that the applicant has filed attached to its application the schedule of rates proposed to be charged on such freight and express matter.

A public hearing in the above cause was begun in the hearing room of the Commission in the State Capitol, Denver, Colorado, August 14, 1919, and was postponed until September 26, 1919, at which time the hearing was concluded.

The testimony on behalf of the applicant is that it now owns and operates two 2-ton trucks that carry perishable, as well as other high-class freight; that trucks leave Denver at 3 a. m., arriving at Greeley between 7 and 8 and not later than 8 a. m.; that in this way freight is delivered to the merchants as they are opening their establishments for the business of the day; that such delivery allows the merchants to receive commodities in fresh condition, saving the extra handling that would be required in the shipment by railroad; that applicant has so operated about 3 months; that the rates charged in most cases are the same as those charged by the railroad, but in some instances are a little higher; that the expense to the customer, however, is less than shipments by railroad on account of the saving of the extra handling; that in this way goods are delivered to Greeley and Eaton about three and a half hours earlier than they could be delivered by the railroad; that the applicant has invested about $9,000.00 in its said business; that applicant is incorporated for the sum of $10,000.00, which certificate is on file with the Commission; that no passengers are to be carried by the applicant; that before a certificate is issued the applicant will file with the Commission a complete description of its trucks and equipment, including names of machines, numbers of engines, models, and numbers of state licenses, certified copies of city or

county licenses where they are required and a certificate to that effect when licenses are not required, a time table and schedule of the rates under which applicant operates, showing the rates between all points. It was further shown that at the present time the Denver-Greeley Motor Express and The Liberty Transportation & Express Company are also operating automobile truck lines in competition with applicant between Denver and Greeley.

After considering the evidence in this case, the Commission is of the opinion and so finds as to the service performed and proposed to be established on the route named in the application herein, namely, between Denver, Greeley and Eaton, that the operation of this automobile truck line furnishes an adequate and convenient method for the transportation of freight and express, and that public convenience and necessity require its operation, and that a certificate of public convenience and necessity should issue.

ORDER.

A public hearing having been held in the above entitled cause and the case having been submitted, the Commission hereby declares that public convenience and necessity require and will require the operation by The Denver & Northern Transportation Company of an automobile truck line service between Denver, Greeley and Eaton.

LEROY J. WILLIAMS

(SEAL) A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 11th day of October, 1919.

DECISION NO. 293.

IN THE MATTER OF THE APPLICATION OF CHARLES E. BARKLEY AND HARRY E. F. HOFFMAN, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF THE DENVER-GREELEY-MOTOR EXPRESS, FOR A CERTIFICATE, UNDER SECTION 35 OF THE PUBLIC UTILITIES ACT, FOR THE OPERATION OF AN AUTOMOBILE TRUCK LINE BETWEEN DENVER AND GREELEY, COLORADO.

Application No. 55.

October 11, 1919.

APPEARANCES: A. T. Monson, Esq., for the Denver-Greeley Motor Express; Earl M. Cranston, Esq., for The Denver & Northern Transportation Company; J. I. Hollingsworth, Esq., for The Liberty Transportation & Express Company.

STATEMENT.

By the Commission:

On August 19, 1919, an application was filed herein by Charles E. Barkley and Harry E. F. Hoffman, doing business under the firm name and style of the Denver-Greeley Motor Express, praying that a certificate of public convenience and necessity be issued for the operation by them of an automobile truck line as a common carrier of freight and express between Denver and Greeley, Colorado.

The application alleges that applicants are engaged in the business of motor truck transfer and transportation between Denver and Greeley, and that their chief business consists in hauling and transporting merchandise of every kind and character between said points and also to and from the smaller towns between said points; that the route followed by them in the main traveled Lincoln Highway between Denver and Greeley; that applicants compose a co-partnership doing business under the name and style of the Denver-Greeley Motor Express, and that they have been engaged in the business of hauling and transporting merchandise by motor truck since April 1, 1919; that there are three other concerns engaged in the same business—The Denver & Northern Transportation Company, The Mountain & Plains Transportation Company and The Liberty Transportation & Express Company—and that these, together with applicants, were the first to engage in this business; that the present and future public convenience and necessity require and will require the carrying on of the business aforesaid by applicants, and that in the event this Commission should feel disposed to curtail or prevent the carrying on of said business by any of the concerns which have commenced operations it should do so with those concerns which have commenced operations subsequent to applicants; that the application would have been made at an earlier date had applicants been familiar with the law governing such applications; that a copy of the operating schedule and the rate schedule of applicants is attached thereto and marked Exhibits "A" and "B" respectively and filed therewith.

A hearing was held in the hearing room of the Commission, Capitol Building, Denver, Colorado, on September 26, 1919, which hearing was also a continuation of the hearing on Application No. 48 of The Denver & Northern Transportation Company, had August 14, 1919. Before Application No. 48 was decided, the application of Charles E. Barkley and Harry E. F. Hoffman was filed with the Commission as Application No. 55, while during the same period the application of The Liberty Transportation & Express Company, which is engaged in the motor transportation business in the same territory, was filed as Application No. 58. The Commission, therefore, deemed it advisable to hear and consider at the same time all of the applications covering this territory before issuing a final order. Accordingly, all hearings on applications affecting such territory were set for September 26, 1919.

The evidence in the present case is that the applicants, Charles E. Barkley and Harry E. Hoffman, constitute a co-partnership under the name of the Denver-Greeley Motor Express; that they are conducting an automobile transportation route, hauling beef, merchandise, etc., between Denver and Greeley and to other intermediate towns; that applicants have been so engaged since April 2, 1919, and have operated continuously on a schedule between Denver and Greeley, making a round trip daily except Sunday and Monday of each week; that applicants make a specialty of early service, reaching the various points before the same class of freight is delivered by the railroads; that applicants use two motor trucks in their business, and have an approximate investment therein of $5,000.00; that the manner in which applicants handle freight is a public convenience and is a necessity to their patrons; that applicants handle no passenger traffic; that they have a transfer license in Denver and state auto license; that the City of Greeley does not require a license; that applicants have filed a schedule of rates with the Commission, together with time of leaving and arrival; that they will file with the Commission their engine numbers and full descrption of their motor trucks, together with all required licenses or permits from towns along the route, before the issuance of a certificate.

After due consideration of the evidence in this case, the Commission is of the opinion and so finds that the service afforded and maintained and the operaton of the route described in the application will furnish adequate and convenient methods for transporting freight and express, and that the public necessity and convenience require and will require the operation of said route by the Denver-Greeley Motor Express, and that a certificate of convenience and necessity should issue.

ORDER.

A public hearing having been held in the above entitled cause and the same having been duly submitted, the Commission hereby declares that the public convenience and necessity require and will require the operation by the Denver-Greeley Motor Express of an automobile truck line service between Denver and Greeley.

LEROY J. WILLIAMS

(SEAL) A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 11th day of October, 1919.

DECISION No. 294.

IN THE MATTER OF THE APPLICATION OF THE LIBERTY TRANSPORTATION AND EXPRESS COMPANY FOR A CERTIFICATE, IN ACCORDANCE WITH SECTION 35 OF THE PUBLIC UTILITIES ACT, FOR THE OPERATION OF FREIGHT AND EXPRESS SERVICE BY AUTOMOBILE TRUCK BETWEEN DENVER AND GREELEY, COLORADO.

Application No. 58.

October 11, 1919.

APPEARANCES: J. I. Hollingsworth, for applicant; A. T. Monson, for Denver Greeley Motor Express; Earl M. Cranston, for The Denver and Northern Transportation Company.

STATEMENT.

By the Commission:

On September 22, 1919, an application was filed herein by The Liberty Transportation & Express Company praying that a certificate of public convenience and necessity be issued to it to operate an automobile truck line as a common carrier of freight and express between Denver and Greeley, Colorado, and to and from intermediate towns and places.

The application alleges that The Liberty Transportation & Express Company is engaged in the business of motor transfer and transportation between Denver and Greeley, and that its business consists in hauling and tranporting merchandise of every kind and description between said points, and also to and from the towns

between said points, and the route followed by it is the main traveled Lincoln Highway between Denver and Greeley; that applicant has filed a certified copy of its articles of incorporation with the Commission; that Harry N. Bennett, one of the incorporators, began said truck line between said named towns and cities on February 15, 1919, and continued to carry on the business until August 10, 1919, when a co-partnership was formed with J. M. Ellis, another one of the incorporators of said corporation; that said co-partnership continued until September 17, 1919, at which time the business was incorporated; that applicant has now in continued operation three trucks and has added others for extra business; that applicant would have made this application at an earlier date had it known that the laws required the same; that a copy of the operating time table of applicant, together with a copy of the rate schedule, is filed with the Commission and marked Exhibits "1" and "2", respectively.

A hearing in the above matters was held in the hearing room of the Commission, Capitol Building, Denver, Colorado, on September 26, 1919, which hearing was also a continuation of the hearing on Application No. 48, the application of The Denver & Northern Transportation Company. After the first hearing in the case of The Denver & Nothern Transportation Company on August 14, 1919, and before final decision by the Commission, this applicant, The Liberty Transportation & Express Company, filed its application, while during the same period there was also filed Application No. 55, the application of the Denver-Greeley Motor Express, both of which applications involved the same territory as the application of The Denver & Northern Transportation Company already under consideration. The Commission therefore deemed it advisable to hear and consider at the same time all of the applications affecting this territory before issuing a final order in any of the cases, and accordingly all of said applications were set for and heard on September 26, 1919.

The evidence in this case is that the applicant and its predecessors in interest have been engaged in the motor transportation business since the middle of February of the present year, operating between Denver and Greeley and intermediate points; that such operation has been continuous, comprising a round trip daily, except Sunday; that at present applicant has three motor trucks and is operating at full capacity; that applicant carries merchndise, fruit, hardware, implements, furniture and other articles; that no passengers are carried; that a copy of its articles of incorporation

is on file with the Commission; that before certificate issues applicant will file with this Commission a copy of the license required from the City and County of Denver and other towns and cities through which it operates, and that where none is required a certificate from the town clerk that none is required will be filed with the Commission; that applicant has filed with the Commission a time schedule showing time of departures and arrivals at each town en route together with a schedule of the rate charged to and from each point; that applicant has now invested in its business from $12,000 to $14,000; that applicant will file with the Commission a description of all its motor vehicles together with numbers of all engines and licenses.

The Commission after duly considering all the evidence in this case is of the opinion and so finds as to the operations of the applicant and the service now established on the route named in the application, viz., between Denver and Greeley, that the operation of said described route will furnish an adequate and convenient method of transportation of freight and that the public convenience and necessity require and will require its operation, and that a certificate of public convenience and necessity should issue.

ORDER.

A public hearing having been held in the above entitled cause and the same having been submitted, the Commission hereby declares that the public convenience and necessity require and will require the operation by The Liberty Transportation & Express Company of an automobile truck line service between Denver and Greeley.

LEROY J. WILLIAMS

(SEAL) A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 11th day of October, 1919.

DECISION NO. 295.

IN THE MATTER OF THE APPLICATION OF DAVID W. PAINE FOR A CERTIFICATE TO OPERATE A MOTOR TRUCK TRANSPORTATION LINE IN ACCORDANCE WITH SECTION 35 OF THE PUBLIC UTILITIES ACT APPROVED APRIL 16, 1917.

Application No. 56.

October 14, 1919.

APPEARANCES: A. T. Monson, Esq., for the applicant David W. Paine.

STATEMENT.

By the Commission:

On August 25, 1919, an application was filed herein by David W. Paine, praying that a certificate of public convenience and necessity be issued to him for the operation of an automobile truck line as a common carrier of freight and express between Denver and Elizabeth, Colorado, and to and from intermediate towns and places.

In his application, applicant alleges that he is now engaged in motor truck transportation between Denver and Elizabeth, and has been engaged in such business since August 4, 1919; that the present and future public convenience and necessity require and will require the operation of the applicant's transportation line; that the chief business in which this transportation line is engaged is the hauling of milk and other merchandise

between Denver and Elizabeth, and to and from other stations between these points; that applicant's equipment consists of one Dodge two-ton truck, which equipment will be increased as business demands; that the route followed by applicant is the main traveled highway between Denver and Elizabeth, passing through Parker and Franktown; that copies of applicant's rate and operating schedules, marked "A" and "B" respectively, are attached and made a part of the application.

This application was heard before the Commission in the hearing room, State Capitol Building, Denver, Colorado, September 26, 1919, at 10 a. m.

The evidence shows that the applicant, David W. Paine, lives at Elizabeth, Colorado, 42 miles distant from Denver; that he is engaged in hauling milk and other merchandise from Elizabeth to Denver and general freight from Denver to Elizabeth; that applicant operates on a schedule between said points, leaving Elizabeth at 7 o'clock a. m. and arriving at Denver at 10 a. m., passing through Franktown and Parker; that applicant averages about 2,300 pounds of freight going into Denver and 3,000 pounds from Denver to Elizabeth; that operation by applicant of a motor truck line is a matter of public convenience and necessity both to applicant's patrons along this route and to his patrons in Denver, for the reason that he calls at the homes of his patrons, loads the milk early in the morning and delivers it direct in Denver while it is sweet. The evidence was further to the effect that applicant has invested in his business the sum of $2,200.00; that he has filed with the Commission a schedule of his rates, together with a schedule of the time of departure and arrival at all points along his route; that before a certificate is issued applicant will file with the Commission a full description of his motor truck, including number of engines; also he will file a copy of all licenses, where the same are required, and in towns where licenses are not required, a statement from the town to that effect.

The Commission, after considering the evidence in this case, finds as to the service now established and the route being now maintained and operated by the applicant, viz., between Denver and Elizabeth, that the operation of said motor truck line will furnish an adequate and convenient method and mode of transporting freight and commodities and that the public convenience and necessity require its operation and that a certificate of public convenience and necessity should issue.

ORDER.

A public hearing having been held in the above entitled cause and the same having been duly submitted, the Commission hereby declares that the public necessity and convenience require and will require the operation by David W. Paine of an automobile truck line service between Denver and Elizabeth aforesaid.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 14th day of October, 1919.

DECISION No. 296.

IN THE MATTER OF THE APPLICATION OF THE UNION PACIFIC RAILROAD FOR PERMISSION TO OPEN AND ESTABLISH A PUBLIC HIGHWAY CROSSING OVER THE TRACKS OF THE UNION PACIFIC RAILROAD AT THE INTERSECTION OF THE MAIN LINE OF THE UNION PACIFIC RAILROAD WITH THE LINE BETWEEN SECTIONS 2 AND 3, T. 11 N., R. 45 W., SEDGWICK COUNTY, COLORADO.

Application No. 60.

October 18, 1919.

STATEMENT.

By the Commission:

This proceeding arises upon the application of the Union Pacific Railroad, in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, for the opening of a public highway crossing at grade over the tracks of the Union Pacific Railroad at the intersection of the main line of the Union Pacific Railroad with the section line between Sections 2 and 3, Township 11 North, Range 45 West, about one-half mile south of Adrian, in Sedgwick county, Colorado.

An investigation into the necessity for the opening of a public highway crossing at this point was made by the Commission's engineer, who recommended that permission for the opening of the crossing be granted. The Board of County Commissioners of Sedgwick county, through Mr. W. H. Pound, county attorney, has signified its desire to have a public highway crossing opened at this point. A plat of the proposed crossing has been filed

with the Commission by the Union Pacific Railroad. The Commission, therefore, will issue its order granting permission for the opening and establishing of the crossing, as requested.

ORDER.

IT IS THEREFORE ORDERED, That in accordance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, a public highway crossing at grade be, and the same is hereby, permitted to be opened and established over the line of the Union Pacific Railroad at the intersection of the main line of the Union Pacific Railroad with the section line between Sections 2 and 3, Township 11 North, Range 45 West, at a point described as about one-half mile south of Adrian, in Sedgwick county, Colorado.

IT IS FURTHER ORDERED, That the crossing at the point above described shall be constructed in accordance with plans and specifications prescribed in the Commission's order *In re* Improvement of Grade Crossings in Colorado, 2 Colo. P. U. C. 128.

IT IS FURTHER ORDERED, That the expense necessary to the opening and establishing of said crossing shall be apportioned as may be agreed upon by the Union Pacific Railroad and the Board of County Commissioners of Sedgwick county; provided, however, that in event the Union Pacific Railroad and the Board of County Commissioners of Sedgwick county fail to agree upon an apportionment of the expense they shall apply to the Commission for a further order apportioning such expense.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

Commissioners.

Dated at Denver, Colorado, this 18th day of October, 1919.

DECISION No. 297.

IN THE MATTER OF THE APPLICATION OF THE DENVER & RIO GRANDE RAILROAD FOR PERMISSION TO CONSTRUCT A SPUR TRACK AT GRADE ACROSS THE PUBLIC HIGHWAY BETWEEN DENVER AND LITTLETON.

Application No. 27.

October 25, 1919.

STATEMENT.

By the Commission:

On October 16, 1918, the Denver & Rio Grande Railroad, through J. G. Gwyn, its chief engineer, filed its application for permission to construct a spur track at grade over the public highway between Denver and Littleton, the spur track to serve the plant of the National Alfalfa Products Company near Littleton.

An investigation was undertaken by the Commission to the end that, if possible, a plan might be worked out whereby the necessary trackage could be built to serve the National Alfalfa Products Company without constructing any additional railroad tracks across the Denver-Littleton highway, which is one of the most traveled thoroughfares in the state. However, the Denver & Rio Grande Railroad, through J. G. Gwyn, its chief engineer, subsequently advised that the proposition to construct the spur track in question is not now active; that should the National Alfalfa Products Company later decide to have trackage built to serve its plant it will be necessary for the company to renew its application, and that the matter then would be treated as a

new application. The applicant further advised that it therefore desires to have this cause dismissed.

ORDER.

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

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 25th day of October, 1919.

DECISION No. 298.

IN THE MATTER OF THE APPLICATION OF THE UNION PACIFIC RAILROAD AND THE BOARD OF COUNTY COMMISSIONERS OF WELD COUNTY FOR THE RELOCATION OF THE PUBLIC HIGHWAY CROSSING AT GRADE OVER THE TRACKS OF THE UNION PACIFIC RAILROAD ON THE LINE BETWEEN SEC. 3, T. 6 N., R. 63 W., AND SEC. 34, T. 7 N., R. 63 W., WELD COUNTY, COLORADO.

Application No. 61.

October 28, 1919.

STATEMENT.

By the Commission:

This proceeding arises upon the application of the Union Pacific Railroad and the Board of County Commissioners of Weld County, in compliance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, for the relocation of a public highway crossing at grade over the tracks of the Union Pacific Railroad at a point west of Cornish, Weld County, Colorado.

It appears that when this public highway crossing was first established it was believed to have been established on the township line. Later surveys, however, developed the fact that the township line crosses the railroad at a point approximately 75 feet east of the point at which the highway crossing originally was established. It is to correct this error that the railroad and Board of County Commissioners desire a relocation of the crossing.

The Commission, therefore, will issue its order granting permission for the relocation of the crossing, as requested.

ORDER.

IT IS THEREFORE ORDERED, That, in accordance with Section 29 of the Public Utilities Act of Colorado, as amended April 16, 1917, a public highway crossing at grade be, and the same is hereby, permitted to be opened and established over the line of the Union Pacific Railroad at the intersection of the line of the Union Pacific Railroad with the line between Section 3, Township 6 North, Range 63 west, and Section 34, Township 7 North, Range 63 West, Weld county, Colorado.

IT IS FURTHER ORDERED, That the public highway crossing located approximately 75 feet west of the point above described shall be closed and abolished as soon as the public highway crossing herein permitted to be opened shall have been established in accordance with the provisions of this order.

IT IS FURTHER ORDERED, That the crossing herein permitted to be established shall be constructed in accordance with plans and specifications prescribed in the Commission's order *In re* Improvement of Grade Crossings in Colorado, 2 Colo. P. U. C. 128.

IT IS FURTHER ORDERED, That the expense necessary to the opening and establishing of the crossing herein permitted to be established shall be apportioned as may be agreed upon by the Union Pacific Railroad and the Board of County Commissioners of Weld county; provided, however, that in event the Union Pacific Railroad and the Board of County Commissioners of Weld county fail to agree upon an apportionment of the expense, they shall apply to the Commission for a further order apportioning such expense.

(SEAL)

LEROY J. WILLIAMS,
A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 28th day of October, 1919.

DECISION No. 299.

IN THE MATTER OF THE APPLICATION OF THE CRIPPLE CREEK WATER COMPANY TO HAVE ITS 9-INCH SUPPLY PIPE LINE INCLUDED IN THE VALUATION OF ITS PLANT, AND TO READJUST THE VALUATION OF THE WATER RIGHTS OWNED AND USED BY SAID COMPANY IN SUPPLYING THE CITY OF CRIPPLE CREEK IN ACCORDANCE WITH A DECREE RECENTLY RENDERED BY THE DISTRICT COURT OF FREMONT COUNTY, COLORADO, AND TO HAVE THE WATER RATES TO ITS CONSUMERS ADJUSTED IN ACCORDANCE THEREWITH.

Application No. 25.

November 10, 1919.

APPEARANCES: J. E. and W. G. Simonson for The Cripple Creek Water Company; E. P. Arthur, Esq., Mayor, J. S. Anderson and William Mellen for the City of Cripple Creek.

STATEMENT.

By the Commission:

On August 7, 1918, The Cripple Creek Water Company, hereinafter called "the Water Company," filed its application, which stated in substance: That its system was originally constructed in 1893 with an 8-inch supply pipe line running from its mountain reservoir No. 2 to its "city reservoir" in Cripple Creek; that later

this 8-inch pipe line was inadequate to furnish sufficient water supply for the inhabitants of Cripple Creek and for fire protection; that in 1901 a 9-inch pipe line was constructed to provide for such deficiencies; that on the hearing to fix water rates of the Water Company, this Commission found in reference to said 9-inch line, that such improvement had not been "wisely and prudently made, and that the same cannot be considered by this Commission, in a rate making case, as property in use and useful today" (*In re* Cripple Creek Water Company, 2 Colo. P. U. C. 55, 71).

It was further alleged that this Commission deducted from the value of the properties of the Water Company the value of the 9-inch pipe line, although the evidence showed that such line had been in constant use since 1901 to the date of the previous hearing and ever since; that tests have been made which demonstrated that the 9-inch pipe line is a necessity in the operations of the Water Company; that the insurance rate in Cripple Creek is based on the use of the two separate lines, and the insurance rate would be much higher if the 9-inch line were not used; that on October 16, 1917, the City Council of the City of Cripple Creek passed a resolution, that in its judgment the 9-inch pipe line above described is a necessary, wise and useful adjunct to the water system and should be added by this Commission to the valuation of the Water Company's property.

It was further alleged that this Commission in its former decision found that the Water Company had title to and owned 7.22 cubic feet of water per second of time and placed a value thereon of only $28,000.00 for the reason that the evidence then taken showed that such water rights when purchased cost that amount, although, as it is alleged, the then market value thereof was $75,000.00; that since the former hearing the Water Company has caused its water rights to be adjudicated and obtained a decree for the diversion of 7.22 cubic feet of water per second of time from Beaver Creek, and that the Water Company was decreed to be the owner of such amount of water which was held to be equal to 2 cubic feet of water per second of time constant flow; that the decree so obtained further made provision for change of point of diversion, the use of water for domestic purposes, and certain storage reservoir rights; that the expense of securing such decree was $3,500.00; that in view of said decree and the costs to obtain the same, this Commission is petitioned to reconsider and modify its former order and findings of value of the Water Company's plant

and water rights and that a hearing be had to determine their present value. The Water Company also alleged that its net earnings for the year 1917 were $3,467.95, being 2.3 per cent of the $150,000.00 or valuation fixed by this Commission; that the Water Company's rates should be readjusted to earn 8 per cent on the present value of the water system.

The applicant then prays that this Commission add to the Water Company's valuation the present value of the 9-inch pipe line; the additional value above $28,000.00 the water rights are found to be worth, and to readjust the water rates to earn a fair rate of return on the total present value of the water system.

Pursuant to notice duly given to all parties in interest, the above cause came on for hearing before the Commission at the City Council chamber in Cripple Creek, Colorado, at the hour of 3:15 o'clock p. m., on May 20, 1919. At this hearing evidence was received by the Commission relative to the matters set forth in the application.

The Water Company introduced evidence to show that the 9-inch pipe line was a necessary part of the water system of Cripple Creek, by testimony of Mr. B. B. McReynolds, superintendent of the water department of Colorado Springs, and also introduced the resolution of the City Council of Cripple Creek, requesting the addition by the Commission of the value of the 9-inch pipe line to the valuation heretofore made. The value of this pipe line as given by the Commission's engineer at the previous hearing was $32,990.00, as of that time.

On the question of the value of water rights the Water Company attempted to show the fair market value of these to be 7.22 cubic feet of water per second of time, at $10,000.00 per cubic foot, or $72,200.00; that the amount paid to adjudicate these rights was $3,011.77.

The Water Company also introduced the decree of the District Court of Fremont county, Colorado, by which changes of points of diversion of the Water Company's priorities theretofore made, for the purpose of supplying the city of Cripple Creek and the inhabitants thereof with water, from the original points of diversion to the reservoirs of petitioner, were permitted, ratified and confirmed; and it was further adjudged that the water to which the Water Company is entitled by virtue of its ownership of certain priorities is a total amount of 7.22 cubic feet of water per second of time, which may be diverted to reservoirs of the Water Com-

pany for the use only of the city of Cripple Creek and the inhabitants thereof, and that such water may be diverted at a rate not to exceed 2 cubic feet per second of time constant flow during the irrigation season.

Evidence was introduced by the Commission's statistician, Mr. F. W. Herbert, to show the financial condition of the Water Company at the date of the hearing. The income statement for 1916, 1917 and 1918 is as follows:

INCOME STATEMENT

		1916	1917	1918
	Revenues:			
501	Commercial Sales	$23,798.25	$20,932.06	$17,776.19
503	Municipal Hydrant Rental	5,250.00	5,250.00	5,250.00
505	Sales to Municipal Departments	480.00	296.50	70.00
	Total Operating Revenue	$29,528.25	$26,478.56	$23,096.19
	Operating Expenses:			
	Distribution—			
701a	Superintendence	$ 2,400.00	$ 2,400.00	$ 2,400.00
701b	Wages	3,013.40	3,803.25	2,860.50
711	Repairs—Reservoirs, Tanks, Standpipes	19.25	60.25	19.25
712	Repairs—Distribution Mains	184.45	872.48	174.84
713	Repairs—Services	69.07	.....	.....
	Commercial Expense:			
742	Office Supplies and Expense	353.09	338.88	374.30
	General Expense:			
761	Salaries, General Officers	1,000.00	1,000.00	1,000.00
766	Expense—General	158.77	200.46	132.93
767	Law Expense	260.90	512.30	250.00
	Total above items	$ 7,458.93	$ 9,187.62	$ 7,212.07
775	Depreciation	6,827.83	6,925.78	6,925.78
779	Taxes	5,733.05	6,902.41	8,523.46
	Total Operating Expense	$20,019.81	$23,015.81	$22,661.31
	Net Operating Revenue	$ 9,508.44	$ 3,462.75	$ 434.88

Readjustment of Income.

In its decision in Case No. 31 the Commission found $2,500.00 to be the proper amount to be set aside annually as a depreciation reserve. The amount charged to depreciation by the Water Company, however, was $6,827.83 for the year 1916, $6,925.78 for 1917, and $6,925.78 for 1918. The difference between the amount actually charged for depreciation by the Water Company and that permitted by the Commission by its order in Case No. 31 is therefore shown to be the following:

	1916	1917	1918
Amount charged by Water Company	$6,827.83	$6,925.78	$6,925.78
Amount permitted by Commission	2,500.00	2,500.00	2,500.00
Difference	$4,327.83	$4,425.78	$4,425.78

It follows that if the Water Company had set aside $2,500.00 as the annual depreciation charge for each of these three years instead of the amounts which it actually did set aside, it would make a better showing as to net operating revenue. A proper readjustment of income is brought about by adding the difference between the actual amount charged by the Water Company and that permitted by the Commission to the net operating revenue for each of the three years as set out in Income Statement reproduced above. This readjustment follows:

	1916	1917	1918
Net Operating Income as per Income Statement	$ 9,508.44	$3,462.75	$ 434.88
Add difference in Depreciation	4,327.83	4,425.78	4,425.78
Total Net Operating Revenue	$13,836.27	$7,888.53	$4,860.66

No serious attempt was made by the city of Cripple Creek to dispute the evidence produced, except to show that property generally had depreciated greatly in market value in the city of Cripple Creek.

The Commision has again considered the question of whether the 9-inch pipe line is in use and useful as a part of the water system of the Water Company and finds that the evidence sustains the contention of the Water Company that such 9-inch pipe line is in use and useful as a part of the water system of the Water Company, and further finds that the value of the 9-inch pipe line is $31,248.00, which sum shall be and is hereby added to the sum of $150,000.00 heretofore found by this Commission as the value of the Water Company's system.

As to the contention that the sum of $72,200.00 should be adopted as the value of the water rights of the Water Company instead of $28,000.00, the Commission declines to find such additional value upon the evidence submitted.

Upon the former hearing the Commission accepted the original cost as the proper measure of value as against "the so-called market value of these water rights." Furthermore, since the decision of this Commission, the Supreme Court of the United States, in Denver v. Denver Union Water Co., 246 U. S. 176, 62 L. E. 649, had before it the question of whether there is actual ownership of water,

or whether a carrying company diverting water for the beneficial use of others is agent or quasi-trustee of the consumers, and is not itself the owner of the rights of diversion. The court declined to pass upon the question as not necessary to its decision, and this Commision will not do so, as even if the excess value is allowed, it is imposible for the Commission to grant rates which would earn an adequate return upon such sum, as such rates would exceed the value of the service. The Commission will allow, however, the sum of $3,011.77 paid by the Water Company for the adjudication of its water rights, as an addition to the value of $150,000.00 heretofore placed upon the Water Company's system, and finds that such sum of $3,011.77 shall be and is hereby added to the sum of $150,000.00 heretofore found by this Commission as the value of the Water Company's system.

Referring to the income statement above set forth it will be noted that while the Commercial sales have decreased considerably since 1916, the taxes have increased. It also appears that there has been a very substantial decrease in the net operating revenue. The rates, however, cannot be substantially increased for the value of service in this community is about reached in the present rates, except in some modifications hereafter made, and it is very doubtful if substantial increases were granted whether there would be any net gain to the Water Company, as there would likely be a reduction of use.

The Water Company is and has been disobeying the order of this Commission in Case No. 31 wherein the Water Company was ordered to set aside annually $2,500.00 as a depreciation requirement. The above statement shows that the Water Company set aside the amount of $6,827.83 for 1916 and $6,925.78 for 1917 and 1918, which shows a much lower per cent of return than the Company really earned. The former order of the Commission is still in effect and must be complied with by the Water Company.

The Commission finds that the following rates, set out in the order herein, are reasonable rates and should be substituted for the rates now on file with the Commission for the respective classes of service.

ORDER.

IT IS THEREFORE ORDERED, That the applicant, The Cripple Creek Water Company, be, and it is hereby, permitted to

establish by filing and posting in the manner provided in Section 16 of the Public Utilities Act, the following rates and charges for water service:

Annual Water Rates.

Bakery, per oven	$15.00
Barber Shop, first chair	10.00
Barber Shop, each additional chair	3.00
Billiard Parlor, each table	2.50
Billiard Parlor, minimum charge	15.00
Blacksmith Shop, per forge	3.00
Blacksmith Shop, minimum charge	12.00
Boarding Houses (see Hotel rate).	
Brick Work, per thousand, kiln count	0.15
Brick Yard, per gang of hands	20.00
Bottling works (or by Meter)	24.00
Churches	10.00
Club Rooms	30.00
Cigar Factories, per hand	2.00
Cigar Factories, minimum charge	5.00
Cigar Stores, on foot front basis.	
Cigar Stores, minimum charge	15.00
Cow, per head	3.00
City Hall, Fire Stations, and other uses not provided for in Hydrant Rental	60.00
Court House, by meter.	
Fire Hydrants, for the first 100 (minimum use by City) each	52.50
Fire Hydrants in excess of 100, each	45.00
Fountains, Soda	20.00
Fountains, drinking, when in use, per month	2.50
Fountains, ornamental or vegetable, by meter.	
Garage, public, on store front basis or by meter.	
Garage, private	2.00
Halls	12.00
Horse, per head	3.00
Hospitals, by meter.	
Hotels, each room with water connection	2.00
Hotels, each room without water connection	1.50
Hotel, dining room, per table chair	1.00
Hotel, dining room, per stool at counter	2.00
Laundry, by meter rate.	
Livery Stable, per stall	2.00
Livery Stable, minimum charge	24.00
Photograph Gallery (or by meter)	15.00
Offices, dentist or surgeon	8.00
Offices, not otherwise specified	5.00
Residences, rate for each family—	
1 to 4 rooms	10.00
5 to 6 rooms	12.00
7 to 8 rooms	14.00
8 to 9 rooms	16.00
Residences of more than 10 rooms use hotel rate.	
Restaurants, per table chair	1.00
Restaurants, per stool at counter	2.00
Restaurants, minimum charge	30.00
Steam Boilers, minimum charge	16.00
Sprinkling, lawn or garden, per season, or by meter, per lot of 25 feet or less	2.00
Stores, drug (soda fountain extra)	30.00
Stores, confectionery (soda fountain extra)	25.00
Stores, meat or butcher shops	20.00
Stores, not otherwise specified, including offices on first floor, street front 12½ foot front or less	10.00
12½ to 25 foot front	20.00
25 to 50 foot front	30.00
Stores, in excess of 50 foot front, per foot front	0.60
Watering Troughs, when in use, per month	10.00

In addition to the above flat rates, the following annual charges will be made for bath tubs, water closets and urinals:

Bath Tubs, private house	$ 6.00
Bath Tubs, hotel or boarding house	10.00
Bath Tubs, barber shop or public	18.00
Water Closets, private house	6.00
Water closets, business house, private use	7.50
Water closets, hotel or boarding house	10.00
Water closets, billiard parlor and cigar stores, public use	15.00
Urinals, private	6.00
Urinals, public	10.00

Meter Rates.

For the first 10,000 gal., per month	50c per M. gal.
For the next 10,000 gal., per month	40c per M. gal.
For the next 20,000 gal., per month	30c per M. gal.
For the next 40,000 gal., per month	20c per M. gal.
For all water used in excess of 80,000 gal., per month	18c per M. gal.

IT IS FURTHER ORDERED, That the foregoing rates and charges shall apply to all service rendered by the applicant on and after January 1, 1920.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 10th day of November, 1919.

DECISION No. 300.

IN THE MATTER OF THE APPLICATION OF THE CRYSTAL RIVER & SAN JUAN RAILROAD COMPANY FOR PERMISSION TO DISCONTINUE OPERATIONS TEMPORARILY.

Application No. 5.

November 12, 1919.

APPEARANCES: Messrs. Bartels & Blood, for the applicant.

STATEMENT.

By the Commission:

An order was entered in the above application on August 25, 1919, that discontinuance of operation of applicant's railroad be permitted until December 31, 1919. At the time such order was made the applicant intended to resume operations by January 1, 1920.

On November 3, 1919, applicant filed its verified petition alleging in substance that the capital stock of applicant has recently changed hands, and since the present owners acquired the same they caused an examination of the property of applicant to be made for the purpose of ascertaining what repairs were necessary in order to operate the railroad; that owing to the fact that the railroad has not been operated for some time many repairs will have to be made, and it is impossible to make such repairs during the winter season.

It is further alleged that the operation of the railroad is mainly dependent on the quarries and plant of The Colorado Yule Marble

Company, which have recently been sold under foreclosure proceedings and the purchasers thereof have no intention of operating such marble property until June 10, 1920. An order was prayed for further discontinuance of service from December 31, 1919, to June 1, 1920.

The Commission finds that the permission for the extension of the order heretofore made should be granted.

ORDER.

IT IS THEREFORE ORDERED, That the permission for discontinuance of operation heretofore granted to The Crystal River & San Juan Railroad Company of its line of railroad, be, and is hereby, extended from December 31, 1919, to June 1, 1920, 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.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 12th day of November, 1919.

DECISION No. 301.

IN THE MATTER OF THE APPLICATION OF THE CRYSTAL RIVER RAILROAD COMPANY FOR PERMISSION TO DISCONTINUE SERVICE TEMPORARILY.

Application No. 33.

November 24, 1919.

APPEARANCES: Fred Farrar, for the applicant; Frank E. Gove, for The Redstone Improvement Company, and John C. Osgood.

STATEMENT.

By the Commission:

On December 19, 1918, there was filed with the Commission an application by The Crystal River Railroad Company, hereinafter called the applicant, for an order of the Commission permitting the discontinuance, from February 1, 1919, to August 1, 1919, of all train service on its line of standard gauge railroad, extending from Carbondale, Colorado, to Placita, Colorado, a distance of 20.6 miles, with 1.72 miles of siding, connecting at Carbondale with the branch line of the Denver & Rio Grande Railroad extending from Glenwood Springs to Aspen, Colorado, and connecting at Placita with the Crystal River & San Juan Railroad, and which latter railroad extends from Placita to Marble, Colorado. The petition of the applicant shows that the Crystal River & San Juan Railroad has been permitted by this Commission to discontinue service and is not now in operation.

It is further alleged that the only connections of the applicant are those above stated; that it was organized in 1898 and succeeded to and acquired the rights and interests of three separate projected railroads designed and in part constructed to serve a territory which at that date promised great activity in the production of coal; that applicant's railroad was completed in 1901, and at that time and for a period following, it carried considerable quantities of coal from mines principally located at Placita and Coalbasin, and coke burned in coke ovens at Redstone; that the production of coal from the mines at Coalbasin has been practically discontinued, and all shipment of coal over applicant's railroad from Coalbasin ceased prior to 1909 and has never been resumed; that the production of coal at Placita has constantly diminished until during the last few years the production has been very slight. It alleged on information and belief that the only mine in operation at Placita is the Placita mine which produced 8,164.90 tons of coal from January 1, 1918, to November 1, 1918.

It is also alleged that with the development of The Colorado Yule Marble Company's quarries at Marble, Colorado, and in connection therewith, the Crystal River & San Juan Railroad was constructed in the year 1906; that all marble shipped by rail over the Crystal River & San Juan Railroad was delivered to applicant for transportation from Placita to Carbondale; that the business of applicant's railroad consisted almost entirely in transportation of coal, coke and marble as above described, as outgoing freight, and in transportation of supplies to coal camps and marble quarries as ingoing freight, together with such passenger business as these points furnished, and the closing of coal mines and marble quarries with consequent reduction of population at those points terminated the major portion of the business of the applicant; that the agricultural and livestock interests served by applicant are very small; that by reason of the lack of industry in the territory served by applicant ,the sparse population, lack of freight and passenger business in this area no increase in freight or passenger rates would yield a sufficient amount of revenue to pay the operating expenses of the road; that the revenues derived from the operation of the road are not sufficient to meet the operating expenses thereof. A financial statement entitled "Exhibit A" was attached to the application.

Notice of this application was served by the Commission on the communities affected thereby. No further action was taken on the

application, and on October 16, 1919, applicant filed its supplemental application wherein it filed "Exhibit B" supplementing "Exhibit A," and prayed that the matter be set for hearing and an order be entered permitting applicant to discontinue service for a period of six months commencing December 1, 1919.

The cause came on for hearing before the Commission at its hearing room in the Capitol Building, Denver, Colorado, on November 7, 1919.

The allegations of the petition have been fully sustained by the evidence. It appears from the evidence that the only towns on the line of this road beyond Carbondale are Redstone and Placita, and that each now has but a few inhabitants; that the Coalbasin branch, which originally extended from Redstone in a westerly direction about 12 miles, was abandoned in 1909, and since that time the rails have been taken up; that the road was abandoned on account of the abandonment of the Coalbasin mine; that the Placita mine has been operated in a small way since 1915, its production being about a carload of coal per day; that the coal produced there is not a good engine coal, is unfit for domestic purposes, and has been used as a coking coal at Minnequa, Colorado, by the owners of the works there in order to help their lessee, at a greater expense than coal could have been procured from southern Colorado. It further appears that extensive coke ovens at Redstone and Cardiff, to which coal was formerly shipped, have not been in operation for several years; that the last few years the only substantial revenue of the applicant, outside of the coal from Placita, has been potato shipments from points near Carbondale, and shipments of cattle and sheep in the fall and spring. The equipment of applicant's railroad consists of one engine and one caboose, a combination passenger car and caboose, and one box car; additional cars when required are furnished by The Denver & Rio Grande Railroad Company.

The general manager of applicant testified that, looking toward discontinuance of service on this road this winter, he undertook to put it in as good condition as possible; that two truss bridges have been replaced with steel girders heavy enough for standard gauge traffiic; that during this summer and fall a bridge gang was put on the road and section men increased to put in as many ties as possible, at an expense of $7,500.00, riprapping the road, repairing bridges and places where there was danger from water; this amount being spent and work done in addition to

the regular outlay of approximately $425.00 per month for maintenance of way.

The financial exhibits show a gross income less taxes for the year ending June 30, 1917, of $5,692.97; for six months period July 1, 1917, to December 31, 1917, $83.64; for the year 1918 a deficit of $8,138.55, and for the eight months of 1919 ending August 31, 1919, a deficit of $8,534.71.

It is clear from the evidence that the outlook for the future of this road is very discouraging unless there is a resumption of work at the marble quarries at Marble, Colorado, as there seems to be little expectation of any improvement in coal production, and no expectation of production of coke in the district tributary to this road.

On November 12, 1919, after several previous orders granting to the Crystal River & San Juan Railroad the right to discontinue service temporarily, that right was again extended by the Commission to June 1, 1920, it appearing that there would be no resumption of work at the marble quarries prior to that date.

The Commission finds that the amount of business originating upon, or destined to, the line of the applicant is not sufficient to require the continued operation of applicant's railroad, when considered in connection with the expense of operation thereof and the applicant's financial status, and under the circumstances of this case, no increase in rates would afford the applicant relief.

ORDER.

IT IS THEREFORE ORDERED, That The Crystal River Railroad Company be, and it is hereby, permitted to discontinue operation upon its line of railroad until the first day of June, 1920, unless this order be modified or extended by the Commission.

IT IS FURTHER ORDERED, That The Crystal River Railroad Company shall during said period make such repairs to its track and roadbed as may resonably be required so that service can be resumed at the end of the above period.

IT IS FURTHER ORDERED, That The Crystal River Railroad Company shall not remove its line of railroad, equipment, or any part thereof.

(SEAL)

LEROY J. WILLIAMS,
A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 24th day of November, 1919.

DECISION No. 302.

INVESTIGATION BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO, ON ITS OWN MOTION, INTO THE REASONABLENESS OF THE RATES, CHARGES, RULES AND REGULATIONS OF THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY, AS ESTABLISHED AND APPROVED BY THE POSTMASTER GENEREAL.

Case No. 180.

November 29, 1919.

APPEARANCES: Milton Smith, Esq., for The Mountain States Telephone & Telegraph Company; Charles Roach, Esq., Deputy Attorney-General of Colorado; James D. Pilcher, Esq., for the City of Alamosa, County of Alamosa, and for himself; Wm. R. Kelly, Esq., for the City of Greeley.

STATEMENT.

By the Commission:

On August 20, 1919, the Commission issued the following order in the above matter:

"WHEREAS, By an Act of the Sixty-sixth Congress of the United States, approved July 11, 1919, the prior act of the Sixty-fifth Congress, authorizing the president to assume control of wire systems, was repealed, with the proviso, however, 'That the existing toll and exchange telephone rates as established or approved by the Postmaster General on or prior to June 6, 1919, shall continue in force for a period not to exceed four months after this Act takes effect, unless sooner modified or changed by the public authorities—state, municipal, or otherwise—having control or jurisdiction of tolls, charges, and rates or by contract or by voluntary reduction,' which said Act terminated such control July 31, 1919.

"NOW, THEREFORE, IT IS HEREBY ORDERED, That the Public Utilities Commission of the State of Colorado, on its own motion, investigate into the reasonableness of the toll and exchange telephone rates and charges, and the rules, regulations and practices surrounding the same, established or approved by the Postmaster General on or prior to June 6, 1919, for and of The Mountain States Telephone & Telegraph Company, in the State of Colorado, and that such investigation and hearing be had at the hearing room of the Commission in the State Capitol Building in the City and County of Denver, State of Colorado, at the hour of 10:00 o'clock a. m., on the 6th day of November, 1919.

"IT IS FURTHER ORDERED, That The Mountain States Telephone & Telegraph Company be, and it is hereby, ordered to appear at the above place and date to give evidence in connection with such investigation.

"IT IS FURTHER ORDERED, That the said company place all of its books, records and accounts, in any way material for a proper investigation of this case, at the disposal of F. W. Herbert, in charge of the statistical department of the Commission, for the purpose of enabling the Commission to arrive at a full and correct determination of all questions in said investigation relating to the finances of said company generally, and particularly within the State of Colorado.

"IT IS FURTHER ORDERED, That the secretary of this Commission be, and he is hereby, directed to serve upon the above named respondent company a certified copy of this order; that notice hereof be given to the press and to the towns and cities interested so far as practicable."

The date of hearing was postponed to November 13, 1919, on motion of The Mountain States Telephone & Telegraph Company, hereinafter called the Telephone Company. Full notice of the date set for hearing and continuance thereof was given to the communities in the state by notice sent out by the Commission or statements in the press. Protests were filed by J. D. Pilcher, Alamosa, Colorado, against certain rates and against service at Alamosa, and by R. P. Rubin of Salida, Colorado, against a certain rate in Salida, Colorado.

On November 13, 1919, the case came on for hearing at the hearing room of the Commission, Capitol Building, Denver, Colo-

raod, at the hour of 10:00 o'clock a. m. The evidence of F. W. Herbert, statistician for the Commission, was introduced as Exhibit 1, being his financial report, made after his examination of the books of the Telephone Company. The Commission thereupon required the introduction in evidence of the so-called "Burleson" rates, exchange and toll, put in force by the Postmaster General of the United States, which were designated as Exhibit 2. The toll rates were put in force January 21, 1919, and the exchange rates on May 1, 1919.

The Telephone Company introduced the evidence of Frederick H. Reid, its assistant general manager, and the following exhibits were included as part of his testimony:

Exhibit A. Revenues and expenses, State of Colorado, September 1 to December 31, 1915; years 1915, 1916, 1917, 1918; by exchanges for year 1918.

Exhibit A1. Revenues and expenses, State of Colorado, by exchanges, month of July, 1918.

Exhibit B. Revenues and expenses, State of Colorado, by months by exchanges, January to July, inclusive, 1919.

Exhibit D, (paper). Operators' wage data.

Exhibit C, (paper). Wages paid plant forces in Colorado.

This was followed by the evidence of Louis B. Fateaux, commercial engineer for the Telephone Company. There were included as part of his evidence the following exhibits:

Exhibit E. Capital requirements of the Telephone Company in the State of Colorado.

Exhibit F. Explanation of the present system of toll rates, State of Colorado.

Exhibit G. Discussion of the service connection charge practice.

Exhibit H. Classification of exchanges in Colorado.

There was also introduced as a part of the evidence of F. H. Reid, Exhibit 1, Trend of material costs, 1915 to 1919.

The only other evidence was that of J. D. Pilcher regarding service conditions at Alamosa, and district service in an adjoining district.

The evidence of the Commission's statistician shows a careful examination of the fixed capital accounts. A thorough check

was made of the books of the company to ascertain the additions to and deductions from the physical property of the company by exchange areas, and the classification of parts of plant, from the date of the last examination by the Commission, August 31, 1915, to July 31, 1919. The result of this examination is found in the following summary from Exhibit 1 in this case:

BASIS OF DEVELOPMENT OF VALUATION AS OF JULY 31, 1919, FROM THE VALUATION DETERMINED AS OF AUGUST 31, 1915.

	Exchange	Toll	Total
Total Physical Valuation by the Commission, August 31, 1915	$ 8,424,570.00	$3,396,522.00	$11,821,092.00
Additions to Fixed Capital from August 31, 1915, to July 31, 1919	1,377,863.88	310,451.62	1,688,315.50
Total Value Physical Property July 31, 1919	$ 9,802,433.88	$3,706,973.62	$13,309,407.50
Non-Physical Values determined by the Commission August 31, 1915	1,672,982.00	674,964.00	2,347,946.00
Working Capital Allowance July 31, 1919	517,980.48	195,216.19	713,196.67
Total Valuation July 31, 1919	$11,993,396.36	$4,577,153.81	$16,570,550.17

The above is divided according to the Classification of Capital Accounts as follows:

I.C.C. Acct. No.		Valuation Established by the Commission as of Aug. 31, 1915	Additions to Fixed Capital Accounts Aug. 31, 1915 to July 31, 1919	Valuation Developed on Aug. 31, 1915 Basis and Additions on July 31, 1919
	Physical Property			
	Intangible Capital	.....	$ *5,819.40	$ *5,819.40
207	Right of Way	125,000.00	14,135.93	139,135.93
211	Land	210,081.00	1,569.66	211,649.66
212	Buildings	617,027.00	73,815.92	690,842.92
221	Central Office Equipment	945,620.00	372,189.15	1,317,809.15
222	Other Equipment of Central Offices	24,041.00	22,706.88	46,747.88
231	Station Apparatus	415,947.00	143,998.12	559,945.12
232	Station Installations	231,287.00	72,729.95	304,016.95
233	Interior Block Wires	13,389.00	3,893.76	17,282.76
234	Private Branch Exchanges	91,473.00	64,794.61	156,267.61
235	Booths and Special Fittings	34,527.00	*525.43	34,001.57
241	Exchange Pole Lines	1,872,159.00	136,603.92	2,008,762.92
242	Exchange Aerial Cable	950,991.00	95,797.12	1,046,788.12
243	Exchange Aerial Wire and Drop Wire	1,155,749.00	152,741.35	1,308,490.35
244	Exchange Underground Conduit	456,410.00	22,734.64	479,144.64
245	Exchange Underground Cable	721,614.00	93,219.08	814,833.08
251	Toll Pile Lines	1,682,336.00	100,176.87	1,782,512.87
252	Toll Aerial Cable	3,688.00	2,600.38	6,288.38
253	Toll Aerial Wire	1,473,585.00	188,810.47	1,662,395.47
255	Toll Underground Cable	11,538.00	1,147.29	12,685.29
268	Interest During Construction	665,000.00	30,218.22	695,218.22
261	Office Furniture and Fixtures	59,063.00	47,395.06	106,458.06
263	General Store Equipment	2,927.00	*5,448.56	*2,521.56
264	Stable and Garage Equipment	36,788.00	43,183.86	79,971.86
265	Tools and Implements	20,852.00	15,647.65	36,499.65
	Total Physical Property	$11,821,092.00	$1,688,315.50	$13,509,407.50
	Non-Physical Values			
	Working Capital August 31, 1915	$ 529,376.00	July 31, 1919	713,196.67
	Organization	358,024.00		713,196.67
	Franchises	15,000.00		15,000.00
	Unearned Depreciation	1,364,922.00		1,364,922.00
	Cost of Establishing Business, etc.	610,000.00		610,000.00
	Total Non-Physical Values	$ 2,877,322.00		$ 3,061,142.67
	Total Valuation	$14,698,414.00		$16,570,550.17

*Indicates deficit.

This examination shows that since the valution of $14,698,-414.00 was fixed by the Commission on the Telephone Company's property as of August 31, 1915, the additions to physical property and working capital amount to $1,872,136.17, making the total value of the Telephone Company's property in the State of Colorado $16,570,550.17 as of July 31, 1919. The Commission finds from the evidence that the fair value of this property for rate-making purposes for the State of Colorado as of July 31, 1919, is $16,570,550.17. Using the figure 5.65 per cent of the investment in depreciable property as a depreciation requirement, heretofore determined as proper by this Commission, the same is found to be $855,000.00 as of July 31, 1919.

A compilation of the revenues and expenses for the period of January 1, 1915, to and including July 31, 1919, and estimated for balance of 1919, shows the following statement:

	1915	1916	1917	1918	1919
Exchange Service Revenue	$2,535,409.40	$2,701,850.77	$2,910,203.98	$3,237,591.87	$3,752,232.48
Toll Service Revenue	759,078.71	899,533.84	1,144,517.45	1,290,605.64	1,425,466.80
Miscellaneous Revenue	44,700.01	31,141.51	35,096.08	37,391.56	42,444.96
Total operating Revenues	$3,339,188.12	$3,632,526.12	$4,089,817.51	$4,565,589.07	$5,220,144.24
Net Non-Operating Revenue	59,082.30	989.11	951.58	522.38	477.24
Total Revenue All Sources	$3,398,270.42	$3,633,515.23	$4,090,769.09	$4,566,111.45	$5,220,621.48
Total Operating Expenses and Deductions (not including depreciation)	$1,998,823.88	$2,210,787.02	$2,764,445.72	$3,166,798.13	$3,448,159.56
Net Revenue All Sources	$1,399,446.54	$1,422,728.21	$1,326,323.37	$1,399,313.32	$1,772,461.92
Total Revenue required for meeting Operating Expenses, Depreciation Requirement and Fair Return at rate previously determined on Valuation:					
Operating Expenses	$1,998,823.88	$2,210,787.02	$2,764,445.72	$3,166,798.13	$3,448,159.56
Depreciation Requirement	773,168.32	788,503.67	812,938.07	836,483.57	855,122.52
Fair Return Requirement	1,180,116.70	1,207,688.97	1,248,063.29	1,286,411.16	1,325,644.01
Total Requirement	$3,952,108.90	$4,206,979.66	$4,825,447.08	$5,289,692.86	$5,628,926.09
Actual Revenue as above	3,398,270.42	3,633,515.23	4,090,769.09	4,566,111.45	5,220,621.48
Amount Deficit of Requirement	$ 553,838.48	573,464.43	734,677.99	723,581.41	408,304.61

NOTE—The development for the year 1919 is based upon the average of 7 months' operations and applying these amounts to the calendar year. The Depreciation Requirement is based upon the average requirement for each month from January to July inclusive, and applying this amount on the 12 months basis. The fair return for the year is based on the valuation as of July 31, 1919, and applied to the year.

The above table shows that the Telephone Company has failed by a very considerable amount to earn the total of its rate of return and depreciation reserve, and will come the nearest to it in the year 1919, as it is reasonable to believe that the above estimate for that year will be borne out by the actual result.

The evidence shows that while earnings have steadily increased, expenses have likewise increased to a considerable extent; that the average increase in operator's wages from 1915 to July 31, 1919, has been 74.70 per cent; that lineman's wages increased during the same period 61 per cent; that the cost of materials increased during this period for 169 items in percentages ranging from 3.97 per cent to 416.37 per cent, or an average for 169 items shown in Exhibit 1 of 70.82 per cent. Only two items in this list showed a decrease in price during the period.

The rates put in force by the Postmaster General mentioned in the Commission's order of August 20, 1919, both toll and exchange rates, are those set forth in Exhibit 2 in this case. The toll rates represent in some instances decreases, and in others increases over prior existing rates, but effected the establishment of a uniform toll rate charge throughout the United States. The evidence justifies this change in toll rates in the state of Colorado, and the Commission finds the same to be just and reasonable, and such toll rates so put in force in Colorado by the Postmaster General shall be continued until the further order of this Commission.

The effect of the exchange rates established by the Postmaster General was to increase the exchange rates in 54 exchanges in this state. There are a total of 149 exchanges in the state of Colorado, so that in 95 of this number, no change was made from the exchange rates as fixed by this Commission in its order of June 14, 1918.

While the table of figures last set forth shows a failure by the Company to earn the total required for a fair return plus its depreciation requirement and operating expenses in the state as a whole it does not necessarily follow that all exchanges failed to do so. A study of the rates in force and revenues and expenses during the month of July, 1919, shows that five exchanges, namely, Denver, Pueblo, Colorado Springs, Loveland and Sterling have each earned a substantial sum in excess of operating expenses, depreciation and fair return. Other exchanges, such as Grand Junction, Fort Collins, Montrose, Longmont, Greeley and Trinidad, did not earn the full amount of operating expenses, fair return and depreciation

requirement. While the Telephone Company is not earning its depreciation requirement as shown by the above table in the state of Colorado, it is not in every case the duty of this Commission to provide rates in each exchange that will fully earn this requirement if such rates exceed the value of the service, as one of the factors to be considered. While the Commission has announced in another order affecting this company that each community of the state is interested in the maintenance of telephone connection with every other community in the state and the larger centers ought to pay substantial rates in order that such communication may be maintained, this would not seem to always justify imposing rates upon a community which would produce a return to the Telephone Company in excess of the operating expenses, fair return and depreciation requirement for that exchange based upon the total investment in such exchange. There must be a limit to which the regulatory body can lawfully go in that regard.

The Commission therefore finds from the evidence in this investigation that the exchange rates fixed by the Postmaster General of the United States as set forth in Exhibit 2 filed herein shall be maintained from and after December 1, 1919, in the state of Colorado, except as hereinafter changed or modified; that the exchange rates fixed by this Commission in its order of June 14, 1918, in the cities of Denver, Pueblo and Colorado Springs shall be continued, maintained and adhered to by the Telephone Company from and after December 1, 1919, except that in the Pueblo exchange the two-party business rate shall be $60.00 per annum.

That in the Sterling exchange the business rates shall be as follows, from and after December 1, 1919:

One-party	$48.00 per annum
Two-party	42.00 per annum

That in the Loveland exchange the business rates from and after December 1, 1919, shall be:

One-party	$48.00 per annum
Two-party	42.00 per annum

It appears that Estes Park is included in the Loveland exchange, but notwithstanding this fact, the Loveland exchange earned in excess of operating expenses, fair return and depreciation requirement, as above stated.

The evidence shows that the Boulder exchange, which includes Nederland and Ward districts, earned slightly in excess of operat-

ing expenses, fair return and depreciation requirement, although carrying the burden of the Nederland and Ward districts. The business rates in Boulder from and after December 1, 1919, therefore shall be:

One-party	$60.00 per annum
Two-party	48.00 per annum

This change places Boulder upon the same rate with Greeley, Fort Collins, Grand Junction and Trinidad.

The service connection charges to be maintained throughout the state of Colorado from and after December 1, 1919, shall be the same as now in effect under the order of the Postmaster General of the United States.

Jurisdiction.

The Commission in this order exercises its jurisdiction throughout the state of Colorado as it has previously done for the reason that, although Case No. 9443 in the Supreme Court of the State of Colorado has been decided by that Court to the effect that this Commission has no jurisdiction to regulate rates in the City and County of Denver, a writ of error has issued to that Court from the Supreme Court of the United States, which writ of error has been made a supersedeas. Therefore, it seems as a matter of law, that the decision of that Court, while not vacated, is suspended pending the final decision of the case, and no remittitur has yet been received by this Commission. As to all cities operating under the Twentieth Amendment to the constitution of the state of Colorado which filed charters subsequent to January 22, 1913, namely, Fort Collins, Montrose and Boulder, it would appear from the decision of Justice Burke that as to these cities, whatever the final decision may be as to the City and County of Denver, the jurisdiction of the Commission would be still effective. So far, the only decision rendered by the Supreme Court relates to jurisdiction in the City and County of Denver. A case is pending there regarding the jurisdiction of the Commission in the city of Pueblo. The effect of the supersedeas is that jurisdiction is still lodged in this Commission.

ORDER.

IT IS THEREFORE ORDERED, That the general tariff of toll rates of The Mountain States Telephone & Telegraph Company for the state of Colorado prepared and put in force by the Post-

master General of the United States on January 21, 1919, in the state of Colorado be, and the same is, hereby now approved, and the same shall become effective throughout the state of Colorado on the 1st day of December, 1919.

IT IS FURTHER ORDERED, That the tariff of exchange rates as contained in Exhibit 2 filed in this case, as prepared and put in force by the Postmaster General of the United States on May 1, 1919, in the state of Colorado be, and the same is, hereby now approved, and the same shall become effective for the exchanges therein mentioned on December 1, 1919, except as hereinafter modified; that in the cities of Denver, Pueblo and Colorado Springs, the exchange rates fixed by this Commission in its order of June 14, 1918, shall be continued, maintained and adhered to by The Mountain States Telephone and Telegraph Company from and after December 1, 1919, except that in the Pueblo exchange the two-party business rate shall be $60.00 per annum; that in the exchange of Sterling the business rates shall be as follows:

One-party	$48.00 per annum
Two-party	42.00 per annum

That in the exchange of Loveland the business rates shall be:

One-party	$48.00 per annum
Two-party	42.00 per annum

That in the exchange of Boulder the business rates shall be:

One-party	$60.00 per annum
Two-party	48.00 per annum

IT IS FURTHER ORDERED, That service connection charges throughout the state of Colorado as now in effect under order of the Postmaster General of the United States shall be continued, maintained and adhered to.

IT IS FURTHER ORDERED, That the tariffs as thus approved be printed, and within 20 days from the date hereof filed with the Commission, and that copies thereof be filed in the various exchanges and offices of The Mountain States Telephone & Telegraph Company throughout the state of Colorado, as required by Section 15 of the Public Utilities Act.

LEROY J. WILLIAMS,
(SEAL) A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 29th day of November, 1919.

DECISION No. 303.

J. P. ADAMS, *et al.*,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Case. No. 170.

ORDER.

By the Commission:

In view of the probable early return of defendant's railroad to private control, and the bearing such action may have on some of the matters involved in the application for a rehearing:

IT IS ORDERED, That the time in which the defendant, the Chicago, Burlington & Quincy Railroad Company shall do the things prescribed in the order in the above case dated September 24, 1919, be, and the same is hereby, extended for an additional period of 90 days.

The motion for rehearing herein is taken under advisement.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 3rd day of December, 1919.

DECISION No. 304.

APPLICATION OF CITIZENS OF PEETZ FOR OPENING OF HIGHWAY CROSSING AT GRADE OVER TRACKS OF CHICAGO, BURLINGTON & QUINCY RAILROAD AT PEETZ.

Application No. 52.

ORDER.

In view of the probable early return of the Chicago, Burlington & Quincy Railroad to private control, and the bearing such action may have on some of the matters involved in the application for rehearing in the above matter:

IT IS ORDERED, That the time in which the Chicago, Burlington & Quincy Railroad Company shall do the things prescribed in the order in the above case, dated October 1, 1919, be, and the same is hereby, extended for an additional period of 90 days.

The motion for rehearing herein is taken under advisement.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 3rd day of December, 1919.

DECISION No. 305.

IN THE MATTER OF THE APPLICATION OF THE DURANGO RAILWAY & REALTY COMPANY FOR PERMISSION TO DISCONTINUE SERVICE.

Application No. 59.

December 6, 1919.

APPEARANCES: John S. Macbeth of Denver and Mollette and Clements of Durango, for applicant; Russell and Reese, for City of Durango and for the Durango Exchange; Barry Sullivan of Durango, for La Plata County, Colorado, and for Jacob Fritz; E. F. McCartney, mayor, for the town of Animas City.

STATEMENT.

By the Commission:

This matter comes before the Commission upon the application of The Durango Railway & Realty Company, a corporation, hereinafter called the Company, asking an order of the Commission permitting said Company to suspend operations of its line of street railway in Durango and Animas City, Colorado, on December 1, 1919.

The Company filed its application with the Commission on October 1, 1919, accompanied by written notice of its intention to discontinue service upon its line of street railway on December 1, 1919, in and by which petition it is alleged that the Company is engaged in operating a street railway about two and one-half miles in length over the streets of Durango and Animas

City in La Plata County, Colorado, under a franchise granted by the City of Durango on June 24, 1890, for a term of 99 years.

The application further alleges that in the early stages of its operation the receipts of the Company from its street car line were not sufficient to meet operating charges, and that the deficiency was met by assessments levied upon its capital stock and by a sale of certain property then owned by the Company; that at the present time the receipts of the Company from its street car operations are barely enough to pay operating expenses, leaving nothing for amortization, dividends and new equipment.

It is further alleged that the Company owns and operates tracks laid upon its right of way in the streets of Durango and Animas City and pole lines, rolling stock and other things necessary to furnish transportaion for the inhabitants of said cities; and further that "little relief would be afforded from the present situation by any reasonable increase in fares, as, even if relief were granted in that direction by the Commission, an extra man would be required to collect fares from and make change for passengers," and by way of justification for the alleged necessity states that "if a motorman should attempt to do this, it would invite accidents which the management or its employes dare not risk." An additional reason for not installing an increased fare is given in the statement that "petitioner fears many inhabitants would refuse to patronize the street car system * * * in case the fares should be increased."

In the sixth paragraph, it is alleged that under present conditions and present population, its street railway cannot earn any profit for its stockholders or for new equipment when necessary, and the seventh paragraph refers to a statement of the condition of the Company for the year ended December 31, 1918, showing a profit of $166.47, which sum, it is alleged, is wholly inadequate to meet depreciation requirements and increased wages and material costs.

Upon due notice, the matter was set for hearing at Durango, Colorado, on November 8, 1919, and was heard by the Commission in the District Court room of the La Plata County court house at 10 o'clock a. m. on said day. No protest or objection had been filed by anyone prior to the date of hearing, but at the hearing leave to file was granted any party appearing and seven days within which to file protests or objections **nunc pro tunc** as of the date of the hearing.

Accordingly, protests were filed by the City of Durango, the town of Animas City and the Board of County Commissioners of La Plata County.

The City of Durango protests against the Company being permitted to discontinue its street car service upon numerous grounds, the first three of which are to the effect that the Company does not offer to surrender its franchise granted by the city for 99 years, that it does not propose to remove from the streets of the city its rails, ties, poles and wires, but on the contrary intends to allow the same to remain in said streets as a menace and hindrance to traffic thereon.

The fourth ground of protest alleges that the Company applied for and received permission of this Commission to increase its fares from 5 to 6 cents, but said Company never put such increased fares into effect and therefore did not ascertain whether such increase would produce sufficient revenue to make a profit in its street railway operation, and that protestant is informed and believes that said street railway can be operated successfully by such increase of fares.

Protestant city further alleges that said street railway has become a necessity to accommodate the residents of Durango and Animas City, and to discontinue its operation will cause great hardship upon the inhabitants of said cities, by depriving many of them of their sole means of transportation between their homes and places of business and work and places of worship. Protestant further alleges that by reducing the number of trips of cars the railway can be operated at a profit, and finally that the Company has sold property to La Plata County for a fair ground and to the City of Durango for a public park, representing that such property was valuable for such purposes by reason of being readily accessible by means of its street railway, and that the Company ought not in equity and good conscience be permitted to now destroy the value of such property for said purposes by ceasing to operate its street railway.

The protest of La Plata County alleges that the county purchased from the Company January 15, 1917, a 40-acre tract of land for a county fair ground paying $10,000 therefor; that the said tract is on the highway about equi-distant between Durango and Animas City, the tracks of the street railway running over and along said highway; that one of the considerations for the purchase of said tract by said county was its ready accessibility

by said street railway line for the patrons and exhibitors of the county fair at nominal cost and at frequent periods; that the protestant fears that the patronage of the county fair will be greatly lessened if the street car service is discontinued, and that the yearly exhibition of stock and food stuffs will cease.

The protest of Animas City alleges that it has a population of about 250 and is the northern terminus of said street railway; that the majority of its inhabitants are employed in the City of Durango, the southern terminus of the street car line, and depend upon the street railway to convey them to and from work; that the car line is about two miles in length and that the housewives of Animas City are dependent upon the said car line in going to and from Durango to procure the necessities of life; that many of the children of Animas City attend the high school at Durango and use said car line to and from school, and that they would be compelled to walk in all kinds of weather to attend said high school in the event said car line is permitted to discontinue; and lastly a discontinuance of said street car line will cause a substantial decrease in the value of real estate in Animas City with consequent financial loss to said town and its citizens.

At the hearing, the only testimony submitted by the applicant Company was that of W. N. Bagby, who is the vice-president, secretary and treasurer of the Company, and who also is its superintendent. His connection with the Company in these several capacities began on January 1, 1912. From his testimony, it appears that the street car line was built by the Company about 1890, under a franchise granted the Company by the City of Durango for a period of 99 years; that the line extends from the Denver & Rio Grande depot in the City of Durango, which is at the southern extremity of the principal street of Durango, north on said street for about two and one-half miles through North Durango and Brookside and having its northern terminus at Second Street in the town of Animas City. The Animas river separates the City of Durango, that part lying north of the river being termed North Durango, while Brookside appears to be an addition to Durango lying north of and between North Durango and Animas City—the last named being a separate municipality. The population of Animas City is fixed at about 250, while the population of Durango, including North Durango and Brookside, is estimated at about 5,000, of which about 1,500 reside in North Durango and Brookside.

The City of Durango is the metropolis of the San Juan basin —a large area in southwestern Colorado—and is the natural trade center for a prosperous agricultural, horticultural and mining region, though its development and growth has been retarded by lack of adequate railroad facilities to the world's markets—it being dependent upon a branch of the Denver & Rio Grande of narrow gauge construction and being about 250 miles distant from standard gauge tracks. The narrow gauge line serving Durango crosses the Cumbres range of the Rocky Mountains at an altitude of approximately 10,000 feet above sea level.

It appears that the Company also engages, or did engage, in handling acreage property lying contiguous to and in the City of Durango and the town of Animas City, and that the street railway was built by it in reliance upon the belief that the City of Durango would enjoy a greater growth in population than has developed. However, that may be, the testimony is to the effect that in the early years of its operation it was necessary to resort to revenues of the company derived from sources other than its fares to maintain this service, though for the past ten years the expenses of operation have been met by its operating revenue.

From the testimony submitted by the Company, the excess of revenue over expenses for the year 1918 of the street car line was $166.47, while the report of the statistician for the Commission admitted in evidence shows a deficit of $165.44 for 1916, and net earnings of $362.20 for 1917, $490.06 for 1918 and $602.54 for 9 months, January to September, 1919, both inclusive. These earnings, however, are subject to deductions for taxes, the amount thereof properly chargeable to its street railway not being clearly established by the evidence.

The Company's Exhibit C, which is a tabulation of gross revenues, operating expenses, taxes, and what is denominated "other deductions" covering a period from 1904-1905 to and including September 30, 1919, shows a net deficit of $3,581.08, but included in the item "other deductions" appears the sum of $8,362.34 charged to interest paid during said period. Interest paid is not an allowable item upon the question of a utility being able to earn a fair rate of return upon capital invested under all the authorities, so that instead of there being a net deficit of $3,581.08, there was a net income of $4,781.26 received by the Company during said period. This amount, it is true, may not be sufficient to give the Company a fair return plus depreciation

and working capital allowances, but it is far from showing the Company to be operating at an actual loss.

It is contended by protestant city that an increase of fare from 5 to 6 cents would permit the Company to continue its operations, and the city introduced testimony to substantiate such contention. The Company by its application and testimony feared that such increase of fares would produce the opposite effect, and it is urged as a further reason that the additional one cent, if charged, would entail so much extra work upon its employes that the Company feared to try it out. On November 20, 1918, the Company filed with the Commission a tariff providing for a 6 cent fare, effective January 1, 1919. However, on December 1, 1918, the Company filed another tariff cancelling that which it had filed ten days before, thereby making no change from the 5 cent fare. The Company now states that it did not press its efforts for a 6 cent fare because of the "fears" it entertained, as above stated.

A public utiliy, having received valuable rights and privileges from the public and having entered upon the enjoyment of them, cannot be permitted to cease its activities upon what it "fears" may be the result of a policy ordinarily resorted to for its benefit. Actual experimentation is the only true test of such result.

Pana v. Cent. Ills. Pub. S. Co., 1916 B. P. U. R. 177.
Lima, etc., E. L. & R. R. Co., et al., 1915 C. P. U. R. 871.
In re Denver, Laramie & N. R. R. Co., 4 Colo. P. U. C. 316.

It appears from the testimony that the Company employs but two men to operate its cars; that the streets over which the cars are operated are of average width and that traffic upon them is no more congested than upon the streets of the ordinary town or city of 4,000 or 5,000 inhabitants, so that the position of the Company that its employes would be unduly hampered in making the change incident to a 6 cent fare and thus invite accidents is apparently more imagined than real.

Protestant city has made objection to the application of the Company to discontinue its street car service upon the ground that there is no showing that the Company proposes to relinquish its franchise to the city and move its poles, wires and tracks from the city's streets. Whether or not it is necessary that the Company should do this in order to properly prove its case the Commission does not decide. Neither party has cited authority upon

the proposition, and in view of the decision the Commission has reached, no useful purpose is apparent why the question should be further considered at this time.

Likewise, the protest based upon the alleged depreciation of property values in case the street car service is discontinued, and the alleged bad faith of the Company by reason of its disposing of its real property to the city and to the county for public purposes in part consideration for continued operation of the street car line it now is seeking to discontinue, in view of the decision reached on other grounds, the same will not be considered at this time.

The testimony of the Company discloses that its street cars are equipped with the old type fare boxes and that the installation of the modern pay-as-you-enter one-man type of car has not been considered by the Company as a means of relieving its employes of the burdens "feared" as a result of an increase of fares, which no doubt could be done at a small outlay. The Company is entitled to pay fair and reasonable wages to its employes as a charge against its operating expenses to be ultimately paid by the public—its patrons; and if the public patronage is insufficient to do this, after fair trial under an increased fare, then it may be permission to discontinue operation should be given.

Under all the facts and circumstances as disclosed by the testimony in this case, the Commission has concluded that the Company has not exhausted all reasonable and practicable means to meet its operating requirements, and that until it shall have done so, the permission sought of the Commission to discontinue operation of its street car system will be denied. If it sees fit to substantially follow the suggestions herein contained with reference to an increase of fare, installation of modern fare boxes and a less frequent service, and after a reasonable time has elapsed thereafter to demonstrate the true effect thereof upon its net revenue, no improvement in financial condition shall become apparent, it may renew its application to discontinue operations of its street car line, then to be further considered by this Commission.

ORDER.

IT IS THEREFORE ORDERED, Upon due consideration and the Commission being now fully advised, that the application of The Durango Railway & Realty Company for permission to

discontinue its street car service be, and the same is, hereby denied;

IT IS FURTHER ORDERED, That said, The Durango Railway & Realty Company, may renew its application herein from and after nine months of this date, should it so elect;

IT IS FURTHER ORDERED, That said, The Durango Railway & Realty Company, shall continue to serve the public by its said street car system until the further order of this Commission.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 6th day of December, 1919.

DECISION No. 306.

THE BRECKENRIDGE CHAMBER OF COMMERCE,

v.

THE COLORADO & SOUTHERN RAILWAY COMPANY.

Case No. 37.

December 8, 1919.

STATEMENT.

By the Commission:

An order was entered by the Commission in the above entitled cause on May 27, 1919, requiring the defendant to operate, commencing June 1, 1919, and continuing until the further order of the Commission, through and exclusive passenger train service daily except Sunday from Denver to Leadville, and from Leadville to Denver, via Como and Breckenridge.

On December 5, 1919, the defendant appeared before the Commission with reference to the general shortage of coal, which, it was claimed, necessitated the discontinuance of certain trains on the lines of defendant. Among the changes proposed, the defendant desired permission of the Commission to change the servive between Denver and Leadville to a tri-weekly service, to operate out of Denver on Monday, Wednesday and Friday of each week, and out of Leadville on Tuesday, Thursday and Saturday of each week.

The coal shortage has assumed such serious proportions as to justify the Commission taking cognizance of the same being sufficient to warrant its cooperation with the carriers in so adjusting train schedules as to effect a material saving of coal. In all

cases of reductions in train service due to the coal shortage the carriers will be expected, and required, by the Commission, immediately upon the discontinuance of the coal shortage emergency, to restore the service to the same as in effect prior to the change.

ORDER.

IT IS THEREFORE ORDERED, That, effective at once, the defendant, The Colorado & Southern Railway Company, be, and it is hereby, permitted and allowed to change its passenger train schedule between Denver and Leadville to tri-weekly service, to operate from Denver to Leadville on Monday, Wednesday and Friday of each week, and from Leadville to Denver on Tuesday, Thursday and Saturday of each week.

IT IS FURTHER ORDERED, That the defendant, The Colorado & Southern Railway Company, be, and it is hereby, notified and required to restore its passenger train service between Denver and Leadville to the service required by the Commission's order of May 27, 1919, immediately upon the declaration by this Commission that the emergency which occasioned this order has ceased.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 8th day of December, 1919.

DECISION NO. 307.

IN THE MATTER OF AN INVESTIGATION AND HEARING, ON MOTION OF THE COMMISSION, INTO THE ADVISABILITY AND NECESSITY OF THE PROPOSED DISCONTINUANCE OF PASSENGER TRAINS NOS. 39 AND 40 BETWEEN DENVER AND EASTONVILLE, BY THE COLORADO & SOUTHERN RAILWAY COMPANY.

Case No. 129.

December 8, 1919.

STATEMENT.

By the Commission:

By the terms of an order entered June 18, 1917, the defendant carrier is required to maintain the operation of its passenger trains Nos. 39 and 40 between Denver and Eastonville.

The defendant appeared before the Commission on December 5, 1919, with reference to the general shortage of coal existing throughout the nation, which it was claimed necessitated the discontinuance of certain trains on the lines of defendant. Among the changes proposed, the defendant desired permission of the Commission to discontinue trains Nos. 39 and 40 pending the coal shortage emergency.

The Commission has taken cognizance of the coal shortage, which has assumed serious proportions, and has cooperated in the saving of fuel by permitting the carriers to adjust their train schedules as to effect a material saving of coal. In all cases of reductions in train service due to the coal shortage the carriers will be expected, and required by the Commission, to restore the

service, immediately upon the cessation of the emergency, to that in effect prior to the change.

ORDER.

IT IS THEREFORE ORDERED, That, effective at once, the defendant, The Colorado & Southern Railway Company, be, and it is hereby, permitted and allowed to discontinue its passenger trains Nos. 39 and 40 between Denver and Eastonville.

IT IS FURTHER ORDERED, That the defendant, The Colorado & Southern Railway Company, be, and it is hereby, notified and required to restore its passenger trains Nos. 39 and 40 between Denver and Eastonville, immediately upon the declaration by the Commission that the emergency which occasioned this order has ceased.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 8th day of December, 1919.

DECISION NO. 308.

CITIZENS OF MOSCA,

v.

THE DENVER & RIO GRANDE RAILROAD COMPANY.

Case No. 150.

December 8, 1919.

STATEMENT.

By the Commission:

By the terms of an order entered February 14, 1918, the defendant carrier is required to operate certain passenger train service, except Sundays, between Alamosa and Salida, as set forth in the order.

The defendant applied to the Commission on December 6, 1919, with reference to the general shortage of coal existing throughout the nation, which it was claimed necessitated the discontinuance of certain trains on the lines of defendant. Among the proposed changes, the defendant desired permission of the Commission to change the passenger train service between Salida and Alamosa to a mixed-train tri-weekly basis, or mixed train to operate out of Alamosa on Monday, Wednesday and Friday of each week, and out of Salida on Tuesday, Thursday and Saturday of each week.

The Commission has taken cognizance of the coal shortage, which has reached serious proportions, and is therefore cooperating in the saving of fuel by permiting the carriers to so adjust their train schedules as to effect a material saving of coal. In all cases of reductions in train service due to the coal shortage the carriers will be expected, and required, by the Commission, to

restore the service, immediately upon the discontinuance of the emergency, to the same as in effect prior to the changes.

ORDER.

IT IS THEREFORE ORDERED, That, effective at once, the defendant, The Denver & Rio Grande Railroad Company, be, and it is hereby, permitted and allowed to change its passenger train schedule between Alamosa and Salida to a mixed-train tri-weekly basis, to operate from Alamosa to Salida on Monday, Wednesday and Friday of each week, and from Salida to Alamosa on Tuesday, Thursday and Saturday of each week.

IT IS FURTHER ORDERED, That, the defendant, The Denver & Rio Grande Railroad Company, be, and it is hereby, notified and required to restore its train service between Alamosa and Salida to the service required by the Commission's order of February 14, 1918, immediately upon the declaration by the Commission that the emergency which occasioned this order has ceased.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 8th day of December, 1919.

DECISION No. 309.

INVESTIGATION BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO, ON ITS OWN MOTION, INTO THE REASONABLENESS OF THE RATES, CHARGES, RULES AND REGULATIONS OF THE MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY, AS ESTABLISHED AND APPROVED BY THE POSTMASTER GENERAL.

Case No. 180.

December 17, 1919.

Order on Petition of the City of Fort Collins, for a Rehearing.

STATEMENT.

By the Commission:

A final order was entered in the above proceeding on November 29, 1919. On December 13, 1919, the City of Fort Collins filed a petition for a rehearing challenging the jurisdiction of this Commission, insofar as its order affected the City of Fort Collins.

Section 3 of the Public Utilities Act of this state, Chapter 127, Session Laws 1913, defines the term "public utility" as including all telephone corporations, and Section 14 of the Act makes it the duty of the Public Utilities Commission to regulate the rates, charges, and practices of every public utility in the state.

The City of Fort Collins contends, however, that this Commission has no jurisdiction to regulate the rates of public utilities

operating in the City of Fort Collins, and particularly the exchange rates to be charged by The Mountain States Telephone & Telegraph Company within the City of Fort Collins.

Fort Collins is what is commonly known as a "home rule" city, operating under a charter form of government, as provided in Article XX of the Constitution of the State of Colorado and amendments hereto. The special charter adopted by the City of Fort Collins purports to grant to such municipality "all power to regulate the rates, fares, use of transfers, rentals and charges for service of public utility corporations," and it is contended that in such matters the powers of the City of Fort Collins, under its charter, supersede any law of the State of Colorado in conflict therewith.

The Commission has fully stated its reasons for holding it has jurisdiction in such charter cities in numerous opinions, and it is unnecessary to repeat those reasons here. The relation of the decision in the case of City and County of Denver v. Mountain States Telephone & Telegraph Co. and this Commission, now pending in the Supreme Court of the United States, to this case, was stated in the decision of this Commission as follows:

> "The Commission in this order exercises its jurisdiction throughout the State of Colorado as it has previously done for the reason that, although Case No. 9443 in the Supreme Court of the State of Colorado has been decided by that court to the effect that this Commission has no jurisdiction to regulate rates in the City and County of Denver, a writ of error has issued to that court from the Supreme Court of the United States, which writ of error has been made a supersedeas. Therefore, it seems as a matter of law, that the decision of that court, while not vacated, is suspended pending the final decision of the case, and no remittitur has yet been received by this Commission. As to all cities operating under the Twentieth Amendment to the Constitution of the State of Colorado which filed charters subsequent to January 22, 1913, namely, Fort Collins, Montrose and Boulder, it would appear from the decision of Justice Burke that as to these cities, whatever the final decision may be as to the City and County of Denver, the jurisdiction of the Commission would be still effective. So far, the only decision rendered by the Supreme Court relates to jurisdiction in the City and County of Denver. A case is pending there regarding the

jurisdiction of the Commission in the City of Pueblo. The effect of the supersedeas is that jurisdiction is still lodged in this Commission."

This postion is adhered to, and the following language in the specially concurring opinion of Justice Burke in Case No. 9443 certainly justifies the above conclusion:

"Furthermore, if the power to fix rates by compulsion exists in the City of Denver it is by reason of the provisions of Article 20 of the Constitution including amended Section 6 ratifying the city's charter. If it depends upon the amendment such power is granted only to those cities which had their charters on file with the secretary of state January 22, 1913, when the amendment became effective. It would, therefore, take another constitutional amendment to confer this power upon other Home Rule cities."

The charter of the City of Fort Collins was filed in the office of the Secretary of State of Colorado on September 24, 1913.

The petition for rehearing filed in this cause does not set forth any ground on which the applicant considers the decision and order of this Commission unlawful or unreasonable, except insofar as it questions the Commission's jurisdiction with respect to the City of Fort Collins.

For the reason above given, this Commission has no doubt as to its jurisdiction over the City of Fort Collins, and since there has been no showing in this application for a rehearing of any particular in which the order of the Commission is unsupported by the evidence, the application for a rehearing should be and is denied.

However, the Commission is willing, pursuant to Section 46 of the Public Utilities Act, and within the time prescribed by the Act for the prosecution of writs of review, to enter into a proper stipulation with the City of Fort Collins for the purpose of certifying to the Supreme Court of this state for its judgment the sole question of jurisdiction raised by the petition for a rehearing.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 17th day of December, 1919.

DECISION No. 310.

THE BRECKENRIDGE CHAMBER OF COMMERCE,

v.

THE COLORADO & SOUTHERN RAILWAY COMPANY.

Case No. 37.

December 18, 1919.

STATEMENT.

By the Commission:

An order having been entered by the Commission in the above entitled cause on December 8, 1919, permitting the defendant herein to modify its passenger train schedules between Denver and Leadville, due to the emergency caused by the coal shortage, and it now appearing that the shortage of coal has abated sufficiently to warrant the renewed operations of the trains as required by the order of the Commission dated May 27, 1919, it is the opinion of the Commission that an order should be entered requiring such restoration of service.

ORDER.

IT IS THEREFORE ORDERED, That the order of the Commission in this cause, dated December 8, 1919, be and the same is hereby, set aside for naught held, and the prior order of the Commission in this cause, dated May 27, 1919, becomes effective as of this date.

LEROY J. WILLIAMS,
(SEAL) A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denverl, Colorado, this 18th day of December, 1919.

DECISION No. 311.

IN THE MATTER OF AN INVESTIGATION AND HEARING, ON MOTION OF THE COMMISSION, INTO THE ADVISABILITY AND NECESSITY OF THE PROPOSED DISCONTINUANCE OF PASSENGER TRAINS NOS. 39 AND 40 BETWEEN DENVER AND EASTONVILLE, BY THE COLORADO & SOUTHERN RAILWAY COMPANY.

Case No. 129.

December 18, 1919.

STATEMENT.

By the Commission:

An order having been entered by the Commission in the above cause on December 8, 1919, permitting the defendant herein to discontinue the operation of its passenger trains Nos. 39 and 40, between Denver and Eastonville, due to the emergency caused by coal shortage, and it appearing that the shortage of coal has abated sufficiently to warrant the renewed operations of the trains in question, it is the opinion of the Commission that an order should be entered to that effect.

ORDER.

IT IS THEREFORE ORDERED, That the order of the Commission in this cause, dated December 8, 1919, be, and the same is hereby set aside and for naught held, and the prior order of the Commission in the cause again becomes effective as of this date.

LEROY J. WILLIAMS,
(SEAL) A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 18th day of December, 1919.

DECISION No. 312.

CITIZENS OF MOSCA,
v.
THE DENVER & RIO GRANDE RAILROAD COMPANY.

Case No. 150.

December 18, 1919.

STATEMENT.

By the Commission:

An order having been entered by the Commission in the above entitled cause on December 8, 1919, permitting the defendant herein to modify its passenger train schedules between Salida and Alamosa, due to the emergency caused by the coal shortage, and it appearing that the shortage of coal has abated sufficiently to warrant the renewed operations of the trains as required by the prior order of the Commission, it is the opinion of the Commission that an order should be entered requiring the restoration of the train service as prescribed by the Commission's order herein of February 14, 1918.

ORDER.

IT IS THEREFORE ORDERED, That the order of the Commission in this cause, dated December 8, 1919, be, and the same is hereby, set aside and for naught held, and the prior order of the Commission in the cause, dated February 14, 1918, becomes effective as of this date.

LEROY J. WILLIAMS,
(SEAL) A. P. ANDERSON,
GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 18th day of December, 1919.

DECISION NO. 313.

In re ADVANCE IN MINIMUM CHARGE FOR ELECTRIC LIGHT SERVICE AT WRAY.

Investigation and Suspension Docket No. 37.

December 22, 1919.

STATEMENT.

By the Commission:

Effective December 1, 1919, a schedule was filed by The Wray Light & Power Company, in its Original Sheet No. 2, to Colo. P. U. C. No. 2, whereby an advance in the minimum charge for commercial lighting service at Wray was proposed. The rights and interests of the public appearing to be injuriously affected thereby, the Commission, on November 14, 1919, entered upon an investigation and hearing concerning the propriety of the proposed increase, and suspended the operation of the schedule until March 29, 1920. On December 22, 1919, advice was received by the Commission from the respondent to the effect that it desired to withdraw the proposed schedule, and requesting permission so to do. It is the opinion of the Commission that the respondent should be allowed to cancel the proposed schedule, and that this cause be dismissed.

ORDER.

IT IS THEREFORE ORDERED, That the respondent herein be, and it is hereby, allowed and permitted to cancel, effective not later than January 1, 1920, on one day's notice to the Commission and to the public by filing in the manner prescribed in Section

16 of the Act, the proposed minimum charge for commercial lighting at Wray, contained in Original Sheet No. 2 to its Colo. P. U. C. No. 2.

IT IS FURTHER ORDERED, That the above cause be, and the same is hereby, dismissed as of January 1, 1920, providing the amended schedule is filed by the respondent herein on or before January 1, 1920, as set forth hereinbefore.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,
Commissioners.

Dated at Denver, Colorado, this 22nd day of December, 1919.

DECISION No. 314.

THE STAR INVESTMENT COMPANY,

v.

CITY AND COUNTY OF DENVER, AND THE BOARD OF WATER COMMISSIONERS OF THE CITY AND COUNTY OF DENVER.

Case No. 176.

On Motion to Dismiss.

December 30, 1919.

APPEARANCES: Thomas R. Woodrow, for the complainant; Norton Montgomery, for the defendants; Walter I. Lyon, for intervenor, town of Aurora.

STATEMENT.

By the Commission:

The original complaint was filed in this case May 28, 1919. The allegations of the complaint state in substance: That The Star Investment Company is a corporation and the owner of lands in Arapahoe County, such lands also lying within the limits of the town of Aurora; that the City of Denver is a municipal corporation existing under the Constitution and Laws of Colorado; that the defendant Board of Water Commission of the City and

County of Denver was duly created and is existing under and by virtue of the provisions of Section 264-D of the charter of the City and County of Denver, and at all times mentioned herein has been and is maintaining, conducting and operating a water-works system and plant for the purpose of furnishing domestic water to the inhabitants of the said City and County of Denver; that by virtue of Section 264-C of the city charter, the water-works system and plant of The Denver Union Water Company was acquired by said City and County of Denver, subject to all rights and contractual obligations and duties of said The Denver Union Water Company; that the town of Aurora is an incorporated town, partly in Arapahoe County and partly in Adams County, Colorado, and adjoins the defendant city; that the town of Aurora owns a water distribution system within its limits consisting of mains and pipes; that prior to the acquisition of the plant of The Denver Union Water Company by the said City and County of Denver the town of Aurora and The Denver Union Water Company entered into a contract whereby said town of Aurora agreed to permit The Denver Union Water Company to use its distribution system and, in consideration therefor, the said water company agreed to keep the pipes and mains in repair and to furnish water to all of the inhabitants of the town of Aurora without discrimination and at fair and reasonable rates; that under said agreement The Denver Union Water Company for many years continuously furnished water to all of the inhabitants of the town of Aurora; that the defendant herein assumed the obligations of The Denver Union Water Company to comply with said contract; that with the knowledge of said contract complainant purchased certain premises herein described and made application for water for domestic purposes to be furnished by The Denver Union Water Company, which application was granted; that thereafter defendants, City and County of Denver and Board of Water Commissioners, took possession and control of the said water plant of The Denver Union Water Company and thereafter demanded and continues to demand unreasonable, excessive, exorbitant and discriminatory rates and charges from the complainant, which rates and charges are in excess of those made to other consumers similarly situated and in the same locality; that said rates and charges are contrary to Chapter 127, Session Laws 1913, being the Public Utilities Act; that complainant has paid said charges under protest, and now prays for a hearing by the

Commission and an order fixing fair and reasonable rates and charges for said services, and for such other relief as to the Commission may seem just and equitable.

On June 9, 1919, defendants filed herein a plea to the jurisdiction of the Commission which it designates a "Motion to Dismiss." The contentions and grounds for its motion are in brief as follows:

1. That the Commission has no jurisdiction to hear and determine the question of water rates in the town of Aurora or over the City and County of Denver, and the Board of Water Commissioners of the said City and County of Denver, for the reason that said city and county is not operating a water system for the purpose of supplying the public with water for domestic, mechanical or public uses outside of the limits of the said City and County of Denver; neither has it the right under the Constitution of the State of Colorado to operate its said water system for the purpose of supplying the public outside of the limits of the City and County of Denver with water for any purpose.

2. That by Section 8, Article XVI, of the Constitution of Colorado and Sections 3262 and 3275 of the Revised Statutes of the State of Colorado, boards of county commissioners, and not the Public Utilities Commission, have jurisdiction in their respective counties to regulate charges for the use of water.

3. That the Public Utilities Commission is a special commission as contemplated by Section 35, Article V of the Constituion of Colorado and being such a special commission the legislature was prohibited by the said Artivle V from enacting the Public Utilities Act as applying to municipally-owned utilities, and for that reason that part of the statute is unconstitutional and void.

4. That Section 1, Article II, of the Constitution prohibits a city from lending or pledging the credit or faith thereof or in any manner aiding any person, company or corporation, public or private, for any amount or for any purpose whatever, or becoming responsible for any debt, contract or liability of any person, company, or corporation, public or private.

The Commission will discuss and determine the four contentions or grounds in their order:

Concerning the first contention: Under the pleadings there is an issue of fact joined here that should probably be determined after final hearing. The City and County of Denver alleges that it is not operating a water system for the purpose of supplying the public with water for domestic, mechanical or public uses outside of the limits of said City and County of Denver, neither has it such right under the constitution. The complainant has affirmatively alleged that the defendant is now engaged in supplying complainant with water for said purposes; the manner of service and rates charged are set out in the complaint. On the theory that defendants' contention is that services rendered outside of the city are only incidental to the main operation of this system, and also owing to the fact that two other objections are urged against the jurisdiction of the Commission, the Commission will proceed to consider them in their order. Conceding for the purpose of determining the questions involved that The Denver Union Water Company was purchased and taken over by the city for the purpose primarily of supplying the residents within its limits with water, but is also actually supplying complainant and the citizens of Aurora, which is outside of the municipal limits of Denver, as an incident to its said operations, it appears to the Commission that its jurisdiction is to be determined as to the location of the consumers or patrons served, which in this case is outside of the city limits of Denver and within the limits of the town of Aurora. The location of the main plant or source of supply is not controlling in this case even though it is located within a home rule city, inasmuch as it is rates and service charged and performed in supplying water to complainant living outside of the municipal limits of Denver to which the Commission is asked to address its supervision, to the end that the rates may be fair and just and non-discriminatory and the service reasonable.

It is the contention of the defendant City and the Board of Water Commissioners that they have no authority either under the constitution or the statutes of the state to operate their water system for the purpose of supplying water to the public outside the city limits.

Some authorities hold that while a city may not primarily construct and operate a public utility for the purpose of supplying the public outside of its limits, yet it may as an incident to such operation dispose of its surplus product in this manner. However, whether it may or may not lawfully so engage it is not

necessary for the Commission to determine at this time. That is a question to be determined by the courts. While the defendant city is actually so engaged, its rates and services are necessarily subject to supervision by some legally constituted body, and it would hardly be contended by the city that it has such jurisdiction in its governmental capacity. It is the opinion of the Commission that the City and County of Denver and the Board of Water Commissioners in serving customers with water beyond the city limits become a public utility and subject themselves to the jurisdiction of this Commission under the Public Utilities Act of the State of Colorado; that in so doing the city is acting not in its governmental capacity but in its private business capacity and is subject to the laws applicable to a private individual or corporation; that in serving water to consumers outside of its boundaries the city must charge such rates and apply such rules as are reasonable and as would be applicable to any other corporation or individual serving water to citizens of the state. The City and County of Denver certainly would not have any authority to grant any franchise to any person or corporation primarily to operate a water plant within the town of Aurora as it can perform no governmental function therein, and if the city itself engages in the operation of a water system therein it must do so in its private business capacity and conform to every law that would apply to any private company or individual.

South Pasadena v. Pasadena L. & W. Co., 152 Cal. 590-3; 93 Pac. 490 (P. U. R. 1918-D).

South Carolina v. U. S., 199 U. S. 437.

Omaha Water Co. v. Omaha, 12 L. R. A. (N. S.) 736; 147 Fed. 1.

Nourse v. Los Angeles, 25 Cal. 385; 143 Pac. 801.

Bullmaster v. St. Joseph, 70 Mo. 60.

City of Los Angeles, *et al.* v. Los Angeles Gas & Electric Corp., —— U. S. ——. Decided Dec. 8, 1919.

Pond on Public Utilities, Sec. 153, p. 195.

Dillon on Municipal Corporations, Sec. 116, p. 199, Vol. 1.

In the case of South Pasadena v. Pasadena Land & Water Company, 152 Calif. 590, **supra,** the court says:

"In the carrying on of the water service to the people of South Pasadena the city of Pasadena will not be acting in its political, public, or governmental capacity as an agent of the

sovereign power equal in all respects to the city within which it operates. In administering a public utility, such as a water system, even within its own limits, a city does not act in its governmental capacity, but in a proprietary and only quasi public capacity."

Also in the same case the court says:

"If by fixing too low rates, South Pasadena should attempt to compel the service to be made at a loss, Pasadena would have the same remedies, and no greater, in the courts than a quasi public corporation or natural person would have in the same circumstances. The fact that the outside service is within another city does not appear to be a significant factor in the question of the power. If it were in a rural community, the rates charged would be subject to judicial control to make them reasonable. Being in another city, the serving city has a right to demand reasonable rates and may enforce them if not granted. The limitations would not affect the power in one case more than in another."

It is clear to the Commission that it was the intention of the legislature in enacting Chapter 127, S. L. 1913 (being the Public Utilities Act) that throughout the state the Commission should have sole jurisdiction of rates and services. In the South Carolina case, *supra*, speaking of contracts for the supply of water by a municipal corporation, the Supreme Court of the United States says:

"Such contracts are not made by the municipal corporation, by virtue of its powers of local sovereignty, but in its capacity of a private corporation. The supply of gas light is no more a duty of sovereignty than the supply of water. Both these objects may be accomplished through the agency of individuals or private corporations, and in very many instances they are accomplished by those means."

If the defendant City and County of Denver had not taken over The Denver Union Water Company's property and The Denver Union Water Company were still operating in Denver as a private corporation under a franchise from the defendant city, it would hardly be contended that the Commission was without jurisdiction to regulate rates and service of The Denver Union Water Company in supplying water to the citizens of Aurora, even

though its franchise were confined to Denver. If it voluntarily engaged in supplying water to the citizens of Aurora, in so doing it would thereby become a public utility as to the consumers therein and be subject to regulation by the Commission under the Public Utilities Act, regardless of whether the Commisison had jurisdiction in home rule cities, the town of Aurora not being a home rule city. If as laid down by the highest court in the land in the case just cited, the supplying of water by a municipal corporation is not an act of sovereignty but an act performed in the capacity of a private corporation, then the City and County of Denver in supplying water outside of Denver and in Aurora stands in no different position than did The Denver Union Water Company prior to its property being taken over by defendant city. Should this Commission deny its jurisdiction to regulate the rates for water to consumers beyond the municipal limits of Denver, those now being served by the Denver municipal water plant outside of the city of Denver would be helpless to obtain water from this source at any other rates than those which might be imposed upon them, and the city acting in a dual capacity of public utility and municipality might, as to such localities, impose exorbitant rates on these communities, when in law the municipality would have no right so to do.

Concerning the second contention: This contention is that by Section 8, Article XVI, of the Colorado constitution, and Sections 3262 and 3275 of the Revised Statutes of Colorado, the boards of county commissioners, and not the Public Utilities Commission, have jurisdiction in their respective counties to regulate the charges for the use of water. This is an unusual contention, and the Commission can hardly believe it is contended for seriously. Article XVI is entitled "Mining and Irrigation," and is subdivided, Sections 1, 2, 3 and 4 being placed under the heading "Mining," and Sections 5, 6, 7 and 8 being placed under the heading "Irrigation." It is evident therefrom that Section 8 refers only to water for irrigation, which is expressly excepted from the operation of the Public Utilities Act. Sections 3262 and 3275, Revised Statutes 1908, enacted pursuant to this constitutional provision, are quite long and will not be quoted here. It is sufficient to say that these sections refer only to water for irrigation and no attempt is made to include water for domestic purposes. It is pertinent to say further, however, that to uphold this contention the Commission would be compelled to hold that the Public Utilities Act at least in part is in

conflict with the constitution of the state of Colorado. This the Commission has no power to do.

Concerning the third contention: It is urged that because Section 35, Article V, Colorado constitution, provides:

> "The general assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever,"

that, therefore, the inference is that this is a "special" commission. Analyzed, this section prohibits the legislature from delegating to any "special" commisison the powers therein described.

It evidently is the contention of the defendants that the Public Utilities Commission is a "special" commission as contemplated by this section. The Commission cannot accede to this contention. All of the modern authorities are to the effect that the powers conferred on the Commission, instead of being "special," are indeed general police powers of the state. The Commission, it will be observed, is neither "special" as to powers conferred upon it, nor as to its jurisdiction. Both are state-wide.

However, if it should be conceded for the sake of argument that the act would come within this prohibition, yet as pointed out in the decisions, *supra,* including the case of South Carolina v. United States, 199 U. S. 437, when the city of Denver supplies water outside of its limits it is not acting by virtue of its local sovereignty but in the capacity of a private corporation, and it will be noted this prohibition does not apply to private corporations. Notwithstanding this, as stated in the discussion of defendants' second contention, to hold with defendants' views, would necessitate the Commission's announcing that the Public Utilities Act is in contravention of the Constitution of Colorado, and this under the law the Commission is not permitted to do.

Concerning the fourth contention: It is urged in this contention that by Section 1, Article XI of the constitution of Colorado, it is provided:

> "Neither the state, nor any county, city, town, township, or school district shall lend or pledge the credit or faith thereof, directly or indirectly, in any manner to, or in aid of, any

person, company or corporation, public or private, for any amount, or for any purpose whatever; or become responsible for any debt, contract or liability of any person, company or corporation, public or private, in or out of the state."

The Commission cannot perceive how this provision affects the case at bar. It is for the courts to say whether or not the furnishing of water to the citizens of Aurora is prohibited by this section or whether the City and County of Denver becomes responsible for the contract of The Denver Union Water Company to supply such water. If the city is now actually furnishing water to the complainant and the public in the town of Aurora, the jurisdiction of the Commission can be invoked to issue such order or orders as the law and the circumstances of the case required. The Commission believes it has jurisdiction to hear and determine the questions involved in this case.

For the reasons above stated, the defendants' motion to dismiss the complaint and to quash herein should be denied.

ORDER.

The Public Utilities Commission of the State of Colorado, being now sufficiently advised in the premises,

IT IS THEREFORE ORDERED, That the motion of defendants to dismiss the complaint of the complainants and to quash in the above entitled cause be, and the same is, hereby denied and overruled.

IT IS FURTHER ORDERED, That the defendant answer the complaint herein within fifteen (15) days from the date of this order.

LEROY J. WILLIAMS,

(SEAL) A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 30th day of December, 1919.

DECISION No. 315.

IN THE MATTER OF THE APPLICATION OF THE INDUSTRIAL SUGAR COMPANY FOR PERMISSION TO CONSTRUCT A PRIVATE RAILROAD OVER THE PUBLIC HIGHWAY IMMEDIATELY NORTH OF FORT LUPTON, IN THE COUNTY OF WELD, STATE OF COLROADO.

Application No. 64.

December 30, 1919.

STATEMENT.

By the Commission:

This proceeding arises on application of The Industrial Sugar Company for permission to construct private railroad tracks, at grade, across a public highway immediately north of Fort Lupton. The application states that the construction of the proposed tracks is necessary in order to provide the sugar factory of the applicant at Fort Lupton with a spur track connecting with the tracks of the Union Pacific Railroad, and that the use of the said tracks is to be confined to operations solely in connection with the handling of sugar beets and sugar beet products. It further sets out that during nine months of the year there will be no operations whatsoever over the proposed tracks, and that, during the three months of activity of the factory, from four to eight trains per day will be operated over said tracks and across said highway.

A sketch of the proposed tracks is filed in connection with the application. The applicant proposes to do all work of construction, and has expressed a willingness to comply fully with the specifications prescribed by the Commission for the construction of railroad

crossings at grade, as set forth in its order *In re* Grade Crossings in Colorado, 2 Colo. P. U. C. 128. The proposed construction provides for two tracks crossing the public highway which converge and join immediately on the east side of the highway, there being no switch or frog proposed on the highway. The applicant further announces that it will maintain the highway between said tracks and to the outside line of the ties.

The Commission has considered the matters presented herein, and is of the opinion that permission should be granted the applicant to construct the proposed tracks, provided the applicant will maintain the highway between the tracks and make such improvements thereon as may be required by the State of Colorado in the future with reference to realignment of grade, paving, etc. An order will be so entered.

ORDER.

IT IS THEREFORE ORDERED, That the applicant herein, The Industrial Sugar Company, be, and it is hereby, permitted to construct two tracks at grade across Primary Highway No. 49, north of the town of Fort Lupton, at and near the southeast corner of the northwest quarter of the southeast quarter of Section 31, in Township 2 North, Range 66 West, in accordance with the plans set forth in the application filed herein and in accordance with the specifications prescribed for the construction of railroad crossings at grade as contained in the Commission's order *In re* Grade Crossings in Colorado, 2 Colo. P. U. C. 128; provided, that the applicant shall maintain the highway across and between the tracks, and shall, at any time in the future that paving or other improvement may be made by the State Highway Commission on this particular piece of road, adjust without expense to the State of Colorado the level of such crossing to the cross-section of the highway at this point, and at its own expense maintain and pave the road across and between said tracks to the outside limit of the ties.

LEROY J. WILLIAMS,

(SEAL)

A. P. ANDERSON,

GRANT E. HALDERMAN,

Commissioners.

Dated at Denver, Colorado, this 30th day of December, 1919.

GENERAL ORDER NO. 32

(Supersedes General Order No. 8.)

Rules governing the monthly filing of railway accident reports.

Approved December 13, 1918. Effective November 1, 1918.

IT IS ORDERED, That the rules of the Interstate Commerce Commission entitled "Rules Governing Monthly Reports of Railway Accidents," 1918 Revision, effective October 1, 1918, be, and they are hereby, approved and adopted as the rules governing the filing of monthly reports of steam railway accidents occurring within the State of Colorado, and

IT IS FURTHER ORDERED, That all steam carriers file monthly reports of all accidents occurring within the State of Colorado, upon blank forms furnished by the Commission, within thirty days after the last day of the month reported, and that all steam carriers be governed by the said rules in the preparation and submission of the said monthly reports on and after November 1, 1918.

GEO. T. BRADLEY,

(SEAL)

L. J. WILLIAMS,

A. P. ANDERSON,
Commissioners.

Dated at Denver, Colorado, this 13th day of December, 1918.

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