

FINANCE DOCKET NO. 24745¹

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY ABANDONMENT BETWEEN FARMINGTON, N. MEX., AND ALAMOSA AND ANTONITO, COLO.

Decided July 14, 1969

1. In Finance Docket No. 24745, subject to specified conditions, present and future public convenience and necessity found to permit abandonment by The Denver and Rio Grande Western Railroad Company of that portion of its narrow gauge line of railroad between Farmington, N. Mex., and Antonito and Alamosa, Colo.
2. In Docket No. 34843, The Denver and Rio Grande Western Railroad Company found not shown to have failed to provide transportation or reasonable facilities therefor. Complaint dismissed.

Ernest Porter and John S. Walker for applicant-defendant.
James D. Childress, Floyd Cross, Howard L. Frisbie, and Ralph B. Harlan for complainant and the State Corporation Commission of New Mexico.

Robert Lee Kessler, Ralph Keull, and John L. McNeill for the Public Utilities Commission of the State of Colorado.

Herbert M. Boyle, James I. Davidson, M. Carl Feather, Edward Hamilton, Philip F. Icke, LaVerne McKelvey, R. Franklin McKelvey, and Linville I. Prell for railway labor organizations and other protestants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, DEASON, AND HARDIN

DEASON, Commissioner:

Exceptions were filed by the State Corporation Commission of New Mexico and the Boards of County Commissioners for LaPlata,

¹This report also embraces docket No. 34843, Colorado-New Mexico Better Transportation Association v. The Denver and Rio Grande Western Railroad Company.

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San Juan, and Archuleta Counties, Colo. (Colorado Group), protestants in F. D. No. 24745, to the report and order recommended by the examiner, and applicant replied. A motion was also filed by applicant to strike certain portions of the exceptions filed by the State Corporation Commission of New Mexico, to which protestant replied. Our conclusions differ somewhat from those of the examiner.

The Denver and Rio Grande Western Railroad Company (Rio Grande) is a common carrier by railroad subject to part I of the Interstate Commerce Act. It operates extensive lines of standard gauge railroad in the States of Colorado and Utah, including a line extending from Denver, through Alamosa, Colo., to Creele, Colo. It also operates a narrow gauge line of railroad, connecting with the standard gauge at Alamosa, which extends between Alamosa, through Durango, Colo., and Farmington, N. Mex., and between Durango and Silverton, Colo.

By application filed in the title proceeding on September 18, 1967, Rio Grande seeks, under the provisions of section 1(18) of the act, a certificate of public convenience and necessity permitting the abandonment of that portion of its narrow gauge line extending between Alamosa and Farmington. No abandonment of the line between Durango and Silverton is proposed.

The filing of the abandonment application was anticipated by the Chambers of Commerce of the cities of Farmington and Durango and they, together with other unnamed interests, formed a corporation named Colorado-New Mexico Better Transportation on whose behalf a complaint was filed April 27, 1967, in docket No. 34843, charging the Rio Grande with downgrading the line proposed to be abandoned and with failure to provide reasonable facilities for transportation in violation of section 1(4) of the act. Rio Grande answered the complaint and denied the allegation contained therein. There were also numerous protests filed to the abandonment application.

The proceedings were heard on a consolidated record. At the hearing appearances were entered and evidence was adduced on behalf of the Rio Grande, as applicant and defendant, and on behalf of complainant and the following protestants: the State Corporation Commission of New Mexico, the Public Utilities Commission of the State of Colorado, the County Boards of LaPlata, San Juan and Archuleta Counties, Colo., the Brotherhood of Railroad Trainmen, the Brotherhood of Locomotive Firemen

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and Enginemen, and the General Chairman of the Association of Employees of the Rio Grande. Briefs were filed by the Rio Grande, the State Corporation Commission of New Mexico, and the named County Boards.

With exceptions as hereinafter indicated, the findings of fact set forth in the examiner's report are substantially accurate and are adopted as our own. Only those facts necessary for our discussion have been repeated here.

Rio Grande's narrow gauge lines, which do not connect with any railroad other than its standard gauge at Alamosa, consist entirely of a line which overlaps the standard gauge system between Alamosa and Antonito (as a center rail on a standard gauge track) and extends westerly from Antonito along the Colorado-New Mexico State line (which it crosses several times) to Durango, with a branch extending in a southerly direction from Carbon Junction (near Durango) to Farmington, and a branch extending northerly from Durango to Silverton. Rio Grande proposes to abandon all of these lines except the Silverton branch, which lies wholly within the State of Colorado and which would thereafter have no connection with any railroad.

Rio Grande's proposal involves the abandonment of its narrow gauge line, totaling 296.10 miles in length, except the 45.6 miles between Durango and Silverton. The latter line is used almost exclusively as a passenger train service for tourists and sight-seers who desire to "ride on a vintage narrow gauge train pulled by an old-time steam locomotive and enjoy the scenic beauty of the area between Durango and Silverton." *Denver & R.G.W.R. Co. Abandonment*, 312 I.C.C. 791, 793.

All scheduled passenger train service was discontinued on the lines proposed for abandonment (the issue lines) in 1951 pursuant to authority granted by the Public Utilities Commission of the State of Colorado and the State Corporation Commission of New Mexico.² Notwithstanding protestants' contentions to the contrary, no approval by this Commission of this discontinuance of service was required by law. Although a few unscheduled, special or excursion trains were operated over the issue lines after the discontinuance of the regular passenger service in 1951, service since 1966 has been confined to freight operations exclusively.

² Apparently, through oversight, the examiner omitted any reference to the action taken by the New Mexico Commission approving the passenger train discontinuances in question.

Until 1957, Rio Grande held itself out to provide regular service, daily as required, except that, after 1951, the winter service was on a triweekly basis, weather permitting. In 1957, the issue lines were closed for 1 month on account of weather, after which the service was progressively reduced to triweekly, biweekly, weekly, and, by 1959, was reduced to the point where rail service was rendered only as required, weather permitting.

Although the reductions that occurred in the amount of rail service provided over the narrow gauge lines were due, in part, to a decline in the volume of freight made available to the Rio Grande for movement over those lines, the principal reasons for the reduction in service were (1) weather conditions, which made rail operations impossible or impractical during extended periods each year; and (2) the ability to afford shippers year-round service by substituting existing motor carrier service for that provided by the rail line.

Weather conditions, particularly during the fall and winter months, have had, and continue to have, a direct effect upon Rio Grande's ability to maintain any regular service over the issue lines. These lines were all constructed as narrow gauge lines a number of years ago to meet the special operating conditions there prevailing. The line between Antonito and Durango traverses mountainous terrain with numerous sharp curves and a maximum grade of 4 percent. The elevation at Cumbres Pass, between Antonito and Chama, N. Mex., is 10,015 feet. Weather conditions, generally, have created many operating problems for Rio Grande, many times making operations totally impossible for extended periods, and also creating numerous repair and maintenance problems.

Because of the operating and maintenance problems created by the winter weather each year, Rio Grande, commencing in 1965, and continuing each year since that time, by appropriate tariff action, has suspended operations over the entire narrow gauge line during the period December to May. However, it continues to afford service to points on the line during those months by substituting motor carrier for rail service, provided at published rail rates.

This substitute-motor-carrier-for-rail service is also available at all other times of the year. For a number of years Rio Grande has provided such service as a supplement to its narrow gauge rail operations, the substitute service having been authorized by published tariffs on file with this Commission.

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Paved, all-weather highways parallel the entire narrow gauge line in close proximity except for (1) the portion of the line between Dulce, N. Mex., and Arboles, Colo., where the only inhabited place is Gato, Colo., with a population of 20, and (2) the portion of the highway east of Chama, through Cumbres Pass, on which improvement work is now in progress. Additionally, there is a major east-west highway which extends between Alamosa and Durango a distance of 150 miles, as compared with the narrow gauge rail distance of 200 miles.

While, over the years during which Rio Grande's tariffs provided for the aforementioned substituted-motor-carrier-for-rail service, a considerable portion of the traffic tendered to Rio Grande has moved by substitute service, at rail rates, in recent years there has been a very substantial increase in the proportion of Rio Grande's traffic that has moved in substitute motor-carrier-for-rail service, with a corresponding reduction in the volume of traffic handled by rail over the issue lines.

From 1964 to 1967, Rio Grande's payments to motor carriers for such substitute service more than doubled. By 1967, they constituted more than one-third of the total expense of the issue lines. Almost all such payments were made to Rio Grande Motor Way, Inc. (Motor Way), a wholly owned subsidiary of Rio Grande. At the same time, there was a decline in the volume of traffic moved by rail over the issue lines. The number of loaded narrow gauge cars moved over the issue lines declined from a total of 1,806 in 1965 to 757 in 1967.

Motor Way is a class I motor common carrier of general commodities, with the usual exceptions, operating over regular and irregular routes in New Mexico, Colorado, and Utah. Its regular-route authority embraces service extending between all points on the issue lines, except the villages of Oxford, Allison, and Falfa, on the one hand, and, Alamosa, on the other. While it is also authorized to perform regular-route operations between Cortez, Colo., and Durango, serving the intermediate points of Mancos and Hesperus, and, as an off-route point, the plant site of Montezuma Plywood Company located about 7 miles north of Cortez, such operations are restricted to the transportation of shipments which have an immediately prior or immediately subsequent movement by rail, and which service is auxiliary to or supplemental of the rail service performed by the Rio Grande.

Motor Way connects with motor carriers and railroads at Salt Lake City, Utah, Denver, Pueblo, Alamosa, and Durango, Colo.,

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and at Farmington, which latter point is also served by Illinois-California Express, Garrett Freight Lines, and Whitfield Transportation Company. Motor Way maintains terminals at Alamosa, Durango, and Farmington. It operates a large fleet of tractors and trailers, which includes vans, flat beds, lowboys, and refrigerated trailers, and is in position to acquire such additional equipment as may be needed for future traffic. By virtue of the type and scope of the operating authority it holds, Motor Way's service has been found to be especially well suited to provide the substituted-motor-carrier-for-rail service hereinbefore described.

The record shows that as the use of the substituted-motor-carrier-for-rail service increased, maintenance on the issue lines was reduced, the railroad way and equipment deteriorated, and the operation of trains was curtailed. The record is not convincing, however, that the substitute service was substantially inadequate, that it seriously inconvenienced or caused damage to shippers, that it resulted either in a substantial reduction in the movement of traffic or in a diversion of traffic from Rio Grande to other carriers, or that any shipper requiring service was unable to obtain it.

Rio Grande presented exhibits to show the financial result of operating the issue lines since 1963. These indicate that, notwithstanding annual reductions in expenses for maintenance on the lines, a deficit of more than \$500,000 was sustained in each year 1964 thru 1967.

The examiner concluded that public patronage of the issue lines as a narrow gauge railroad had diminished and will continue to diminish; that freight revenues from the entire narrow gauge system³ have resulted in annual deficits for the issue lines in excess of a half-million dollars, notwithstanding reduced expenditures for maintenance; that the deficits constituted a burden upon the Rio Grande and upon the interstate commerce in which it participates, thereby warranting abandonment of the issue lines unless that burden is outweighed by public need for narrow gauge railroad service; and that a finding that such public need exists would be warranted even in the face of declining public patronage and mounting deficits if they in fact resulted from a failure of the applicant to fulfill its duty to provide adequate facilities and service.

³Freight traffic on the Durango-Silverton branch produced less than \$800 in revenue in each of the years 1963 thru 1967.

It was the contention of complainant and protestants that the Rio Grande had failed in its duty, had downgraded the railroad, that there is a need for the railroad, and that the application for abandonment should be denied and an order entered requiring Rio Grande to provide adequate service.

The examiner concluded, however, that reasonably adequate service had been provided by the Rio Grande through the provision of the substitute-motor-carrier-for-rail service; that the substitution-of-motor-for-rail service was not illegal; that the contemporaneous curtailment of rail operations was a matter for the exercise of managerial discretion, did not require prior Commission approval, did not constitute an abandonment, and was unlawful only if it was in fact unreasonable or resulted in inadequate service. This, he found, was not established by the evidence.

Summarized, it was the finding of the examiner that the area served by the issue lines is rich in natural resources including minerals, forest products, livestock, and agriculture; that the freight traffic potential of the area is great and might increase; that much of the future traffic, like much of the present traffic, will require long-haul rail transportation; that it had not been established that such traffic would be more adequately transported by narrow gauge railroad than by highway motor vehicles to and from the standard gauge railhead at Alamosa, where the transfer of lading into or from standard gauge rail cars is required in either case.

Further, he found that the narrow gauge railroad line at issue is an obsolete and misfit facility wholly inadequate to meet the real needs of the communities involved; that those needs are presently, and for the foreseeable future will be, more adequately met by available motor carriers and their rail and motor connections; that narrow gauge rail service adds little if anything, and only at disproportionately great cost; and that, even though it were established that the public needs the present railroad rates, it does not need the railroad.

Based on a finding that Rio Grande had not been shown to have failed to provide transportation or reasonable facilities therefor, the examiner recommended that the complaint in docket No. 34843 be dismissed.

In Finance Docket No. 24745, he recommended that, subject to the imposition of the same conditions for the protection of Rio Grande employees as those contained in *Chicago, B. & Q. R. Co.*,
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Abandonment, 257 I.C.C. 700, and subject to the further condition that Rio Grande so equip the Silverton branch as to permit adequate future maintenance of way and equipment, and that the effects of severing that branch from its rail connection at Durango shall not be considered as grounds for abandonment of the branch in the future, a certificate and order permitting the abandonment of the issue lines be issued.

The aforementioned motion to strike certain portions of the exceptions filed by the State Corporation Commission of New Mexico arose out of the inclusion therein of (1) a "Supplement to the Conclusion" consisting of a copy of an unidentified newspaper article which dealt with the issue of the possible future use of a portion of the issue lines in the event of abandonment, and (2) a "Supplement to Exception Number 14," which consists of allegations of unethical conduct on the part of counsel for the Rio Grande and charged counsel with the violation of section 13 of the Canons of Ethics for Practitioners before this Commission.

With respect to the "Supplement to the Conclusion," it is noted that the newspaper article in question and the comment contained in the supplement deal with a subject outside the record and with matters which are entirely irrelevant and immaterial to the issues here considered. Insofar as the "Supplement to Exception Number 14" is concerned, the Commission and the parties to the proceedings have now been informed by counsel for the New Mexico State Corporation Commission that an investigation has disclosed no basis for any assertion of unethical or improper conduct on the part of Rio Grande's counsel, and that all assertions of a violation of the Canons of Ethics were erroneous. The circumstances considered, the motion to strike will be granted and the matters to which objection was taken referred to in the motion will be stricken from the exceptions of the New Mexico Commission.

Except for a contention, hereinafter discussed, of a denial of due process in respect of both of the instant proceedings, the arguments presented on exceptions are essentially the same as those presented on briefs. In essence they are: that Rio Grande has wilfully and knowingly downgraded the issue lines, has failed to maintain adequate, proper, and safe equipment thereon, and has otherwise failed to carry out its obligation as a common carrier by railroad in respect of the lines involved in these proceedings; that such wilful acts cannot provide a proper basis for the abandonment of the issue lines; that no undue burden is or will be imposed upon the carrier or upon interstate commerce by requir-

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ing operations over the issue lines to be continued; that the evidence establishes an existing public need for the continued operation of the subject lines, and that the examiner should have so concluded in his report herein; and that the findings of the examiner should be reversed and an order entered denying the proposed abandonment and requiring Rio Grande to provide over its narrow gauge lines reasonably adequate transportation service and facilities.

Included in the exceptions of the Colorado Group is a request for oral argument of the issues before the Commission. We have considered the exceptions in the light of the evidence and conclude that no oral argument of the issues is required for an appropriate disposition of the matters here involved. Accordingly, the request is denied.

With respect to the assertion of denial of due process, protestants contend that, by virtue of a ruling of the examiner that rate comparisons are not relevant to the issues involved in the instant proceedings and that he would not receive in evidence any testimony concerning rates, affected shippers were deprived of the opportunity to present their evidence fully and were unable to provide for the record all of the evidence essential to a proper determination of the issues involved.

Protestants assert that the error was not rectified by the examiner's reversal of his ruling after the record was closed and by considering such rate evidence as was proffered for the record in his report and recommended order in the proceedings. While conceding that rate increases as a result of an abandonment are not, necessarily, a controlling factor, protestants claim that a number of witnesses were either prevented by the examiner's ruling from testifying at all, or were not permitted to develop the record fully in respect to the economic effect that abandonment would have upon their business. They claim that the record is still incomplete and that interested shippers have been denied their full day in court. In the circumstances, protestants urge the rejection of the examiner's recommendations and request the reopening of the proceedings for a hearing *de novo*.

In reply, Rio Grande asserts that full opportunity was afforded all interested parties to testify and offer rate evidence; that substantial and representative rate evidence was received in the record and was considered by the examiner; that any additional evidence concerning rates would be merely cumulative; and that

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the suggestion that a hearing *de novo* be granted is without foundation and frivolous.

A careful review of the record fails to provide any support whatever for protestants' assertions that, by reason of the aforementioned ruling of the examiner, interested witnesses were prevented from offering testimony in the proceeding or from developing the record adequately.

It is true that the examiner did reject as irrelevant four exhibits which dealt with rate comparisons and announced, in connection with that ruling, that he would not receive "any more testimony or exhibits on the matter of rates that would be accumulative and irrelevant." However, the exhibits did accompany the record and the parties were advised that the ruling in respect thereto could be appealed to this Commission.

The record reflects that, notwithstanding this ruling and the announcement made in connection therewith, a substantial amount of evidence concerning the effect that the proposed abandonment would have upon the rate structure and upon transportation costs was presented by shipper witnesses and was received in evidence. Even in the one instance where objection was made to an exhibit submitted by a shipper witness, because it dealt, in part, with rate matters, the entire exhibit was received in evidence subject to the ruling that the rate matters would not be considered as a relevant issue in the proceedings. Protestants concede that a number of witnesses were permitted to testify concerning rate levels and the impact that abandonment would have upon transportation costs in the considered area. Also, that all exhibits containing rate comparisons, whether rejected partially or entirely, were permitted to accompany the record.

Protestants fully affirm the action of the examiner, taken in his report and recommended order, of reversing his earlier rulings and receiving the aforementioned exhibits in evidence. They also recognize that, in reaching his conclusions in the proceedings, the examiner gave consideration to all rate evidence presented. However, they claim that this does not serve to remove the deficiencies in the record which flow from witnesses being prevented, by the examiner's rulings, from testifying fully in respect of rate matters or from presenting their testimony at all. It is their position that, only by the obtaining of a complete record on the rate issue as it affects shippers in the area, that any proper determination may be made of the abandonment proposal here considered. Accordingly, they urge that

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a new hearing be held at which shippers may be accorded the opportunity of developing the issue adequately.

Although protestants identify certain witnesses who, they assert, were prevented, by the examiner's ruling, from presenting rate evidence for the record, our review of the record discloses that all those identified did present testimony concerning changes in rate levels and in transportation costs that could be expected to flow from the proposed abandonment, and that none of these witnesses was restricted by the examiner in the testimony which he desired to offer for the record. Their testimony provides an entirely clear and adequate picture of the rate effect that the proposed abandonment might be expected to have upon each shipper-witness testifying. Any additional evidence concerning rate levels that such witnesses might have presented for the record would have been cumulative and unnecessary for a determination of the issues presented.

With respect to protestants' assertions that witnesses, who, allegedly available to testify in respect to rate matters, were prevented by the examiner's ruling from proffering any testimony whatever, a review of the record fails to indicate that any witness was denied the right to proffer such evidence as he had available, or that any counsel made any offer of proof as to the testimony that would have been presented for the record had the ruling in question not been made by the examiner. In their exceptions protestants made no attempt to identify any of the witnesses who they claim were prevented from testifying at the hearing. Neither do they indicate what testimony, other than rate evidence, would be presented by any such witness should a further hearing or a new hearing be granted. In effect, they merely ask that a further hearing be held in order that rate evidence not presented at the hearing may be included in the record.

Considering protestants' request in the light of the record now before us, we conclude that there is no proper basis or justification either for a further hearing or a new hearing in these proceedings. Substantial evidence concerning the changes in the rate structure that might be expected to flow from the abandonment is presently contained in the record and is sufficiently comprehensive, so far as individual shippers are concerned, to provide us with information essential to a proper disposition of these proceedings. In these circumstances, any additional evidence that might be obtained at any further hearing would be merely

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cumulative and is not required. Accordingly, protestants' request for a hearing *de novo* is denied.

We have reviewed the evidence in the light of protestants' arguments on exceptions and conclude that the examiner did not err in finding that the Rio Grande has not been shown to have failed to carry out its legal duty to provide reasonably adequate transportation service and facilities at points on the issue lines. We concur in the examiner's recommendation that the complaint in docket No. 34843 be dismissed.

With respect to the abandonment proposal, however, the evidence does not, in our opinion, provide the necessary support for what amounts to an outright and basically unconditional abandonment of the issue lines as recommended by the examiner. Rather, we view the evidence as establishing that the abandonment may be justified only if certain basic conditions, hereinafter described and which are required by the present and future public convenience and necessity, are fully met.

Although the record clearly indicates no substantial demand today for the rail service provided over the narrow gauge lines, it also establishes that this lack of demand does not flow from any substantial decline in the volume of freight being proffered to Rio Grande for movement between points in the area served by the narrow gauge lines, on the one hand, and, points beyond Alamosa, on the other. In fact, the record shows that the traffic has continued to be available for movement by Rio Grande, but because of the provisions in Rio Grande's tariffs, which enables it to substitute, at no additional cost to the shipper, motor carrier service in lieu of the narrow gauge service, the traffic has, generally, shifted from the narrow gauge lines to movement over the highway in substitute service by Rio Grande's wholly owned subsidiary, Motor Way.

It is obvious from the record that the provision by Rio Grande of the substituted-motor-carrier-for-rail service, at no increase in cost to shippers, and Rio Grande's success in diverting its narrow gauge traffic to highway movement, provide the only real basis for the proposed abandonment of the issue lines. Without question, if the substituted service were not available, there would still be substantial demands for rail service, thereby greatly diminishing the possibilities of justifying the abandonment here proposed.

Although the fact that shippers are not now utilizing the narrow gauge service to any substantial extent may, as contended

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by Rio Grande, warrant the conclusion that shippers do not need narrow gauge rail service, we are not warranted by the evidence here presented in concluding that there is no need for any of the service which the narrow gauge line affords.

The transportation needs have been met through the provision of the substituted highway service, afforded at the same cost to shipper as if the service were provided by rail. Shippers have come to rely upon and, at times, are forced to depend upon this substitute service as the means of obtaining Rio Grande service on traffic which moves to or from Alamosa and which is routed via Rio Grande and its connections beyond. In this respect, the record shows that the determination of one shipper to establish its business in the considered area was based on assurances that Rio Grande would continue to provide the described substituted-motor carrier service.

Although protestants expressed some dissatisfaction with the substituted-motor carrier service provided by Rio Grande, and claims were made that the needs of certain shippers could be met only through the use of narrow gauge rail service, the evidence is convincing that the transportation needs of the vast majority of the shippers in the area have been adequately met by utilizing the substituted service.

Through that arrangement, shipments moving between points on the narrow gauge line, on the one hand, and, Alamosa, on the other, and routed for movement beyond Alamosa via Rio Grande and its connections, are transported, at published through rail rates, over the highway by motor vehicle (in the vast majority of cases by Motor Way), to or from Alamosa, where transloading to or from standard gauge rail cars occurs. Under the tariffs applicable to narrow gauge movements, whether handled via narrow gauge rail service or over the highway in substituted-motor-carrier-for-rail service, the cost of unloading and loading at Alamosa is included in the through rate charged.

Shippers located at points served by Motor Way on its authorized route between Cortez and Durango, including the off-route point identified as the plant site of Montezuma Plywood Company, also utilize the substituted-motor-carrier-for-rail service provided by Rio Grande. Their shipments are loaded on Motor Way's trailers at point of origin and moved to Alamosa without unloading. Motor Way assesses its published proportional common carrier rate between point of origin and Durango, and the movement beyond is on Rio Grande billing and at Rio Grande's

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published rail rates. No additional charge is made for unloading and loading at Alamosa. The movement between Durango and Alamosa is classed as substituted-motor-carrier-for-rail service, with Motor Way performing the service between Durango and Alamosa under an agreement with Rio Grande.

As previously noted herein, the service which Motor Way is authorized to perform between Cortez and Durango is restricted to that which is supplemental to and auxiliary of the rail service afforded by Rio Grande. It is clear that such operations were intended to be a mere adjunct to Rio Grande's narrow gauge service at Durango in order that shippers having traffic moving between points on the Cortez-Durango route, through Alamosa, to or from rail points beyond, would have a convenient combination motor carrier and rail service available at a reasonable cost.

Shippers have established their plants in the Cortez-Durango area based on the existence of this combination service and have come to rely on it in meeting their transportation needs. A number of these shippers presently utilizing Rio Grande's service on their rail shipments beyond Alamosa are dependent, to a considerable degree, upon the through rates which the present arrangement makes possible as the means of remaining competitive with shippers in other areas. The existence of through rates applying on all shipments between points on the narrow gauge lines and Alamosa and points beyond enables shippers in the considered area to keep their transportation costs at a level competitive with plants in other areas. Some shippers contend that, if the abandonment proposal were authorized and through rail rates were no longer available in the area here considered, their transportation costs would be increased so substantially, by being required to rely on motor carrier service, at motor common carrier rates, as to amount to an embargo on their traffic moving beyond Alamosa via Rio Grande and its connections and would prevent them from meeting competition in other areas.

Rio Grande's proposal does not involve the mere elimination of specified portions of the narrow gauge railroad, with substituted-motor-carrier-for-rail service continuing to be available. The latter service would also be eliminated if the proposed abandonment occurs. Under Rio Grande's plan, all service by Rio Grande in the area served by the issue lines would be

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terminated and the entire area would be left without any rail service being directly available.

Rio Grande does not contend that no need exists for transportation service in the considered area or that shippers are not using its service in moving their shipments to or from Rio Grande's standard gauge connection at Alamosa. Rather, it contends that (1) there is no longer any need for the rail service which the narrow gauge lines provide; (2) that the service afforded, whether performed over the narrow gauge line or in substituted-motor-carrier-for-rail service, is provided at a loss; and (3) that, inasmuch as the transportation needs of shippers for the movement of their freight to and from Alamosa can be adequately met through the use of existing motor common carrier service, it should be concluded that the public convenience and necessity no longer require any of its services in the considered area and that the abandonment of the issue lines and termination of all Rio Grande services in the area served by them are fully warranted.

Rio Grande asserts that shippers actually have no real need for the narrow gauge line in any respect; that their shipments to and from Alamosa would be physically transported in the same fashion as at present if the common carrier service of motor carriers were substituted for the existing substituted-motor-carrier-for-rail service; and that shippers are urging the retention of the Rio Grande's service in the considered area as a means of retaining what Rio Grande characterizes as the "subsidy" for their businesses flowing from the level of the rail rates now applying on Rio Grande's substituted service.

While it is clear that substantial use is being made by the public of the service provided by Rio Grande in the considered area, it is evident that there is no longer any substantial need or demand for the narrow gauge rail service, as such. Also, in view of their particular characteristics and the terrain through which they extend, it is obvious that these lines can be maintained for use in the movement of freight only by the expenditure of large sums entirely disproportionate to the revenues that could be expected to be earned through their continued operation. In our view, the examiner properly characterized the narrow gauge line as an obsolete facility no longer able to provide transportation services adequate to meet the needs of the public within the area here considered.

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Abandonment of the issue lines would be fully warranted under these circumstances, provided, of course, that the abandonment did not result in the elimination of service for which there is a substantial public demand and need.

As hereinbefore noted, abandonment of the issue lines would also result in the elimination of the substituted-motor-carrier-for-rail service presently provided by Rio Grande. This would result in the complete abandonment by Rio Grande of all of its service within the area served by the issue lines. Rio Grande contends that, inasmuch as existing motor common carriers can provide a service entirely adequate to meet the needs of the public in the considered area, there is no need for it to continue to provide any form of service (over the highway or over narrow gauge lines) within such area.

In making the assertion respecting the motor carrier service available in the area, Rio Grande made particular reference to the motor carrier service provided by Motor Way. Rio Grande points to the fact that Motor Way will continue to render highway service to and from Alamosa, as at present; that shipments will continue to be transferred at Alamosa; and that the traffic will be handled in the same manner, physically, in which it is being handled today in substituted-motor-carrier-for-rail service. In these circumstances, Rio Grande asserts that it cannot be justifiably claimed that the public would be denied adequate transportation service in the area involved.

Considering the existing corporate relationship between Rio Grande and Motor Way, the manner in which their operations have been coordinated in the past, and the aforementioned limitations or restrictions placed upon some of Motor Way's operations involved herein which necessarily require movement to or from Rio Grande's rail line, it is obvious that, under Rio Grande's plan, most, if not all, of the traffic presently handled by Rio Grande as a narrow gauge line movement would, after the abandonment, be transported by Motor Way to or from Alamosa under its motor common carrier authority.

It is clear that the services would continue to be closely coordinated between Rio Grande and Motor Way and that, in effect, Motor Way would become the alter ego of Rio Grande throughout the area presently served by the issue lines. The circumstances would be such, however, that Rio Grande would still be in position to control traffic routed for movement beyond Alamosa via Rio Grande and its connections.

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While it is evident that under Rio Grande's proposal shipments would be handled to and from Alamosa in the same manner, physically, as at present, and that it would still be possible to transfer shipments at Alamosa between the motor carrier trailer and standard gauge rail cars, shippers having traffic moving between points in the areas here considered, including points on Motor Way's routes between Cortez and Durango, on the one hand, and Alamosa and rail points beyond, on the other, would no longer receive the same type of service as that now provided.

No form of rail service within narrow gauge territory would thereafter be directly available; rail rates to and from narrow gauge points would no longer be applicable; and all movements between points in the considered area, on the one hand, and Alamosa, on the other, would be transported at published motor common carrier rates, which do not include any loading or unloading service at Alamosa. All loading and unloading service would be required at an additional charge, whereas it is now included in Rio Grande's rail rates, whether performed over the narrow gauge line or in substituted-motor-carrier-for-rail service.

Under Rio Grande's plan, no change in the present pattern of movement on traffic routed through Alamosa over Rio Grande and its connections is contemplated. Such traffic would continue to be physically transported to and from Alamosa exactly as at present, namely, over the highway by Motor Way and, possibly to a limited extent, by other motor carriers. Insofar as the traffic moving to or from points on Motor Way's Cortez-Durango route is concerned, it is apparent that, in view of the aforementioned restriction contained in the operating authority covering that route, such traffic will necessarily be transported to or from Alamosa by Motor Way where it will be transferred to Rio Grande for movement beyond. Substantial changes would occur, however, in the rates and charges applicable to the traffic thereafter to be transported to or from Alamosa in motor carrier service routed for movement beyond by Rio Grande and its connections.

At present, shipments transported between points on the narrow gauge lines, on the one hand, and Alamosa, on the other, routed for movement beyond by Rio Grande and its connections, move at published rail through rates, origin to final destination. As previously noted, the rates applied include all loading and un-

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loading services required at Alamosa, and such rates apply whether rail or substituted-motor-carrier-for-rail service is provided.

A review of the tariffs of Rio Grande and Motor Way on file with this Commission discloses that shipments moving between points on Motor Way's Cortez-Durango route, on the one hand, and Alamosa and points beyond, on the other, routed for movement beyond Alamosa via Rio Grande and its connections, move on through rates which include all loading and unloading services at Alamosa. The movement between points on the Cortez-Durango route, on the one hand, and Durango, on the other, is furnished by Motor Way under proportional rates. The handling of this traffic in the manner described is in consonance with the restriction, hereinbefore described, applicable to Motor Way's operation over the Cortez-Durango route.

After the abandonment of the issue lines, it is Rio Grande's proposal that the all-rail rates applicable on the through movement via Rio Grande at Alamosa would be eliminated and such traffic would be transported between all points on the considered routes, including the Cortez-Durango route, on the one hand, and Alamosa, on the other, by motor common carriers at local rates. Shipments would be transferred to or from Rio Grande at Alamosa with the appropriate rail rates applying on the movements beyond Alamosa. On all shipments transferred at Alamosa an added charge would be assessed for all loading and unloading services performed at that point.

The record is clear that Rio Grande intends to handle through traffic which originates at or is destined to points in the considered areas and which moves beyond Alamosa via its rail line. Rio Grande also stresses the fact that it will look to Motor Way to perform the necessary motor carrier services in transporting such shipments between points in the considered areas and Alamosa. This would include through movements which originate at or are destined to points on Motor Way's Cortez-Durango route, routed beyond Alamosa over Rio Grande's standard gauge line.

While recognizing that Motor Way's operations over the Cortez-Durango route are restricted to service which is supplementary to and auxiliary of the rail service of Rio Grande, it is Rio Grande's position that, notwithstanding the fact that abandonment of the issue lines would mean the elimination of Durango as the point where the supplementary service of the motor carrier

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subsidiary connects with its rail line, Motor Way could nevertheless continue its service on the Cortez-Durango route in full compliance with the restriction merely by shifting the point of connection with Rio Grande's rail line from Durango to Alamosa. Rio Grande points to Motor Way's operating authorities which would permit it to transport shipments between points on the Cortez-Durango route, on the one hand, and Alamosa, on the other, and asserts that, by utilizing Alamosa as a connecting point with Rio Grande's line, the service to or from points on the Cortez-Durango route would continue to be supplementary to and auxiliary of Rio Grande's railway service and, therefore, fully authorized under the restricted operating authority.

Protestants question whether Motor Way would be enabled to continue service over the Cortez-Durango route after the abandonment of the issue lines, contending, in effect, that the elimination of Durango as a connecting point to Rio Grande's rail service would prevent the service over the Cortez-Durango route from thereafter being supplemental to or auxiliary of the rail service of the Rio Grande.

It should be noted that, in granting the operating authority relating to the Cortez-Durango route, we reserved jurisdiction to impose in the future such other limitations and restrictions as may be found necessary to insure that the service would be auxiliary to or supplemental of the rail service of the Rio Grande.

The record here makes it evident that neither the Rio Grande nor Motor Way intends to terminate the arrangement whereby the rail service of Rio Grande is supplemented by the traffic moving to or from points on the Cortez-Durango route. In fact, emphasis is placed on the plan to continue to participate in that traffic after the abandonment by shifting the point of connection between Rio Grande's line and the subsidiary's operation from Durango to Alamosa.

The record demonstrates an existing and continuing need in the Cortez-Durango area for the continuation of the same type of combination motor carrier and rail service, on through movements, as is presently available through the rail connection at Durango. The shifting of the point of connection from Durango to Alamosa would afford the means by which such service would continue to be available.

In view of the circumstances involved, we conclude that consummation of the abandonment here proposed should be conditioned on
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Motor Way first obtaining an appropriate modification of the operating authority covering the Cortez-Durango route which would specify Alamosa as the point of connection with Rio Grande's line in lieu of the present connecting point of Durango.

As we have previously indicated, the shipments which Motor Way presently transports over the Cortez-Durango route are, by reason of the restriction contained in the operating authority covering such route, necessarily through movements which involve joint rate arrangements between Motor Way, which publishes a proportional factor on the movement between Durango and points on the Cortez-Durango route, and Rio Grande, which charges a through rate on the balance of the movement.

So long as the service of Motor Way over the Cortez-Durango route continues to be restricted to service supplementary to or auxiliary of rail service of Rio Grande, all shipments handled by Motor Way to or from points on that route continue to be through movements, which will be subject to through rates even though the connecting point with Rio Grande's rail line, after the abandonment, will be Alamosa, rather than Durango.

We have previously indicated that Rio Grande's plan of abandonment does not contemplate the provision of any through rate arrangements on any shipments interchanged at Alamosa after the abandonment occurs. Since Motor Way's service within the Cortez-Durango area may be continued, after the abandonment, only in conjunction with a Rio Grande rail movement, we believe that any abandonment herein should be conditioned on Motor Way and Rio Grande first establishing rates and charges which shall be applicable to the through movements of traffic handled between points on Motor Way's route between Cortez and Durango, on the one hand, and Alamosa and points beyond, on the other. We also conclude that, because of the fact that the proposed change in the handling of the traffic does not involve any basic change in the service afforded, and the instant case is not the appropriate type of proceeding for determining justification for the rates and charges to be made applicable to the service in question, the basis for rates and charges to be established as aforesaid should, unless otherwise authorized by this Commission pursuant to an appropriate petition therefor, be no higher than the basis underlying the rates presently applicable on through movements of the same traffic handled in combination motor and rail service (motor carrier between points on the Cortez-Durango route and Durango, with rail service or substituted-motor-carrier-for-rail service

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beyond) and shall contain the same provision for the performance by Rio Grande of all loading and unloading services at Alamosa without an added charge, as that contained in Rio Grande's present rail tariffs applicable to traffic moving through Alamosa to and from points on Rio Grande's narrow gauge line of railroad.

We also conclude that the abandonment here proposed should be further conditioned on an arrangement being made by Rio Grande, either in conjunction with Motor Way or with other authorized motor carriers, which will insure that shippers having shipments moving in through service between points on the lines to be abandoned, on the one hand, and Alamosa and points beyond, via Rio Grande and its connections, on the other, are provided an adequate substitute for the through service, at rates on the same basis as the through rail rates, which Rio Grande presently provides on such traffic.

Notwithstanding the availability of motor carrier service for the movement of traffic to or from Rio Grande's standard gauge line at Alamosa, shippers located on the issue lines have, for a number of years, relied on Rio Grande for a through service, at through rates, on shipments originating at or destined to points beyond Alamosa. The availability of the through service has enabled such shippers to maintain their competitive position with other producers located in other western areas who ship to the same destinations.

To deprive these shippers of a through service, as Rio Grande's plan contemplates, would result in these shippers being at a competitive disadvantage in respect of their competitors—those located in other areas as well as those located in the immediate area at points where the aforementioned joint motor-rail rates must apply if Motor Way is to continue to handle the Cortez-Durango traffic.

We have heretofore discussed the manner in which Rio Grande proposes to handle the through shipments between points on the issue lines and Alamosa, and have indicated the basic changes which would be made in assessing rates and charges applicable to such traffic. To place this plan in operation would result in increasing transportation costs to shippers on the issue lines very substantially—in some instances by as much as 43 percent.

The adverse effect upon shippers which would flow from increasing transportation costs is fully demonstrated in the record. Added to the competitive impact which the increase in transportation costs would have upon the shippers involved would be the economic effect upon the communities, as a whole, which would

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flow from the shippers' inability to remain competitive. The very nature of the economy of the area is such that its continued economic viability is dependent, to a considerable degree, upon the ability of shippers to remain competitive. The effectuation of Rio Grande's plan would at least make it most difficult for affected shippers to remain competitive.

An indication that Rio Grande recognizes the need and justification for the continuation of a substitute for the through service which it proposes to terminate is the fact that it had been negotiating, prior to the hearing, with certain shippers for the establishment of certain combination motor-rail rates to apply on a particular commodity. Additionally, there was an expression by one of its representatives at the hearing of a willingness on the part of Rio Grande to negotiate with all affected shippers for the establishing of appropriate coordinated rates which would apply on their particular traffic moving in combination service through Alamosa.

While indicating a willingness to provide shippers located on the issue lines with some type of through service as a substitute for that presently provided, it is Rio Grande's position that the rates and charges presently applicable to the through service do not provide revenues to cover the cost involved; and that it should be permitted, through the abandonment proposed, to avoid the operating losses which, it says, are presently being incurred in providing the service in question.

While it well may be that an increase in the through rates applying on the traffic in question might be warranted, this record provides no proper basis for reaching any conclusion in respect to such matter. There is no indication in this record that any attempt has been made by Rio Grande, through an appropriate rate proceeding, to increase the rates in question or to modify the tariff provision whereby the rates charged now include all loading and unloading services performed at Alamosa. Instead, the through service has been performed at existing rates without change and now Rio Grande is attempting, indirectly, through the instant proceeding, to bring about a change in the rates and services that would apply to the through movements in question. This is not the type of proceeding for resolving that issue.

The circumstances here involved fully warrant the conclusion that no abandonment of the issue lines should be authorized unless and until appropriate joint motor-rail rates applying on the described through movements to or from points on the issue lines are

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established to assure a substitute for the through-rail service presently provided by Rio Grande.

Also, inasmuch as no change in the service accorded shippers on the issue lines will occur after the abandonment, and this record provides no proper basis for determining the appropriate rate levels that should apply on the shipments in question, we conclude that, in the absence of an appropriate order authorizing a different level of rates and charges, the joint motor-rail rates established pursuant to our finding herein shall be no higher than existing rail rates applicable to the same traffic moving between the same points, and which shall include the same provision for the furnishing of loading and unloading services at Alamosa without additional charge as that contained in current rail tariffs applicable to traffic moving throughout Alamosa to or from points on Rio Grande's narrow gauge lines.

As previously noted, the instant proposal does not include the abandonment of the Silverton Branch or the abandonment by Rio Grande of any of its operations over that branch. Although the only rail connection with that branch would be severed if the narrow gauge lines here in issue are abandoned, the record shows that Rio Grande does handle some freight traffic which moves between points on the Silverton Branch, on the one hand, and, Alamosa and points beyond, on the other.

The record also shows that such shipments have moved under through rail rates, with rail service being provided beyond Durango on the Silverton branch segment of the movement, with substituted-motor-carrier-for-rail service being provided between Durango and Alamosa, and standard gauge rail service beyond.

In the absence of any authorization for the abandonment of operations over the Silverton Branch, Rio Grande will continue to be obligated to provide shippers on this branch with the same through service as that presently provided, notwithstanding the fact that the abandonment of the issue lines would sever the existing rail connection between the Silverton Branch and Alamosa. After the abandonment, the existing through rail rates on shipments moving from or to points on the Silverton Branch would continue to be applicable, but the physical handling of the movement between Durango and Alamosa would be by motor carrier performed as substituted-motor-carrier-for-rail service.

In the circumstances, the abandonment authorized herein will also be conditioned on Rio Grande continuing, in the absence of

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any abandonment of the Silverton Branch or the abandonment of operations thereover, to provide a through service, at published through rail rates, applicable to shipments moving between points on the Silverton Branch, on the one hand, and Alamosa and points beyond, on the other, which, unless otherwise authorized by this Commission, (1) shall be on a basis no higher than that of the existing rail rates applicable on the same traffic moving between the same points; and (2) shall contain the same provision for the performance of loading and unloading services at Alamosa without additional charge as that contained in current rail tariffs applicable to traffic moving through Alamosa to or from points on Rio Grande's narrow gauge line of railroad. Further, that the necessary tariff publications establishing such rates and charges shall contain the necessary references indicating that the movements between Durango and Alamosa will be performed over the highway in substituted-motor-carrier-for-rail service.

As stated in the recommended report, applicant stipulated that, in the event of abandonment, it would consent to the imposition of the same conditions as those contained in *Chicago, B. & Q. R. Co. Abandonment, supra*, for the protection of any employees adversely affected by such abandonment. This stipulation was accepted by the General Chairmen's Association and there was no objection thereto by any other parties in interest. In our view, affected employees would be adequately protected by such conditions. Accordingly, they will be imposed as a condition to the abandonment herein authorized.

FINDINGS

Subject to the prescription of the same conditions for the protection of all railway employees of applicant who may be adversely affected by the proposed abandonment as were prescribed in *Chicago, B. & Q. R. Co. Abandonment, supra*, and subject also to the conditions prescribed below, we find in F. D. No. 24745 that the present and future public convenience and necessity permit abandonment by the Denver and Rio Grande Western Railroad Company of the following portions of its line of railroad: (1) from I.C.C. Engineer's Station 1470 + 31 (Milepost 280.85) at Antonito, Conejos County, Colo., to Engineer's Station 3581 + 64 (Milepost 450.75) near Durango, La Plata County, Colo.; (2) from Engineer's station 3496 + 60 (Milepost 449.13) at Carbon Junction, La Plata County, Colo., to the end of track at Farmington, San Juan County,

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N. Mex., Engineer's Station 1556 + 86 (Milepost 496.76); and (3) the Center Rail between Alamosa and Antonito, Colo.

(1) Rates and charges, and rules, regulations, and practices affecting such rates and charges, applicable on all traffic handled in through service (combination motor carrier and rail), between points on the lines to be abandoned, on the one hand, and, on the other, Alamosa, Colo., and points beyond, routed via Rio Grande and its connections, shall be established, which unless otherwise authorized by this Commission pursuant to an appropriate petition therefor, shall be on a basis no higher than the present rail rates applicable to the same traffic moving between the same points, and which shall contain the same provision for the performance of loading and unloading service at Alamosa without added charge as that contained in current rail tariffs applicable to traffic moving through Alamosa to or from points on Rio Grande's narrow gauge line of railroad. (2) Applicant shall cause its wholly owned subsidiary, Rio Grande Motor Way, to obtain appropriate Commission authority for a modification of its motor carrier certificates relating to operations between Cortez and Durango, Colo., and intermediate and off-route points, which will specifically substitute Alamosa, Colo., in lieu of Durango, Colo., as the point where shipments moved over the Cortez-Durango route by Rio Grande Motor Way will be interchanged with applicant.

(3) Applicant and its wholly owned motor carrier subsidiary, Rio Grande Motor Way, shall establish rates and charges, and rules, regulations, and practices affecting such rates and charges, applicable on all traffic handled in through service between points on Rio Grande Motor Way's authorized route between Cortez and Durango, Colo., including authorized off-route points, on the one hand, and, on the other, Alamosa and points beyond, routed via Rio Grande and its connections, which, unless otherwise authorized by this Commission pursuant to an appropriate petition therefor, shall be on a basis no higher than the rates presently applicable on through movements of the same traffic handled in combination motor and rail service (motor carrier between points on the Cortez-Durango route and Durango, with rail service or substitute-motor-carrier-for-rail service beyond), and which shall contain the same provision for the performance of all loading and unloading services at Alamosa without added charge as that contained in current rail tariffs applicable to traffic moving through Alamosa to or from points on applicant's narrow gauge line of railroad.

(4) Rates and charges, and rules, regulations, and practices in connection therewith, applicable on all traffic handled in through service (combination rail-motor carrier-rail), between points on the Silverton Branch, on the one hand, and Alamosa and points beyond, on the other, shall be established, which, unless otherwise authorized by this Commission pursuant to an appropriate petition therefor, (1) shall be on a basis no higher than the present rail rates applicable to the same traffic moving between the same points; (2) shall contain the same provision for the performance of loading and unloading services at Alamosa without additional charge, as that contained in current rail tariffs applicable to traffic moving through Alamosa to or from points on the Silverton Branch; and (3) shall contain the specific provision that such traffic will be transported between Durango and Alamosa over the highway in substituted-motor-carrier-for-rail service.

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Issuance of a Certificate and Order in F. D. No. 24745 will be deferred until there is full compliance with the above-described conditions.

We further find in docket No. 34843 that the complaint should be dismissed. An appropriate order will be entered.

COMMISSIONER HARDIN, concurring in part:

I agree with the ultimate conclusion that public convenience and necessity do not require the maintenance of the narrow gauge railroad in issue, if the abandonment is properly conditioned. However, I do not agree with the treatment accorded the embraced complaint proceeding.

The complaint in docket No. 34843 seeks a Commission order "commanding said railroad (Rio Grande) to provide and furnish transportation upon reasonable request therefor and to furnish reasonable facilities for such transportation between origin and destination points between Farmington, New Mexico, and Alamosa, Colorado." By carrier's own admission the line of railroad in issue, approximately 250 miles of track, has been subject to minimum maintenance over the last 10 years, and while the track is now safe for summer operation, "it isn't going to stay that way unless we spend some money on it." In order to assure continued safe operations, carrier estimates it will have to invest millions in refurbishing, rebuilding, or replacement of cars, locomotives and right-of-way, or, in the alternative, allow the quality and *safety* of the service to seriously deteriorate. Considering the nature of the territory traversed by the line in issue, so mountainous as to make a standard gauge railroad impractical, it was not necessary, in my view, for complainants to await the serious deterioration of quality and *safety* before filing the complaint. While carrier's deferred maintenance in this instance does not constitute a downgrading which would warrant denial of the application to abandon, I am of the opinion that pending final approval of the abandonment, dependent on the Rio Grande seeking and obtaining additional administrative authority, **the Rio Grande must immediately commence a revitalization of operations, with particular emphasis on safety, over the line in issue.**

While jurisdiction over railroad safety is lodged with the Department of Transportation, special attention must be invited to the safety factors disclosed on this record. I would admonish the Rio Grande to commence its long-delayed maintenance programs unless its motor carrier subsidiary takes steps to commence

operations at once, thus facilitating abandonment without giving rise to hazardous conditions in its rail service. Safety should not await the necessary delay that may occur in the event the Rio Grande elects to meet the conditions prescribed by the majority. Some of these conditions may involve the taking of testimony at oral hearing.

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