

Served AUGUST 16, 1968

AUG 30 1968

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and served on all parties in interest within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of such exceptions. At the expiration of said period for the filing of exceptions, the recommended order will become the order of the Commission and will become effective unless exceptions have been seasonably filed or the order has been stayed or postponed by the Commission. If exceptions are filed, replies to exceptions may be filed within 20 days after the final date for filing of exceptions. It should not be assumed that the recommended order has become effective as the order of the Commission until a notice or order to that effect has been served.

Finance Docket No. 24745¹

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

Decided

1. 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 Alamosa and Antonito, Colo. Conditions prescribed and certificate issued in F. D. 24745.
2. The Denver and Rio Grande Western Railroad Company found not shown to have failed to provide transportation or reasonable facilities therefor. Complaint in No. 34843 dismissed.

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

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, CERTIFICATE AND ORDER

RECOMMENDED BY ROBERT N. BURCHMORE, HEARING 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 and a connecting narrow gauge line of railroad in southern Colorado and northern New Mexico. On September 18, 1967, it filed in the title proceeding an application under section 1(18) of the act (49 U.S.C. Sec. 1(18)) seeking a certificate of public convenience and necessity permitting the abandonment of that portion of its narrow gauge lines extending between Alamosa, Colo., and Farmington, N. Mex. The abandonment application was anticipated by the chambers of commerce of Farmington and of Durango, Colo.; together with other unnamed interests they formed a corporation named Colorado-New Mexico Better Transportation Association on whose behalf a complaint was filed in No. 34843 on April 27, 1967. The complaint charges the Rio Grande with downgrading the lines sought to be abandoned and with failure to provide reasonable facilities for transportation in violation of section 1(4) of the act. There were numerous protests to the application; the Rio Grande answered the complaint and denied the allegations thereof. The proceedings were referred to the hearing examiner for hearing and for the recommendation of an appropriate order accompanied by the reasons therefor.

Hearing was held at Farmington, Durango and Alamosa on April 29 to May 3, 1968. 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 (SCC), The Public Utilities Commission of the State of Colorado, the county boards of La Plata, San Juan and Archuleta Counties, Colo., the Brotherhood of Railroad Trainmen, the Brotherhood

of Locomotive Firemen and Enginemen and the General Chairman of the Association of Employees of the Rio Grande. Briefs were received from counsel for the Rio Grande, the SCC, and the named county boards.²

The Rio Grande narrow gauge lines, once quite extensive, now 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, Colo. The lines do not connect with any railroad other than the Rio Grande standard gauge at Alamosa-Antonito. The proposal of the Rio Grande is to abandon all of said lines except the Silverton branch, which lies wholly within the State of Colorado and which would thereafter have no connection with any railroad. The rail distance from Antonito to Durango is 173.71 miles; from Carbon Junction to Farmington it is 47.63 miles; the center rail distance between Alamosa and Antonito is 29.16 miles; and the Silverton branch embraces 45.6 miles. The lines proposed to be abandoned (the issue lines) therefore total 221.34 miles plus 29.16 miles of center rail.

The narrow gauge lines to Durango and Silverton were constructed in 1880; the Farmington branch was constructed as a standard gauge line in 1905 and converted to narrow gauge in 1923. The track structure is 65-pound and 75-pound rail on the Farmington branch, and 70-pound and 85-pound rail between Durango and Antonito, with 3,000 cross ties per mile. The line between Antonito and Durango traverses mountainous terrain with numerous sharp curves and a maximum grade

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Rio Grande moved to strike the brief of SCC on the ground that it is "garish" and "gaudy", unfairly relies on erroneous transcriptions of the reporter's notes and is unprofessional and inflammatory. The brief is printed on colored paper, with each part in a different color; the cover is printed as an overlay on a photograph of narrow gauge steam locomotives. The sections of the abstract bear such headings as "THE PUBLIC BE DAMNED" and are decorated with schematic railroad tracks. No violation of the rules of this Commission has been shown and the brief is not scurrilous or contrary to good order. The motion is overruled.

A two-page document captioned "Further Supplemental Particulars" and served as a "Brief and Argument of Protestants and Complainants" was received by the Commission from James D. Childress after the expiration of the time allowed for the filing of briefs. Applicant moved to strike the document and the motion is granted.

of 4 percent; the elevation at Cumbres Pass between Antonito and Chama, N. Mex., is 10,015 feet. Applicant considers the issue lines to be in fair condition for the amount of traffic now operating over them. However, applicant has since 1964 deferred some maintenance and it now estimates that expenditures in excess of \$1½ million will be needed to put the issue lines in good condition for continued operation if abandonment is not permitted. Net salvage value is estimated at \$1,393,260.

Antonito and stations north thereof are and will continue to be served by the standard gauge railroad. West of Antonito there are four agency stations on the issue lines: Chama (milepost 344.1, pop. 1,000); Durango (milepost 451.5, pop. 10,530); Aztec (milepost 481.8, pop. 4,137); and Farmington (milepost 496.2, pop. 23,786). Total population of all stations on the issue lines west of Antonito is 41,562; the approximate total population of the five counties traversed by said lines is 117,781.

All passenger service on the issue lines was discontinued in 1951 with approval of the Public Utilities Commission of the State of Colorado;³ thereafter a few sightseers' excursion trains were operated in 1964, 1965 and 1966, but none in 1967. In this connection, it should be noted that passenger service has continued on the Silverton branch for tourists and sightseers desiring to "ride on a vintage narrow gage 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. In that proceeding in 1962 this Commission found that there was a substantial need for such passenger service on the Silverton branch, that the branch was being operated profitably and that its abandonment was not warranted. 312 I.C.C. 796.

Freight service on the issue lines was provided daily as required until 1957, except that after 1951 the winter service was on a tri-weekly basis, weather permitting. In 1957 the issue lines were closed one month on account of weather and service was thereafter progressively reduced to tri-weekly, semi-weekly, weekly, and by 1959 it was rendered only as required, weather permitting. The lines were closed approximately from December to May in 1965, 1966 and 1967. As a supplement

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No approval by this Commission was required by law; a contrary assertion is made in the Colorado brief but is without foundation.

to such rail operations, the substitution by the Rio Grande of motor carrier for rail service has been authorized by its published tariffs on file with this Commission for a number of years. Pursuant thereto, Rio Grande has provided substitute motor service at rail rates on much of the traffic tendered to it. From 1964 to 1967, Rio Grande's payments to motor carriers for such substitute service more than doubled until 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. (Motorway), a wholly owned subsidiary of Rio Grande. At the same time, the record shows that the total number of loaded narrow gauge cars moved over the issue lines in 1965 was 1,806; in 1966 it was 1,194 and in 1967 it was 759.

Freight traffic on the narrow gauge lines (whether handled in rail cars or highway trailers) has consisted in the main of lumber and forest products, livestock, building materials, pipe, clay and miscellaneous manufactures. In recent years there has been no local traffic between narrow gauge stations; the following table summarizes data introduced by the Rio Grande and shows tons handled together with the revenues accruing to applicant for the movement over its entire system (narrow and standard gauge):

FREIGHT TRAFFIC TO AND FROM NARROW GAUGE STATIONS⁴

Year	-Silverton Tons	Branch- Revenue	-All Cars	Narrow Gauge Tons	Lines- Revenue
1964	26	\$725	2261	65,529	\$646,327
1965	1	171	1572	52,763	614,716
1966	25	409	1415	46,687	541,043
1967	28	427	1341	43,115	442,725

The financial result of operating the issue lines since 1963 is shown by applicant's evidence to have been a deficit in each year of more than \$500,000. The annual deficit was reduced during the four year period,

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The table includes both carload and less carload traffic; it also includes traffic handled in substitute motor service, but the record does not show how much was so handled. Carloads are expressed in terms of standard gauge cars except that they include 2 narrow gauge cars in 1967, 5 in 1965 and 575 in 1964.

but during the same period applicant reduced its expenditures for maintenance by more than twice the decrease in deficit. The annual expenses shown include less than \$70,000 charged to depreciation. The Rio Grande figures are summarized as follows:

DEFICITS INCURRED ON NARROW GAUGE LINES TO BE ABANDONED

Year	Narrow Gauge Portion of Revenues		Issue Lines Expenses	Net Deficit	Net Deficit to System from Issue Lines
	Passenger	Total			
1964	\$11,816	\$365,465	\$1,026,396	\$660,931	\$513,924
1965	19,179	350,557	1,056,476	705,919	563,182
1966	18,416	298,505	941,902	643,397	512,497
1967	NIL	243,001	829,351	586,350	486,040

NOTE: Total system freight revenues were pro-rated to narrow gauge on revenue ton-mile basis, minimum 25 percent (Silverton branch is included as to revenues but not expenses). Balance of revenues, less 50 percent for expenses, were added to net deficit to arrive at net deficit to System.

Paved, all-weather highways parallel the narrow gauge 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 highway east of Chama through Cumbres Pass, on which improvement work is in progress. In addition, a major east-west highway extends between Alamosa and Durango, a distance of 150 miles as compared with narrow gauge rail distance of over 200 miles.

Motorway 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. It serves every community on the issue lines except the villages of Oxford, Allison and Falfa. It connects with motor carriers and railroads at Salt Lake City, Utah, Denver, Pueblo, Alamosa and Durango, Colo., and at Farmington, which latter point is also served by Illinois-California Express, Garrett Freightlines and Whitfield Transportation Company. Motorway maintains terminals at Alamosa, Durango and Farmington; it operates 109 tractors and 300 trailers, including vans, flat beds, lowboys and refrigerated trailers; it is willing to acquire such additional equipment as may be needed for future traffic.

Public witnesses from a number of organizations were presented in opposition to the abandonment. Official statements were made by the Mayor and City Manager of Farmington and the chairman of the Board of Commissioners of San Juan County. Testimony was also received from the Executive Director of the Four Corners Regional Commission, Supervisor of the San Juan National Forest, a member of the Tribal Council of the Southern Ute Tribe, Treasurer of the Railroad Club of New Mexico and representatives of the chambers of commerce of Farmington, Durango and Alamosa. There were also 25 witnesses from 23 shipping interests, of which 7 were from Farmington, 11 from Durango, 1 from Chama, 4 from Silverton and 1 each from Cortez and Mancos; the last two points are not on the narrow gauge.

Evidence of possible present and future need for passenger service is found in this record only in connection with the sightseer excursions that were run for a few years. The testimony shows public disappointment and disapproval of the applicant's having discontinued those trains in 1967, and that the business communities thereby lost substantially profitable side benefits of tourism. A State Representative from Farmington introduced a New Mexico joint memorial requesting the legislature of the State of Colorado to join in a study of the possibility of joint operation of the narrow gauge as a tourist attraction and winter sports facility. The Silverton branch has been operated profitably on revenues from similar business, which suggests the possibility of a like success here. However, the annual revenues from such past operations on the issue lines were less than \$20,000, something under 5 percent of the claimed deficit. The length of the issue lines and the competition of the Silverton branch are relevant factors. Otherwise, the evidence is wholly conjectural and insufficient to sustain a finding that future patronage would reasonably be expected to exceed or even to sustain the level of receipts experienced in the past. Under these circumstances, it is clear that the public need for passenger service is not shown in this proceeding to require the continued operation of the issue lines or to overcome or justify the financial burden which such operation appears to place on other traffic.

The passenger excursion business has in the past sustained and appears to continue to sustain the Silverton branch, and the evidence shows a strong public desire and need for the benefits of tourism which flow therefrom. Abandonment of that branch is not proposed, but the abandonment of the issue lines would sever its only rail connection. Applicant intends therefore upon such abandonment to improve or enlarge the Durango roundhouse and move thereto all machinery necessary to maintain the motive power for the Silverton branch.