

The certificate to be granted herein should be subject to a condition that applicant so equip the Silverton branch as to permit adequate future maintenance of way and equipment, and that the effects of severing the rail connections of the branch shall not be considered as grounds for abandonment of the branch in the future. Further, it may be that the proposed abandonment will result in a change in legal status of the Silverton branch such as to divest this Commission of its jurisdiction thereover. In this connection the examiner takes official notice of the law of the State of Colorado requiring approval by the State authorities for any subsequent proposal to abandon the Silverton branch. It can reasonably be presumed that the future public interest in the branch will thus be appropriately and sufficiently protected.

The evidence of present public need for narrow gauge rail freight service consists primarily of testimony that freight rates and other shipping charges incurred for common motor carrier service will be greater than those presently applicable for rail service (which are equally applicable for substitute motor service). In this connection, protestants urge reconsideration of a ruling of the examiner rejecting as irrelevant certain exhibits purporting to show the effect of the proposed abandonment to bring about increased rates and charges. Upon review of the Commission's past treatment of the subject of rates in public convenience and necessity cases, motor and rail, it is clear that rate evidence is relevant and admissible. Exhibits H-34, H-35, H-36 and H-37 are therefore hereby received in evidence. See Southern Pac. Co. Abandonment, 317 I.C.C. 489, 497; Chemical Leaman Tank Lines, Inc., Ext. - Newburgh, N. Y., 99 M.C.C. 6, 9.

An illustrative example of the evidence on the economics of rail transportation is afforded by an exhibit showing a shipment of 73,060 pounds of plywood to Chicago by a shipper located 8 miles north of Cortez, Colo., a point not served by the railroad, but which is served by Motorway as a common motor carrier. The evidence indicates that present charges incurred for rail delivery of such shipment at Chicago are comprised of \$113.40 in charges by the motor common carrier for the movement from origin to Durango plus \$642.93 rail charges, total \$756.33. The physical movement was in trucks of Motorway from the plant site to Alamosa, where the lading was transferred to standard gauge rail cars for the movement beyond; in effect the truck movement constituted motor common carrier service as far as Durango and constituted substitute motor for rail common carrier service from Durango to Alamosa; the transfer at Alamosa was performed at railroad expense in lieu of the transfer from narrow gauge to standard

gauge equipment which would otherwise be performed.⁵ Abandonment of the railroad would not change the physical handling, but the highway movement would thereafter constitute motor common carrier service all the way to Alamosa, for which the present charges would be \$328.77, the rail charges beyond would be at the Alamosa rate and would at present rates amount to \$621.01, and the transfer of lading at Alamosa would entail a loading charge of \$70, total \$1,019.78. The shipper needs the lower basis of charges, and numerous other shippers offered similar testimony based on comparison of rail and motor rates. There is also testimony that shippers need the longer free time allowed for unloading rail cars as compared with prompt unloading required of highway trailers; such a comparison is ultimately a matter of money charges also.

In addition to the rate matter, there was testimony by certain livestock shippers that animals better tolerate transportation in rail cars than in trucks. Otherwise, the evidence is convincing that the substitute motor service accommodates present traffic as well or better than the narrow gauge railroad. Numerous shippers have requested substitute service. Few shippers objected to substitute motor service and some shipper witnesses stated that they now request rail movement only for the purpose of preserving the narrow gauge; others testified that substitute service was generally satisfactory, or that satisfactory motor service was available to them.

The area served by the issue lines is rich in natural resources including minerals, forest products, livestock and agriculture. Economic studies and testimony were introduced from which it may reasonably be concluded that the freight traffic potential of the area is great and might increase. Much of the future traffic, like much of the present traffic, will require long haul rail transportation. However, there is relatively little evidence that such traffic will be more adequately transported by narrow gauge railroad than by highway motor vehicles to and from the standard gauge railheads where transfer of lading into standard gauge equipment is required in either case. The Mayor and City Manager of Farmington indicated that the real desire and efforts of that community were directed towards the building of a standard gauge railroad.

The evidence contains photographs which show that the narrow gauge freight cars are rundown in appearance, some worse than others. The steam locomotives are fully depreciated for accounting purposes. Testimony was introduced as to instances in which loss or damage to livestock and other lading resulted from equipment defects;

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Present rates are the same whether the railroad provides rail or substitute motor service between Durango and Alamosa.

there was no evidence concerning the handling of resulting claims, if any, and no evidence was offered comparing the frequency of such incidents with experience on other railroads or in connection with highway transportation. A snowshed had not been maintained since winter narrow gauge operations were curtailed. Livestock loading ramps have been removed. A sidetrack in Durango was covered up to establish a new Motorway depot; the evidence shows the sidetrack had not been used for movement of rail cars in recent years and the expressed physical transportation needs of the concerned shipper are equally served by truck delivery to the door opening on the sidetrack.

Examination of all the evidence compels the conclusion that public patronage of the issue lines as a narrow gauge railroad has diminished and will continue to diminish. Freight revenues from the entire narrow gauge system have resulted in annual deficits for the issue lines in excess of a half million dollars, notwithstanding reduced expenditures for maintenance.⁶ The deficits constitute a burden upon the applicant and upon the interstate commerce in which it participates, and the burden warrants abandonment of the issue lines unless that burden is outweighed by public need for narrow gauge railroad service. A finding that such public need exists would clearly 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.

The position and interest of the public has been thoroughly presented and argued with outstanding skill and force in the brief of the State Corporation Commission of New Mexico and in the brief of the county boards of La Plata County, Archuleta County and San Juan County, Colo. They argue that applicant has failed in its duty and has downgraded the railroad, that there is a need for the railroad and that the application should be denied and an order entered requiring applicant to provide adequate service.

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Freight traffic on the Silverton branch, which still produced annual revenues of \$5,499 in 1959 when abandonment of that branch was being considered (312 I.C.C. 794) produced less than \$800 of revenue in each of the four years preceding this hearing.

The record clearly establishes that applicant did reduce railroad maintenance, that the railroad way and equipment deteriorated, that the operations of trains was curtailed. It also establishes that at the same time substitute motor service was provided with modern and well maintained highway equipment. The record does not contain convincing evidence that the transportation service thus actually provided was substantially inadequate, that it seriously inconvenienced or caused damage to shippers generally or 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. The failure to make such a showing is foreshadowed in an excerpt from the NEW MEXICO RAILROADER which was put in the record and which pertains to a meeting of the Railroad Club of New Mexico held one month before the hearing:

The state Corporation Commission has been looking for people that would be willing to testify at the ICC hearings, and has found very few people (no people at all from Farmington?) willing to get up and say on such-and-such a date they wanted service from the railroad and couldn't get it.

The substitution of motor for rail service was done pursuant to tariff and was not illegal. The contemporaneous curtailment of rail operations was a matter for the exercise of managerial discretion, did not require the prior approval of this Commission and did not constitute an abandonment; it was unlawful only if it was in fact unreasonable or resulted in inadequate service, and the evidence does not establish that it did.

The affected area is rich in resources and growing; it needs and will continue to need adequate transportation. However, there is available competent year round motor carrier service throughout the territory, and it affords more physical connections and transfers to standard gauge railroads than are afforded by the narrow gauge. There is evidence to the effect that the needs and convenience of some shippers may be less satisfactorily served by motor than by rail narrow gauge; careful and sympathetic consideration of that evidence compels the conclusion that it is overwhelmingly outweighed by the financial burden which would attach to the continued operation of the issue lines.

The accumulated testimony that shippers need present rate levels and that the proposed abandonment will result in the application of higher motor common carrier rates remains for consideration. This testimony warrants the conclusion that the public needs the present railroad rates, but not that it needs the railroad.

This is so because there is no evidence in this record as to the ratemaking circumstances attending the rates compared, either rail or motor, and the rates shown are subject to change even if the abandonment were not allowed; preserving the narrow gauge will not necessarily preserve the rates. The evidence shows that present revenues are insufficient to cover the total expenses of the issue lines and such a showing suggests that the rates which produce the revenues may be below cost and less than reasonable. If applicant were required to continue to operate the narrow gauge, it would have a right to assess rates sufficient to cover its expenses and provide a fair return. So far as this record shows, such rates might exceed the present motor common carrier rates. Moreover, the motor carrier rates are subject to reduction, either by voluntary adjustment after negotiation with shippers or by order of this Commission if they are shown to be unreasonably high or otherwise unlawful. Therefore, the fact that the use of the available motor carrier service currently entails the payment of rates and charges higher than those presently in effect for rail and substitute motor service, does not, standing alone, afford a basis for finding that the public needs the railroad.

In the opinion of the examiner, this record establishes an unusually clear case for prompt approval of the proposed abandonment. The narrow gauge railroad at issue is an obsolete and misfit facility which is wholly inadequate to the real needs of an important and lively area in the States of Colorado and New Mexico. Under present conditions and for the foreseeable future, those needs are and will be more adequately met by available motor carriers and their rail and motor connections; narrow gauge rail service adds little, if anything, and only at disproportionately great cost. The decision thus reached in this proceeding is harmonious with progressive aims to obtain modern, standard gauge railroad service at Farmington. It is also consistent with several efforts that are referred to in this record to have a scenic portion of the narrow gauge preserved by public or private action as a tourist attraction. In this connection the Farmington State Representative stated, "We, all over the United States, are establishing monuments and parks just to preserve fossils and historic things and places. This is the last steam narrow gauge railroad in the United States and, as such, the State of New Mexico and the State of Colorado should make a study of any serious effort to preserve this railroad in its setting in the most beautiful mountains of America." The laudable purpose so expressed is clearly one for community concern.

Applicant estimates that the proposed abandonment would have the effect of abolishing the positions of one machinist, one pipefitter, one machinist helper, one boilermaker helper and seven laborers, for an estimated monthly savings of \$6,873.73. The individuals involved would remain on the seniority roster and be subject to re-employment as jobs opened up in their craft. Applicant stipulated at the hearing that in the event of abandonment it would consent to the imposition of the Burlington conditions, Chicago, B. & Q. R. Co., 257 I.C.C. 700. The stipulation was accepted by the General Chairmen's Association and there was no objection thereto by any other interests. Affected employees would be adequately protected thereby and the Burlington conditions will therefore be imposed.

ULTIMATE FINDINGS, CERTIFICATE AND ORDER

In Docket No. 34843, the examiner finds that the defendant has not been shown to have failed to provide transportation or reasonable facilities therefor and that the complaint should be dismissed.

In Finance Docket No. 24745, the examiner finds that, subject to the Burlington conditions hereinabove referred to for the protection of employees, and further subject to the conditions hereinabove described for the preservation of the Silverton branch, the present and future public convenience and necessity permit the 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, N. Mex., Engineer's Station 1556+86 (Milepost 496.76); and (3) the center rail between Alamosa and Antonito, Colo. The examiner further finds that the abandonment of said lines of railroad is subject to the jurisdiction of this Commission.

Premises considered, it is the CERTIFICATE AND ORDER of the examiner that:

Subject to the conditions referred to above, the present and future public convenience and necessity permit the abandonment by The Denver and Rio Grande Western Railroad Company of that portion of its narrow gauge line of railroad extending generally between Alamosa, Colo., and Farmington, N. Mex., as described more particularly in the report.

The tariffs applicable to the line herein permitted to be abandoned may be changed accordingly on or after the effective date hereof upon notice to the Commission and to the general public by not less than 10 day's filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act. When filing schedules changing tariffs applicable to the lines permitted to be abandoned, applicant shall, in such schedules, refer to this certificate and order by date and docket number.

If the authority herein granted is exercised, The Denver and Rio Grande Western Railroad Company shall submit for consideration and approval two copies of the journal entries showing the retirement from service of the portion of the railroad abandoned.

The authority granted herein shall not be exercised prior to the date of service of an order adopting this certificate and order as the certificate and order of the Commission, or a notice stating that it has become the certificate and order of the Commission.

If the authority granted herein is not exercised within one year from the effective date hereof, this certificate and order shall be of no further force and effect.

By the Commission, Robert N. Burchmore, Hearing Examiner.

Dated at Washington, D. C., this 30th day of July, 1968.

(SEAL)

H. NEIL GARSON,
Secretary.