

BEFORE THE INTERSTATE COMMERCE COMMISSION

In the Matter of the Application
of
DEEP CREEK RAILROAD COMPANY for a
Certificate of Public Convenience
and Necessity for the Abandonment
by Applicant of its Entire Line of
Railroad and the Operation thereof,
under Paragraphs (18) to (21),
inclusive, of Section 1 of the
Interstate Commerce Act.

Finance Docket

No. _____

A P P L I C A T I O N

TO THE HONORABLE, THE INTERSTATE COMMERCE COMMISSION:

(a) The exact corporate name of Applicant is DEEP CREEK RAILROAD COMPANY.

(b) Applicant is a corporation organized to construct and operate railroads and is a carrier by railroad subject to the Interstate Commerce Act.

(c) The line of railroad of Applicant runs from Wendover, Utah, in a southerly direction to Gold Hill, Utah, said line consisting of 45.66 miles of main track and 1.68 miles of spurs and sidings. Its sole interchange point is at Wendover, Utah, where it connects with the main line track of the Western Pacific Railroad. Said line is located almost wholly in the County of

Tooele, State of Utah, with approximately 0.563 miles extending into the County of Elko, State of Nevada.

(d) Applicant seeks the abandonment of its entire line and of the operation thereof.

(e) Briefly stated, the reasons why the abandonment herein sought should be authorized are as follows:

Deep Creek Railroad Company, a Utah corporation, was organized in 1916 and sold all of the capital stock authorized by its Articles of Incorporation, viz., 4500 shares of the par value of \$100.00 each, at par for cash, to The Western Pacific Railroad Company, thus raising \$450,000. The Company was organized for the purpose of constructing, and did construct, with the proceeds from the sale of its capital stock, a line of railroad from a connection with the Western Pacific Railroad at Wendover, Utah, to Gold Hill, Utah, a distance of approximately 46 miles, in anticipation of the development of a mining center at and near Gold Hill, Utah, which development depended upon the construction into said territory of a rail carrier. Over \$500,000 was spent in the construction and equipment of said railroad, which commenced operations in the spring of 1917. The operation of the Company's line of railroad resulted in a net loss in full operation for every year of its operations except 1923, 1924 and 1925. The mining properties at and near Gold

Hill, Utah, which fed the railroad were largely copper mines which were developed concurrently with the construction of this railroad. The history of the railroad is practically a history of these mines, inasmuch as ore constituted, until 1925, from 75% to 90% of the shipments originating on this railroad, and approximately 85% of business carried throughout the life of the railroad has originated on the line, and less than 15% of its business has been destined from other rails to points on the railroad.

In the year 1921 the largest mining properties near Gold Hill closed down entirely, and although they were subsequently operated to some extent, have never since operated at their former capacity. In 1923, a concentrating plant was located at Salt Springs on the railroad of Applicant, and ore was hauled from mines near Gold Hill to Salt Springs, and the refined product was shipped out from Salt Springs. The years during which the concentrating plant was operated at Salt Springs, viz., 1923, 1924 and 1925, were the only years for which Applicant showed a profit or net income. In the year 1925, the copper ore mined near Gold Hill developed a high arsenical content and became so low grade as copper ore that it was no longer profitable to extract the copper. Thereupon the arsenical ore was marketed, but

the arsenic market of the world is very limited, and sufficient arsenic is obtained as a by-product from the concentrating of ordinary, or good grade, copper to supply that market, and it is not profitable to market ore solely for its arsenical content. Practically all of the large mining properties at or near Gold Hill have ceased operations altogether, due to the above physical conditions, and there is no likelihood that there ever will be a substantial resumption of operations in the district, the probability being that no such resumption will be undertaken.

Shipments of livestock rank next to ore in tonnage, but such shipments have fallen off to practically nothing, due to the practice at the present time of driving animals over the mountains to transcontinental rails instead of shipping them over the Deep Creek Railroad. 98% of livestock shipped consists of shipments of sheep. The number of sheep raisers has greatly decreased in the past nine years. The only shipments of sheep over the railroad occur when feed in the area is poor and the animals are too weak to drive over the mountains.

For the year 1918, the first full year of the railroad's operations, 736 cars originated on the railroad. For the years 1923, 1924 and 1925, the only years when

the railroad was operated at a net profit, 480 cars, 971 cars and 428 cars, respectively, originated on the railroad. In the year 1938, 73 carloads of freight originated on the railroad and 25 carloads terminated on the railroad. For the year 1924, the year in which the largest net income was derived, such net income amounted to only \$18,039.20. In the year 1918, 179 cars from other rails were destined for points on the Deep Creek Railroad. For the years 1936, 1937 and 1938, but 15, 24 and 25 cars, respectively, were received by the Deep Creek Railroad. In other words, the territory now served by the Deep Creek Railroad is at a standstill so far as shipments originating from or destined to it are concerned.

Applicant is a wholly owned subsidiary of The Western Pacific Railroad Company, an interstate railroad corporation. When Applicant's railroad operations have resulted in deficits, advances on open book account have been obtained from said parent company. The earnings of said parent company on traffic delivered to and received from Deep Creek Railroad more than offset the annual deficits of Deep Creek Railroad until two years ago, when the parent company's earnings on traffic interchanged with Applicant for the first time were less than Applicant's deficit in operating income.

The taxes borne by Applicant in the State of Utah are based on the value of the property, not on income, and there is a state corporation franchise tax, and recently an additional public utilities corporation tax. For the years 1920, 1921 and 1922 Applicant paid more than \$6,000 per annum in taxes. For the years 1923, 1924 and 1925 it paid over \$5,000 per annum in taxes. For the year 1926, with total operating revenues of \$18,097 and a net income deficit of \$12,782 Applicant paid taxes amounting to \$5,832. For the years 1927, 1928 and 1929, taxes over \$5,000 per year were paid with deficits of \$9,875.26, \$9,232.30 and \$11,400.82, respectively.

In 1930 Applicant applied for a reduction in the assessed valuation of its properties as a condition to repairing its roadbed (injured by a cloud-burst) and resuming interrupted railroad operations. The assessed valuation of Applicant's properties was thereupon reduced to the then scrap value thereof, viz., \$48,045. The taxes for 1930 were \$1,337 as compared with \$5,436 in 1929. Thereafter the assessed valuation remained substantially unchanged until 1934, when it was again materially reduced and the taxes since have been less than \$700 a year. An advance in freight rates was also obtained in 1930 as a condition to repairing the roadbed and resuming operations. With the reduced taxes and

increase in revenue secured through the increase in freight rates, the Company's deficit in railway operating income remained low from 1931 until 1934. However, in 1934 and subsequently revenue dropped off materially and the deficit increased.

The books of the Company show an investment in road and equipment as of November 30, 1938, less depreciation on equipment, of \$501,261.92. No dividends have ever been paid to the Company's stockholders. The years 1935, 1936, 1937 and 1938 showed so marked a decrease in traffic as to warrant the assumption, in the light of the causes for such decrease, that conditions on the railroad will not improve and that further operation of the railroad will result in still greater loss.

(f) The name, title and post office address of counsel to whom correspondence in regard to this application is to be addressed are: L. N. Bradshaw, Attorney, Deep Creek Railroad Company, 878 Mills Building, San Francisco, California.

(g) Your Applicant was incorporated under the general laws of the State of Utah in 1916.

(h) The making, verifying and filing of this application was authorized by resolution of the stockholders of Applicant at a meeting held in the City of Salt Lake, County of Salt Lake, State of Utah, on the

24th day of October, 1938, a certified copy of which resolution is attached hereto, marked Exhibit "A".

All of the capital stock of Applicant, subject to directors' qualifying shares, is owned by The Western Pacific Railroad Company, of which Applicant is a subsidiary. Applicant has no bonded debt. It has a demand promissory note outstanding, payable to The Western Pacific Railroad Company, in the principal amount of \$45,000, dated October 1, 1921. It is indebted on open book account to The Western Pacific Railroad Company, as of November 30, 1938, in the amount of \$128,230.40. The Western Pacific Railroad Company is now the Debtor in a proceeding for reorganization under Section 77 of the Bankruptcy Act, pending in the United States District Court for the Northern District of California, Southern Division, and T. M. Schumacher and Sidney M. Ehrman are the Trustees of the properties of said Debtor and have succeeded to the interest of the Debtor in the securities of Applicant. The Reorganization Trustees of said Debtor, The Western Pacific Railroad Company, and said Debtor jointly petitioned said United States District Court for approval of the proposed abandonment by Applicant of its line of railroad and the operation thereof, and said Court on January 5, 1939, approved such abandonment and authorized said

Debtor and its Reorganization Trustees to cause this application to be filed.

(i) Applicant desires a hearing upon this application only in the event that the granting of the application is contested, or the Commission deems a hearing necessary or desirable.

(j) A map of the territory served by Applicant, showing the railroads, highway routes and important points therein, and the line it is proposed to abandon, and the principal stations thereon, is attached hereto, marked Exhibit "B".

WHEREFORE, Applicant respectfully requests that it be authorized to abandon the whole of its line of railroad and the operation thereof.

Dated this 19th day of January, 1939.

DEEP CREEK RAILROAD COMPANY,

By CHARLES ELSEY
President.

L. N. BRADSHAW
Attorney for Applicant.

EXHIBIT "A"

"WHEREAS, the operation of this Company's line of railroad commenced in May of 1917 and resulted in a deficit for the years 1918, 1919, 1920, 1921, 1922, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937 and that portion of 1938 for which figures are available; and

WHEREAS, the copper ore mined at and near Gold Hill which furnished a large part of this Company's traffic developed a high arsenic content and in the year 1925 the ore finally became so low grade as copper ore that it was no longer profitable to extract the copper; and that thereupon for a time the arsenical ore was marketed, but the limited arsenic market of the world reached saturation and there is now no market for ore producing arsenic only and practically all of the mines at and near Gold Hill have finally ceased operations altogether and there is no likelihood of there ever being a substantial resumption of operations in said Gold Hill mining district; and

WHEREAS, this Company in 1928 and again in 1930 contemplated abandonment of the operation of the road and each time deferred the institution of proceedings therefor in the hope that the mines would reopen, and operated thereafter with operating expenses reduced to a minimum, but business conditions on the Company's line of railroad have grown steadily less promising and there is no prospect of any increase of the business of the Company and it is manifest that said railroad can hereafter be operated only at a loss;

NOW, THEREFORE, BE IT RESOLVED, that it is the sense of the stockholders of this Company, representing 99+% of its outstanding capital stock, that this Company should abandon the whole of its line of railroad and the operation thereof, and to that end that application for authorization of such abandonment be presented to the proper governmental body or bodies, federal and/or state, and that the proper officers of this Company take all steps necessary or appropriate to effectuate such abandonment.

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RESOLVED, that an application be made, verified and filed by this Company with the Interstate Commerce Commission of the United States under the provisions of Paragraphs (18) to (21) inclusive of Section 1 of the Interstate Commerce Act for a certificate of public convenience and necessity authorizing the abandonment of the whole of this Company's line of railroad and the operation thereof, and

BE IT FURTHER RESOLVED, that Charles Elsey, President, or E. W. Mason, Vice-President, of this Company, be, and they are hereby severally designated as the executive officers of this Company to make, verify and file such application with the

Interstate Commerce Commission, and to make, verify and file any questionnaire required by the Interstate Commerce Commission in connection with such application, and they are hereby severally authorized, empowered and directed to make, verify and file such application with the Interstate Commerce Commission, and any such questionnaire, and to take any further action, step, or proceeding necessary or proper in the premises."

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I, C. L. DROIT, Secretary of Deep Creek Railroad Company, hereby certify that at a meeting of the stockholders of said Company, duly and regularly convened and held at the office of the Company in Salt Lake City, Utah, holders of more than a majority of the issued and outstanding capital stock of said Company, viz., holders of 99+% of such issued and outstanding capital stock, were at all times present in person or by proxy, and that the above and foregoing is a full, true and correct copy of resolutions adopted at said meeting by the unanimous vote of all stockholders represented at said meeting, and that the same have not been rescinded or amended and are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company this 19th day of January, 1939.

(SEAL)

C. L. DROIT

Secretary of
Deep Creek Railroad Company.