Ironton Branch

FINANCE DOCKET No. 5543

OPERATION OF LINE BY LOS ANGELES & SALT LAKE RAILROAD

Submitted March 12, 1927. Decided March 23, 1927

Certificate issued authorizing the Los Angeles & Salt Lake Railroad Company to operate an extension of its line of railroad in Utah County, Utah.

H. A. Scandrett, *George H. Smith*, and *J. M. Souby* for applicant.

Henry I. Moore, *Moultrie Hitt*, and *Clarence A. Miller* for Henry I. Moore and D. P. Abercrombie, receivers of Salt Lake & Utah Railroad Company, protestant.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND WOODLOCK

BY DIVISION 4:

The Los Angeles & Salt Lake Railroad Company, a carrier by railroad subject to the interstate commerce act, on May 22, 1926, filed an application under paragraph (18) of section 1 of the act for a certificate that the present and future public convenience and necessity require the operation by it of certain trackage extending from its yard tracks at Provo in a general southeasterly direction a distance of 1.87 miles to the plant of the Columbia Steel Corporation, in Utah County, Utah. Objection to the granting of the application was made by Henry I. Moore and D. P. Abercrombie, receivers of the Salt Lake & Utah Railroad Company, hereinafter sometimes called the Orem line. A hearing was held for us by the Public Utilities Commission of Utah, and the record was transmitted to us by that body without recommendation.

The Los Angeles & Salt Lake Railroad is a unit of the Union Pacific system, and the term applicant as used hereinafter may be considered as applying to either or both.

The territory between Salt Lake City and Payson, Utah, via Provo, referred to as the valley of the Jordan River and Utah Lake, is served by the applicant, the Orem line, which is an electric railway, and the Denver & Rio Grande Western Railroad, hereinafter called the Denver. Near Provo the Utah Railroad also operates over the Denver right of way. The termini of the Orem line are at Salt Lake City and Payson. The applicant states that its line

was the first to be constructed through the valley. Subsequently it was paralleled by the Denver, and still later the Orem line was constructed. The three lines operating through the valley cross and recross each other several times, and are so close together for the entire length of the Orem line that all three serve practically the same territory. In our report in *Restrictions in Routing over S. L. & U. R. R.*, 115 I. C. C. 357, we said:

> From Salt Lake City to Payson protestant's line parallels both the D. & R. G. and the eastern line of the Salt Lake Route, the maximum distance from any point on its line to the nearer of the two steam roads being about 2.5 miles. Between Salt Lake City and Payson there are 10 points on protestant's line spread out fairly evenly, not including Salt Lake City, which are also served by one or the other of the two steam roads, some few of its stations being served by both.

In 1923 the Columbia Steel Corporation constructed a blast furnace and coke oven near Provo, east of and close to the Orem line. At that point the line of the Denver parallels the Orem line a short distance to the west, and the applicant's line parallels both of the others still farther west. While the plant of the steel corporation was under construction the applicant built a track from its line across the lines of the Denver, the Utah Railroad, and the Orem line for the purpose of affording service to the plant. This track terminates in an interchange yard consisting of five parallel tracks located between the Orem line and the plant at which the steel corporation receives inbound freight from and delivers outbound freight to the carriers. The applicant contends that this track is merely a spur, the construction of which could be accomplished without authority from us under the provisions of paragraph (22) of section 1 of the act, but the matter having been brought to our attention during the early part of 1926, and some doubt expressed as to the status of the track as a spur, it was decided to file the present application.

The record shows that the plant site was selected because of favorable foundation and drainage features, and also because of its proximity to the lines of the applicant and the Denver. Prior to the construction of its plant the steel corporation made arrangements with the applicant for the establishment of rates on raw materials inbound and manufactured products outbound, which rates contemplated direct service by the applicant. The plant receives iron ore from mines in Iron County, Utah, limestone from Topliff, Utah, and manganese from Pioche, Nev., all on the applicant's lines, and receives coal from mines in Carbon County, Utah, via the line of the Denver. The applicant states that when the plant site was definitely located, permission was obtained from the Denver, the Utah Railroad, and the Orem line to extend the track in question

across their lines, and arrangements were made whereby the Denver was permitted to use the track. It also was agreed that the Denver might acquire an ownership interest in the track at any time it desired upon the payment of a certain sum. Arrangements also were made to interchange intrastate traffic between the applicant and the Orem line over this track by using a short track belonging to the steel corporation. Prior to that time, the only means of interchange between those two carriers in that locality was by the use of an intermediate switching service performed by the Denver at Provo. The restriction of the interchange at that point to intrastate traffic was made at the instance of the Orem line through fear that the applicant might undertake to establish an arrangement by which, through the absorption of switching charges, the Orem line would be deprived of its line haul on interstate traffic to Salt Lake City, where interchange is made under established through rates and divisions. After commencement of operations, and at the request of the steel corporation, its plant was designated by the station name of Ironton, and the tariffs of the applicant and the Orem line were amended accordingly. More recently a plant for the manufacture of cast-iron pipe and a creosoting plant have been established near the track, west of the Denver.

The protest filed by the Orem line alleges that the authority sought by the applicant would operate to the hurt and detriment of the protestant and of that part of the public represented by the shippers and receivers of freight located upon the protestant's line; that the trackage involved does not represent a public convenience and necessity in any sense of the word, and that the granting of the application would not be in the interest of the public in general but would be contrary to the spirit and letter of section 1 of the act, all of which the protestant "is prepared to show and prove." Upon application of the protestant, the commission ordered that the deposition of Bird M. Robinson, president of the American Short Line Association, be taken before an examiner at Washington, D. C. At the hearing the protestant produced no witnesses or documentary evidence in support of its allegations, neither was Robinson's deposition placed in the record. The protestant states that it is at present in a state of transition from a predominantly passenger-carrying line to a predominantly freight-carrying line owing to loss of passenger traffic due to the construction of hard-surfaced highways.

While earnestly contending that the track in question is a spur or industrial track, for the construction of which a certificate of public convenience and necessity is not required by law, the applicant requests that in the event the commission shall find to the contrary

it shall also find that the public convenience and necessity require the operation of that track in interstate commerce by the applicant. The applicant points out that the connection between the track and its main line is within the Provo yard limits and the track is part of the Provo station facilities, that operation over the track consists solely of switching movements, that there are no regular or scheduled train movements, that no express, mail, passenger, or less-than-carload freight traffic is handled, and that the movement of traffic over the track is similar to that involved in making delivery to or receiving shipments from industries located on industry tracks within the switching limits of Salt Lake City. The applicant maintains an agent at Ironton to handle the business of the steel plant, but states that if this fact alone is to take the track out of the category of a spur and make it a branch line or extension requiring a certificate of public convenience and necessity, it would rather withdraw the agent than be required to cease operation over the track.

The protestant on brief cites numerous cases in support of its contention that the track is an extension of the applicant's railroad within the meaning of paragraph (18) of section 1 of the act, and alleges that the applicant has failed to show that the public convenience and necessity require the operation of this extension. The protestant further alleges that to allow the applicant to have access to the plant of the steel corporation so that it may monopolize that traffic to the exclusion of the protestant is in and of itself so against the public interest as to require the commission to deny the present application, and that the preservation of the Orem line as an efficient operating entity is the most important factor in this proceeding from the standpoint of public convenience and necessity. Particular stress is laid by the protestant upon the decision of the Supreme Court of the United States in *Texas & Pacific Railway Co.* v. *Gulf, Colorado & Santa Fe Railroad Co.*, 270 U. S. 266, as supporting its contention that the track here involved is an extension of the applicant's line and not a spur. The following excerpt from that decision constitutes part of the quotation contained in the protestant's brief:

> The carrier was authorized by Congress to construct, without authority from the Commission, "spur, industrial, team, switching, or side tracks * * * to be located wholly within one State." Tracks of that character are commonly constructed either to improve the facilities required by shippers already served by the carrier or to supply the facilities to others, who being within the same territory and similarly situated are entitled to like service from the carrier. * * * But where the proposed trackage extends into territory not theretofore served by the carrier, and particularly where it extends into territory already served by another carrier, its purpose and effect are, under the new policy of Congress, of national concern. For invasion through new construction of terri-

tory adequately served by another carrier, like the establishment of excessively low rates in order to secure traffic enjoyed by another, may be inimical to the national interest. If the purpose and effect of the new trackage is to extend substantially the line of a carrier into new territory, the proposed trackage constitutes an extension of a railroad within the meaning of paragraph 18, although the line be short and although the character of the service contemplated be that commonly rendered to industries by means of spurs or industrial tracks. Being an extension, it can not be built unless the federal commission issues its certificate that public necessity and convenience require its construction.

The applicant contends that under the decision in question the track involved must be held to be a spur track unless (1) it invades territory not theretofore served by the carrier constructing it but already served by another carrier, and (2) it be so located that there is reasonable likelihood that it may inflict injury upon that other carrier, and proceeds to argue that the track lies wholly within territory local to its rails; that instead of invading an industry already served by the Orem line, the construction of the track was a controlling factor in securing the location on that line of the industry in question, and that instead of inflicting injury on that line by depriving it of traffic which it would otherwise secure, the track has resulted in opening to it possibilities of traffic which would otherwise be wholly lacking to it. There is nothing of record, however, to indicate that the protestant is not able to handle the traffic of the steel plant in switching movement, and under the doctrine laid down by the court as quoted above it must follow that the track in question is in fact an extension of the applicant's line as contemplated by paragraph (18) of section 1 of the act. See also *Marion & E. R. Co.* v. *M. P. R. Co.* (Ill.), 149 N. E. Rep. 492. This conclusion is further supported by the fact that the track forms a physical connection between the applicant and the protestant for the interchange of traffic. *El Dorado & W. Ry. Co.* v. *Chicago, R. I. & P. Ry Co.*, 5 Fed. (2d) 777.

The next question for determination is: Does the public convenience and necessity require the operation by the applicant of the extension in question? A witness for the steel corporation testified that it is absolutely necessary that the plant have direct service by the applicant and the Denver because of the fact that it operates 24 hours a day, that a continuous supply of raw materials at all times is absolutely essential, and that mishaps, delays, or tie-ups in transportation might result in a heavy loss to the company. He further testified that if the plant were reduced to a direct connection with the protestant only some way would have to be found to extend the plant tracks to a connection with the lines of the applicant and the Denver. Counsel for the protestant stated that the Orem line would offer to take over and operate the extension in question should we decide

against the applicant, but there is nothing of record to show how the public convenience and necessity would be better served by the substitution of a switching service by the Orem line for the present through handling of traffic by the line-haul carriers.

Upon the facts presented we find that the present and future public convenience and necessity require the operation by the applicant of the extension of its line of railroad in Utah County, Utah, described in the application. An appropriate certificate will be issued.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Issued March 23, 1927

A hearing and investigation of the matters and things involved in this proceeding having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require the operation by the Los Angeles & Salt Lake Railroad Company of the extension of its line of railroad in Utah County, Utah, described in the application and report aforesaid.

INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 124

DECISIONS OF THE

INTERSTATE COMMERCE COMMISSION

OF THE UNITED STATES

(FINANCE REPORTS)

MARCH JULY, 1927

REPORTED BY THE COMMISSION

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON
1927

L&SL - Ironton Spur

FINANCE DOCKET NO. 5543

OPERATION OF LINE BY LOS ANGELES & SALT LAKE RAILROAD

Submitted July 1, 1927. Decided November 12, 1927

Petition of the Salt Lake & Utah Railroad Company and its receivers for reopening case denied. Original report, 124 I. C. C. 207.

Appearances as in original report.

REPORT OF THE COMMISSION ON PETITION FOR REOPENING

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND WOODLOCK

BY DIVISION 4:

By our original report and certificate in this proceeding, dated March 23, 1927, 124 I. C. C. 207, we authorized the Los Angeles & Salt Lake Railroad Company, hereinafter referred to as the applicant, to operate an extension of its line of railroad from a connection with its yard tracks at Provo in a general southeasterly direction 1.87 miles to the plant of the Columbia Steel Corporation, in Utah County, Utah. The extension had been constructed by the applicant in 1923, without first securing from us a certificate of public convenience and necessity, on the ground that the track involved was merely a spur track and not an extension of its line as contemplated by paragraph (18) of section 1 of the interstate commerce act. On May 22, 1926, an application was filed with us in which the applicant reiterated its belief that the track is in fact a spur, but requested that in the event we found it to be an extension of its line we issue a certificate of public convenience and necessity authorizing operation.

A protest was filed by the receivers of the Salt Lake & Utah Railroad Company in which it was alleged that the authority sought by the applicant would operate to the hurt and detriment of the protestant and of that part of the public represented by the shippers and receivers of freight located upon the protestant's line; that the trackage involved does not represent a public convenience and necessity in any sense of the word, and that the granting of the application would not be in the interest of the public in general but would be contrary to the spirit and letter of section 1 of the act, all of which the protestant stated it was "prepared to show and prove." A hearing was held, but the protestant produced no witnesses or documentary evidence in support of its allegations.

On April 20, 1927, the protestant filed a petition for reopening the case for reconsideration and argument, to which a reply was filed by the applicant, and by our order of May 3, 1927, we assigned the

petition for oral argument on July 1, 1927. By agreement the argument went to the merits of the case.

Upon consideration of the argument and further consideration of the record herein we are of the opinion that our findings in the original report and certificate were proper, and that reopening of the case would not be justified. The protestant's petition will therefore be denied. An appropriate order will be entered.

EASTMAN, *Commissioner*, dissenting:

Upon further consideration I am of the opinion that we were in error in finding that public convenience and necessity require the operation by the Los Angeles & Salt Lake of the extension in question. Clearly such operation was and is not necessary in order that the plant of the Columbia Steel Corporation may have the benefit of competitive railroad service. Through the line of the Salt Lake & Utah that plant had the means of obtaining full and free access to the systems of both the Union Pacific and the Denver & Rio Grande Western. The Salt Lake & Utah is not a competing trunk-line system, but a short line furnishing in effect the service of a terminal switching road, so far as the steel plant is concerned. Many larger steel plants in other parts of the country prefer, for the sake of convenience and economy in operation, to reach competitive trunk lines through the medium of a single switching line of this general character. No public need required the Union Pacific system to duplicate construction and operation by extending its own lines into the plant, and the result of this duplication will be to deprive the short line of business of which it is in far greater need than is the Union Pacific system. Moreover the burden of proof in this proceeding is upon the Union Pacific system and there was no obligation upon the part of protestant to present direct evidence if it felt that such burden had not been sustained. In my opinion it has not been sustained.

ORDER

Entered November 12, 1927

Upon further consideration of the record in the above-entitled proceeding, of the petition of the Salt Lake & Utah Railroad Company and its receivers to reopen said proceeding for reconsideration and argument, and of the reply of the Los Angeles & Salt Lake Railroad Company to said petition:

It is ordered, That said petition to reopen be, and it is hereby, denied.

LA+SL — Ironton Spur

FINANCE DOCKET NO. 5543

OPERATION OF LINE BY LOS ANGELES & SALT LAKE RAILROAD

Submitted April 6, 1928. Decided May 8, 1928

Upon reconsideration and reargument, findings in the original report, 124 I. C. C. 207, authorizing the Los Angeles & Salt Lake Railroad Company to operate an extension of its line of railroad in Utah County, Utah, affirmed. Report on petition for reopening 131 I. C. C. 463.

J. M. Souby for applicant.

Henry I. Moore, *Moultrie Hitt*, *Clarence A. Miller*, and *G. Kibby Munson* for receivers of Salt Lake & Utah Railroad Company, and *George R. Blodgett* for protective committee for bondholders of Salt Lake & Utah Railroad Company, protestants.

REPORT OF THE COMMISSION ON RECONSIDERATION AND REARGUMENT

BY THE COMMISSION:

On May 22, 1926, the Los Angeles & Salt Lake Railroad Company, a unit of the Union Pacific system, hereinafter jointly termed the applicant, filed an application under paragraph (18) of section 1 of the interstate commerce act for a certificate that the present and future public convenience and necessity require the operation by it of certain trackage extending from its yard tracks at Provo in a general southeasterly direction 1.87 miles to the plant of the Columbia Steel Corporation, in Utah County, Utah. Objection to the granting of the application was made by Henry I. Moore and D. P. Abercrombie, receivers of the Salt Lake & Utah Railroad Company. A hearing was held for us by the Public Utilities Commission of Utah, and the record was transmitted to us by that body without recommendation.

The protest filed by the receivers of the Salt Lake & Utah alleged that the authority sought by the applicant would operate to the hurt and detriment of the protestant and of that part of the public represented by the shippers and receivers of freight located upon the protestant's line; that the trackage involved does not represent a public convenience and necessity in any sense of the word, and that the granting of the application would not be in the interest of the public in general but would be contrary to the spirit and letter of

section 1 of the act, all of which the protestant stated it was "prepared to show and prove." At the hearing the protestant produced no witnesses or documentary evidence in support of its allegations.

By its report and certificate dated March 23, 1927, 124 I. C. C. 207, division 4 granted the application. On April 20, 1927, the protestant filed a petition for reopening the case for reconsideration and argument, which was granted, and argument was had before division 4, which argument, by agreement, went to the merits of the case. By its report and order on petition for reopening dated November 12, 1927, 131 I. C. C. 463, division 4 held that its findings in the original report and certificate were proper and denied the petition. On January 5, 1928, the protestant filed a petition for reopening and reconsideration of the case. By our order of February 13, 1928, the proceeding was reopened for argument.

Briefly stated, the facts are as follows. The territory between Salt Lake City and Payson, Utah, via Provo, referred to as the valley of the Jordan River and Utah Lake, is served by the applicant, the Salt Lake & Utah, which is an electric railway, and the Denver & Rio Grande Western Railroad, hereinafter called the Denver. Near Provo the Utah Railroad also operates over the Denver right of way. The termini of the Salt Lake & Utah are at Salt Lake City and Payson. The three lines operating through the valley cross and recross each other several times, and are so close together for the entire length of the Salt Lake & Utah that all three serve practically the same territory.

In 1923 the Columbia Steel Corporation constructed a blast furnace and coke oven near Provo, east of and close to the line of the Salt Lake & Utah. At that point the lines of the Denver and the Utah Railroad parallel the Salt Lake & Utah a short distance to the west, and the applicant's line parallels both of the others still farther west. While the plant of the steel corporation was under construction the applicant built a track from its line across the lines of the Denver, the Utah Railroad, and the Salt Lake & Utah for the purpose of affording service to the plant. This track terminates in an interchange yard, located between the line of the Salt Lake & Utah and the plant, at which the steel corporation receives inbound freight from and delivers outbound freight to the carriers. The applicant contends that this track is merely a spur, the construction of which could be accomplished without authority from us under the provisions of paragraph (22) of section 1 of the act, but the matter having been brought to our attention during the early part of 1926, and some doubt expressed as to the status of the track as a spur, it was decided to file the present application.

The record shows that the plant site was selected because of favorable foundation and drainage features, and also because of its proximity to the lines of the applicant and the Denver. Prior to the construction of its plant the steel corporation made arrangements with the applicant for the establishment of rates on raw materials inbound and manufactured products outbound, which rates contemplated direct service by the applicant. The plant receives iron ore from mines in Iron County, Utah, limestone from Topliff, Utah, and manganese from Pioche, Nev., all on the applicant's lines, and receives coal from mines in Carbon County, Utah, via the line of the Denver. The applicant states that when the plant site was definitely located, permission was obtained from the Denver, the Utah Railroad, and the Salt Lake & Utah to extend the track in question across their lines, and arrangements were made whereby the Denver was permitted to use the track. It also was agreed that the Denver might acquire an ownership interest in the track at any time it desired upon the payment of a certain sum. Arrangements also were made to interchange intrastate traffic between the applicant and the Salt Lake & Utah over this track by using a short track belonging to the steel corporation. Prior to that time, the only means of interchange between those two carriers in that locality was by the use of an intermediate switching service performed by the Denver at Provo. The restriction of the interchange at that point to intrastate traffic was made at the instance of the Salt Lake & Utah through fear that the applicant might undertake to establish an arrangement by which, through the absorption of switching charges, the former carrier would be deprived of its line haul on interstate traffic to Salt Lake City, where interchange is made under established through rates and divisions. After commencement of operations, and at the request of the steel corporation, its plant was designated by the station name of Ironton, and the tariffs of the applicant and the Salt Lake & Utah were amended accordingly. More recently a plant for the manufacture of cast-iron pipe and a creosoting plant have been established near the track, west of the Denver.

The following reasons why this case should be reopened were assigned by the protestant: First, the principles involved are of such importance as to require the consideration of the entire commission; second, the operation of the extension in question by the Los Angeles & Salt Lake is not required by the public convenience; third, the decision of division 4 granting the certificate of public convenience and necessity was apparently predicated upon the fact that the protestant produced no witnesses; fourth, the decision is contrary to the evidence, and is not supported by the evidence; fifth, after argument on protestant's petition for reconsideration, the de-

cision of division 4 was not unanimous and there was a strong dissenting opinion; sixth, this decision, if allowed to stand, will jeopardize the continued existence of the Salt Lake & Utah Railroad, as well as the Government's security for loans under section 210 of the transportation act, 1920.

The second and fourth reasons constitute the principal bases of the protestant's argument. The certificate issued by division 4 states not only that the public convenience requires operation of the extension by the applicant, but that the public convenience and necessity require such operation. Certainly the public interest requires the development of the natural resources of the nation and utilization of those resources in the manufacture and distribution of their products. The owners of the iron mines, the limestone and manganese deposits, the coal mines, and the people depending upon those industries for a livelihood, are members of the public whose convenience and necessity require adequate and proper transportation facilities. So, too, the owners and employees of the steel corporation, as well as the persons consuming the products of the steel plant, are members of that public entitled to consideration under the law here invoked by the applicant. The application filed in this proceeding, as supported by the return to the questionnaire submitted in accordance with our requirements, presented a prima facie case showing that the present and future public convenience and necessity require operation by the applicant of the extension involved, and except for the protest filed by the receivers for the Salt Lake & Utah Railroad Company, the case doubtless could have been disposed of without hearing. A hearing was ordered, however, for the purpose of affording the protestant an opportunity to "show and prove" the matters which formed the basis of its protest, but at that hearing the protestant contented itself with developing, by cross-examination of the applicant's witnesses, the facts that the applicant had negotiated with officials of the steel corporation for the direct handling to and from the plant of such traffic as it might so handle; that the applicant had declined to avail itself of the services of the protestant's road as a switching carrier; that the steel corporation insisted upon the right of direct service to its plant by the applicant, the Denver, and Utah Railroad; and that the steel corporation would not have located its plant on the present site if it could not have direct service by the trunk lines.

On brief and oral argument counsel for the protestants earnestly insist that the public convenience and necessity require participation by the Salt Lake & Utah in the handling of traffic to and from the steel plant; that unless such participation is permitted there is great danger of the line ceasing operation and thereby inconveniencing the

public dependent upon it for transportation service, and that such cessation of operation will jeopardize the security held by the United States for loans made to the Salt Lake & Utah under section 210 of the transportation act, 1920. It is clear from the record, however, that the steel plant would never have been located upon its present site had its officials understood that it would have to depend solely upon the Salt Lake & Utah for service. The testimony shows that the promoters of the steel corporation had commenced searching for a suitable location for the plant in 1921; that efforts were made to secure a site in the vicinity of Salt Lake City or Provo which would permit of direct service by the applicant and the Denver; that in no event would the plant have been located at a point local to any one railroad, and that if direct service by the applicant and the Denver were withdrawn as the result of this proceed ng the steel corporation would seek means of extending its tracks to connect directly with the tracks of the applicant and the Denver. The testimony shows further that after rejecting sites available near the lines of the applicant and the Denver because of unfavorable foundation and drainage conditions, the present site was selected because those conditions were found suitable and at the same time it was sufficiently close to the lines of the applicant and the Denver to permit of direct service by those carriers. It appears certain that had the steel plant not been placed upon its present site the Salt Lake & Utah would have been in no more favorable condition financially than it is at present. On the contrary it doubtless has benefited to some extent by the presence of the plant near its line.

It is apparent from the facts of record that the findings of division 4 in the previous proceedings herein were proper, and that they should be, and are hereby, affirmed.

PORTER, *Commissioner*, concurring:

I would dispose of this case favorably to the applicant, as does the majority of this commission, but upon different grounds. I can not agree that this is a situation where applicant needs come to us for authority to act. That is only required where the carrier is about to undertake the "extension of its line of railroad." Paragraph 18, section 1, of the interstate commerce act, as amended. It is definitely provided in a later section of the statute that authority from us shall not be necessary in the case of the construction of "spur, industrial, team, switching, or side tracks." Paragraph 22, section 1, interstate commerce act, as amended.

In view of these provisions of the law, in every such case as we have here before us, it becomes necessary to determine whether the track in question constitutes an "extension of its line" or is on the other hand "spur, industrial, team, switching, or side tracks."

It is apparent no hard and fast rule can be announced that will accurately apply to all situations. We have said that the "line of demarcation between a spur track and the branch line of railroad is often somewhat vague and difficult of ascertainment, but we think that each case must be governed by its own facts." *Public Convenience Application of A. & S. A. B. Ry.*, 71 I. C. C. 784. In that case the track extended from a point on a main line north of the applicant's station at Panama City, Fla., a distance of 1.89 miles to the station of St. Andrews. The last-named station was in charge of a regularly paid agent. Tickets could be purchased to all points on and beyond the applicant's main line, less-than-carload freight was billed therefrom, and express shipments of merchandise were made. The United States mail was handled at the station and carried over the line. It did a general freight, passenger, and express business over the line and through the station. We there properly held that it was a branch line and not simply a spur track.

We had this same question before us in the *Operation of Lines by C. R. & E. Ry. Co.*, 94 I. C. C. 389. There two lines were under consideration, one extending a length of 11 miles and the other 2 miles. These lines were each constructed and owned in the first instance by separate and independent companies from the applicant and were later acquired by purchase. They each served several industries, coal mining, lumber, and the manufacture of carbon black from natural gas. They were operated as segments of the main line. The longer of the two served two or three separate villages. The shorter extended close to another village. Under these circumstances we held the lines could not be classed as spurs merely, and defined a spur as follows:

> The usual conception of a spur, as far as physical characteristics are concerned, is a stub or side track connecting only at one end with a main line or branch of a railroad and constructed by or for the use of the carrier owning or operating the railroad.

In the case of *Abandonment of Line by Missouri Pacific R. R.*, 76 I. C. C. 635, the track proposed to be abandoned was 2.2 miles long. It there appeared that the track was built for the sole purpose of transporting carload shipments of stone from certain stone quarries to the applicant's main line. No passenger traffic or less-than-carload freight traffic was ever handled. No tariffs were filed covering shipments over the line and the track was commonly designated as the quarry switch. It was consequently held that under the facts presented, the line was a spur track within the meaning of the law and did not require authority on our part for its abandonment.

Another case involving the same problem was before us in *Public Convenience Application of Western Pacific R. R.*, 67 I. C. C. 135.

There the proposed line was 1.75 miles in length, extending from the applicant's main line at Bidwell to a point called Bidwell Bar. It terminated in a tract of timber and no station was established thereon. Its sole purpose was to reach the tract of timber inaccessible to any other line of railroad. The only traffic to be moved over the branch was logs owned by the single lumber company operating the mill about 10 miles from Bidwell on the applicant's main line. But the one shipper was to be served, and the operation was to be purely a switching movement from Bidwell where billing of the logs was to be done. There was to be no passenger service over the proposed branch. It was there held that the line when constructed would be a spur track and did not require action by us.

The Supreme Court had before it the same question we are here considering, in the case of *Texas & Pac. Ry.* v. *Gulf, etc., Ry.*, 270 U. S. 266. It there appeared that at a point 2.5 miles west of the city of Dallas, Tex., and extending westward 2.5 miles farther lies a territory known as the industrial district. It was adequately served by the Texas & Pacific. The Santa Fe's nearest line from this district was 3.25 miles away, air-line distance. It proposed to construct a line to begin at Hale extending 7.5 miles to this industrial district. From this principal line there were to be constructed spurs, sidings, and other subsidiary tracks, some of considerable length, to serve the various industries located in the district. The cost of construction was estimated at more than $500,000. It was to be of substantial construction, laid with 75-pound rails, and over a right of way averaging 100 feet in width, fenced on both sides for its full length. No industry was located along the proposed line between Hale and the industrial district. Under circumstances such as there presented the court well said: "The Hale-Cement Line is clearly not a spur in the sense in which that word is commonly used. It presents some of the characteristics of a branch; and a branch is clearly an extension of a railroad within the meaning of paragraph 18."

The few cases above referred to out of those decided by us will serve to illustrate the line of demarcation between those where we have held that the line under consideration was an "extension of a line" on the one hand, or a mere "spur" on the other. They are on the whole in complete accord, and are in perfect harmony with the above decision of the Supreme Court in the one case where this same question was before it.

It will be observed that in reaching a conclusion in the foregoing cases, among the determining factors taken into consideration were the length of line, the physical characteristics of the line under consideration, the purposes of its construction, the character of service rendered or to be rendered by and over it, its relation to the main line of which it was a part, and the territory reached by it.

Under the admitted facts of the case at bar, the main line of the applicant passes in close proximity to the plant of the Columbia Steel Corporation engaged in the manufacture of steel products and to which the track in dispute extends. Paralleling the track of the applicant and between its line and the steel plant are three other lines, one of which, the protestant's, is close to the steel works. The track involved herein starts on the applicant's main line near the east end of applicant's yards at Provo and runs in a southeasterly direction to a connection with an interchange yard at the steel plant, a distance of 1.87 miles. At the time of its construction it was used exclusively in making delivery to and receiving freight from the steel plant. Since this track was built two additional industries have been located thereon west of the steel plant and in close proximity to the line of the applicant. A short stub track has been built from the one constructed to the steel plant to serve these industries. An agent is located at the steel plant for the sole purpose of billing out the shipments therefrom. No mail, express, passenger or less-than-carload business is carried on over it. No regular train schedules are maintained, and its operation is confined strictly to switching movements.

Surely in situations like this, which are constantly arising all over the country, it was never the thought of Congress that before the carrier could act, we first must determine whether there exists a public necessity therefor. Obviously, this track is in no sense an "extension" of the line of the applicant running from Provo north to Salt Lake City and beyond, but is in all particulars a spur track, built in the first instance solely to accommodate the shipments to and from the steel plant. It can not be regarded as an "extension" or branch of the line of the applicant without doing violence to every one of our prior decisions, and the decision of the Supreme Court as well. For this commission to assume jurisdiction under the facts here presented would be wholly unwarranted. Lacking jurisdiction on our part, I would dismiss the application.

EASTMAN, *Commissioner*, dissenting:

I am unable to agree with the conclusions reached in this case, for reasons which were fully stated in my dissenting expression in 131 I. C. C. 463.

COMMISSIONER MEYER did not participate in the disposition of this case upon reconsideration and reargument.