

Service Date: December 4, 1985

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application	)	TRANSPORTATION DIVISION
OF BURLINGTON NORTHERN RAILROAD	)	
COMPANY to discontinue its Direct	)	DOCKET NO. T-8400
Service Agency (DSA) Operations	)	
at Stanford.	)	ORDER NO. 5625a

\* \* \* \* \*

FINAL ORDER

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APPEARANCES

FOR THE COMMISSION:

Eileen E. Shore, Esq., 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

CLYDE JARVIS, Commissioner

Pursuant to 2-4-621, MCA, a proposed order denying the authority requested was issued in this matter on September 20, 1985. No exceptions, briefs or requests for oral argument have been received. Therefore, the Commission adopts the proposed order as its final order in this matter.

### INTRODUCTION

1. On October 29, 1984, Burlington Northern Railroad Company (BN) filed a petition with the Commission for authority to discontinue its direct service agency (DSA) at Stanford, Montana, which presently serves Hobson, Benchland, Buffalo, Moccasin, Windham and Judith Gap. BN proposes to provide agency service for all locations from its present station agency in Stanford, Montana.

2. Following proper notice, a hearing was held at the Judith Basin County Courthouse, Stanford, Montana, on January 15, 1985, commencing at 9 a.m. Because of extremely inclement weather, legal counsel for BN was unable to attend the hearing. Since both BN and the Hearing Examiner were concerned that others had not been able to attend the hearing because of the weather, BN consented to allowing unsworn written statements to become part of the record upon which the Commission will base its decision in this docket. Comments filed by February 4, 1985, have been considered.

### APPLICANT'S TESTIMONY

3. Because of the absence of counsel, BN presented its case through narrative statements submitted by its witnesses.

4. William T. Allbright, Senior Analyst, Costs and Statistics, presented time studies and accounting statistics that summarized revenues, expenses and shipments associated with the areas currently served by the DSA, as well as information relating to financial ramifications of a grant of the application. Exhibits 1 and 2, which detailed Allbright's testimony, were admitted into the record. Allbright testified that his figures demonstrated that all locations under consideration showed net revenues under both the BN formula or the formula suggested by the Commission in

Docket No. T-6375, Order 4529. However, despite the profitability of these locations, Allbright testified that unit train operations had increased agent efficiency so that all shippers can be served as well by the Stanford agency as they are presently by the DSA.

5. Louis D. Lippert, Manager of Station Services, testified about present and proposed operations that relate to the application. He stated that BN wishes to abolish the DSA position. He stated that, with billing performed in Great Falls, the DSA is in charge of demurrage car orders, lease applications and a few other minor orders. Grant of the application would not represent any change of buildings now used for railroad service. Lippert stated that if the application is granted, the current agent stationed in Stanford would take an early retirement, while the agent in charge of the DSA would become the Stanford agent. Lippert also stated that BN has contacted major shippers who would be affected and that none object to grant of the application. He concluded that BN does not intend to abandon present customers, since the Stanford agent has the time to travel to locations previously served by the DSA, and will be reimbursed for travel expenses.

#### PROTESTANTS' TESTIMONY

6. Mark Stermitz, Judith Basin County Attorney, testified in opposition to the application. He asked the Commission to keep the railroad's obligation to provide adequate service in mind. He stated that the potential savings of \$42,920 per year with grant of the application was a small amount when the profit ability of the DSA is examined. Stermitz questioned why BN should reap all benefits of unit train operations which bring more products to be shipped, while shippers must put up with less service. Stermitz expressed the fear that this application represented a preliminary step for ultimate abandonment of agency service for the Stanford area.

7. James Mular, State Legislative Director of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC), asked the Commission to examine figures presented in 1972, when the DSA was approved, with those presented in this docket. The figures from the 1972 proceedings were allowed into the record as Exhibit 3. Mular claimed that this as well as other requests for agency consolidations and abandonments constitute a transfer of work from his union members to shippers; one example is the requirement that shippers prepare bills of lading. He concluded that captive shippers were being

forced to accept a decline in service. Mular further claimed that BN is using applications like this one to use the Commission to avoid his union's contracts, which defines the work agencies should do and, in essence, doing away with his class and craft. Mular further claimed that grant of this petition would result in some employee moving elsewhere. Mular claimed that BN wished to make Montana a "bridge state" that would be used only as a way of connecting points outside the state, and that his union wished to oppose that move.

8. Don Anderson, Stanford businessman, claimed that this and other BN actions, including abandonment of service to Hamilton and Harlowton and refusal to upgrade the Denton line demonstrated a policy of less service. He further noted that the employee assigned to the DSA was a strong worker advocate and this application is a means of closing out his job. Anderson also stated that he believes that this application is but one step toward abandoning substantial services. Anderson did not accept BN's claim that one person could now do all the work that two had previously performed.

9. Mike Biggerstaff, a Stanford businessman, testified that he received goods via BN, as well as working as a contractor for the railroad. He reiterated testimony regarding general reduction in service quality and eventual abandonment of the Stanford agency.

10. Mular made an additional appearance to claim that the provisions of 69-14-202, MCA, are applicable to the proposal as it relates to Judith Gap, since that service is the last in the county. BN responded that Judith Gap was never in the original DSA application.

11. Ed Hall of Stanford testified that there was substantial potential growth in demand for railroad service. Hall cited grain shipments from Harlowton to the Cargill facility, saw timber from the U.S. Forest Service, transportation of railroad ties, and increased grain shipments from the Denton area. Based on this increased demand, Hall claimed BN's figures were out of date. Hall further stated that this additional demand further justified retention of the DSA.

#### WRITTEN COMMENTS

12. Senator Bob Williams filed written comments that stated grant of the application would work great hardships on farmers, ranchers and many others in central Montana who depend

on BN's services. Williams further stated that the person in charge of the DSA was doing the work formerly handled by seven or eight people.

13. Barbara Skelton, Judith Basin County Commissioner, compared the \$516,135 in net revenues in 1984 with BN's projected savings of \$43,000 per year if the DSA were discontinued. She questioned the timing of the request in view of the fact that construction is underway on a new 52 car unit siding in Stanford. This facility will result in a significant increase in the number of car loads shipped from the Stanford area. Although Skelton agreed that unit trains increase efficiency, she added, "Now the railroad is using that increased efficiency against the very area that made the situation possible by shipping its commodity (grain) by rail." She concluded, "The money BN may save by this effort is not worth the impact to Stanford."

14. George Stearns, President of Spring Creek Forest Products, Inc., Judith Gap, stated that his previous service had, at times "been very very poor," and that personal contact with the DSA had been helpful. He concluded, "If we can depend on equal or better service without an agent we would not oppose that action."

15. Dale Goodan, Manager, General Mills, Inc., Moccasin, stated that he has dealt with the present DSA since it started. He noted that the application was, in effect, an attempt to get him to be BN's agent with no pay. Goodan described the services the DSA currently provides him, which include information and help in regard to trains for switching, help in avoiding demurrage charges, personal daily visits, car lists, seals, and taking his order for spotting trains. Goodan stated, "Without his help, I know we would have had some demurrage charges," and concluded, "I believe our business will suffer badly if this personal contact is taken away from us."

16. Written comments include petitions signed by approximately 116 individuals.

17. Thomas Spence, BN's General Counsel for the Billings Region, filed a written statement, which responded to the testimony of Stermitz and Biggerstaff. He stated that the Stanford agent would remain to serve the area. He also stated that, to BN's knowledge, Biggerstaff had not received any merchandise by rail.

### DISCUSSION

18. It is evident that the present DSA enjoys both shipper and public support, a fact not addressed by BN in this docket. In addition, BN has failed to address the testimony which projects substantial increased traffic in the Standard area. As BN is well aware, such testimony has been the basis for denying previous petitions it has filed.

19. Given the testimony and statements received, especially by shippers and those that describe the increased traffic that BN can expect from the area, the Commission finds that there has been a substantial showing that the presence of the DSA is necessary to meet the needs of the shipping public in the areas covered by this petition. This is especially true in view of testimony that claimed very very poor service at times, even with the DSA's services. Unless BN can provide adequate service with its current personnel, it would be premature, to say the least, for the Commission to allow a reduction in personnel.

### CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and the matters in this proceeding, pursuant to Title 69, Chapter 14, Montana Code Annotated.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter, pursuant to Title 2, Chapter 4, Montana Code Annotated.

3. It is well established that no set rule can be used to determine whether or not the public convenience and necessity requires a given service to be performed. The facts in each case must be separately considered and from those facts the question is to be determined. See Chicago, M. St. P. & P.R.G. v. Board of Railroad Commissioners, 126 Mont. 568, 225 P.2d 346 (1953) Cert. Denied 346 U.S. 823. The Commission concludes that Burlington Northern Railroad Company has not shown that the public convenience and necessity does not require the continuance of the station agency at Stanford, Montana.

### ORDER

NOW, THEREFORE, IT IS ORDERED that the application of Burlington Northern Railroad Company in Docket No. T-8400 BE DENIED.

IT IS FURTHER ORDERED that this order be effective immediately and that a full, true, and correct copy of this order be mailed to all parties of record.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this docket that were not ruled on are hereby denied.

DONE AND DATED this 4th day of December, 1985 by a vote of 5 -0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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CLYDE JARVIS, Chairman

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JOHN B. DRISCOLL, Commissioner

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HOWARD L. ELLIS, Commissioner

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TOM MONAHAN, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Trenna Scoffield  
Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.