

Service Date: August 16, 1988

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 Montana Rail Link, Inc., )	
Missoula, Montana, to Discontinue )	
its Agency Operations at Drummond/ )	DOCKET NO. T-9184
Philipsburg, Montana and to Dispose )	
of the Depot Facilities. )	ORDER NO. 5865

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Edward A. Murphy, Attorney at Law, Datsopoulos, MacDonald & Lind, 201 West Main, Central Square Bldg., Missoula, Montana 59802, Attorneys for Montana Rail Link

FOR THE PROTESTANT:

Richard VanAken, Legislative Representative for Transportation and Communications Union, Missoula, Lodge #43

FOR THE COMMISSION:

Robin A. McHugh, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620-2601

BEFORE:

JOHN B. DRISCOLL, Commissioner and Hearing Examiner

## BACKGROUND

On January 26, 1988, Montana Rail Link (MRL) filed a petition with the Public Service Commission (Commission) for authority to discontinue its agency operations at Drummond/Philipsburg, Montana, and to dispose of its depot facility at Drummond.

Following issuance of proper notice a public hearing was held on July 14, 1988, at the Drummond Town Hall, Drummond, Montana. Though no protests were filed prior to the hearing, Mr. Richard VanAken appeared at the hearing to protest the MRL petition on behalf of the Transportation and Communications Union.

At the conclusion of the hearing all parties stipulated to a final order. No party requested to file briefs.

## SUMMARY OF TESTIMONY

### Testimony of Petitioner

Orson E. Murray, MRL Manager of Operations and Information Services, with responsibility for agency functions, appeared and testified in support of the petition. Mr. Murray sponsored the following MRL exhibits:

Exhibit A: Traffic and Carload Commodity Statistics by Station by month, Drummond/Philipsburg Agency-1985.

Exhibit B: Traffic and Carload Commodity Statistics by

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Station by Month, Drummond/Philipsburg Agency-  
1986.

- Exhibit C: Traffic and Carload Commodity Statistics by Station by Month, Drummond/Philipsburg Agency-1987.
- Exhibit D: Carload Commodity Statistics by Station by Month, Drummond/Philipsburg January-March-1988.
- Exhibit E: Cars Received and Forwarded/Cars Handled per Month/Cars Handled per Day, Drummond/Philipsburg-1985, 1986, 1987.

Mr. Murray explained that MRL has developed a centralized agency in Missoula. All services are now handled by the centralized agency. Shipper access to the centralized agency is by toll free number. Mr. Murray stated that no functions are presently being performed by the agent in Drummond/Philipsburg. He said the agent does answer the phone and refers callers to the proper place for assistance. No complaints have been received from the Drummond/Philipsburg area. He acknowledged that Drummond/Philipsburg is a profitable agency. With respect to the Drummond to Philipsburg line, Mr. Murray estimated it would cost \$100,000 to upgrade the track to a usable condition. He said MRL would be willing to make that investment if the traffic warranted it.

Robert Bateman, MRL Trainmaster at the Missoula yard, in charge of controlling car movements and communicating with shippers between Phosphate, Montana and Sandpoint, Idaho, appeared and testified in support of the petition. Mr. Bateman elaborated on the condition of the track between Drummond and Philipsburg and the

work necessary to restore the track to operating condition. Mr. Bateman also described the safety equipment on the main line, and noted that the agent in Drummond/ Philipsburg has no safety function and is not required to do roll-by inspections. On recall Mr. Bateman explained the effect of a power outage on the railroad signalling devices.

Linda Hays, MRL agent in Drummond, appeared and testified. Ms. Hays has been the agent since December 15, 1987. She sponsored petitioner's Exhibit F, a copy of a phone log she maintained from December 15, 1987 to June 30, 1988. The log indicates the identify of the caller, the subject of the call, and the reference made. On questioning from Commissioner Driscoll Ms. Hays explained the log references to power outages and the Montana Power Company.

#### Testimony of Protestant

Richard VanAken, the legislative representative for the Missoula lodge of the Transportation and Communications Union, appeared and testified in opposition to the petition. Mr. VanAken read a statement which was accepted as Protestant's Exhibit No. 1.

Arguments made by Mr. VanAken for retaining the agency at Drummond/Philipsburg include the following:

- a) There are many other duties that an agent should perform besides arranging for the shipping and receiving of

freight;

- b) Consignees deserve service as much as shippers;
- c) Agents are needed to assure proper demurrage records;
- d) Toll free numbers are not an answer to shippers' transportation needs; a local presence is needed.

In addition, Mr. VanAken urged the Commission to investigate possible MRL violations of Montana law, including Sections 69-14-202, 215 and 708, MCA.

#### Public Testimony

Martin Dippold, manager of the phosphate mine near Drummond, appeared to comment on his experience with MRL. Mr. Dippold praised MRL's cooperation and responsiveness and said he has had no problems working with the Missoula office of MRL.

#### DISCUSSION, ANALYSIS AND FINDINGS

This Petition to close the Drummond/Philipsburg agency is brought pursuant to 69-14-202, MCA, as amended by the 1987 Montana legislature. That statute reads in its entirety as follows:

**69-14-202. Duty to furnish shipping and passenger facilities.** (1) Every person, corporation, or association operating a railroad in the state on January 1 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1,

1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility.

The BN, MRL's predecessor, maintained an agency at Drummond/Philipsburg on January 1, 1987. Therefore, the only question to be considered is whether public convenience and necessity require that MRL continue to maintain the agency.

There is no simple formula for determining public convenience and necessity. The Commission must scrutinize the facts of each case to determine whether the burden on the railroad from maintaining an agency is outweighed by the burden on shippers should the agency be closed. In this case MRL presented data that shows that there is demand for railroad service at Drummond, and there was testimony that there may be demand for service on the presently unusable Drummond/Philipsburg line. MRL acknowledged that it makes a profit from serving shippers in the Drummond area.

Determining that there is shipper demand and an agency is profitable does not, however, dispose of the issue of public convenience and necessity. Even a profitable agency may not be a basis for a finding of public convenience and necessity if there is not some level of shipper support for the agency's continued

operation. MRL presented testimony that shippers in the Drummond/Philipsburg are served adequately through the new centralized agency in Missoula. No shipper witnesses appeared to challenge MRL's contention that adequate service can be provided without the Drummond/Philipsburg agency. The single shipper witness who did appear ships from Phosphate, not part of the Drummond/Philipsburg agency, and his testimony contained nothing negative about the service he has received from MRL, nor did it provide any basis for maintaining the Drummond/Philipsburg agency.

The only witness to testify that the Drummond/Philipsburg agency should be retained was Mr. VanAken who spoke as a representative of the Transportation and Communications Union, not as a representative of shippers. Mr. VanAken insinuated that MRL may be violating certain Montana statutes. Specifically, Mr. VanAken questioned whether MRL is violating Sections 69-14-202, 69-14-215 and 69-14-708, MCA.

Section 69-14-202, MCA, requires a railroad to maintain and staff facilities for the shipment and delivery of freight unless closure is authorized by the Commission. The Commission has always taken the position that the manner in which an agency is staffed is a railroad management decision that will vary with the needs of particular localities. The Commission has never defined specifically what the staffing of an agency requires, and will not do so now. The Commission does, of course, require some sort of

staffing of agencies that have not been authorized to close; and the Commission will entertain shipper complaints that the staffing in any given agency is inadequate.

Section 69-14-215, MCA, requires, under certain circumstances, the issuance of bills of lading by agents. Nothing in this section, however, requires the maintenance of an agency in the absence of public convenience and necessity. It may or may not be that MRL has been in violation of this statute. But an inquiry into a specific violation does not affect the determination of whether, in a given instance, the record supports the continued staffing of an agency. The record in this case does not reveal any problems related to the issuance of bills of lading.

Section 69-14-708, MCA, has been discussed by the Commission in In the Matter of the Application of Burlington Northern Railroad Company to Discontinue its Agency and Dispose of the Depot Facility at Fort Benton, Montana, Docket No. T-9236, Order No. 5859. That discussion is incorporated herein by reference. Nothing on the record in this case supports a need for an agent in Drummond for the maintenance of livestock records.

In short, the Commission finds nothing in the statutes referred to above that would require the maintenance of a railroad agency in the absence of a finding of public convenience and necessity. The Commission will, of course, entertain formal allegations that a railroad is violating Montana law in the form of

a complaint proceeding.

There is nothing in the record of this case to support a conclusion that public convenience and necessity requires the maintenance of the Drummond/Philipsburg agency.

#### CONCLUSIONS OF LAW

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

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

3. No set rule can be used to determine whether or not the public convenience and necessity require 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. and P.R.G. v. Board of Railroad Commissioners, 126 Mont. 568, 225 P.2d 346 (1953), cert. denied 346 U.S. 823.

4. Public Convenience and Necessity does not require the maintenance of the agency at Drummond, Montana.

5. The Commission concludes that Montana Rail Link may remove the Drummond depot. Prior to its disposal, MRL should determine whether the building is of historical significance and

preserve it if it is historically significant or allow local governments in the area the opportunity to utilize the building.

The Commission directs Montana Rail Link to inform the Commission in writing of the disposition of the building.

ORDER

NOW THEREFORE IT IS ORDERED that Montana Rail Link's Petition to discontinue its agency and dispose of the depot facility at Drummond, Montana is Granted.

IT IS FURTHER ORDERED that Montana Rail Link shall apply 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED pursuant to stipulation by all parties that this be a Final Order.

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

Done and Dated this 16th day of August, 1988 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:

Carol Frasier  
Commission Secretary

(SEAL)

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