

Service Date: September 30, 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 of)	TRANSPORTATION DIVISION
Montana Rail Link, Inc., Missoula,)	
Montana, to Discontinue its Agency)	
Operations at Polson/Ronan, Montana)	DOCKET NO. T-9185
and to Dispose of the Depot)	
Facilities.)	ORDER NO. 5884

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Edward A. Murphy, Datsopoulos, MacDonald & Lind, 201 West
Main, Missoula, Montana 59802

FOR THE COMMISSION:

Timothy R. Baker, Staff Attorney, 2701 Prospect Avenue,
Helena, Montana 59620-2601

BEFORE:

HOWARD L. ELLIS, Commissioner and Hearing Examiner

BACKGROUND

On January 26, 1988, Montana Rail Link, Inc. (MRL or Applicant), of Missoula, Montana, filed an application with the Montana Public Service Commission (Commission) seeking authority to discontinue its agency operations at Polson/Ronan, Montana, and dispose of the depot.

Following issuance of proper notice, the Commission conducted a public hearing on April 21, 1988, in the Lake County Courthouse, Polson, Montana. The parties stipulated that the Commission could proceed to issue a final order in this matter.

SUMMARY OF TESTIMONY

Testimony of Applicant

Mr. Orson Murray, appeared and testified in support of the application. Mr. Murray is the Manager, Operations Specialist, in the operations department. Mr. Murray is responsible for the administrative aspects of the railroad as they interrelate to operations, which includes the oversight of agency operations. Mr. Murray sponsored the following exhibit:

Exhibit D: A document which is a compilation of information concerning the number of cars shipped, the type of commodity, and the amounts shipped per month, for the years 1985, 1986 and 1987.

Mr. Murray described the derivation and significance of the numbers contained in Exhibit D. These figures are derived through the computer system on the basis of input at the centralized billing stations. This particular document was prepared on request of the MRL by the Burlington Northern statistical department. The first page shows shipments received and forwarded during 1985 to be a total of 593 cars of various commodities. The second sheet shows that in 1986, and again for various commodities, a total of 654 cars were received and forwarded. In 1987, 720 cars were received and forwarded. Mr. Murray testified that to his knowledge, there had not been any significant changes in these traffic patterns during 1988. The last page of Exhibit D shows that, on the basis of working days, the Polson/Ronan agency has provided approximately 2.372 cars per working day. Mr. Murray added that it was MRL's position that the Polson/Ronan agency was profitable.

Mr. Murray offered a general description of agency functions on the MRL system. All agency functions are currently performed through the centralized agency located in Missoula, Montana. Mr. Murray stated that he was not aware of any problems for shippers which resulted from the MRL system whereby the agency function is actually handled in Missoula. Representatives of MRL routinely contact shippers to make sure that there are no problems.

Mr. Murray added that since MRL has been in operation the local agent in Polson/Ronan has not played any part in the traffic described by Exhibit D.

Mr. Murray also testified that both depot buildings are located off-track. The MRL agent has been stationed in Polson, and

has not traveled to Ronan.

Mr. Thomas Arthur Jones, appeared and testified in support of the application. Mr. Jones is the Trainmaster for MRL in the Missoula terminal (and lines west), and resides in Hamilton, Montana. The responsibilities of this position include oversight of the agency operations at Polson/Ronan, Montana. As Trainmaster, Mr. Jones is the first line operating officer for the railroad, and is responsible for train and crew operations, safety, rule compliance, etc.

Service at Polson/Ronan is currently provided on Tuesday and Thursday of each week, by a local train based in Paradise. This service will not be affected by the closing of the agency.

Mr. Ed McCurdy, appeared and testified in support of the application. Mr. McCurdy currently leases the depot facility in Polson from MRL, and operates a private business from the same. He also answers the telephone on behalf of MRL, and described the calls he has received since assuming these duties. Two potential shippers had called for information about MRL, and were referred to the Missoula office. For these duties, Mr. McCurdy is paid by a temporary employment service in Missoula, who in turn has contracted with MRL. Mr. McCurdy stated that he has not traveled to Ronan in performing these services for MRL.

Testimony of Protestants

Mr. James T. Mular appeared and testified in opposition to the application. Mr. Mular is the State Legislative Director of the Transportation/Communications Union (TCU), and resides in Butte, Montana. According to Mr. Mular, the Transportation/Communications Union has an existing labor agreement with the Applicant which covers the scope of services that a rail agent performs with MRL. The agreement provides for two clerical pay classifications. However, MRL has subcontracted with Express Services, an employment agency located in Missoula, Montana, to render agency telephone services in Polson/Ronan. Their wage is 3.35 an hour (minimum wage).

Mr. Mular stated that he believes MRL has not complied with Section 69-14-202, MCA, which requires a successor railroad through a purchase to maintain and staff station facilities in Montana and to accept and receive freight by those agents. It wasn't until a show cause order was issued by the Commission that MRL provided the service under Montana law. According to Mr. Mular, Section 69-14-708, MCA, requires railroads to maintain records of accidents involving animals killed along the rights-of-way at a station located in the county where the railroad operates, by filing the station locality with the county clerk and recorder. Such filing must assure that a station agency maintains a book record of such accidents.

Mr. Mular noted that MRL alleges that the relief requested in this application is an effort to reduce the cost of transportation services. He asked whether or not the cost savings will pass on to the customer. Mr. Mular also added that the Applicant pleads opportunity cost savings without substantiating any impact of closure on profitability and savings.

Finally, Mr. Mular requested that the Commission require MRL to maintain the public team track and loading facilities at both Polson and Ronan, even if the depot facilities are closed.

Mr. Rick Van Acken appeared and testified in opposition to the application. Mr. Van Acken is the legislative representative for the TCU, Lodge 43, in Missoula. Mr. Van Acken stated that in reality, the Polson/Ronan agency has already been abandoned, since no service is being provided by the agent. If the service is not there, shippers are not going to call the agency. The agent at Polson runs his own business from the depot facility, and is often not available to answer the phone for MRL. According to Mr. Van Acken, the local agent plays an important function in troubleshooting and assisting with local needs. A longer period of operation for MRL is required to determine whether or not an agent is really necessary.

DISCUSSION, ANALYSIS AND FINDINGS

This Petition to close the Polson/Ronan 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.

MRL's predecessor maintained an agency at Polson/Ronan 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.

The term "public convenience and necessity" is not a formulaic standard, but rather must be determined from the facts in each case; the existing burdens on the railroad will be weighed against burdens that will be placed on shippers should the application be granted. It has always been the practice of this Commission that railroads should be allowed to practice economies when the benefits therefrom outweigh inconvenience and loss of service to the public. In approving applications to close profitable agencies in the past, the Commission has noted that shipper testimony in such cases will be accorded great weight.

It is noteworthy that the application was not opposed by any shipper. Clearly, there is no evidence in this Docket indicating that public convenience and necessity require the daily

presence of a resident agent at the Polson/Ronan agency. The only witnesses to testify in opposition to the application were Mr. Mular and Mr. Van Acken. They contended that MRL was in possible violation of certain aspects of Montana law. The Commission finds nothing in the statutes referred to (specifically Sections 69-14-202 and 69-14-708, MCA) that would require the maintenance of a railroad agency in the absence of a finding of public convenience and necessity. On the contrary, Section 69-14-202(2), MCA, requires the Commission to authorize closure of a railroad facility unless it finds from the evidence that public convenience and necessity require the facility. See e.g. Docket No. T-9187, Order No. 5867 (Darby station closure).

There is nothing in the record of this proceeding to support a conclusion that public convenience and necessity require the maintenance of the Polson/Ronan agency.

The Commission notes that under the terms of its prior order authorizing dualized service from Polson/Ronan, the agent was required to travel to Ronan for a minimum of two hours each Tuesday and Thursday, as well as on an "as needed" basis. Docket No. T-7406, Order No. 5269a, Finding No. 18. As BN's successor in interest, and by statute, MRL assumed this responsibility. < 69-14-202, MCA. The uncontroverted testimony in this proceeding is

that the Polson agent did not ever travel to Ronan. The Commission puts MRL on notice that in future proceedings where it is determined that MRL has not provided service in accordance with prior Commission orders, appropriate sanctions may be considered.

Further, in future applications with the Commission for agency closures, MRL shall indicate whether or not service is being provided which is consistent with requirements imposed by the Commission.

Mr. Mular requested that the Commission require MRL to maintain the public train track and loading facilities at Polson and Ronan, even if the depots are closed. The Commission notes that pursuant to state statute, separate authorization is required for removal of these facilities.

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 Polson/Ronan, Montana.

5. The Commission concludes that Montana Rail Link may remove the Polson/Ronan 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 Polson/Ronan, Montana is Granted.

IT IS FURTHER ORDERED that in filing future applications with the Commission for discontinuance of agency service, MRL shall comply with Finding No. 19 herein.

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

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 30th day of September, 1988 by a vote of
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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

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.