

Service Date: February 27, 1990

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

* * * * *

IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of Burlington Northern Railroad)	
Company to discontinue its agency)	DOCKET NO. T-9294
and dispose of the depot facility)	
at Chinook, Montana.)	ORDER NO. 5979

* * * * *

PROPOSED ORDER

* * * * *

APPEARANCES

FOR THE APPLICANT:

Charles Dearden, P.O. Box 759, Kalispell, MT 59903-0759

FOR THE INTERVENOR:

Stuart C. MacKenzie, Chinook City Attorney, P.O. Box 248, Chinook, Montana 59523,
appearing on behalf of the City of Chinook

FOR THE COMMISSION:

Garth Jacobson, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

DANNY OBERG, Commissioner and Hearing Examiner

The Hearing Examiner, having taken evidence and being fully advised in the premises, issues the following Proposed Findings of Fact, Conclusions of Law and Order pursuant to Section 2-4-621, MCA.

BACKGROUND

Burlington Northern Railroad Company (BN) applied to the Montana Public Service Commission (Commission) on August 19, 1988 for authority to discontinue its agency operations and dispose of the depot facility at Chinook, Montana (Chinook).

The Commission noticed BN's application and held a public hearing on October 18, 1988 in the Blaine County Library, 94 Fourth Street in Chinook, Montana.

On October 18, 1988 Mr. Stuart C. MacKenzie, City Attorney for the City of Chinook, appeared on behalf of Chinook or any other interested party. Mr. MacKenzie moved to intervene on the basis that the city provides fire protection to BN and the shippers and the safety of the community is affected by the possible loss of the agent. The motion to intervene was granted.

Following the hearing in this docket and Transportation Docket No. T-9162, the Commission allowed parties to brief the issues of whether safety is an aspect of public convenience and necessity and whether farmers who do not make arrangements for shipping are shippers. BN has filed briefs in this docket and Docket No. T-9162. The City of Chinook has declined to do so. Briefs were also filed by the Intervenor in Docket No. T-9162, Chester.

SUMMARY OF TESTIMONYTestimony of Applicant

Testifying for BN at the hearing were Brian Aman, Donald G. Boespflug and William Allbright.

Brian Aman, assistant manager of data quality for BN in Seattle, Washington, testified on the role of a central agency, or Central Billing Center (CBC), in handling shipping in the present organization of BN. The customer initiates the shipping procedure by calling the central agency and placing a car order, i.e., stating what car type is needed, when and where (s)he wants the car, what commodity will be shipped, and if possible, the destination of the loaded car. The information is logged in the car order book on file and electronically transmitted to the car distribution office (for this area, Seattle, Washington), which forwards the cars through a train or series of trains through a tagging system to the destination. At the destination, the cars have a SPRINS number and destination (assigned to a customer) which indicates to the crew where to spot the car(s). The car distribution office in Seattle has full control of distribution, which is all done on computers. The CBC (in this area, located in Great Falls) is a central agency that handles waybill and other agency functions previously handled by the local agents. The CBC is open 24 hours a day and run by people using a computer. The CBC also handles demurrage, the penalty assessed by tariff for keeping a car beyond 24 hours for loading. The train crew spots the car(s) and notes the time and date on the wheel report which is forwarded to the CBC at the conclusion of its tour of duty. The customer after loading the car may telephone, send by facsimile, or mail the bill of lading to the CBC. BN provides the shipper a power of attorney for the railroad to sign the bill of lading as agent for BN. The waybill produced from the bill of lading is entered into a computer and produces the paper documents which generate the freight bill. Any CBC can trace cars with the waybill information in the computer system. If a shipper has a problem, he will call the CBC, according to Mr. Aman. CBC will either handle the problem directly or refer the problem to appropriate personnel, including the trainmaster who is available 24 hours a day. Mr. Aman also testified that when a customer receives a shipment by rail it is similarly processed through the CBC.

Mr. Aman testified that the agent, Mr. Harold Bergman, is 57 years old. If the agency is closed, he has such options as early retirement as a protected employee under his union agreement or taking the agent's position at Malta, Montana, in exercising his seniority.

Mr. Aman testified that BN contacted the following shippers in the community prior to the application and none objected to closure:

Harvest State	Roger Donis	Chinook
Farmers Union Oil	Dan Johnson	Chinook
Montana Merchandising	Jerry Paugh	Chinook
Harvest State	Curt Abalter	Great Falls
North Montana Wool Pool Association	Rosella Higgins	Zurich

Mr. Aman further testified that the facility would still be available for the shipping public to use following closure. Upon cross-examination, he indicated that the closure would give BN the right to dispose of the depot facility as the application had requested, but BN would not necessarily do so. Mr. Aman testified that he saw no reason that BN would not help the Wool Pool shippers with their loading facility. In his personal opinion, BN would see to it someone was available for the one day the Wool Pool gathers to ship wool, although it was not a normal practice to help shippers load. The procedure would be for the Pool to contact CBC which would notify the trainmaster to establish communication and one person to contact for a particular movement.

Donald G. Boespflug, trainmaster/road foreman between Havre and Glasgow, testified that he has supervised operating crews (train and engineering) since May 20, 1988. BN has local service to Chinook four days a week with the option the other three days a week of setting out cars from through trains. Mr. Boespflug is available through CBC on a 24 hour a day basis with a pager, mobile telephone and radio channels. He testified that he had received no complaints from

shippers at Chinook regarding spotting of cars. His customers, with the exception of two in Malta, are all in Harlem and Chinook.

Mr. Boespflug testified that CBC will take over all the responsibilities of the local agent upon agency closure. In the cattle drive situation, the CBC, once contacted, would probably notify both the trainmaster and the dispatcher. The dispatcher controls when the trains go. Mr. Boespflug stated that BN would make arrangements to get the cattle across the tracks. BN would give a time for the cattle to cross and ensure no train in that time frame.

Mr. William T. Albright, senior cost analyst for BN and a 24 year employee, testified on financial matters, including revenue, expense and carload data. He prepared and testified on Exhibit A, a report compiling accounting information. In 1985, 349 cars were forwarded, of which 311 were grain cars, and 87 cars were received for a total of 436 cars. In 1986, 222 cars were forwarded, 14 cars received for a total of 236 cars. In 1987, 470 cars were forwarded, 18 cars received, for a total of 488 cars. In the first half of 1988, 319 cars were forwarded, 1 car received.

Mr. Albright further testified that agency duties related to handling of shipments amounted to 54 hours out of a total of 2,000 annual hours, and other station work such as janitorial and filing required 250 hours, for a total of 315 hours, or 16 percent of an agent's straight work time. The clerical work is actually done in Great Falls, including preparation of waybills and bills of lading attributed to the 54 hours of shipment handling time. Therefore, the agency's available time spent on agency work is substantially less than 16 percent, according to Mr. Albright. These figures

were based upon hypothetical analysis of typical duties, based upon time study factors applicable to a single person agency.

Mr. Allbright testified that total freight revenues and net revenues after applying the operating ratio (operating expenses divided into operating revenues of the company by year) are as follows:

	<u>Total Revenue</u>	<u>Net Revenue</u>
1985	\$ 998,767	\$192,562
1986	536,701	65,907
1987	1,035,766	154,433
1988 (1st 1/2)	748,519	108,685

The Chinook agency has been profitable using the Belt/Carter formula.

Mr. Allbright testified that BN has 190 agents system-wide in 25 states and 2 Canadian provinces as of the date of the hearing. There were 37 agents in Montana, for 2,323 miles of track, while Nebraska had 16 agents for 2,327 miles of track. Washington had 9 agents for 2,561 miles of track; North Dakota had 6 agents for 2,513 miles of track; Colorado had 7 agents for 714 miles of track. Mr. Allbright testified that these figures were used for illustrative purposes only.

Testimony of Public Witnesses

State Senator Greg Jergeson, who farms south of Chinook, appeared as a member of the public with an interest in the issues of management and operation of BN as affecting his operation as a farmer. He testified that the local agent was very helpful in making arrangements to get cars available and spotting them at a local grain elevator in order to ship 6,000 bushels of malting barley. The agent had to go to some effort to get the cars on a timely basis. Senator Jergeson was not sure that he could get the same kind of service out of calling a toll-free number and trying to make some arrangements. As a grain broker, Senator Jergeson believed that having an agent in Chinook is of public convenience and necessity. He commented that, while the owner of the largest shipping firm carried the bill leading to agency closure hearings, the shipper's employees contacted Senator Jergeson asking him to vote against it because they believed they would lose the vital services of the agent in Chinook.

On cross-examination, Senator Jergeson stated that although an agent could do nothing if there were a shortage of grain cars, he had confidence in the agent to put some effort into locating some cars on a timely basis. The agent could better deal with the organization. He did not have the same confidence in a nameless, faceless person at the other end of a toll-free number.

Steve Kleinjan of Chinook, assistant manager representing Farmers Union Oil Company (Farmers Union), testified on direct in favor of keeping the agency. The BN delivers carloads of fertilizer to Farmers Union. All they have to do is call the agent and he will get a train in that day. The agent has provided good, prompt service, including such efforts as pulling in, emptying and removing cars. Farmers Union believed that if they had to call a toll-free number in

Billings, there would be a delay in the quality of service. A two-day delay on a fertilizer car could cost Farmers Union a lot of money.

On cross-examination, Mr. Kleinjan testified that he had never called the toll-free number. The last time they had a car-spotting problem was the previous year in the fall when a car was spotted at the Milk River Elevator. He testified that he was in the habit of calling the agent, and had no need to call the 800 number with an agent in the community to take care of problems. The manager, Dan Johnson, had told him he could come testify and fight the railroad if he was willing, but he did not think it would do any good. Mr. Johnson has called the toll-free number.

Mr. Kleinjan testified that the solid fertilizer purchased by Farmers Union is not significantly hazardous. He testified that Farmers Union orders the fertilizer and Cenex handles the ordering of the cars and getting them to Chinook. The manager handles the orders and not the assistant manager (himself). Cenex in St. Paul arranges for approximately eight cars a year. The only thing Farmers Union is concerned about is spotting the cars, getting them unloaded and getting them out to avoid demurrage. To get them out, he picks up the phone and calls the agent. It would not matter if he called someone else, he said.

Rosella Higgins of Chinook, Secretary of the Hi-Line Wool Pool, Inc., read into the record a letter from its president, Phil Sims. According to the letter, the Hi-Line Wool Pool consists of 115 active wool producers in Montana who have shipped 443,628 pounds of wool through BN since 1983. BN took out the loading dock in January, 1983. In May of 1983, the Pool contacted the agent in Chinook about a place to load wool. The agent put the Pool in contact with Ed Gallagher, the assistant superintendent in Havre who promised to have a loading dock built in the East yards at Chinook. Meanwhile, the Pool could load wool out of the freight house at the depot. In 1988

there still was no loading dock and the building at the depot was used for storage. The agent spent two to three days each year moving stuff and cleaning an area for wool loading. BN changes personnel often, so the Pool has to depend upon the agent in Chinook.

Mrs. Higgins testified that the Wool Pool needs a place to load wool onto the cars. The producers have been unloading the wool sacks from their vehicles into the freight house in the depot. Then they have a Bobcat which loads the sacks over a platform onto the cars. Mrs. Higgins indicated that the Pool could not afford the taxes on the depot if BN gave it to them. They need the agent to help them in cleaning out the facility. They use three-fourths of the freight house. They require room to maneuver the Bobcat around and set out the wool sacks. The wool is brought into the area, weighed and loaded in one day. (The Pool stores its scale at the depot.) Mrs. Higgins calls the agent and he orders the cars. She prefers talking to the agent at Chinook, but hopes that if she were to telephone another agent she would get the same result.

Mrs. Higgins testified that about 100 wool producers come on loading day to Chinook. They get a major part of their income from wool. If they arrived on loading day and the storage area was not ready and no cars had arrived, they would have to haul the wool back to their farms. Something like the depot facility is needed in which they can load from an elevation onto the box cars and which protects the wool from the elements. If the sacks get wet, the wool buyers will dock. The Pool is able to weigh the wool inside the depot.

Mrs. Higgins further testified that the one company with the highest bid buys all the wool and pays the freight. The wool buyer notifies the Pool as to the delivery date and requires the Pool to get the cars. She and the agent make arrangements to use the facility. She calls the agent and tells him how many cars they need and what day they are going to ship. The depot agent actually

orders the cars and notifies her when the cars arrive. Her concern is that without an agent in Chinook the facilities for a loading dock will not be available.

Mrs. Duan Drugge, rancher in the Chinook area, represented a number of area ranchers. She testified that they move at least 1,200 head of stock and also sheep across the railroad tracks four times a year. The other ranchers each move livestock at least twice a year. They have to contact the agent to get permission or the insurance company will not cover the livestock. She had not been aware of the toll-free number. With the local agent, they can call him the night before and find out when they can cross. She testified that she did not feel comfortable calling a toll-free number because she did not think they would get back to her if there was a change in the schedule. With that large a herd of cattle, they require half an hour notice to hold them. The agent Mr. Bergman would send someone out to tell them of changes. The agent has always been available.

Mrs. Drugge testified that the agent had not discussed flagging protection or coordinating with the trainmaster to her knowledge. She assumed that he just let her know when the trains were going through. The advantage of the local agent was the opportunity for him to get back to them if there was a change of schedule. She did not know if it could work to coordinate with someone else from BN.

William Preeshl of Chinook, director of the Hi-Line Wool Growers for the past 10 years, testified that he had personally used the depot and facilities for shipping for 28 years (and the Pool for 40 years) and was in support of keeping the depot and the agent. Upon cross-examination, he testified that they ship three carloads every year. He did not think it would be feasible for them to buy the depot facility. The local facility is important to the Pool financially. Although they were

promised a new loading dock, the depot facility has been well-suited. The agent has handled acquiring the cars and helping them get "rigged up to load," and it has been handy to have the local agent.

Arthur Kleinjan of Chinook, chairman of the Board of County Commissioners, Blaine County, testified that the Commissioners support the public testimony in favor of keeping the agency. He does not ship anything by railroad. He is a rancher who raises cattle and has used the facilities of the local agent to cross the main line with the cattle. He had been unaware of the toll-free number, although as a Commissioner he had worked with BN for the past six years. He testified that a disaster would be possible if the train times changed when they were taking cattle across the tracks. He believed that during summer, spring and fall, ranchers crossed the tracks with cattle twice a day, some without asking for assistance. Under Commission questioning, Mr. Kleinjan testified that an alternative provided by the railroad such as a local contact between the railroad and trail riders might be satisfactory. However, Hill County would not be close enough since people cross at Havre, for example. He further testified that if BN could provide a situation such as flagmen to assure safety in cattle crossings, this might solve the problem.

State Senator Francis Bardanouve, a local rancher, testified that he is also a shipper who ships from Harlem, Chinook and Rudyard. He testified that he is concerned that a giant corporation is trying to run the largest railroad with "the absolute minimal amount of human element," and with the bottom line of profit and loss, rather than a concern about service.

On cross-examination, Senator Bardanouve testified that he was on the Board of Directors of the coop in Harlem, and that he ships grain through the coop association which comes to Harlem, Chinook or Rudyard. He is not involved in the daily operations of the elevators. He

testified that he realized an agent does not have the workload he used to have, but that the agent works closely with the people and is their advocate with the BN system.

Testimony of Intervenor's Witnesses

Harold Bergman, BN's present agent at Chinook, appeared and testified under subpoena pursuant to request of the intervenor, City of Chinook. Mr. Bergman testified that he had worked for BN for 39 years. He came to Chinook in the fall of 1959 at which time five people worked at the agency. Chinook became a one-man agency in 1973, and he left. He returned to Chinook in 1977 when the previous agent retired, and had worked there continuously since. Mr. Bergman testified that he performed the same day-to-day jobs in providing service to shippers. He testified that the toll-free number provided slow service and that the agent provided better communication and smoother service.

Mr. Bergman further testified that Chinook has a unique loading facility in the Chinook yards at the old sugar factory. There are five tracks with loading only on three tracks. Cars must be put on all five tracks. If the cars are not spotted correctly, the elevator cannot operate and is tied up until a train can arrive to fix it. This delay can lead to demurrage. On occasion, problems arise and the agent personally intervenes on behalf of the shipper. In Mr. Bergman's opinion, service from the toll-free number in Great Falls is much slower. Mr. Bergman also testified that the agent is in a better position to handle a "bad-order car" situation which can be more quickly determined by personal inspection. His personal presence, he testified, saves time for the shipper and the railroad. For example, in one instance a fertilizer car was misspotted in the general terminal area elevator rather than at the fertilizer plant. The agent was able to get on the phone immediately,

contact the dispatcher and catch a train from Malta within three hours to correctly spot the car of fertilizer. Through Great Falls, it might have been that night or the next day. Mr. Bergman later testified that he had not saved shippers demurrage but had saved the railroad delay in movement of the cars.

Mr. Bergman testified that the agent has direct contact with the dispatcher so that he can quickly call the fire department (happened two years previously). In the spring and the fall, Mr. Bergman testified that he has spent most of his time helping ranchers cross with their cattle. Typically, the rancher calls and asks for a time to cross. The agent informs him that trains do not run on a schedule, so when the cattle are ready to go, the rancher should call back. Then Mr. Bergman calls the dispatcher directly, finds out where the trains are and when the cattle can go.

Mr. Bergman testified that the only bill of lading he does is on the wool shipments. But he does not bill the car. He phones the bill of lading to Great Falls and mails a copy. Great Falls takes care of it.

Mr. Bergman testified that a loading dock was removed without notice from the depot in Chinook in 1983. A local Wool Pool representative met with a BN representative from Havre at the depot. BN promised to build a dock in the east yard, but meanwhile the Pool could use the depot for loading wool. This procedure has worked well since.

Mr. Bergman testified that he does roll-by inspection of every train when he is on duty, but only occasionally has found some very minor problems.

Mr. Bergman testified that back in 1959, he handled passenger service, tickets, baggage, railway express, Western Union, US Mail, "less than carload" shipments, livestock, etc. Now, most of these services are not provided, and all the waybills are done by computer. He

testified that the toll-free number in Great Falls works, but it involves more delay, perhaps a 24 hour delay. When he himself has called the toll-free number (CBC), he has encountered the delay. But he has expedited by directly calling the dispatcher himself. Mr. Bergman believed that he handles his job better in the community than it could be handled by someone on a toll-free number.

Mr. Bergman further testified as to his personal service on behalf of the Wool Pool. One hundred or so sheep herders have got to get their wool in for shipping in one day. Two weeks ahead of time he orders one or two cars from Great Falls to arrive two or three days ahead of time. The day before loading he helps the Pool clean out the car(s) and the freight house. He also makes sure they have the ramps for loading. His intention is to provide good service and keep the satisfaction of the shippers.

Hobert C. Richmond, fire chief of Chinook and Blaine County for 21 years, testified that the fire departments have responded to 40 fires in 1987 started by BN trains. He has gone to Mr. Bergman to find out where the trains are in order to protect the men fighting the fires. It also helps to have the engineers report the fires to the agent, leading to quicker response. Mr. Richmond was unfamiliar with the toll-free number, but figured it would probably work. Mr. Richmond said that he usually gets a message about a fire from his pager and drives his pickup to the agent to let him know. Mr. Richmond testified that most train-caused fires happen during the day. If a rail road fire occurs at night, generally the engineer or an observer calls the fire dispatcher at night. To get the train schedule, the fire dispatcher calls the railroad dispatcher.

Testimony from Union Representatives

Mr. James T. Mular, representing the Transportation and Communications Union, testified in opposition to the closure of both the Harlem and the Chinook agencies. Mr. Mular testified that public convenience and necessity applied to safety standards and other requirements over which the Commission has jurisdiction in the public interest and that the railroad had presented a case of carrier convenience and necessity. Mr. Mular testified that BN had already closed the station because the agent was not allowed to perform agency duties. BN took away these duties in 1984 and 1985 without permission, Mr. Mular testified. Mr. Mular asserted that shippers were not the only witnesses to attest to whether an agency is required by public convenience and necessity, and that the Commission should consider safety factors and BN's compliance with Commission rules in determining whether to allow an agency closure. Mr. Mular asked that this testimony be incorporated by reference into the Harlem proceedings as relates to safety and the public convenience and necessity.

Mr. Ray West, assistant state legislative director of the United Transportation Union and formerly brakeman/conductor, testified on behalf of the train crews. He testified that the agent provides an important function for train crews in conducting roll-by inspections, especially since there are no longer cabooses. The agent has radio communication, the only way the train may be contacted. Mr. West testified that BN wants to replace the agent with a toll-free number, but the agent is still very important in checking the train and relaying messages. The agent can reach the dispatcher at times when the train crews cannot. On one occasion, if there had not been an agent at Harlem a train fire would have been long gone. An agent's expeditious reporting of fires is important, Mr. West testified.

DISCUSSION, FURTHER FINDINGS AND ANALYSIS

Under § 69-14-202(2), MCA, the Commission shall authorize the closure, consolidation or centralization of a facility if a railroad demonstrates to the Commission that the facility is not required for public convenience and necessity. At the time of this application when the facility at issue was for purposes of shipping, the Commission's test for determining public convenience and necessity involved a threshold determination of whether the railroad had a duty to maintain and furnish shipping facilities under § 69-14-202(1), MCA.

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.

The Commission weighed the needs of the shipping public for rail service against the railroad's burden of maintaining agency service.

The 1989 Legislature modified § 69-14-202(2), MCA, by adding the following language:

In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

Since the legislature does not engage in idle acts, the Commission reads this amendment to § 69-14-202, MCA, to reflect the intention of the legislature to expand Commission analysis to include

impacts of the proposed closure upon persons other than shippers. A review of the legislative history of this amendment supports such an interpretation.

The Commission determines that there are two tests to apply in determining whether an agency may be closed under § 69-14-202(2), MCA:

1. the narrower test (pre-1989 legislature) which requires a railroad to demonstrate that an agency is not required for the convenience and necessity of the shipping public; and
2. the broader test (per 1989 amendment) which requires the Commission to consider, in addition to testimony on shipping, any other facts and testimony related to burdens to the general public if the application were granted to close the agency.

Public convenience and necessity is not an absolute standard that can be determined by a formula. It must be determined by the facts and circumstances of each case. Under the first test, the Commission must weigh the needs of the shippers served by the railroad for rail service against the railroad company's burden of maintaining agency service. The second test requires the additional consideration of the needs and concerns of the general public in the communities served by the railroad.

The Commission does not need to determine in this proceeding which test to provide. Application of either test results in a determination that public convenience and necessity does not require the agency at Chinook to remain open.

According to Mr. Aman, before the hearing the railroad contacted its known shipping customers in Chinook and there were no objections to closure of this agency. At the hearing repre-

sentatives from Hi-Line Wool Pool testified as to their concerns. The assistant manager of Farmers Union Oil Company testified on his own volition. Farmer's manager had not objected to the closure of the agency and did not appear at the hearing. The senator from Harlem testified that he was on the Board of Directors of the cooperative in Harlem and that he shipped grain through the coop in Harlem, Chinook or Rudyard.

The Commission determines that BN can address and satisfy the concerns of the Hi-Line Wool Pool shippers by making arrangements agreeable to the Pool to meet their special needs. Their shipping needs do not require that the agency remain open when they can be met otherwise. It would be an undue burden on BN to keep the agency open for one or two cars on one day a year. The Commission directs BN to file a satisfactory plan for meeting the special needs of the Wool Pool by April 1, 1990.

The Commission further determines that the agency is not necessary in order to serve Farmers Union Oil Company. The manager allowed the assistant manager to try to keep the local agent. The assistant manager had never tried to use the toll-free number BN provides for shipper service, but the manager has used the number. The manager handles the shipping orders. On balance, this testimony does not rise to the level of the public convenience and necessity required to keep the agency open. The 24 hour toll-free number, as described in Mr. Aman's testimony, apparently meets the shipping needs of the manager of Farmers Union Oil Company.

The Commission determines that public convenience and necessity does not require that the agency in Chinook remain open to meet Senator Bardanouve's shipping needs. He is on the board of directors of the coop in Harlem which has its own agency. It is more compelling to keep the Harlem agency open to meet his shipping needs.

The intervenor presented witness testimony and members of the general public also testified on concerns for safety. The agent had been serving as an intermediary in notifying the fire department about railroad fires along the track and finding out the train schedule. The agent works eight hours a day, five days a week. His primary assistance to the fire department is in informing it of the train schedule. When the agent is off-duty, the fire department dispatcher itself telephones Havre to get the necessary information. Testimony was general and vague about the time-saving element of the agent's actions related to fire safety. The Commission determines, however, that the railroad is responsible to expedite fire reporting and enable the local fire departments to fight the fires with reasonable knowledge of the train schedules. To this end, the Commission directs BN to file documentation by April 1, 1990 with the Commission demonstrating that the fire department in Chinook and Blaine County is fully informed of proper procedures to expedite fire reporting and obtaining train schedules.

The Commission further determines that BN shall make every effort to work with the cattle and sheep ranchers in informing them of procedures to obtain train times for safe movement of cattle or sheep across the tracks. The railroad should not be burdened with maintaining an agency to provide assistance, primarily in the spring and fall, with cattle-crossing. The Commission directs BN to file documentation by April 1, 1990 with the Commission demonstrating its plan to inform ranchers of procedures to obtain train times. Procedures should include letters to local agricultural organizations, news releases and display advertisements in the Chinook Opinion and Harlem News during March and September of each year.

The Commission determines that there is not compelling shipper testimony such that the agency should remain open. The Commission has historically relied upon shipper needs to deter-

mine whether public convenience and necessity justifies local agency service. The shipper testimony supports a preference for local agency service, an appreciation for the special extraordinary services provided locally, and a concern that corporate BN will lose the human element. This testimony does not rise to the level of public convenience and necessity. Agency services to satisfy the shippers at Chinook appear to be adequately provided by BN in its CBC. The Commission finds that the public convenience and necessity of the shipping public does not require the Chinook agency to remain open. However, BN shall satisfy the Commission as directed herein that it will meet the singular needs of the Hi-Line Wool Pool.

The safety concerns of the general public regarding livestock crossing and fire dangers can be met by BN as directed in this order. Public convenience and necessity does not require the presence of a local agent to meet these concerns.

CONCLUSIONS OF LAW

The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA.

The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.

No specific rule can be used to determine whether public convenience and necessity requires a given service to be performed. The facts in each case must be separately considered. See Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Board of Railroad Commissioners, 225 P.2d 346 (Mont. 1953), cert. den. 346 U.S. 823. The Commission concludes that the public convenience and necessity does not require the continuance of an agency at Chinook, Montana.

The Commission concludes that Burlington Northern Railroad Company may remove the Chinook depot only if it is not required to meet the special needs of the Hi-Line Wool Pool subject to BN's plan to be filed on or before March 1, 1990. Prior to its disposal, BN 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 Burlington Northern Railroad Company to inform the Commission in writing of the disposition of the building.

ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application in Docket No. T-9294 to close the agency at Chinook, Montana and dispose of the depot facilities is Granted, subject to the conditions provided herein.

IT IS FURTHER ORDERED that Burlington Northern Railroad Company shall apply < 69-14-1001, MCA, as required.

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

IT IS FURTHER ORDERED that BN shall file documentation with the Commission as directed herein by April 1, 1990 addressing the concerns of the Hi-Line Wool Pool regarding shipment, the Fire Departments of Chinook and Blaine County regarding reporting of fires and obtaining train schedules, and the ranching community regarding safety in livestock crossing.

IT IS FURTHER ORDERED, pursuant to Section 2-4-621, MCA, that this is a proposed order only. Any party has the opportunity to file exceptions to this initial decision, present briefs, and

make oral arguments before the full Commission. Exceptions and supporting briefs must be filed with the Commission within twenty (20) days from the date of service of this proposed order.

DONE AND DATED this 27th day of February, 1990.

BY ORDER OF THE PUBLIC SERVICE COMMISSION

DANNY OBERG, Commissioner and
Hearing Examiner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)