

Service Date: July 7, 1989

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 agency	)	
operations at Richland/Peerless,	)	DOCKET NO. T-9298
Montana and to dispose of the	)	
depot at Richland, Montana.	)	ORDER NO. 5939

\* \* \* \* \*

FINAL ORDER

\* \* \* \* \*

APPEARANCES

FOR THE APPLICANT:

Charles C. Dearden, Murphy, Robinson, Heckathorn & Phillips, P.O. Box 759, Kalispell,  
Montana 59903-0759

FOR THE COMMISSION:

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

BEFORE:

DANNY OBERG, Commissioner & Hearing Examiner

## BACKGROUND

Burlington Northern Railroad Company (BN) applied to the Montana Public Service Commission (Commission) on August 24, 1988 for authority to discontinue its agency operations at Richland/Peerless and dispose of the depot facilities at Richland, Montana.

The Commission noticed BN's application and a public hearing was held on November 14, 1988 at the Old School/Community Hall, Richland, Montana.

At the conclusion of the hearing the parties stipulated to a final order.

## SUMMARY OF TESTIMONY

### Testimony of Applicant

Testifying for BN were Charles Scheibe, Les Schefil-bine, James Whitmeyer and William Allbright.

Charles Scheibe. Mr. Scheibe is the Manager of Data Quality located in St. Paul, Minnesota. He explained that under BN's proposal, a shipper wanting service out of Richland/Peerless would contact the Centralized Billing Center (CBC) in Great Falls to order a railroad car. The customer would provide the CBC with the necessary relevant information, such as commodity, destination and shipping date. The CBC places an order with a BN car distributor, who sends a car to the customer's loading facility. BN will pick up the car when it is loaded.

The CBC operates 24 hours a day, 7 days a week. It is a computerized operation that ties into the entire BN system. The customer prepares the bill of lading, and can call the CBC toll-free. There are three options for processing the bill of lading. The customer can mail the bill of lading to Great Falls for processing, may use a power of attorney for BN to sign the bill of lading, or may put the bill of lading into a locked box at the point of pickup. The CBC is equipped to handle

both the bill of ladings and way bills (a way bill is an internal document that describes the destination of the car).

James Whitmeyer. Mr. Whitmeyer is the Division Agent at the CBC facility located in Great Falls, Montana. Mr. Whitmeyer testified that there are eight clerks assigned to Great Falls. There are four clerks assigned to the day shift, three on the evening shift, and one on the night shift. Mr. Whitmeyer also testified that he had conducted a shipper meeting in the Richland area to inform shippers of the CBC use as well as answer any questions they may have. He stated that the shippers which were contacted did not oppose the application.

The agent is a protected employee with seniority, who would be able to bump a junior employee within the terms of his agreement with BN.

Les Schefilbine. Mr. Schefilbine is the trainmaster stationed in Glasgow. He testified that train service on the Opheim branch is a scheduled local on Tuesday as far as Scobey, returning on Wednesday. Train service to Richland, or any point west of Scobey, is on an "as needed" basis. Mr. Schefilbine testified that the branch line is 150 miles in length, from Bainville to Opheim, with an operating speed of 35 mph to Scobey and some slow order track beyond to Opheim.

William Allbright. Mr. Allbright, a senior cost analyst for BN, sponsored Exhibit B -- Accounting Exhibits for Proposal to Discontinue Agency Service at Richland/Peerless, Montana. Exhibit B shows the following cars received and forwarded at Richland/Peerless in 1985, 1986, 1987 and the first nine months of 1988.

Cars Received and Forwarded at Richland/Peerless

	1985	1986	1987	Jan-Sept 1988
Received	5	7	14	6
Forwarded	13	9	24	48
Total	18	16	38	54

Exhibit B also contained net revenues or losses for the Richland/

Peerless agency calculated using the Belt/Carter and the BN formulas.

		Belt/Carter Formula	BN Formula
1985	\$ 6,807	\$(33,185)	
1986	3,933	(35,673)	
1987	11,793	(34,170)	
1988 (Jan-Sept)		14,993	(23,114)

Page 3 of Exhibit B shows the number of units handled and the estimated amount of time consumed performing agency work at the station at Richland/Peerless during 1987. This schedule shows a total time worked of 2,000 hours and a total time required for agency work of 364 hours, including travel time. Based on BN's estimation of the time required to do a unit of agency work, and the actual number of units of work handled, the agent at Richland/Peerless spent 18 percent of his time on agency work and 82 percent of his time was available for other work.

#### Testimony of Public Witnesses

Mr. James Mular, legislative director of the Transportation Communications Union (TCU) testified in opposition to the closure of the Richland/Peerless agency. He testified that he believes that public convenience and necessity require the Richland/Peerless agency to remain open. Using the Belt/Carter formula, the agency is profitable. In his opinion, the lack of shipper testimony does not prove that public convenience and necessity do not require the Richland/Peerless agency. The railroad has introduced no evidence to show that the Great Falls agency is capable of handling the increased work from Richland/Peerless, and has produced no evidence that the Great Falls CBC can adequately meet shipper needs.

Mr. Mular also testified that there will be no cost-savings to the railroad for closing the Richland/Peerless agency, because the agent is a protected employee. He also disputed BN's productivity figures arguing that the numbers do not adequately reflect the agent's contribution to service.

Mr. Mular requested the Commission to give employee wage protection under § 69-14-1001, MCA. He also testified as to his discussions with BN personnel during the 1987 legislature regarding the amendment of § 69-14-202, MCA, and its subsequent application. Mr. Mular testified that BN indicated it would not seek the closure of any station where the agent was within two years of retirement. This policy would avoid both the bumping of junior employees and the upheaval of the agent's life. Mr. Mular testified that in return for this promise the TCU and other unions did not oppose the amendment of § 69-14-202, MCA.

#### DISCUSSION, ANALYSIS AND FINDINGS

Under § 69-14-202(2), MCA, as amended by the 1987 legislature, 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. Public convenience and necessity is not an absolute standard that can be determined by formula. It must be determined by the facts and circumstances of each case. The Commission must weigh the needs of shippers for rail service and the concerns of the communities served by the railroad against the railroad company's burden of maintaining agency service.

The Commission finds that Richland/Peerless received 5 shipments in 1985, 7 shipments in 1986, 14 shipments in 1987 and 6 shipments in 1988 (Jan.-Sept.). The agency

forwarded 13 shipments in 1985, 9 shipments in 1986, 24 shipments in 1987 and 48 shipments in 1988 (Jan.-Sept.). No shippers or receivers of freight appeared to testify in opposition to the CBC concept.

Based on the low volume of cars received or forwarded at Richland/Peerless, the absence of shipper testimony, and BN's testimony that the Great Falls CBC is willing and able to provide all necessary services, the Commission finds that public convenience and necessity does not require that the Richland/Peerless agency remain open.

Although the record evidence in this docket supports a grant of BN's application, the Commission recognizes that agency service on the Opheim branch generally may be a valuable service to the local communities along that line. While maintenance of a full-time agent may not be required at many of the communities on the Opheim branch, BN is encouraged to explore other options for providing agency service along this line, such as shared agent service between many, or all of the affected communities.

#### CONCLUSIONS OF LAW

1. The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA.
2. 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.
3. No 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 do not require the continuance of an agency at Richland/Peerless, Montana.

4. The Commission concludes that Burlington Northern Railroad Company may remove the Richland depot. 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-9300 to close the agency at Richland/Peerless, Montana and dispose of the depot facility at Richland is granted.

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

IT IS FURTHER ORDERED that pursuant to stipulation that this is a final order.

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 this order be effective immediately and that a full, true and correct copy be mailed to the Applicant and all parties of record.

DONE AND DATED this 5th day of July, 1989 by a vote of

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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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CLYDE JARVIS, Chairman

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HOWARD L. ELLIS, Vice Chairman

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JOHN B. DRISCOLL, Commissioner

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WALLACE W. "WALLY" MERCER, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Ann Purcell  
Acting 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.