

Service Date: September 21, 1994

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

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IN THE MATTER Of the Petition of)	TRANSPORTATION DIVISION
Burlington Northern Railroad)	
Company for Authority to)	DOCKET NO. T-93.114.RR
Discontinue Agency Services)	
at Browning, Montana.)	ORDER NO. 6321a

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

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FOR THE COMMISSION:

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Wayne Budt, Transportation Division, 1701 Prospect Avenue,
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BEFORE:

DANNY OBERG, Commissioner and Hearing Examiner

Pursuant to 2-4-621, MCA, a proposed order authorizing a
grant of the authority requested was issued in this matter on

July 22, 1994. 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.

BACKGROUND

1. Burlington Northern Railroad Company (BNRC or Applicant) applied to the Montana Public Service Commission (Commission) on August 19, 1993 for authority to discontinue agency services at Browning, Montana.

2. The Commission properly noticed BNRC's application and held a public hearing on December 9, 1993 at the Bureau of Indian Affairs, Blackfeet Agency, BIA Conference Room, Browning, Montana.

Summary of Testimony

Testimony of Applicant

3. Tom Zack, BNRC's manager of Customer Service in Great Falls, testified on the operation of a central agency. Mr. Zack explained that a customer wanting service in Browning can contact either the Great Falls or Whitefish central agencies. He testified that the central agencies provide modern computerized service, 24 hours per day. He also explained that the Browning agent plays no role in the customer service process provided by the central agencies.

4. Jim Engel, a trainmaster in Shelby for BNRC explained that the Browning agent does not provide customer service. He

said that the agent provides some Amtrak service but could not describe the scope of that service.

5. Paul Froelich, a cost analyst for BNRC, sponsored an accounting exhibit showing the car traffic and revenues associated with the Browning station.

Testimony of Public Witnesses

6. James T. Mular, State legislative director for the Transportation Communications International Union (TCU) testified generally about the relationship between BNRC and Amtrak. Mr. Mular's position is that BNRC should not be authorized to close the agency if closure will affect Amtrak service.

7. Francis Warren Horn, a resident of the Blackfeet reservation, also testified that the agency should not be closed if it will affect Amtrak service.

Exhibits

8. BNRC presented two exhibits: 1) BNRC #1 - December 1, 1993 letter to Gary Anderson (BNRC) from Kurt Laird and Gary Enford (Amtrak); 2) BNRC #2 - Accounting Exhibits for Proposal to Discontinue Agency Service at Browning, Montana. TCU was permitted to submit an exhibit after the close of hearing: TCU #1 - The National Railroad Passenger Corporation Agreement.

DISCUSSION, FURTHER FINDINGS AND ANALYSIS

9. Under Section 69-14-202(1), MCA, a railroad operating in the state of Montana shall maintain and staff such agency facilities for shipping, freight delivery and accommodation of passengers as were maintained and staffed on January 1, 1987. However, if the railroad demonstrates to the Commission, following an opportunity for public hearing, that a facility is not required for the public convenience and necessity, then the Commission shall authorize the closure of such facility. Section 69-14-202(2), MCA. Though BNRC is only requesting to discontinue agency services in this instance, rather than close the Browning facility, the same analysis applies.

10. In determining public convenience and necessity, the Commission must weigh and balance facts and testimony presented at the hearing including facts and testimony presented by the general public. Id. The Commission shall also consider 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 the provision of adequate rail service. Id.

11. Section 69-14-202, MCA, requires the Commission to consider any burdens that may be placed upon the general public if the application is granted. The only concern raised by the general public in this case is whether the removal of the agent will affect Amtrak service. At hearing BN submitted a letter from Amtrak indicating that Amtrak services will continue at Browning as follows: 1) eastbound and westbound trains will continue to stop at Browning; 2) a caretaker will open and close the station seven days a week for both trains; 3) tickets and reservations can be made through a toll free reservation line and at travel agencies; 4) express freight will be handled if receivers are present on the arrival of trains. BNRC Exh. #1. The Commission verified this Amtrak policy on service at Browning in a separate letter from Amtrak. March 3, 1994 letter to Commission attorney Robin McHugh from R.C. Vanderclute, Vice President Transportation, Amtrak. Master File. Therefore, the Commission is reasonably satisfied that discontinuance of BNRC agency services in Browning will not compromise the general public's interest in adequate passenger service.

12. Section 69-14-202, MCA, also requires the Commission to consider any burdens that would be placed upon the shipping public if the application were granted. No shipper testified in

opposition to this application; therefore, the Commission concludes that granting this application would not place a burden on the shipping public. Absent shipper need for a local agent, and given that the central agencies in Great Falls or Whitefish can adequately handle shipper need at Browning, requiring BNRC to maintain the Browning agency would place a burden on the railroad.

13. In evaluating the burdens that would be placed on the railroad if the application were denied, the Commission notes that the accounting exhibit presented by BNRC shows that the Browning Agency is profitable. However, BNRC made a sufficient showing for the Commission to conclude that the Browning agency services are duplicative of the Great Falls or Whitefish Central Agency services. Requiring BNRC to continue such duplicative services in the absence of shipper need clearly places a burden on the railroad.

14. Weighing the respective burdens, as required by Section 69-14-202, MCA, the Commission finds that the only burden present is that which would be placed upon BNRC by requiring the continued provision of agency services. Therefore, the Commission further finds that the agency services provided through the Browning agency services are not required for the public convenience and necessity. The application is hereby granted.

Procedural Matters

15. With the agreement of BNRC, the record in this Docket was left open to receive a clarifying statement from Amtrak on its policy on the Browning station. See paragraph 11, supra. Also, at hearing TCU was allowed an opportunity to late file a

petition to intervene in this Docket on the issue of Amtrak service. TCU filed a petition to intervene on December 30, 1993.

For purposes of representing the railroad agents' interest in Amtrak service at Browning, TCU's petition to intervene is granted.

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. The services provided through the Browning Agency are not required for the public convenience and necessity. Section 69-14-202, MCA.

4. The Commission shall require employee protection before granting an application to discontinue agency services. Section 69-14-1001, MCA.

ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application to discontinue agency services at Browning, Montana is hereby granted.

IT IS FURTHER ORDERED that Burlington Northern Railroad Company shall provide employee protection as required by Section 69-14-1001, MCA.

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 in order to facilitate an orderly transition between BN and Amtrak, this order will be effective on November 6, 1994.

Done and Dated this 12th day of September, 1994 by a vote of
5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

BOB ROWE, Vice Chairman

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Kathy Anderson
Commission 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 ARM 38.2.4806.