

Service Date: June 4, 1991

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
UNION PACIFIC RAILROAD COMPANY )	
to Relocate Agency Services from )	
Its Silver Bow Agency to the )	DOCKET NO. T-9447
National Customer Service Center )	
at St. Louis, Missouri. )	ORDER NO. 6036

PROPOSED ORDER

APPEARANCES

FOR THE APPLICANT:

Steven Goodsell, Regional Legal Counsel, Union Pacific Railroad, 406 West First South, Salt Lake City, Utah 84101

R.D. Corette, Jr., Esq., Corette, Smith, Pohlman & Allen, 49 North Main, P.O. Box 590, Butte, Montana 59703

FOR THE COMMISSION:

Timothy N. Sweeney, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

JOHN B. DRISCOLL, Commissioner & Hearing Examiner

BACKGROUND

On July 28, 1989 Applicant Union Pacific Railroad Company (Applicant or UP) filed an application with the Montana Public Service Commission (Commission) to relocate its Montana agency services at Silver Bow, Montana to its National CustomerService Center (NCSC) at St. Louis, Missouri. Applicant states that communications and computer systems implemented at NCSC will allow it to more efficiently perform all agency functions currently performed by the Silver Bow agency.

On December 19, 1989 Docket No. T-9447 was noticed for a public hearing to be held on January 17, 1990. On January 5, 1990, Applicant filed a motion requesting that the scheduled hearing be continued for a period of five months. The stated purpose of this continuance was for further study and discussions regarding the proposed relocation. On January 8, 1990 the Commission granted Applicant's motion and vacated the hearing.

On January 10, 1991 the Commission conducted a properly noticed public hearing on Docket No. T-9447 at the Butte Public Library, Butte, Montana.

### SUMMARY OF TESTIMONY

#### For the Applicant

Mr. Don Bartula, UP's NCSC Team Leader for the Western Region, testified that the NCSC was established at St. Louis, Missouri, in 1986 at a cost in excess of \$44 million; that it operates 24 hours a day, 365 days a year, and is accessible by an 800 telephone number or electronic data exchange; and that the approximately 1,000 customer service representatives working with the various technologies perform a wide array of functions including receiving and processing car orders, tracking and tracing cars, processing waybilling information, and responding to shipper inquiries.

Mr. Bartula also testified that on a daily basis the NCSC's handles approximately 24,000 telephone calls with an average response time of 3 seconds, monitors about 180,000 freight cars and 1,800 trains, and processes about 12,000 new shipments; and that despite mistakes, a monthly customer satisfaction survey conducted by an independent firm indicates that customer satisfaction is increasing dramatically.

Mr. Bartula further testified UP operates in a number of states sans local agents; that a local agent cannot operate independently of NCSC in serving shipper needs; that, in his opinion, a local agent is not necessary for a shipper to conduct rail business with UP; and, based upon his knowledge of the NCSC, his contacts with Montana customers and his background and experience with UP, there is no need for UP to maintain a local agent at Silver Bow.

Mr. Dwane Durham, UP's Manager of Data Integrity for the Western Region, testified on his experience in the relocation of agency services to NCSC and, specifically, those associated with the Silver Bow agency. He also provided testimony on the originating and terminating traffic at Silver Bow and the functions and duties of the current station agent. He also stated that there are nine states on the UP line without station agents, including Texas, California, Washington, Oregon, Iowa, Illinois, and Utah. Based upon his knowledge and experience, Mr. Durham concluded that all the work currently being performed by the station agent could be performed by NCSC or other UP personnel.

Mr. Craig L. Taylor, Manager of Train Operations for UP, testified on UP's train operations in Montana; the operating expenses of the Silver Bow agency; UP's Customer Action Team program (UPCAT) that is designed to increase interaction between train crews and customers; and the Automatic Train Control System (ATCS) that allows real-time communication between the train crew and the NCSC. Mr. Taylor also was of the opinion that the station agent was no longer needed.

Mr. Leo Tierney of UP's Hazardous Materials Management testified on UP's training and operating procedures vis-a-vis hazardous materials. He further testified that the station agent was not necessary to ensure the safe movement of hazardous materials.

Mr. John Steiger, UP's Manager of Labor Relations, testified on the Silver Bow station agent's employment options and opportunities should the petition be granted.

In Opposition to the Applicant

Mr. Jack Lynch, Chief Executive of Butte-Silver Bow, presented a resolution of the Butte-Silver Bow Council of Commissioners opposing the petition to relocate agency services for safety and business concerns. He also testified that the absence of shippers at the hearing reflects a desire to protect their business relationship with UP.

Mr. Tom Brophy, Chairman of the Butte-Silverbow Council, provided further testimony on the safety and business concerns of the Council.

Ms. Mary Mollish, concerned citizen, testified that she would be very concerned if the station agent were removed since significant amounts of hazardous waste is transported through Butte-Silver Bow. On cross-examination, Ms. Mollish admitted she had never engaged in any rail business with UP.

Mr. Bill Burger, concerned citizen, testified that the consensus opinion of Strategy 2000, a local business group, was that Butte needed a full-time freight agent. On cross-examination, Mr. Burger admitted that he also had never engaged in any rail business with UP.

Mr. Gregory Loder, Legislative Representative for the United Transportation Union Local 365 and a UP conductor, testified as to his practical experience with operating trains and interfacing with NCSC. On cross examination, he admitted to having been previously fired by UP for a safety violation and subsequently reinstated upon appeal.

Mr. Robert M. McCarthy, County Attorney for Butte, testified about two experiences involving trains blocking a roadway. He testified that in both instances he contacted the station agent and the trains were promptly moved.

Mr. James T. Mular, Butte-Silver Bow resident and State Legislative Director for the Transportation Communications Union, testified on elements of train operations and safety.

Called by the Commission

Mr. Lyle P. Neilsen, having been subpoenaed to appear, pursuant to a request of the Transportation Communications Union for the service of subpoena, was called to testify by the

Commission. Mr. Neilsen testified as to his duties and responsibilities as the UP station agent for the Silver Bow agency.

### DISCUSSION

Section 69-14-202(1), MCA, imposes a duty on railroads to maintain and staff facilities for the shipment and delivery of freight. However, upon a showing that a facility "is not required by public convenience and necessity, the Commission shall authorize the closure, consolidation, or centralization of the facility." Section 69-14-202(2), MCA.

In determining public convenience and necessity, the Commission previously weighed the burden on the railroad from maintaining the agency against the burden on the shippers should the agency be closed. However, in 1989, the Legislature amended Section 69-12-202(2), MCA, by adding the following sentence:

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.

The Commission has interpreted this amendment as indicating the Legislature's intent that the Commission expand its analysis to include impacts and burdens of a proposed closure on persons other than shippers and the railroad. See Commission Order No. 5866, *In the Matter of the Application of Burlington Northern Railroad Company to Discontinue its Agency and Dispose of the Depot Facility at Hysham, Montana* (1989).

However, for the Commission to deny an application primarily on the basis of impact and burden on persons other than shippers, it needs to be convinced that the community will either 1) face serious safety risks in the absence of the agent; or 2) experience other significant problems related to railroad operations that an agent is uniquely able to prevent or solve. Id. at 15.

No shipper witnesses appeared to either support or oppose UP's application in this instance. In fact, aside from the appearance of Mr. Jack Lynch who testified on behalf of the Port of Montana Port Authority, a political subdivision of the Butte-Silver Bow government, there were no witnesses engaged in the shipping business. Therefore, the Commission must evaluate whether the Butte-Silver Bow community will experience any serious safety or other railroad-related problems should UP's application be granted. In this regard, the Commission finds the following facts presented at hearing both relevant and credible:

The Silver Bow agency services the Butte-Silver Bow area. Silver Bow is a point of interchange between UP, Montana Western Railroad and Rarus Railway.

The interchange traffic primarily involves Burlington Northern (BN) cars being delivered on-line to UP by Montana Western. In fact, over 21,000 cars from BN came on-line at Silver Bow between 1986 and 1990, and approximately 7,000 cars went off-line to BN during this same period.

There are two UP employees assigned to the Silver Bow agency, the station/freight agent and a carman.

Consistent with Rule 7 of The Official Railway Equipment Register, UP personnel must conduct an inspection of every car that is interchanged on-line at Silver Bow -- approximately 50 cars per day. Mr. Taylor, UP's manager of train operations, testified that the station agent is not qualified to perform these inspections and that the responsibility lies with the carman. The carman is also responsible for train inspections and car repair for that area extending from Monida to Silverbow, approximately 135 highway miles.

The Port of Montana Port Authority maintains an intermodal transportation HUB facility at Silver Bow and relies on UP for services including transloading of forest products, bulk minerals and fertilizers, and intermodal transfers of trailers-on-flat-cars and containers-on-flat-cars.

Approximately 1,300 carloads of hazardous materials passed through Silver Bow during 1990. Neither the carman nor the station agent are trained in hazardous materials emergency response; and the only training received by the train crews is in compliance with hazardous materials regulations. The location of the nearest UP employee trained in responding to hazardous materials emergencies is Salt Lake City.

Within the last three years, there have been four hazardous materials accidents in the Silver Bow area involving UP.

Mr. Leo Tierney, UP's system-wide expert on hazardous materials, testified that the station agent is not necessary for the handling or reporting of a hazardous materials accident. This assertion aside, Mr. Tierney's testimony regarding the role of the station agent during these incidents is instructional:

[The station agent<sup>5</sup> initiated the report that resulted in the response by our special agent/hazardous materials, and then once that special agent/hazardous materials arrived here in Silver Bow, then the agent told him where the car was; and then if the special agent needed additional assistance in the way of determining where to obtain parts or use the help of the businesses in the community, then the agent was helpful in steering him in that direction. As far as the physical cleanup is concerned, I'm not aware that the agent did anything in the physical cleanup or correction of the problem.

Mr. Robert M. McCarthy, the Butte County Attorney, testified that within the last five years he had twice been contacted about trains blocking Lone Tree Gulch Road. In one case, he was testified that children had climbed between rail cars in order to get to a nearby school. In both instances, Mr. McCarthy contacted the station agent and the situation was quickly resolved.

In contradiction to the above facts, witnesses for the Applicant consistently testified that the station agent is not necessary to the safe and efficient operation of the railroad. In fact, the testimony of Mr. Dwane Durham indicated that the station agent spent much of his time performing inventory and janitorial duties, and that 44 percent of his time could be classified as "free time."

The Commission does not find the testimony of UP's witnesses credible in this regard. The weight of the evidence suggests that Mr. Neilsen is an integral component of UP's Butte-Silver Bow operations and the community in general. In emergency situations Mr. Neilsen is not only the contact person for the local government and its citizens, but the testimony of Mr. Tierney indicates that he is also a contact person for UP's special agents.

Additionally, Mr. Neilsen performs interchange functions including putting the proper cars on the proper track and resolving discrepancies in inventory. On a daily basis, Mr. Neilsen reviews switch lists with the train crews and coordinates the movement of cars.

Mr. Neilsen, in other words, performs a multitude of services on which the community and UP rely. The evidence indicates that a number of these services, especially in regard to safety, were dependant on his physical presence. The Applicant argues that Mr. Neilsen's performance of these duties is duplicative in that these duties have been assigned and are adequately performed by other personnel or the NCSC. The Commission acknowledges that the NCSC, train

crews and carman are responsible for and capable of responding to an number of safety and operational concerns. However, the fact remains that the train crews and the carman are transitory and the NCSC is in another state. The ability of UP to promptly and successfully respond to an emergency or interchange problem is clearly a function of whether any of its personnel happen to be in the Butte-Silver Bow area at the time a problem arises. The Commission therefore finds that Mr. Neilsen's role as a contact person, both for emergencies and interchange problems, precludes the granting of this application on the basis of safety concerns.

While the Commission finds that the safety considerations alone warrant denial of the application, it would also note that the Silver Bow agency revenues for the last three years averaged over \$6.7 million. Measured against operating expenses that are averaging \$70,000, the burden on UP to keep this agency open appear minimal.

Finally, the Commission would like to applaud the efforts of UP to modernize and update its operations. The concept of the NCSC and its attendant systems (On-Board Terminals, Electronic Data Exchange, UPCAT and ATCS) are truly impressive. The evidence indicates there are a few bugs yet to be worked out, but overall the NCSC appears ready to take UP into the next century. The denial of this application is not meant to foreclose the possibility of closing the Silver Bow agency. The Commission merely believes that the NCSC, as it is currently configured, cannot respond to the various safety concerns which now exist and are particular to the Silver Bow 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. In weighing the factors set forth in Section 69-14-202(2), MCA, the Commission finds that public convenience and necessity require the Silver Bow Agency to remain open.

ORDER

NOW THEREFORE IT IS ORDERED that Union Pacific's Petition to Relocate its Silver Bow Agency to the National Customer Service Center at St. Louis, Missouri is Denied.

DONE AND DATED this 4th day of June, 1991.

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JOHN B. DRISCOLL, Commissioner  
& Hearing Examiner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)