

Service Date: August 30, 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 Dillon Agency to the )	DOCKET NO. T-9448
National Customer Service Center )	
at St. Louis, Missouri. )	ORDER NO. 6059

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 PUBLIC:

Mary Wright, Attorney at Law, Montana Consumer Counsel,  
34 West Sixth Avenue, Helena, Montana 59620

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 Dillon, Montana to its National Customer Service 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 Dillon agency.

On December 19, 1989 Docket No. T-9448 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 9, 1991 the Commission conducted a properly noticed public hearing on Docket No. T-9448 at the Beaverhead County Courthouse, Dillon, 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 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 Dillon.

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 Dillon agency. He also provided testimony on the originating and terminating traffic at Dillon 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 Dillon agency; UP's Customer Action Team program that is designed to increase interaction between train crews and customers; and the Automatic Train Control System 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 Dillon station agent's employment options and opportunities should the petition be granted.

In Opposition to the Applicant

Mr. Max Nield of East Bench Grain & Machinery testified in his capacity as a shipper. He testified that the station agent is able to obtain cars for him when the NCSC is unable to do so.

Mr. Jack Champine of C & C Farm and Ranch Supply testified in his capacity as a shipper. He also testified as to the ability of the station agent to obtain cars that the NCSC was unable to provide.

Mr. Larry Laknar, Beaverhead Disaster and Emergency Services Coordinator, opposed the application on the basis of safety concerns primarily involving shipments of hazardous materials through Dillon. Mr. Laknar also read into the record a letter from the Beaverhead County Commissioners that strongly opposed the application on the basis of the safety concerns.

Mr. Roy Cornell, Fire Chief of Dillon and Fire District No. 2, testified as to several instances where the station agent played an integral role in resolving emergency situations. Mr. Cornell also testified that Union Pacific has been very cooperative and helpful in coordinating safety training with the hazardous materials response community.

Mr. Bill Glauber, manager for A.L. Gilbert, testified in his capacity as a shipper that on a number of occasions the station agent had been able to get him cars when the NCSC had been unable to.

Ms. Shelly McDonald, purchasing manager for Pfizer, Incorporated, testified in her capacity as a shipper. Amongst the matters testified to: Pfizer ships approximately 800 to 1000 cars per year; and significant delays are often encountered while Pfizer personnel are placed on hold by NCSC.

Representative Chuck Swysgood, District 73, Beaverhead County, was of the opinion that the station agent was of particular importance to the Dillon shippers because they were primarily small shippers who are more dependent on the specialized service that a local agent can provide.

Mr. George J. Millward, an engineer for Union Pacific and also a lobbyist for the United Transportation Union, testified as to specific safety and efficiency issues associated with the station agent.

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. He also testified as to specific safety and efficiency issues associated with the station agent.

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

#### 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 is guided by Section 69-12-202(2), MCA:

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 NCSC represents an effort by Union Pacific to modernize and update its operations. Through the implementation of the NCSC and its attendant systems (On-Board

Terminals, Electronic Data Exchange and Automatic Train Control System) UP intends to eliminate the need for its agencies located in Dillon and Butte-Silver Bow, Montana.

The salient issue here is whether the NCSC has in fact eliminated the need for the Dillon agency, as measured against a standard of public convenience and necessity. For the reasons stated below the Commission finds that the NCSC has not eliminated the need for the Dillon agency.

Several shipper witnesses appeared in opposition to UP's application. The recurring theme of their testimony was that the station agent is a more efficient and effective conduit for the satisfaction of shipper needs. In fact, Mr. Bill Glauber of A.L. Gilbert testified that the station agent has been able to obtain cars for his company when NCSC has been unable to do so.

Witnesses for UP emphasized the fact that the station agent has no special access, that he too must make orders and requests through the NCSC. However, the testimony of the shipper witnesses leaves little doubt that the station agent is able to obtain cars and service that the shipper would not otherwise be able to obtain through the NCSC. Mr. Loder's testimony indicated that the station agent is sometimes able to identify and intercept cars headed back to their home terminal for distribution, thereby avoiding the time it takes for these cars to find their way back to Dillon. This ability to intercept cars would explain why the station agent succeeds where the customer fails. It would also explain why the station agent is able to locate cars on short notice while the NCSC requires the customers to place their orders two months in advance. Additionally, several shippers testified that this two-month requirement is inconsistent with the needs of the small shipper who operates on a week-by-week, day-by-day basis.

The Commission therefore finds that the NCSC, as it is currently configured, is unable to satisfy the needs of the Dillon-area shippers.

In analyzing the burden placed on UP by keeping the Dillon Agency open, the Commission notes that UP's revenues attributed to the agency averaged \$3.3 million from 1989 through 1990. The expenses attributed to the agency over the same time period averaged \$76,949.50. Clearly, the Dillon station is far from a burden on UP.

The Commission notes in this regard that during his cross-examination of the shipper witnesses counsel for UP suggested that UP would impose a \$50.00 surcharge on each shipper transaction with the station agent should the agency remain open. It is unclear whether this suggestion was intended to intimidate the shipper witnesses or the Commission. It does, however, necessitate the following observation: If the NCSC is unable to properly serve shipper needs in Dillon, the shipper should not be penalized for utilizing the only resource that works, i.e., the station agent. This is especially true considering the revenues generated by the Dillon shippers. If and when the NCSC is able to provide the same responsive service that the station agent currently provides then a surcharge may be appropriate. Of course, it should go without saying that this equality of service should not be achieved by denying the station agent the ability to identify and intercept cars, an ability that is essential to the public convenience and necessity of the Dillon community.

Finally, several witness testified as to safety issues associated with the closure of the agency, including train operations and the shipment of hazardous materials. While the Commission is greatly concerned by the testimony on these subjects, the question of safety need not be addressed here. The weight of the shipper testimony and revenue/expense figures alone necessitate the denial of UP's application.

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 Dillon Agency to remain open.

ORDER

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

DONE AND DATED this 30th day of August, 1991.

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JOHN B. DRISCOLL, Commissioner  
& Hearing Examiner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)