

Service Date: June 25, 1990

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 MONTANA RAIL LINK, INC., to)	
Transfer the East Helena, Montana,)	
Agent to Helena, Montana, and to)	DOCKET NO. T-9512
Dispose of the Agency Facility at)	
East Helena, Montana.)	ORDER NO. 5997

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Edward A. Murphy, Datsopoulos, MacDonald and Lind, P.C., 201 West Main Street,
Missoula, Montana 59802

FOR THE COMMISSION:

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

BEFORE:

CLYDE JARVIS, Chairman and Hearing Examiner

On February 5, 1990 Montana Rail Link, Inc. (MRL or Applicant), 201 International Way, Missoula, Montana 59802, filed a petition with the Montana Public Service Commission (PSC) for authority to transfer the East Helena, Montana, agent to Helena, Montana, and to dispose of the MRL agency facility at East Helena, Montana.

No protests were filed, however, several lists of signatures of members of the public objecting to the application were received.

Following issuance of proper notice, a public hearing was held on April 24, 1990, in the VFW Building, 117 West Main, East Helena, Montana.

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

SUMMARY OF TESTIMONY

Orsen E. Murray, MRL Director of Operations Information, appeared as a witness for the Applicant. He testified that MRL agency functions have been centralized in Missoula, Montana, since October, 1987. He testified that the centralized system has been successful, communications being made by phone, facsimile, and travelling marketing and operating personnel. He testified that MRL has two customers in East Helena -- American Smelting and Refining (ASARCO) and American Chemet. Letters from both of these customers were received as evidence that the customers had no objection to MRL's requested transfer and disposal. He also testified that the East Helena agent performs no traditional agent function or safety function -- the agent's current duties being to receive track section work forms and convey them to MRL offices. He testified that there is no necessity that an agent be in East Helena. He testified that a grant of the request would allow efficient use of the agent's time.

Michael R. Lemm, MRL Trainmaster at Helena, appeared as a witness for the Applicant. He testified as to the nature of the overall safety operations of MRL. He testified that an East Helena agent would have nothing to do with safety. He testified that all East Helena traffic is routed to Helena, west bound or east bound.

Richard Van Aken, Assistant State Legislative Director, Transportation and Communications Union International, appeared as a public witness. He testified that without an East Helena agent there will be no one to monitor car movements, overloads, demurrage, and other aspects including yard checks and verification of cars to be way billed. He also requested that the PSC consider agency rules in regard need for on-site personnel to handle customer matters and concerns of government agencies, law enforcement, public safety and the general public. He commented that a need for this exists.

FINDINGS OF FACT

MRL currently maintains an agent and an agency in East Helena, Montana.

MRL serves two customers in East Helena, Montana. Neither objects to the transfer of the agent or disposal of the agency.

The East Helena, Montana, agent currently performs a duty of receiving certain track work forms and conveys them to other MRL offices. The agent performs no other duties concerning passengers, freight or safety.

There is a burden on MRL in maintaining an agent and agency in East Helena.

The record discloses no burden on the public in general or shippers in specific in the event that MRL's petition is granted.

Neither the agent nor the agency are needed for proper and reasonable accommodation to the public in East Helena.

The public convenience and necessity does not demand an agent or agency in East Helena.

Safety concerns and any possible need for an agent at any physical site in East Helena, will be adequately preserved by MRL's existing safety operations and Helena facilities and agents.

CONCLUSIONS OF LAW

The PSC has jurisdiction over this matter pursuant to Title 69, Chapter 14, MCA, specifically including Sections 69-14-111 and 69-14-202, MCA.

MRL made proper application pursuant to ARM 38.4.301.

This matter was properly noticed for hearing and hearing was properly held pursuant to Section 69-14-202, MCA, and Title 2, Chapter 4, part 6, MCA (MAPA).

Section 69-14-117, MCA, requires the PSC to compel railroads to provide, maintain and operate sufficient train service for proper and reasonable accommodation to the public. The record discloses that proper and reasonable accommodation to the public will not be affected by the granting of MRL's petition.

Section 69-14-202, MCA, imposes a duty upon railroads to furnish shipping and passenger facilities unless the railroad demonstrates to the PSC that a facility is not required for public convenience and necessity. The record discloses that MRL has demonstrated that the facility is not required for public convenience and necessity.

Section 69-14-202, MCA, requires that in considering public convenience and necessity, the PSC weigh and balance the facts and testimony of the general public, of existing burdens on the railroad, of burdens on the shipping and general public if the request is granted, and of any other factors the PSC considers significant regarding adequate rail service. There being no evidence of burdens on the general public or shippers, there being evidence of burdens on MRL, the balance clearly favors MRL's petition being granted.

Section 69-14-1001, MCA, provides that the PSC shall require employee protection in any closure, consolidation, or centralization of an agency. This provision appears to be satisfied as this matter includes a transfer of the agent. Should the situation change in such nature that employee protection is not satisfied or otherwise circumvented, the PSC reserves the right to reconsider this requirement and take action necessary to satisfy it.

By PSC policy, MRL should determine whether the East Helena agency is of historical significance and preserve it if it is or allow local governments in the area an opportunity to utilize it. MRL shall inform the PSC, in writing, of the determination and disposition.

MRL may lawfully transfer the East Helena agent to Helena and dispose of the East Helena agency.

ORDER

IT IS HEREBY ORDERED that MRL's Petition is Granted and MRL may transfer the agent and dispose of the agency.

IT IS FURTHER ORDERED that MRL shall apply Section 69-14-1001, MCA, as required in paragraph 22 above; that MRL shall take appropriate action to implement any existing historic site concerns as required in paragraph 23 above; and that this order shall be effective immediately, a true and correct copy to be served on all parties of record.

Done and Dated this 25th day of June, 1990 by a vote of 5-0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Vice Chairman

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Peck
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.