

Service Date: April 14, 1992

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 Close)	DOCKET NO. T-9632
its Agency at Sidney, Montana.)	ORDER NO. 6094

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Jon Metropoulos, Browning, Kaleczyc, Berry & Hoven, 139 Last Chance Gulch, P.O. Box 1697, Helena, Montana 59624

FOR THE COMMISSION:

Tim Sweeney, Staff Attorney, 1701 Prospect Avenue, Helena, Montana 59620

Wayne Budd, Transportation Division, 1701 Prospect Avenue, Helena, Montana 59620

FOR RICHLAND COUNTY:

Mike Weber, Richland County Attorney, Richland County Courthouse, 201 West Main, Sidney, Montana 59270

BEFORE:

Wally Mercer, Commissioner and Hearing Examiner

BACKGROUND

Burlington Northern Railroad Company (BNRC or Applicant) applied to the Montana Public Service Commission (Commission) on October 31, 1990 for authority to close its agency at Sidney, Montana.

The Commission properly noticed BNRC's application and held a public hearing on February 19, 1992 at the City Council Chambers, 115 Second Street S.E., Sidney, Montana. In addition to considering whether the agency is needed to provide shipping service at Sidney, the published notice stated that the Commission would consider rail safety as it relates to closure of the agency.

The parties stipulated to a final order.

SUMMARY OF TESTIMONY

Testimony of Applicant

Daulene Mattox, BNRC's Manager of Customer Service in Great Falls, testified on the operations of a central agency. According to Ms. Mattox the central agency in Glendive serves the Sidney area and is responsible for car orders, car releasing, billing, and other functions including car problems. She also noted that shippers can communicate with the central agency using telephones, facsimile transmissions and computer links. Based on her knowledge and experience, Ms. Mattox did not believe the Sidney agency was necessary to serve the shipping public.

Anthony Rio, BNRC's trainmaster agent from Glendive, Montana testified on both the operations and administration of the Glendive central agency. Mr. Rio testified that the removal of the Sidney agent would not effect the agency service or train service provided to the Sidney area.

Paul Frolich, Senior Cost Analyst for BNRC, testified on the Accounting Exhibit (Exhibit) prepared and submitted to the Commission prior to the hearing. Pages 1-4 of the Exhibit, a computer generated report on carload commodity statistics for years 1988 to 1991, showed that cars forwarded and received at Sidney totaled 4,945 in 1988, 3,895 in 1989, 4,393 in 1990, and 4,251 in 1991; page 5 took these figures and factored-in the number of total cars from the blind sidings of Ludington and Savage for totals of 5,606 in 1988, 4,425 in 1989, 4,865 in 1990, and 4,862 in 1991; page 5 presented these statistics in terms of average cars per month and per day; pages 6-7 showed these same statistics broken down into single car, multi-car and unit train shipments; page 8 presented a time study based on the number of units handled by the agency; and revenues were shown on pages 9- 10. Mr. Frolich testified that the agency at Sidney is profitable under both the Belt/Carter formula (\$1,465,405 in 1991) and the BNRC formula (\$43,179 in 1991).

Mr. Frolich also testified that the time study shown on page 8 of the Exhibit calculates the time consumed to perform agency work at Sidney using past studies of actual work performed by local agencies generally. He testified that if the local agent were to perform the work, the agent annually would work about 235 hours on actual agency work and 250 hours on other station work, such as forwarding utility bills, mail filing and janitorial work. Based on 2,000 hours per year, agency work would therefore account for only 24 percent of the agent's

time. However, Mr. Frolich testified that this figure is inaccurate because the central agency, not the local agent, performs most of the actual agency work.

Testimony of Public Witnesses

Ed Gimbel, a former Sidney Agent, testified on agency duties and stated that there was no lack of work while he was agent.

C.J. Earhardt, Locomotive Engineer for BNRC, testified on agency duties and the role the agent plays in train operations. He also testified that BNRC's radio communication system was sometimes subject to failure, increasing a train crews reliance on the agent.

Pat Mischel, Representative of United Transportation Union Local 486, testified that the Union opposed closure of the agency.

Senator Larry Tveit, District II, expressed concern about removal of agency services in a non-competitive environment. He also stated his belief that a mainline may soon run through Sidney increasing the need for a station agent.

James T Mular, State Legislative Director for the Transportation Communications Union, testified on agency duties and safety concerns related to hazardous materials.

DISCUSSION, FURTHER FINDINGS AND ANALYSIS

Under Section 69-14-202(1), MCA, a railroad operating in the state of Montana shall maintain 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.

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.

The railroad business is clearly moving into an era of computerization and centralization. The testimony provided by BNRC's witnesses indicates that the railroad is capable of providing agency services to the Sidney community through the computerized Glendive Central Agency. The fact that no shipper witnesses appeared to oppose the closure of the Sidney agency supports this conclusion.

In the Notice of Public Hearing the Commission informed BNRC and the public that it would consider rail safety as it relates to the closure of the agency and removal of the local agent. In considering safety within the public convenience and necessity analysis, the Commission examines whether the local agent by defined duties or a course of conduct provides

an essential safety function which is necessary to provide adequate rail service.

The testimony did indicate that the Sidney agent performs a safety function by being cognizant of potential safety hazards that may arise during the course of his duties. However, there was also testimony from Mr. Rio that there is nothing unusual or essential about this awareness and that safety awareness is required of every BNRC employee. Further, though there was evidence that radio contact with train crews is sometimes irregular and that cars carrying hazardous materials do pass through Sidney, there was no evidence that the local agent is essential to ensuring safety as it affects either radio contact or hazardous materials.

The Commission will grant an application for agency closure when the railroad meets its burden of proof that the agency is not required for the public convenience and necessity, including proof that the railroad maintains a satisfactory level of agency services within the state of Montana to meet any shipping needs of the locale. The Commission finds, based on the testimony before it and the absence of shipper witnesses, that the central agency in Glendive meets the needs of the shipping public at Sidney and that the local agency is not required for the public convenience and necessity.

The Commission further finds that the agent performs no essential safety duties necessary to provide adequate rail service.

CONCLUSIONS OF LAW

The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA.

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.

The Commission has the authority to grant closure of a local agency upon a showing that the agency facility is not required for the public convenience and necessity. Section 69-14-202, MCA.

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

ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application to close the agency at Sidney, Montana is 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.

Done and Dated this 8th day of April, 1992 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, 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.