

Service Date: August 26, 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 Petition of )	TRANSPORTATION DIVISION
Burlington Northern Railroad )	
Company for Authority to Close )	DOCKET NO. T-9633
its Agency at Fort Benton, Montana. )	ORDER NO. 6057

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:

Denise Peterson, Staff Attorney, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

DANNY OBERG, Commissioner and Hearing Examiner

BACKGROUND

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

The Commission properly noticed BN's application and held a public hearing on August 7, 1991 at the EOC Building, 2610 North Main, Fort Benton, Montana. In addition to considering whether the agency is needed to provide shipping service at Fort Benton, the published notice stated that the Commission would consider rail safety as it relates to closure of the agency.

Applicant stipulated to a final order, confirmed by letter dated August 8, 1991.

#### Testimony of Applicant

Charles E. Keeler, Daulene Mattox and William T. Allbright testified on behalf of BN at the hearing.

Charles E. (Chuck) Keeler, employed with BN for 13 years, is the trainmaster for the territory from Shelby city limits to Laurel city limits, Great Falls to Garrison and associated branch lines including Fort Benton. His present duties include supervising the train yards, engine crews, scheduling, clerical supervision and interaction with other departments related to customer service.

Mr. Keeler testified that BN is engaging in a track maintenance program for the closed loop track between Great Falls and Fort Benton. BN is doing a track line change, removing track along the Missouri River up to more stable ground, upgrading the line between Great Falls and Carter, and doing a tie replacement on the balance between Carter and Fort Benton. Within Fort Benton, BN finished the crossing renewal project in 1990.

Mr. Keeler testified that as the operations officer for the territory, he is responsible for scheduling train service and coordinating with customers. For service at Fort Benton, he

generally coordinates service through the shippers' regional offices located at Great Falls, using input from the Great Falls central agency and personal contact with the shippers. Mr. Keeler stated that service is BN's only product. The closure of the agency will have no effect on train service except to improve it, he testified. Using the agent now adds one step to getting a problem handled, he stated. The local agent would have to call the Great Falls Central Agency first, which could be done directly by the shipper.

Mr. Keeler also testified in response to concerns expressed by Calvin Hankins, local manager for Farmers Union Oil Company who testified as a member of the public prior to Applicant's presentation. Mr. Keeler explained that Farmers Union's car-spotting problem results from the fact that Farmers Union has its own facility with a one-car capacity. Therefore, Farmers Union gets one car to unload and leaves the others up on the hill. Farmers Union then pulls the car out of the way and moves the next car down. BN provides written spotting instructions with diagrams. Mr. Keeler stated that he has never had a problem reaching the local agent at the local telephone number in Fort Benton during his working hours. As to whether Mr. Hankins had contacted him about any service problems, Mr. Keeler stated that he and the central agency had received little personal contact on the process to get a truck out to correct a problem. See §18, Summary of Public Testimony.

According to Mr. Keeler's testimony, BN has a mobile service truck out of Great Falls. It may be contacted at any time. If the shipper is ordering or releasing cars, the service truck is available immediately. If the problem is a mechanical defect or a derailment, of course, that is not a responsibility of the service truck but rather the track forces and support service at Havre. The mobile service truck visits Fort Benton once a week or as needed, and precedes each local train scheduled through Fort Benton. The mobile agents meet with shippers more often during the busy seasons, such as planting and harvesting.

Mr. Keeler testified that shippers at Fort Benton use their central offices in Great Falls to order and release cars through the central agency although the 1-800 number is available. Generally, the central offices call in or hand deliver billing, or enter it into the computer directly, or send by fax.

Under questioning by Commission staff, Mr. Keeler responded that the local agent has no duties to perform. Technology means that the local agent is not needed to provide service to shippers. Mr. Keeler, under re-direct examination, stated that a car problem such as a "stuck door" (described by Mr. Hankins) is a mechanical problem and not an agency related function. Given some time constraints, a service vehicle may not arrive until the following morning. The central agency serves as a coordinator for service needs and mechanical problems.

Daulene Mattox, BN's Manager of Customer Service in Great Falls, testified that her present job duties include reporting for the central agency for the Montana Division, including car orders, car releasing, billing, and all functions including car problems. Shippers phone in, fax in or directly give information through their computers from their central offices to the central agency. The agency at Fort Benton has no duties. The mobile agent meets with customers, brings supplies such as seals, and relays problems back to the central agency to handle. Ms. Mattox testified that BN has no plans to modify services already provided to Fort Benton if agency closure is granted. She further testified that BN has received no objections to closure from major shippers. She attested that she has telephoned the local agent occasionally and has never had a problem reaching the agent. The local agent also calls in daily. She testified, finally, that she was unaware of Farmers Union's problems, as expressed by its local manager. See § 15. If aware, action could have been taken, she stated.

William T. Allbright, Senior Cost Analyst for BN, testified on Accounting Exhibits prepared and submitted to the Commission prior to the hearing. Accounting exhibits, pages 1 and 2, are computer generated reports on carload commodity statistics for years 1988 to 1990 and the first six months of 1991. Cars forwarded and received at Fort Benton totalled 1,039 in 1988, 1,215 in 1989, 1,748 in 1990, and 1,023 for the first six months of 1991. Page 3 of the exhibit shows the same traffic statistics with the total cars from the blind siding at Kershaw added in for totals in 1988 of 1,666, in 1989 of 2,002, in 1990 of 2,809 and in the first six months of 1991 of 1,667. Mr. Allbright then broke down these statistics into the average cars per month and per day. Pages 4 and 5 showed the same statistics broken down into single car, multi-car and unit train shipments. Mr. Allbright testified that the agency at Fort Benton is profitable, using either the Belt/Carter formula or BN's formula. Revenues are shown on pages 7 and 8 of the exhibits Mr. Allbright prepared.

These exhibits indicate that the blind siding at Kershaw contributes the majority of revenue for the Fort Benton agency.

Mr. Allbright also testified to page 6 of his exhibit -- the Unit Time Factor. Taking past studies of actual work performed when local agencies performed the work, Mr. Allbright calculated the time consumed to perform agency work at Fort Benton. If the local agent performed the work required, annually he would work about 200 hours on actual agency work and 250 hours on other station work, such as forwarding utility bills, mail filing, and janitorial work, for a total of 23 percent of the 2,000 hours per year, if he actually performed the work. However, Mr. Allbright testified that the local agent does not do the actual agency work. He does not see a waybill received. Demurrage is no longer done at the local agency. The agent's only act now is to receive damage claims, accounting for one hour of the year. He is not qualified to settle damage claims. Since 1990 more things have been put on the centralized computer, eliminating all need for a local agent.

Mr. Charles E. Keeler, upon recall, testified that the agency at Fort Benton has a U.S. West published telephone number. He is made aware of any shipper complaints in Fort Benton. BN employee Chuck Bush personally contacted all shippers in Fort Benton asking about any problems with service from BN and requesting that a shipper direct any problems which arise to the central agency. There have been no complaints from anyone in Fort Benton related to service.

Mr. Keeler further testified that BN has had a centralized agency, and called it such, at Great Falls since the early 1980's. The billing function at the Centralized Billing Center is separate from the centralized agency, although Daulene Mattox oversees both. The centralized agency covers all the actual services provided at Fort Benton. Mr. Allbright testified that the central agency actually performs all agency services for the state of Montana, except for some services at Whitefish/Columbia Falls, due to the volume there. BN has no intention of abandoning the central agency concept, which has met with favorable shipper response throughout the BN system, according to his testimony. When asked whether BN would ever attempt to transfer the states' centralized agencies to one national centralized agency, Mr. Keeler testified that to his knowledge BN would not because it found the present system has worked very satisfactorily.

Testimony of Public Witnesses

Calvin Hankins, local manager of Farmers Union Oil Company, testified in opposition to closure of the agency at Fort Benton at the beginning of the hearing. He said that Don Little, branch manager at Farmers Union, authorized him to testify, saying that Farmers Union needs the local agency. Mr. Hankins expressed concern that once Fort Benton would lose the agency, what would happen next? The railroad has been a large part of the community, he testified. Perhaps the community does not need the agency now, he stated, but in the future the loss of the agency could hurt the economy. Mr. Hankins also expressed a concern that the town would lose competition from train service and that the trucks would have a monopoly.

Mr. Hankins, under cross-examination, testified that he used to use the previous local agent whenever he needed service. That agent has been transferred to Great Falls. Mr. Hankins testified that he had unsuccessfully tried a dozen times to contact the present local agent during the hours of 8 to 5. He further testified that he had not used a local agent for eight months, because he did not know who he is and was unable to reach him. He would prefer to deal with someone he knew.

Mr. Hankins stated that Farmers Union had problems spotting cars (only one car at a time) and could use the assistance of a local agent. He had to get help from his own company. Upon further questioning, he testified that he had not contacted Great Falls for respotting of cars as it involved a company problem of only enough track for one car at a time.

Upon questioning by the hearing examiner, Mr. Hankins stated that the 1-800 number had worked satisfactorily and got the job done. He qualified his answer, under cross-examination, testifying that Farmers Union had "gotten by" using the 1-800 number.

N. George Fultz, mayor of Fort Benton, testified in opposition to the closure of the agency. The transportation structure is most critical to economic development, he testified, and the quality and quantity of service essential. The flour mill and steel manufacturing will grow, but BN's plans could change and they would lose service. Mr. Fultz alleged that the local shippers speak privately about needing an agent, but that it is not politically feasible to appear at hearings. In response to Commission questioning, Mr. Fultz said that this is a busy time of year, and it is difficult for shippers to get to the hearing. But there is also an understanding, "no need to make waves." Mr. Fultz testified that the previous agent had been very helpful with the shipment of logs from the

Bearpaws (20 cars, 1989), and there was a rumor there would be more logging. Mr. Fultz believed that it is good to avoid elimination of personal contact if there is no economic hardship and that BN could provide better service with a local agent, he testified.

Allin Cheetham, Choteau County Attorney, testified in opposition to the closure of the agency on behalf of the county and the City of Fort Benton. In his testimony, he said he echoed but would not repeat the previous public testimony. He expressed the additional concerns of the County Commissioners on safety issues. Fire along the tracks resulting from high grass is one concern. Better coordination with local emergency people is possible with a local agent than an "800" number, he testified. The Commissioners are also concerned about future transportation of hazardous materials. Mr. Cheetham asked the Commission to take administrative notice of the previous hearing at Fort Benton in which the agency was kept open. There was little change at Fort Benton since the last hearing, he testified. He urged the Commission to keep the agency open for the same reasons as in the last order.

Richard (Rick) Vanaken testified in opposition to the closure as the president and legislative representative for Transportation Communication Union (TCU). He was also authorized to speak on behalf of James Mular, state legislative director and regional director for Transportation-Communications International Union (TCIU). Mr. Vanaken testified that a local agent should operate as a local contact and trouble shooter regarding car orders, tracing, spotting and fire reporting. However, the agent is now instructed to answer the telephone and forward calls to Great Falls. He expressed the fear that the duties moved to Great Falls may not be long for Great Falls, either, but could be moved anywhere with a toll-free number. BN's customer representative cannot provide the service of a local agent, he testified, because he has far more ground to cover.

Mr. Vanaken testified that prospective shippers may choose alternatives such as trucking when there is no local agent. He also testified that an independent study for BN suggested that toll-free numbers were "putting customers off." BN can afford good public relations from the local agency, according to his testimony. TCU's members expressed frustration with the centralized agency concept. The agent could be given safety duties, he testified, and could play a critical role with 100 car trains now passing through, hazardous materials, spills, etc.

Under examination by the Commission, Mr. Vanaken testified that he had no problem contacting the local agent and that he had found him in the office on two different occasions.

#### DISCUSSION, FURTHER FINDINGS AND ANALYSIS

Under § 69-14-202(1), MCA, a railroad under operation 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. If the railroad demonstrates to the Commission, following an opportunity for public hearing, that the facility is not required for the public convenience and necessity, then the Commission shall authorize the closure of the facility. § 69-14-202(2), MCA.

To determine public convenience and necessity, the Commission must weigh and balance facts and testimony presented at the hearing by the general public, shipping public and railroad, pursuant to § 69-14-202(2), MCA. The Commission shall also weigh and balance any other factors it considers significant to provide adequate rail service. The 1989 legislature amended § 69-14-202(2), MCA, to expand Commission analysis to include impacts of the proposed closure upon the general public other than shippers or passengers. The amendment also allows the Commission to consider factors other than shipping and passenger requirements. These factors, however, must be significantly related to the agency's function in providing adequate rail service.

In the Notice of Public Hearing the Commission informed BN 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 as a factor, the Commission examines whether the local agent by defined duties or a course of conduct provides an essential safety function which is significant to provide adequate rail service.

The railroad business is moving into computerization and centralization. The Commission finds that BN has made efforts to enter the computer age while at the same time meeting the needs of shippers. BN has maintained and staffed the agency at Fort Benton, although the Commission finds that there is nothing for an agent to do there. Only one local shipper appeared

to testify and he stated that service was satisfactory from the toll-free number. He had used the previous local agent, but stated that he had been unable to reach the present agent in the past eight months. Therefore, BN has provided all the service to this shipper from the toll-free number. The previous agent had assisted the shipper with car-spotting at the shipper's site. However, the Commission finds that car-spotting on the shipper's track is a company problem. The shipper's track will allow spotting of only one car at a time. BN has left diagrams and instructions for spotting.

The Commission finds that BN is providing adequate service from its centralized agency at Great Falls through the toll-free number. According to unrefuted testimony, BN has a mobile agent who precedes each local train scheduled through Fort Benton and otherwise visits Fort Benton once a week or as needed. The mobile agent may be contacted at any time. If the shipper is ordering or releasing cars, the service truck is available immediately. If the problem is a mechanical defect or derailment, the track forces respond as it is not a service problem. Shippers at Fort Benton generally use their own central offices in Great Falls to do business with the central agency. The Commission finds that there was no shipper testimony that would rise to a level of public convenience and necessity.

The Commission further finds that the agency at Fort Benton is not required for safety and that the agent performs no safety duties significantly related to the provision of service. BN has engaged in a program of track maintenance for the closed loop track between Great Falls and Fort Benton. Its track forces handle derailments and mechanical problems. The local agent has not provided safety services related to hazardous materials, spills, or speeding trains. There was no showing, other than speculation, that a local agent could be equipped or qualified to perform functions related to safety.

At Mr. Cheetham's request, the Commission takes administrative notice of Order No. 5859 in Docket No. T-9236 which denied a previous application several years earlier to close the agency at Fort Benton. In 1988 Mr. Cheetham participated as attorney for the Protestants County and City. In 1991 he testified as one of several public witnesses, after being offered the opportunity to enter an appearance as a Protestant. The public's testimony in 1991 indicated general concerns and fears about centralization and speculation about economic effects of closure. The Commission,

however, cannot keep the agency open based upon concern for the future, if the agency is not presently needed.

Substantial shipper and grain farmer testimony at the hearing in 1988 supported a finding that the public convenience and necessity required the continuation of agency services. Three years later, only one shipper testified for Farmers Union Oil Company. Although he preferred a local agent, he had not used the present agent in eight months. His company's central office is in Great Falls where the manager deals with BN's central agency. In the previous docket Farmers Union successfully pleaded for continued local agency service because of unique car spotting requirements of his firm and also the close proximity to a public crossing. The Commission grants considerable leeway to meet shipper needs. In this docket the shipper stated that the company handled the car spotting problem which was on its own track. He further testified that service from the central agency was satisfactory.

The Commission grants the closure of an agency when the railroad meets its burden of proof that the agency is unneeded to provide service and that the agent performs no safety duties significantly related to the provision of service. The Commission will only grant a closure, however, if the railroad establishes that it does, in fact, maintain a satisfactory level of agency services within the state of Montana to meet any shipping needs of the locale. The Commission finds that the central agency in Great Falls meets the needs of the shipping public at Fort Benton and that the local agency is not required for the public convenience and necessity. The Commission also finds that BN has maintained and staffed the agency facility at Fort Benton as required by § 69-14-202, MCA, until the Commission authorizes the closure.

#### 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. § 69-14-202, MCA.

In determining public convenience and necessity, the Commission shall weigh and balance the facts and testimony presented at the hearing by the general and shipping public and by the railroad and shall consider any factors deemed significant to provide adequate rail service. § 69-14-202, MCA.

Section 69-14-1001, MCA, applies to protect employees affected by the closure of the agency at Columbia Falls.

The Commission concludes that BN may remove and/or dispose of the agency facility only after notifying the Commission and requesting permission. Prior to the request and disposal, BN should determine whether the building is of historical significance and preserve it if historically significant or allow local governments in the area the opportunity to utilize the building.

### ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application in Docket No. T-9633 to close the agency at Fort Benton, Montana and dispose of the depot facilities is Granted, subject to the conditions provided herein.

IT IS FURTHER ORDERED that Burlington Northern Railroad Company shall apply § 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED that prior to removal or disposal of the agency facility that Burlington Northern Railroad Company first obtain permission of the Commission, after determining whether the facility qualifies for historical preservation. If it qualifies, the facility shall be preserved and/or offered for local government use.

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 26th day of August, 1991 by a vote of 5 - 0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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HOWARD L. ELLIS, Chairman

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DANNY OBERG, Vice Chairman

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BOB ANDERSON, Commissioner

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JOHN B. DRISCOLL, Commissioner

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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.