Service Date: April 12, 1994

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 to Discontinue Agency | ) | DOCKET NO. T-93.116.RR |
| Services at Froid, Montana. | ) | ORDER NO. 6289 |

# 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, P.O. Box 202601, Helena, Montana 59620-2601

Wayne Budt, Transportation Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601

BEFORE:

DANNY OBERG, Commissioner and Hearing Examiner

## BACKGROUND

1. Burlington Northern Railroad Company (BNRC or Appli-

cant) applied to the Montana Public Service Commission (Commission) on August 19, 1993 for authority to discontinue agency services at Froid, Montana.

2. The Commission properly noticed BNRC's application and held a public hearing on November 3, 1993 at the Froid Firehall, Froid, Montana.

3. BNRC stipulated to a final order and no briefs were filed.

## SUMMARY OF TESTIMONY

### Testimony of Applicant

4. Tom Zack, BNRC's Manager of Customer Service in Great Falls, testified on the operations of a central agency. He stated that no agency functions are performed in Froid. He indicated the Great Falls Central Agency currently serves the Froid area and is responsible for car orders, car releasing, billing, and other functions including car problems. He also noted that shippers can communicate with the central agency using telephones, facsimile transmissions and computer links.

5. Mr. Zack presented copies of two questionnaires that were sent by BNRC to Froid-area shippers. One shipper indicated the Great Falls Central Agency served its shipping needs very

well while the other felt the service was merely adequate. Both of the respondents indicated they planned on utilizing the agency's services more in the coming years.

6. Based on his knowledge and experience, Mr. Zack concluded the Froid Agency was not necessary to serve the shipping public's needs.

7. Steven Pfiffer, BNRC trainmaster, testified on the train operations serving Froid. He stated train crews perform a number of customer-related services previously provided by the station agent. He also testified he personally contacts all the shippers and often has weekly contact with some. He concluded the Froid Agency was no longer needed to serve the shipping public since the train crews and the Great Falls Central Agency are able to provide all the necessary customer services.

8. On cross-examination Mr. Pfiffer was asked whether he or the crews work with the Froid Station Agent to serve customer needs. He responded that he talks with the agent at least once a week about customer and community matters.

9. Paul Froelich, Senior Cost Analyst for BNRC, testified on the Accounting Exhibit prepared and submitted to the Commission prior to the hearing. Pages 1-4 of the Exhibit, a computer generated report on carload commodity and traffic statistics for

the years 1990 through 1993 (January-June), showed that cars forwarded and received at Froid and Homestead totaled 145 in 1990, 150 in 1991, 188 in 1992, and 136 in 1993 (January-June). Pages 5 also presented these statistics in terms of average cars per month and day. Page 6 presented a time study based on the number of units handled by the agency. Revenues and expenses were analyzed on pages 7-8.

10. The data on page 6 indicated net revenue for freight service at Froid was $44,488 in 1990, $32,168 in 1991, $47,031 in 1992, and $43,740 during the first six months of 1993. On cross-examination Mr. Froelich confirmed that the Froid agency was profitable.

Testimony of Public Witnesses

11. Gary Nelson, BNRC Station Agent for Froid, was subpoenaed to testify on agency services. Mr. Nelson testified he initially provided customer service to shippers from Plentywood to Saco and traveled on a weekly basis to contact elevator operators and other representatives of the shipping public. Though he performed these duties under the direction of his Havre-based supervisor, he said he was later advised to stay within his service area due to a union territorial dispute.

Nonetheless, as a matter of personal initiative and professionalism, Mr. Nelson indicated he has continued to assist shippers from Culbertson to Plentywood. He also indicated BNRC management had previously ordered him to provide considerable service in Sidney for the sugar beet harvest.

12. Mr. Nelson stated he currently orders and traces cars for customers and performs car inspections. He described specific instances where he had provided services to Ag Grain in Plentywood and traced a sunoil car for SVO Specialty Products in Culbertson. He did not agree with BNRC's contention that the Froid Agency does not provide customer services.

13. Mary Nielson, representing Women Involved in Farm Economics (WIFE), appeared in opposition to the application.

14. Gary Christianson, owner/operator of AG Grain, Plentywood, testified the Froid Station Agent was vital to assisting his new business. He also described an advised weight dispute that Mr. Nelson resolved. He stated BNRC's service is so poor he resorts to shipping cars on the Soo Line, and approximately 50 percent of his calls to the Central Agency are not returned.

15. Magnus Aasham testified in opposition to the application. Mr. Aasham stated he shipped grain through a local elevator, and delays in getting grain cars is a real problem because

he does not receive payment until his grain is actually shipped. Since the car shortage situation has become so extreme that elevators now have to bid for cars, he believed the presence of the station agent was more important than ever to secure cars.

16. Gordy Kampew appeared in opposition to the application.

17. Michael Kjos, Plant Engineer for SVO Specialty Products, testified the Froid Station Agent was very important to SVO, which ships over 500 cars per year. He stated the customer service provided by the Great Falls Central Agency is inadequate, and the Froid Station Agent is needed to answer questions and verify loss claims.

18. Melba Anderson, Traffic Manager for SVO Specialty Products, also testified the Froid Station Agent was very important to SVO. She also stated the customer service provided by the Great Falls Central Agency is inadequate, and described instances where phone calls were not returned.

19. Representative Linda Nelson, House District 19, testified in opposition to the application. She stated as a shipper she has had to wait for cars and felt the presence of the station agent might be beneficial in expediting the process. On cross-examination, she noted farmers suffer a monetary loss from shipping delays as they do not receive payment for grain deliv-

ered to the elevator until it is shipped.

20. Doug Urdahl, Manager of Farmers Union Oil Co., testified in opposition to the application. He described service problems he had encountered as a BNRC customer.

21. Mr. James T. Mular, State Legislative Director for the Transportation and Communications Union, testified in opposition to the application.

## DISCUSSION, FURTHER FINDINGS AND ANALYSIS

22. 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.

23. 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 ship-

ping and general public if the application is granted, and any other factors the Commission considers significant to the provision of adequate rail service. Id.

24. The Commission notes the instant application seeks to discontinue agency services at Froid and transfer such services to its Great Falls Central Agency. The application does not seek to close the depot facility. Therefore, the Commission now considers only whether BNRC should be allowed to discontinue and transfer agency services. BNRC cannot close the depot facility without Commission approval, and such approval would have to be the subject of a separate application.

25. BNRC's application contends the Great Falls Central Agency is fully capable of meeting shipper needs and, therefore, the Froid Agency is no longer needed. However, a number of shippers appeared in opposition to the application. Their testimony described specific instances where either the Froid Station Agent had provided services and resolved problems or the central agency had failed to provide adequate service. Additionally, the witnesses from Ag Grain and SVO Specialty Products felt the Agent was needed to properly serve their respective businesses. No shipper appeared in support of the application. On this basis, the Commission finds discontinuing agency services

at Froid would place a significant burden on the shipping public.

26. In weighing this burden against any existing burdens on BNRC, the Commission notes the Froid Agency is profitable according to BNRC's own financial exhibit. Since there is no financial burden and BNRC presented no evidence of any other burdens, the Commission must find there are no existing burdens on BNRC as a result of agency operations. Since discontinuing agency services at Froid would place a burden on the shippers and there are no existing burdens on BNRC, the Commission finds public convenience and necessity require continuation of Froid Agency services.

27. That said, the testimony presented in this case justifies further comment and action by the Commission. The Commission first wishes to applaud the efforts of the Froid Station Agent, Jim Nelson, to provide superior customer service. In the competitive business sector corporations spend thousands of dollars to train employees to become as willing as Mr. Nelson to go that "extra mile" in providing customer service.

28. Second, the Commission must recognize the need for Mr. Nelson's services not only in Froid but along the entire Opheim Branchline. The Commission has learned from its regulatory oversight of the Opheim Branchline, past agency cases and its participation in an Interstate Commerce Commission proceeding

that there is a tremendous need for efficient and effective service along the branchline. Shipper and public testimony in this Docket simply restate contentions from past proceedings:

a) The Opheim Branchline has unique characteristics that differ from areas served by mainline agencies. Due to BNRC's pricing strategy, branchline elevators find it difficult to compete with mainline competitors. Further, they do not receive daily pickup and delivery of cars.

b) The Opheim Branchline is costly to BNRC, and elevators and farmers live in constant fear that BNRC may abandon the line rather than make expensive track rehabilitation investments. Given the fact this was BNRC's testimony in the aforementioned ICC case, such fears appear well justified.

c) Loss of BNRC service to the Opheim Branchline area would result in considerable economic damage to the area attributable to increased transportation costs.

d) Shippers have complained reduced agency services and minimal track repair efforts are part of an overall BNRC strategy to make the branchline uneconomic and justify abandonment. The Commission has been constant-

ly warned by shipper of this "domino effect" in proceedings dating back to 1982.

e) Shippers and the public view the Opheim Branchline as an economic unit and agency services as necessary to serving that unit. In this respect, they do not believe agency services should be restricted solely to Froid but rather extended to serve the entire branchline.

f) BNRC has deliberately hobbled station agents by ordering them to stop providing certain services, making a lack of shipper need for these services a self-fulfilling prophecy.

29. BNRC often bitterly complains that it is entrapped by years of historical legacy and the romance of railroading which effectively preclude it from becoming efficient. However, the Opheim Branchline shippers obviously feel just as restrained by BNRC's myopic strategy of limiting agent services. In regard to agency services, the shipper testimony in this case clearly indicates the Opheim Branchline is and has been in need of the area-wide services previously provided by Mr. Nelson. Though BNRC appears dedicated to a strategy of eliminating shipper need for agency services by eliminating services, it must become aware

that this strategy is unacceptable. Section 69-14-202, MCA, contemplates closure, consolidation and centralization where local agency services are no longer needed not, as BNRC would seem to believe, when services have already been eliminated. The Commission takes BNRC's strategy and the Opheim Branchline situation very seriously. Therefore, while it is legally unable to order BNRC to expand the services provided by the Froid Station Agent as part of this Docket, the Commission will open a new docket to consider what services are necessary to serve the public convenience and necessity of the Opheim Branchline area.

## CONCLUSIONS OF LAW

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

2. 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.

3. The Froid Agency is required to serve the public convenience and necessity as defined by § 69-14-202, MCA.

## ORDER

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

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this Docket that were not ruled on are denied.

IT IS FURTHER ORDERED that the Commission will open a docket to consider what services are necessary to serve the public convenience and necessity of the Opheim Branchline area.

Done and Dated this 30th day of March 1994 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

_____
BOB ANDERSON, Chairman

_____
BOB ROWE, Vice Chairman

_____
DAVE FISHER, Commissioner

_____
NANCY MCCAFFREE, Commissioner

_____
DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.