

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF TRANSPORTATION

In the Matter of the Petition of
Burlington Northern Railroad Company
to Establish a Centralized Freight
Agency in St. Cloud, Minnesota.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Bruce D. Campbell, Hearing Examiner for the Minnesota office of Administrative Hearings in St. Cloud, Minnesota, on April 6, 1983, and in Fergus Falls, Minnesota, on November 3 and 4, 1983.

Appearances: Peter M. Lee, Assistant General Solicitor, Burlington Northern Railroad Company, 176 East Fifth Street, St. Paul, Minnesota 55101, appeared on behalf of Burlington Northern Railroad Company (Railroad); Katherine E. Sasseville, Attorney at Law, Route 3, Jewett Lake, Fergus Falls, Minnesota 56537, and Robert W. Bigwood, Attorney at Law, 110 North Mill Street, Fergus Falls, Minnesota 56537, appeared on behalf of the Transportation Rail Action Coalition (TRAC); and Ronald F. Mattson, Manager, Regulatory Affairs, Room 419, Transportation Building, St. Paul, Minnesota 55155, appeared on behalf of the Minnesota Department of Transportation.

The record herein closed on December 29, 1983, the date of receipt by the Hearing Examiner of the final post-hearing brief.

Notice is hereby given that, pursuant to Minn. Stat. sec. 14.61 (1982), Minn. Rule 9 MCAR sec. 2.218 C., and the Rules of Practice of the Public Utilities Commission, as applicable to the Department of Transportation, the final decision shall not be made until this Report has been made available to all parties to the proceeding for at least 20 days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner of Transportation. Exceptions must be filed with the Commissioner of Transportation, Fourth Floor, Transportation Building, Saint Paul, Minnesota 55155. Exceptions should be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within 10 days after the service of the exceptions to which reply is made.

The Commissioner will make the final determination of the matter after the

expiration of the period for filing exceptions as set forth above.

Further notice is hereby given that the Commissioner may, at his own discretion, accept or reject the Examiner's recommendation and that said recommendation has no legal effect unless expressly adopted by the Commissioner as his final order.

STATEMENT OF ISSUES

The hearings herein were held to determine whether the Railroad, pursuant to Minn. Stat. 219.85 (1982), should be authorized to terminate its base agency service at Little Falls, Fergus Falls, and Anoka, to terminate the direct service agencies headquartered at St. Cloud and Fergus Falls, to reassign certain stations handled by the direct service agencies headquartered at Benson and Barnesville, and to close to the public freight depots maintained at Little Falls, Anoka, and Fergus Falls, in order to establish a centralized, regional freight agency at St. Cloud.

Based upon all of the proceedings herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. By Petition dated February 4, 1983, and subsequently filed with the Minnesota Department of Transportation, the Railroad requested authority to terminate its base agency service at Little Falls, Fergus Falls, and Anoka, to terminate the direct service agencies headquartered at St. Cloud and Fergus Falls, to reassign certain stations handled by the direct service agencies headquartered at Benson and Barnesville, and to close to the public freight depots located at Fergus Falls, Little Falls, and Anoka. The Petition proposes to establish at St. Cloud a centralized agency to conduct railroad business at the locations heretofore specified.

2. By Order dated March 4, 1983, the Commissioner of Transportation directed that a hearing on the Petition be held in St. Cloud, Minnesota, on April 6, 1983, and continuing for such additional days as might be necessary. A copy of the order and Notice of Hearing was mailed to all potentially affected and interested parties. The matter was then referred to the Minnesota Office of Administrative Hearings for the purposes of conducting a hearing and making a recommendation to the Commissioner.

3. The Railroad presently maintains a freight depot building and a station agent at the following base agency stations which will be affected by the Petition herein:

St. Cloud, Minnesota, serving the blind sidings of Becker, Clear Lake, Clearwater, Reformatory, Sauk Rapids, Sartell, Rice, Parent, Foley, Ronneby, Oakes, Foreston, Milaca, Bock, Ogelvie, Mora, Rockville, Cold Spring, Richmond, Roscoe and Paynesville;

Little Falls, Minnesota, serving the blind sidings of Royalton, Gregory, Darling, Lincoln, Randall, Philbrook, Belle Prairie and Camp Ripley;

Wall Fergus Falls, Minnesota, serving the blind sidings of Hoot Lake,
Lake, French and Foxhome; and
River, Anoka, Minnesota, serving the blind sidings of Coon Creek, Elk
Big Lake, Zimmerman and Princeton.

4. As relevant to the Petition herein, the Railroad also maintains direct service (mobile) agents in the following locations:

St. Cloud, Minnesota, calling upon shippers in St. Joseph, Collegeville, Avon, Albany, Freeport, Melrose, Sauk Centre, West Union, Osakis and Nelson;

Fergus Falls, Minnesota, calling upon shippers in Alexandria, Garfield, Brandon, Evansville, Ashby, Dalton, Underwood and Battle Lake;

Benson, Minnesota, serving shippers in Hawick, New London, Spicer, Pennock, Kerkhoven, Murdock and DeGraff; and

Barnesville, Minnesota, calling upon shippers at Carlisle, Rothsay, Lawndale, Baker, Sabin, Hawley and Lake Park.

The Railroad proposes to terminate the direct service agencies at St. Cloud and Fergus Falls and to reassign certain stations handled by the direct service agencies headquartered at Benson and Barnesville. The direct service agent at Benson would continue to call upon shippers at Pennock, Kerkhoven, Murdock and DeGraff. The direct service agent at Barnesville would continue to call upon shippers at Baker, Sabin, Hawley and Lake Park.

5. Each of the Railroad's base agencies affected by the Petition are staffed by a full-time agent, and the direct service agencies headquartered at St. Cloud, Fergus Falls, Benson, and Barnesville likewise provide full-time service. The hours of availability of the full-time base agents, direct service agents and other servicing clerical personnel are as follows. At St. Cloud, an agent is available between 8:00 a.m. and 5:00 p.m. five days a week, a billing clerk works between 10:00 a.m. and 7:00 p.m. six days a week, a chief clerk is available from 3:00 p.m. to 12:00 midnight Monday through Friday, a supervisory agent, who is on call 24 hours a day, seven days a week, normally works between 8:00 a.m. and 5:00 p.m. Monday through Friday, and the direct service agent is on duty between 8:00 a.m. and 5:00 p.m. on weekdays. At Fergus Falls, a base agent works from 8:00 a.m. to 5:00 p.m. Monday through Friday, and an operator is on duty 4:00 p.m. to 12:00 midnight, Monday through

Friday. The hours of work for the Fergus Falls direct service agent are 8:00 a.m. to 5:00 p.m. Monday through Friday. At Little Falls, the base agent is on duty from 7:30 a.m. to 4:30 p.m. Monday through Friday. The same hours of work are maintained by the base agent at Anoka. The direct service agent at Benson is on duty from 8:00 a.m. to 5:00 p.m. on weekdays. The same hours of work are maintained by the direct service agent at Barnesville. BN Ex. 12.

6. Under the reorganization proposed in the Petition, the centralized agency at St. Cloud will be open for business 24 hours a day with staff available to accommodate the service needs of shippers as follows:

Demurrage Clerk--8:00 a.m. to 5:00 p.m., Monday through Friday;
Billing Clerk--10:00 a.m. to 7:00 p.m., Monday through Saturday;
Chief Clerk--3:00 p.m. to 12:00 midnight, Monday through Friday;
Central Clerk No. 1--7:00 a.m. to 3:00 p.m., Monday through
Friday;
Central Clerk No. 2--3:00 p.m. to 11:00 p.m., Monday through
Saturday;
Traveling Agent--9:00 a.m. to 6:00 p.m., Monday through Friday;
Yard Clerk No. 1--7:00 a.m. to 3:00 p.m., seven days a week;
Yard Clerk NO. 2--3:00 p.m. to 11:00 p.m., seven days a week;
Yard Clerk No. 3--11:00 p.m. to 7:00 a.m., seven days a week; and
Supervisory Agent--8:00 a.m. to 5:00 p.m., Monday through Friday
and
on call on a 24-hour a day basis.

BN Ex. 12.

7. None of the base agency stations affected hereby have passenger service and none of the stations handle freights in less than carload lots. With the exception of the base agency at Little Falls, rate information is normally handled by contacting either the central office in St. Paul directly or by use of a toll-free WATS number that the Railroad has established. Cash remittances or telegrams are not routinely handled by any of the agents, and all customer accounts have been centralized in the St. Paul headquarter's office.

8. Orders for rail cars are typically placed by a telephone request with the local agent. A shipper need not visit a freight agency to place or confirm a car order. Any freight agent receiving a car order call must relay that order to the regional car distributor in St. Paul, Minnesota. The regional car distributor then obtains a suitable car and directs the car to the shipper. No service agent has authority to appropriate a car made empty locally for reloading by the same or another local shipper, and local agents have no influence or authority in obtaining a car for a particular shipper from the regional car distributor. The regional car distributor is made aware of the location of empty cars within the car pool, and it is his responsibility to provide cars for local reloading, if practical. (Tr. Vol. I, pp. 29-30)

9. Cars are currently placed and removed by switching crews operating from either St. Cloud, Minnesota, or Fargo, North Dakota. currently, the base

agent prepares a switch list, using information from a, computerized wheel report, for the local activity of the switching crew. He does not physically accompany the switch crew as it spots and removes cars at the locality. (Tr. Vol. I, pp. 30-41.) Under the proposal, instructions to the local switching crews will be prepared at either St. Cloud, Minnesota, or Fargo, North Dakota,

from computerized wheel reports prepared at such locations. BN Ex. 4; BN Ex.

5. The presence of a local agent would not materially assist the switching crews in the placement or removal of cars. A local agent would perform no function in preparing the computerized instructions to the switching crews.

10. The needs of the shippers currently serviced by the base agency stations and the direct service agents included in the Petition can be adequately accommodated without direct personal contact with an agent. The St. Cloud agency will provide 24-hour service, seven days a week. Under the

proposed realignment, shippers presently served by the base agencies affected

by the Petition will be able to contact the St. Cloud office 24-hours a day without charge through three WATS lines to be installed by the Railroad.

Damage inspections will be performed by agency personnel operating through the

St. Cloud office at the point of the location of the damaged freight. The Railroad does not routinely require a signed bill of lading executed prior to

the movement of a rail car. Under current Railroad policy, telephone contact

can initiate shipment with a later delivery of an executed bill of lading.

The bill of lading prepared by the shipper will be mailed to the St. Cloud

agency, signed and returned by the agency to the shipper. Dispatch of the

rail car will not await receipt of the bill of lading at the agency. With

respect to time-sensitive bills of lading, the execution on behalf of the Railroad of such documents will be accomplished in three ways: (1)

train conductors will be authorized to sign and return the bills of lading when the

loaded car is removed; (2) upon request, a representative of the St. Cloud agency will travel to the shipper's place of business to sign the bill of lading; and (3) the shipper will be authorized to sign the bill of lading on

behalf of the Railroad. (Tr. Vol. I, pp. 58-60.) With respect to inbound or

received traffic shipped under an order bill of lading or restricted delivery

straight bill of lading, delivery may be had through the use of a surety bond,

the presence of a representative of the St. Cloud centralized office to acquire the original bill of lading prior to delivery of freight, or the surrender of the document to a train conductor at the time of delivery. (Tr.

Vol. I, pp. 61-66) With respect to demurrage, there will be no change affecting the shipper. (Tr. Vol. 1, pp. 71-79) The St. Cloud agency will

compute demurrage for all patrons within its jurisdiction by the same rules and the same manner as is now accomplished. BN Ex. 10. Under current operations, both base and direct service agents commence the period of demurrage using information obtained from the switch lists for the cars

involved and the period of demurrage terminates by a telephone release of the rail car by the shipper. No physical visit to the St. Cloud base agency is required for commencing or terminating the period of demurrage. The ability to trace expeditiously a car will not be affected by the Petition. A car may be traced either through use of the Railroad's central 800 telephone number, or through contacting the St. Cloud agency, which has access to the centralized computer system. (Tr. Vol I, pp. 79-82; Trr. Vol II, pp. 184-186)
BN Ex. 15.

11. Hennepin Paper Company is a manufacturer of paper and paper products headquartered in Little Falls, Minnesota. It routinely receives from the base agent at Little Falls quotations of freight rates which it has found to be more reliable than quotations received from the headquarter's office in St. Paul. Pub. Ex. No. 3. The expertise of the freight agent at Little Falls in quoting appropriate rates for the transportation of paper and paper products is not a sufficient basis for maintaining the base agency in Little Falls.

12. Interstate Incorporated is a dealer in large farm implements in Fergus Falls, Minnesota. Approximately ten shipments of such large pieces of equipment are received each year. On-sight damage inspections and unloading assistance from Railroad personnel are routinely required. The needs of Interstate Incorporated and other implement dealers in Fergus Falls do not require the maintenance of agency service at Fergus Falls. (Tr. III, pp. 202-211)

13. The realignment of agency responsibilities requested by the Petition will not in any way change the nature of rail service to shippers at the base stations affected by the Petition, at any of the unmanned sidings currently served by such base agency stations, or at locations currently served by the direct service agents affected by the Petition.

14. A grant of the Petition would result in the elimination of six Railroad positions and the addition of three clerical positions. Each of the affected employees may exercise his seniority rights within the labor district. No affected employee will be discharged from Railroad Service as a result of the grant of the Petition.

15. The base agency at Anoka, Minnesota, exclusive of service to unmanned sidings, received 201 cars in 1981 for an average of .80 cars per working day, and forwarded 239 cars for an average of .95 cars per working day. The average number of cars both forwarded and received per working day during 1981 was 1.75 cars. During 1982, 122 cars were received for an average of .49 cars received per working day and 175 cars were forwarded for an average of .70 cars forwarded per working day. In 1982 the average number of cars received and forwarded declined to 1.19 cars per working day. Although the average number of cars forwarded and received at the blind siding served by the Anoka station was not included in the statistics previously enumerated, during calendar year 1981, a total of 134 cars were handled at all of the unmanned sidings associated with the Anoka station. For calendar year 1982, the total number of cars handled at such blind sidings had declined to 64 cars. On the basis of a statistical unit time factor analysis assigning average time to tasks performed, developed by the Railroad at agencies similar to the Anoka station, the time spent by the agent directly handling all cars during the year 1982 was 19 hours and 32 minutes. Other necessary agency functions performed by the agent, including public contact, janitorial tasks, and similar functions, required 111 hours and 19 minutes. The total productive time worked by the base agent at Anoka during calendar year 1982 was 131 hours, or seven percent of the total working hours for which he was paid. During calendar year 1981, if the revenue resulting from the Anoka unmanned

sidings were excluded, the base agency service at Anoka resulted in a net loss to the Railroad of \$9,700.00. In 1982, the net loss for the operation of the Anoka station was \$22,192.00. For calendar year 1981, the total revenue resulting from the unmanned sidings associated with the Anoka station was \$367,302.00, \$183,186.00 of which was assigned to the Railroad. In 1982, the revenues associated with such blind sidings had declined to \$193,818.00, \$98,177.00 of which was assignable to the Railroad. BN Ex. 11, pp. 1-6.

16. The base agency at Fergus Falls, Minnesota, exclusive of service to unmanned sidings, received 760 cars in 1981 for an average of 3.03 cars per

working day, and forwarded 1,843 cars for an average of 7.34 cars forwarded per working day. The average number of cars both forwarded and received during 1981 was 10.37 cars per working day. In 1982, the station received 839

cars for an average of 3.37 cars received per working day and forwarded 1,740

cars for an average of 6.99 cars per working day. During 1982, the average number of cars both forwarded and received per working day was 10.36 cars. While the average number of cars forwarded and received through the unmanned sidings associated with the Fergus Falls station were not included in the statistics previously enumerated, during 1981, 116 unit trains were received at the Hoot Lake unmanned siding and 41 cars were received at the remaining unmanned sidings. 119 cars were forwarded from such unmanned sidings.

During

1981, the total traffic at the unmanned sidings associated with Fergus Falls amounted to 116 unit trains and 160 individual cars both forwarded and received. During 1982, 107 unit trains were received at the Hoot Lake unmanned siding, 12 additional cars were received at other sidings, and 127 cars were forwarded. During 1982, the total traffic at the unmanned sidings

associated with Fergus Falls included 107 unit trains and 139 cars both forwarded and received. The bulk of the traffic associated with the unmanned

sidings serviced by Fergus Falls consists of unit train coal deliveries to the

Hoot Lake station of Ottertail Power Company. On the basis of a statistical

unit time factor analysis assigning average time to tasks performed, developed

by the Railroad at agencies similar to the Fergus Falls station, the time spent directly handling all cars during 1982 was 191 hours and 47 minutes. Other necessary agency functions performed by the base agent, as previously described, required 871 hours and two minutes. The total productive time worked by the base agent at the Fergus Falls station during calendar year 1982

was 1,063 hours, or 53 percent of the total working hours for which the agent

was paid. During calendar year 1981, if the revenue resulting from the associated unmanned sidings is excluded, the base agency service at Fergus Falls resulted in a net profit to the Railroad of \$133,341.00. Similar statistics for the calendar year 1982 demonstrate a gross profit to the Railroad of \$130,989.00. During 1981, the total revenue resulting from the unmanned sidings associated with the Fergus Falls station was \$4,843,463.00, of which \$4,753,547.00 was assigned to the Railroad. In 1982, the revenues associated with the unmanned sidings handled by the Fergus Falls station were

\$4,983,949.00, of which \$4,931,422.00 was assigned to the Railroad. The bulk

of the revenues associated with the blind sidings serviced by Fergus Falls, Minnesota, result from the unit trains handled at Hoot Lake for Ottertail Power Company. BN Ex. 11, pp. 7-11.

17. The base agency at Little Falls, Minnesota, during the calendar year 1981, exclusive of cars handled at its unmanned sidings, received 390 cars for

an average of 1.55 cars per working day, and forwarded 428 cars for an average of 1.71 cars forwarded per working day. During 1981, the combined average per working day for cars received and forwarded at Little Falls, exclusive of cars forwarded and received through its unmanned sidings, was 3.26 cars. During 1982, the station received 290 cars for an average of 1.16 cars received per working day. During the same time period, it forwarded 326 cars for an average of 1.31 cars forwarded per working day. During 1982, the combined average per working day for cars received and forwarded at Little Falls, exclusive of cars forwarded and received through its unmanned sidings, was 2.47 cars per working day. The number of cars both forwarded and

received through the unmanned sidings associated with the Little Falls station was not included in the statistics heretofore enumerated, 29 cars were forwarded and received during 1981 at the unmanned sidings associated with the Little Falls base agency station. During 1982, the number of cars forwarded and received declined to 15 cars. on the basis of the unit time factor analysis developed by the Railroad previously discussed, the handling of all cars at the Little Falls agency, including its unmanned sidings, required 34 hours and 54 minutes. Other necessary agency tasks required 230 hours. Together, all of the work performed by the base agent at Little Falls required 230 hours, or 12 percent of the total working hours for which the base agent was paid in 1982. During calendar year 1981, if revenues associated with the Little Falls unmanned sidings are excluded, the operation of the Little Falls base agency station resulted in a net profit to the Railroad of \$13,775.00. In 1982, operations of the station resulted in a net profit to the Railroad of \$195. The revenues associated with the unmanned sidings within the responsibility of the Little Falls station, during 1981, amounted to \$43,822.00, of which \$28,441 was assigned to the Railroad. In 1982, the unmanned sidings generated gross revenues of \$21,418.00, of which \$16,061.00 was assigned to the Railroad. BN Ex. 11, pp. 12-16.

18. The Fergus Falls direct service agent, serving the locations previously enumerated, forwarded and received during calendar year 1981, a total of 688 shipments, for an average of 2.74 shipments per day. In 1982, 562 shipments were forwarded and received for an average number of shipments per day both forwarded and received of 2.26 shipments. On the basis of the unit time factor analysis developed by the Railroad previously discussed, the handling of all cars through the Fergus Falls direct service agent required 37 hours and 34 minutes. The travel time required to perform the functions of the direct service agent was 746 hours and 10 minutes. Other station work of the direct service agent in Fergus Falls required 173 hours and 17 minutes. Together, all of these tasks required 957 hours, or 48 percent of the time for which the direct service agent was paid in 1982. For the calendar year 1982, the activities of the direct service agent in Fergus Falls resulted in a net profit to the Railroad of \$4,557.00. Similar calculations for the year 1982 show a net loss to the Railroad of \$14,180.00. BN Ex. 11, pp. 7-12.

19. The St. Cloud direct service agent, serving the locations previously enumerated, forwarded and received, during calendar year 1981, a total of 724 shipments, for an average of shipments per day of 2.88. In 1982, the agent forwarded and received 374 shipments for an average number of shipments per day both forwarded and received of 1.5. on the basis of the unit time factor analysis developed by the Railroad previously discussed, handling of all cars through the St. Cloud direct service agent required 17 hours and 22 minutes, exclusive of travel time. The travel time associated with the tasks of the St. Cloud direct service agent was 754 hours and three minutes. Other station work required 115 hours and 19 minutes. All of the tasks required to be performed by the direct service agent at St. Cloud required 887 hours, or 45 percent of the total working hours for which the St. Cloud direct service agent was paid in 1982. For calendar year 1981, the operation of the St. Cloud direct service agent resulted in a net gain to the Railroad of \$24,189.00. During 1982, the profit to the Railroad for the St. Cloud direct service agent had declined to \$10,570.00. BN Ex. 11, MD. 23-29.

20. The Barnesville direct service agent, serving the locations previously enumerated, forwarded and received during calendar year 1981 a total of 320 shipments, for an average of 1.27 shipments per working day. During 1982, he forwarded and received a total 333 shipments, for an average number of shipments per day of 1.34. There is no evidence in the record of the number of productive hours spent by the Barnesville direct service agency in the performance of Railroad duties. During 1981, the direct service agent at Barnesville was responsible for generating gross revenues to the Railroad of \$596,774.00 of which \$500,654.00 was assigned to the Railroad. In 1982, the gross revenues generated by the direct service agent were \$600,389.00, of which \$542,070.00 were assigned to the Railroad. There is no evidence in the record regarding the expenses of the Barnesville direct service agent or the net effect of his operations on Railroad profit. BN Ex. 11, pp. 30-31.

21. The direct service agent at Benson, serving the locations previously enumerated, forwarded and received during calendar year 1981, a total of 237 shipments, for an average number of shipments per day both received and forwarded of .94 shipments. In 1982, the total traffic declined to 153 shipments, for an average number of shipments per day both forwarded and received of .61 shipments. There is no evidence in the record of the amount of time required by the Benson direct service agent for the performance of his Railroad duties or the percentage of unprofitable time he experienced during either 1981 or 1982. The direct service agent at Benson, in 1981, was responsible for generating \$444,847.00 of total operating revenues, of which \$376,985.00 was assigned to the Railroad. In 1982, he generated total operating revenues of \$217,936.00, of which \$185,858.00 was assigned to the Railroad. There is no evidence in the record of the profitability to the Railroad of the operations of the Benson direct service agent. BN Ex. 11, pp. 32-33.

22. The base agency at St. Cloud, Minnesota, including service to its unmanned sidings, received 5,569 cars during 1981 for an average number of cars received per day of 22.19 cars. It forwarded 6,707 cars, for an average of 26.72 cars forwarded per working day. It interchanged 167 cars, for an average number of cars interchanged per day of .67. The St. Cloud agency, during 1981, received 497 unit trains, for an average number of unit trains received of 1.98 unit trains per working day. In 1982, it received 5,832 cars for an average number of cars received per day of 23.42 cars. It forwarded 5,623 cars, an average of 22.58 cars forwarded per working day. The station interchanged 116 cars and received 469 unit trains, for an average of .47 cars interchanged per working day and 1.88 unit trains received per working day. On the basis of the time unit factors previously discussed, the time spent directly handling all cars during 1982, including the blind sidings serviced through St. Cloud, was 743 hours and 43 minutes. Other station work required 3,712 hours and 20 minutes. The total time required for agency work was 4,456

hours, an average of 56% of the available time of the St. Cloud agency personnel being spent in activities productive to the Railroad. There is no evidence in the record of the profitability to the Railroad of the St. Cloud station during either 1981 or 1982. BN Ex. 11, pp. 34-37.

23. A pro forma analysis for the proposed centralized agency at St. Cloud, Minnesota, for the year 1981, would result in a total of 18,815 cars

received, forwarded and interchanged, for an average number of carloads handled per day of 74.96, and 613 unit trains received for an average of 2.44 unit trains per day received. Similar pro forma statistics for the year 1982, would demonstrate a total of 16,703 cars handled for an average number of cars handled per working day of 67.08. 576 unit trains would have been received at the St. Cloud centralized agency in 1982, an average number of unit trains received of 2.31. Estimated time spent to perform the agency work of the proposed centralized agency at St. Cloud, Minnesota, for the year 1982 would have reflected total time spent handling railroad traffic of 1,175 hours and 19 minutes. other station agency work would have required 5,327 hours and 41 minutes. The total time required for agency work would have been 6,403 hours, or 50% of the time for which the agency personnel at the proposed centralized agency at St. Cloud would have been paid during 1982 based on the projected level of agency staff. BN Ex. 11, pp. 38-39.

24. The depot buildings at Anoka, Fergus Falls and Little Falls will be closed to the public and used for internal Railroad purposes.

Pertinent Statutory Excerpts

Minn. Stat. S 219.85 (1982), provides in relevant part:

"Agency service at common carrier railroad stations shall be that required by the public convenience and necessity. No such station shall be abandoned or agency service thereat reduced or discontinued without the consent of the Commissioner after public notice and hearing."

Based upon the foregoing Findings of Fact, the Bearing Examiner makes the following:

CONCLUSIONS

1. The subject matter of the petition is within the jurisdiction of the Minnesota Commissioner of Transportation and the matter is properly before the Hearing Examiner pursuant to adequate notice and all requirements of law or rule have been satisfied.

2. The granting of the petition would not adversely affect the public convenience and necessity if the following conditions are observed by the Railroad:

(a) The Railroad accepts collect or WATS telephone calls at its St. Cloud agency station from shippers outside of the St. Cloud toll-free calling area who formerly were served by any of the base agency stations or direct service agents proposed to be terminated herein with respect to shipping transactions with the centralized St. Cloud agency;

laws (b) The Railroad continues, to the extent allowed by applicable
and regulations, to allow use of the telephone and United States
shippers mails for the transmittal and receipt of bills of lading for
service currently served by any of the base agency stations or direct
agents to be terminated pursuant to this Petition; and

(c) The Railroad furnishes, in the manner proposed, the same quality of agency service to the affected shippers from its centralized agency at St. Cloud as was previously available.

3. The closing of the affected depot buildings is in the public interest since the buildings will no longer be needed for base agency service and the use of the buildings by the Railroad for its internal purposes will maximize the productive use of such assets by the Rail-road.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE COMMISSIONER OF TRANSPORTATION WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

By reasons of the foregoing, the undersigned Hearing Examiner recommends to the Commissioner of Transportation that he enter an order as follows:

ORDER

1. The Petition of Burlington Northern Railroad Company for authority to terminate base agency service at Anoka, Little Falls, and Fergus Falls; to terminate the direct service agencies headquartered at St. Cloud and Fergus Falls; to reassign certain stations handled by the direct service agencies at Benson and Barnsville; to close to the public the depot buildings located at Anoka, Little Falls, and Fergus Falls; and to transfer to a centralized base agency located at St. Cloud, Minnesota, all of the functions currently within the jurisdiction of the base agency stations and direct service agents at Fergus Falls and Little Falls, and the base agency station at Anoka, is hereby granted; and

IT IS FURTHER ORDERED that the request of the Burlington Northern Railroad Company to close to the public its depot buildings at Fergus Falls, Anoka, and Little Falls, Minnesota, is hereby granted; and

IT IS FURTHER ORDERED that Burlington Northern Railroad Company shall not reduce the quality of railroad service afforded to the patrons in the area affected by One granting of this Petition in comparison to the service afforded to them in the past; and

IT IS FURTHER ORDERED that the Railroad shall post a bulletin in each of the stations hereby affected describing in detail the manner in which rail service can be obtained.

Dated this 6th day of February, 1984.

BRUCE D. CAMPBELL
Hearing Examiner

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1 (1982), the agency is required to serve its final decision upon each party and the hearing examiner by first class mail.

Reported Janet R. Shaddix & Associates
8755 Irving Avenue South
Bloomington, Minnesota 55431

MEMORANDUM

This hearing concerns a proposed consolidation of base agency service in central and northwestern Minnesota in which the Railroad is experiencing a variety of traffic patterns and revenue conditions. Certain of the stations generate significant traffic and resulting revenues and others have little traffic resulting in net losses to the Railroad. The issue to be determined is not the advisability of the Railroad's decision to consolidate agency service but whether that decision of the Railroad will yet afford affected shippers the level of service required by the public convenience and necessity. Minn. Stat. sec. 219.85 (1982).

As rightly recognized by the Railroad, the Commissioner of Transportation does not enjoy the freedom of an owner of the carrier. Unless public convenience and necessity requires it, the discretion of the carrier in establishing and maintaining its stations is not to be interfered with. Chicago, Burlington & Quincy R.R.Co. v. Stamford Elevator Co., 138 N.W. 2d 816, 820 (Neb. 1965); Application of Chicago, B&Q Railway Co., 155 Neb. 392, 52 N.W. 2d 241 (1952). The phrase "public convenience and necessity" denotes something less than absolute necessity and something more than mere convenience. As expressed by the South Dakota court, the phrase "public convenience and necessity" contemplates a public need without which the public is inconvenienced to the extent of being handicapped in the pursuit of business or wholesome pleasure or both, without which the people generally of the community are denied to their detriment that which is enjoyed by other people, otherwise similarly situated. Illinois Central Railway Co. v. Wisconsin Granite Co., 70 S.D. 558, 19 N.W. 2d 753 (1945).

Although the Hearing Examiner afforded the Transportation Rail Action Coalition substantial latitude in both discovery and the presentation of its case, with the arguable exceptions to be hereinafter discussed, the record adduced at the hearing does not disclose any handicap to the shipping public resulting from a grant of the Petition. Similarly, shippers, public officials and businessmen testified at the several hearings held herein to speak in

opposition to the Petition. With few exceptions, the comments of such witnesses were general, reflecting both a lack of understanding of the Railroad's proposal and unsubstantiated fears about the possible effects of the consolidation on local train service.

The first and most frequently advanced assertion was that a replacement of the local agent who was known to the shipper and a substitution of computerized, telephonic communication would result in a deterioration of service. With two arguable exceptions, hereinafter discussed, the evidence merely indicated a preference for face-to-face communication with a known agent of the Railroad. The Railroad, however, through several witnesses, established that the service to be provided at the centralized agency will, in fact, be superior to the service currently available. While the concerns of the witnesses regarding an unfamiliar method of operation are understandable, there is no evidence in the record from which the Hearing Examiner can conclude that the service to be received through the centralized agency will be markedly different from that currently experienced. In fact, the centralization of the agency may allow the Railroad to use economies of scale and implement technical innovation.

Two witnesses did, however, advance concrete service concerns. A spokesperson for Hennepin Paper company of Little Falls, testified about the superior service on rate quotations received through the local agent at Little Falls over telephonic communication with the central office in St. Paul. Pab. Ex. 3. Several considerations, however, militate against maintaining the base agency station at Little Falls to accommodate Hennepin Paper Company. Initially, Hennepin Paper Company has been consolidated with St. Regis Paper Company, a larger corporation with internal tariff personnel. Secondly, the Railroad is in the process of implementing the computerized preparation of way-bills and selection of the appropriate tariff. The St. Cloud consolidation will ultimately result in this service being provided to the areas consolidated within the St. Cloud agency. Equally as important is the fact that the expertise of the base agent at Little Falls is not inherent in the position but is peculiar to the individual. There is no evidence in the record of when that person will retire from Railroad service, when he might accept a different agency assignment or even if his services would be available through the St. Cloud agency. To deny a major Railroad reorganization on a basis of particular skills possessed by one individual when there is no evidence in the record that those skills would be available in the future is inappropriate. Finally, the representative of Hennepin Paper Company stated that he could express no conclusion as to whether accurate rate quotations would be available through the St. Cloud office. (Tr. Vol. 1, pp. 171-173.)

A representative of Interstate Incorporated, a Fergus Falls large farm implement dealer, testified that about ten shipments received per year require

on-site damage inspection, unloading assistance and, occasionally, the turning of rail cars for unloading. As demonstrated by the Railroad, however, the concerns of Interstate Incorporated can be adequately met through the St. Cloud centralized agency. Initially it should be noted that all of the railroad deliveries of large farm implements to Fergus Falls on the Burlington Northern system come through St. Cloud and the St. Cloud agency will have advance notice of the Fergus Falls delivery to arrange for prompt on-site inspection. The need to turn rail cars could be obviated through communications between the dealer and the St. Cloud agency. Rail cars cannot be turned at Fergus Falls; they must be turned at St. Cloud. Hence, the cars can be positioned correctly while at the St. Cloud yard and routed to Fergus Falls rather than await special handling after arrival at Fergus Falls. (Tr. Vol. III, pp. 202-211.)

A number of witnesses testified about the inadequacy of three incoming WATS lines to the St. Cloud centralized agency. It was alleged that the number of shippers using such lines would result in perennial busy signals to incoming callers. It should be noted, however, that Burlington Northern expressly agrees that if three telephone lines prove inadequate, it will add others and provide yard personnel to answer such additional calls. (Tr. Vol. II, pp. 187.)

The service concerns expressed by the witnesses are largely fears of an unaccustomed method of conducting business. Minn. Stat. sec. 219.85 (1982), in relevant part, however, also provides:

"The Commissioner may on his own motion or upon the petition of any interested party order station agency service at any station established, reestablished or expanded after notice and hearing as herein provided...."

If the service provided by the St. Cloud agency station proves inadequate with respect to the needs of any geographic area serviced by the station, recourse may be had to the Commissioner to order the reestablishment of agency service or the expansion of the service at the St. Cloud centralized agency to comport with the requirements of the public convenience and necessity. Minn. Stat. sec. 219.85 (1982).

Many witnesses commented that the proposed agency consolidation is but a preliminary step toward the abandonment of rail service in the areas affected. Although TRAC was given the widest latitude by the Hearing Examiner to establish any causal connection between agency consolidation and ultimate abandonment of rail service in both discovery and trial testimony, no such causal relationship was established. As a result of the inability to establish any causal connection between agency consolidation and eventual abandonment, the Hearing Examiner, on the record, stated that the allegations of eventual abandonment would not be considered by him in the formulation of a recommendation to the Commissioner. (Tr. Vol. III, p. 246.) Moreover, abandonment of any rail service, should such be proposed, would not be within the jurisdiction of the Commissioner of Transportation but would be subject to approval by the appropriate regulatory agency after full and thorough investigation and public hearings. There is no evidence in the record from

which the Hearing Examiner can rationally conclude or even hypothesize that the granting of the Petition will, in any manner, affect the outcome of any future abandonment proceeding.

The third argument advanced in opposition to the Petition is that certain of the stations, principally the Fergus Falls base agency station, generate positive revenues which justify their retention. The presence of positive revenue is but one factor in judging the public convenience and necessity. The presence of positive revenue, if at all relevant, would support the retention of a station where there was evidence in the record that the services provided by the local agent were otherwise appropriate to the public convenience and necessity. *State v. Chicago & Northwest Railway Co.*, 246 Minn. 43, 75 N.W. 2d 411 (1956); *Application of Thomson*, 6 N.W. 2d 607 (Neb. 1943); *In re Thomson*, 4 N.W. 2d 756 (Neb. 1942); *Railroad Commission of Texas v. St. Louis*

Southwestern Railway Co., 474 S.W. 2d 19, 21 (Tex. 1971). There is no evidence in the record that the grant of the Petition will in any way affect the quality of railroad service currently provided at Fergus Falls. Clearly, positive revenue is not determinative of the question of public convenience and necessity. Since the law does not require useless or meaningless things, Minn. Stat. sec. 219.85 (1982), could not require the physical presence of an agent when his presence would have no effect on the quality or quantity of railroad transportation services provided to shippers affected thereby. In this regard, it should be noted that prior versions of Minn. Stat. 219.85 (1982), had included a stated level of revenues for the maintenance of a resident agent. Evidently, in deleting that provision from the current statute, the Legislature recognized that positive revenues have no logical relationship to the service required by the public convenience and necessity. This conclusion by the Hearing Examiner with respect to the effect of positive revenues on station retention is in accordance with the position of the Commissioner in previous cases. In the Matter of the Petition of Burlington Northern Railroad Company to Establish a Centralized Freight Agency at Bemidji, DOT-82-008-BC, D-5134, R-3839; and In the Matter of the Petition of Burlington Northern Railroad Company to Establish a Centralized Freight Agency at Crookston, Minnesota, DOT-82-001-RD, D-5729, R-3829.

B.D.C.

