MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 12, 1985

The nineteenth meeting of the Business & Industry Committee met in Room 410 of the Capitol Building at 10 a.m. The meeting was called to order by Chairman Mike Halligan.

ROLL CALL: All committee members were present.

CONSIDERATION OF SENATE BILL 297: Senator Dorothy Eck, Senate District 40, Bozeman, introduced this bill to order an independent audit of a public utility which is to be paid for by the public utility. She feels this might be very beneficial and would be a cost savings to the public. Occasionally there are problems with the Public Service Commission and the power companies and she feels that an independent audit would make for more equitable decisions.

PROPONENTS: Eileen Shore, Attorney with the Public Service Commission, stated the PSC strongly supports Senate Bill 297. They believe that the costs of such audits should appropriately be a utility or a ratepayer expense rather than taxpayer expense since it will benefit the utility or the ratepayers. (EXHIBIT 1) She further stated that these audits do not come up that often. Jim Payne, Consumer Council, favors empowering the PSC with the ability to order an audit.

OPPONENTS: John Alke, from Montana Dakota Utilities, feels the bill as drafted specifies that the commission wants the power to request an audit and it is to be paid for by the utility. He felt this was unconstitutional and that the expense should be borne by the one who requests the audit. He feels routine audits are done anyway and information can be obtained from these. Mike Zimmerman, Montana Power Company, feels there are some flaws in the bill. They feel the bill is unnecessary and that they already have this power anyway. (EXHIBIT 2) Jim Hughes, with Mountain Bell, feels there are enough audits already which provide enough information. He feels independent audits are just superficial and the cost is tremendous.

Questions were then called for from the committee. Senator Fuller wondered who would bear the cost of the audit and was told by Eileen Shore that it would be a ratepayer expense. Senator Goodover asked Eileen Shore about the constitutionality of the bill and she stated she did not feel there was a problem. Of Mike Zimmerman's testimony, she felt that the utilities themselves know when there is a problem that clarification is sometimes needed. Mike Zimmerman felt there should be some guidelines met before a company can order an audit.

Eileen Shore stated the PSC cannot order an audit unless there is a majority. Senator Kolstad asked if the consumer council had enough staff to do an audit and was told they have some flexibility except for contracted work they would need extra funds. Senator Gage asked Eileen Shore if she felt there might be some potential for harassment from citizen groups with this authority and she felt not because of the cost of the audits. Jim Payne felt that an independent audit would have more creditability should there be a court case. Senator Goodover wondered if there would be some objection by the PSC to amending the bill to be paid for by tax money. Eileen Shore felt they would not favor this kind of approach, that it was more equitable to have the utility pay for the cost and have this passed on to the ratepayer. Senator Thayer wondered who might do the audits. Senator Goodover asked Mr. Ellis from the PSC his opinion and he stated that they currently have to come before the legislature to request an audit and that time is sometimes a factor. Senator Eck closed by stating that indeed time is a problem and it has been the legislative intent to have a PSC with some real capabilities and by giving them increased authority it will provide some benefits to the utilities as well. The hearing was closed on Senate Bill 297.

CONSIDERATION OF SENATE BILL 318: Senator Thomas Keating, Senate District 44 from Billings, said first of all this bill does not close down any agencies in the state but would bring the code into the age of improved service and computerization. His bill will allow the PSC to allow closure of certain railroad facilities not required by the public convenience and necessity. The purpose of the legislation originally was to provide adequate service to the public. He explained service is still available but now they want the PSC to be the entity to determine if there is sufficient service being provided to the public.

PROPONENTS: Wayne Hatton, Regional Vice-President & General Manager for Burlington Northern in Billings, feels the old legislation is just outdated. He talked about the advantages of centralization and how much better service can be offered to the customers with computerization. (EXHIBIT 3) He also pointed out examples of various states and the number of agents they have. He does not feel there will be any job loss because of centralization but they would be able to find meaningful work in other areas. He feels the bill will give them more flexibility in bringing the statute up to date. Ken Koolen, an attorney for Burlington Northern in Billings, stated presently they have to go before the PSC and set up a public hearing and this bill will give the PSC the authority and flexibility to do the job they were elected to do. Under this new legislation they would be able to hear the evidence and reach some logical conclusions for better efficiency.

OPPONENTS: Jim Mular, Legislative Director of the Brotherhood of Railway & Airline Clerks, opposes this bill. He gave the committee copies of research he has done, a summary from the

the Library of Congress, copy of the statute and a list of stations in Montana. He feels the legislation being sought is just to seek judicial redress because they were defeated recently in a Billings court. (EXHIBIT 4) Rick Van Aken, with the Brotherhood of Railway Clerks from Missoula, feels this legislation will broaden the closure laws and that the committee should consider the loss of payroll to smaller communities, the continued erosion of accessibility of railway service, of our tax base and our traditional demand for service in exchange for what Burlington Northern took from Montana. (EXHIBIT 5) Bob Burch, Helena, an ex-engineer, feels there will not be more jobs available and cited examples of past performances after closures occurred. Joseph Moore, of the Montana People's Action group, spoke in opposition. He felt we should be looking for more economic development instead of less. He feels rail transportation is very important to our state. (EXHIBIT 6) Lavina Lubinus, with WIFE, opposes this bill because she feels we should not lose touch with losing our local agents who know and understand the individual problems. (EXHIBIT 7) Opal Winebrenner, staff person with PSC, stated they have a neutral position on this bill. She explained there is currently litigation pending in the court.

Questions were then asked from the committee. Senator Gage asked how many agencies had been closed without opposition and was told there was only one. Jim Mular was asked if he felt there would be a cost reduction if stations were closed and he felt there was less when there was more competition. Senator Weeding asked about the procedure required to put a unit train together and was told the local agents have very little to do with this anymore. Senator Goodover asked about the court cases pending. Senator Christiaens then asked Kent Koolen how many had been closed since 1983 and was told there were approximately 6 closures in towns of less than 1000 population. He further stated that of those requested about 1/4 of the requests had been turned down. Senator Keating stated in closing that the railroad has an obligation to provide a service to the public and the public in turn has to use these services or it just isn't cost efficient. It would give the railroad the authority to go to the PSC and ask to be relieved of a requirement that is inefficient and nonprofitable. They would like to see more efficiency so they do not have to raise rates. A letter from the Montana League of Cities and Towns in opposition to this Senate Bill was entered as an exhibit. (EXHIBIT 8) The hearing on Senate Bill 318 was closed.

CONSIDERATION OF SENATE BILL 333: Senator Chris Christiaens, Senate District 17, Great Falls, explained his bill will allow a dealership or lienholder to place their security interest on a title if the purchaser has not done so within the 20 days that has elapsed after the time of purchase.

PROPONENTS: Tom Curruthers, Past Chairman of the Montana Retail Bankers Committee, feels this is just a housekeeping measure and would help them make perfection of liens on vehicles. It would result in savings of time and be a benefit to banker, savings and loans, credit unions, etc. Larry Majerus, Administrator of the Motor Vehicle Division, stated the bill will help solve some problems regarding perfections. He explained in more detail some minor problems with language in the bill. He felt that 20 days might not be quite enough time. Les Alke, of the Montana Bankers Association, stated they support this bill because it will enhance proper lien filings for protection to the bankers. (EXHIBIT 9)

OPPONENTS: There were no opponents to Senate Bill 333.

Questions were then called for from the committee. Senator Boylan wanted to know if this was forcing people to license a vehicle and was told it was just when you have a lien on a vehicle purchased in order to have the lien perfected. You are required to pay taxes on a vehicle even if you do not license it. Senator Christiaens stated in closing that he feels this is a very necessary piece of legislation. He would be happy to work with Larry Majerus on any language problems he feels are in the bill. The hearing on Senate Bill 333 was closed.

The meeting was adjourned at noon.

Mike Halligan, Chairman

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ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 2/12/85

SENATE SEAT #

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman	X		
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

DATE February 12, 1985

COMMITTEE ON BUSINESS & INDUSTRY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Joseph Moore	Montana Peoples Action	SB318		X
Jim Mular	BRAC	SB318		X
Bob [illegible]	Self	SB318		X
Rick VanAken	BRAC Mala Lodge #43	S/B318		X
Opal Winebrenner	Public Service Com.	SB.318		
[illegible]	MBA	SB 333	X	
Mike Zimmerman	MPCo	297		X
[illegible]	Mtn Bell	297		
[illegible]	Mtn Bell	297		X
[illegible]	N.P.R.C.	297	X	
Keith Duke	Observer			
[illegible]	Mt. Consumer Council	297	X	
Lavina Lubinus	WIFE	318		X
Howard Ellis	P.S.C.	297	X	
Jim England	MontPIRG	297	X	
M. Englesen	Montana Peoples Action	318		X
Kent Kaalan	BNRR	318	X	
Wayne Hatton	BNRR	318	X	
Larry Majerus	Motor Vehicle Division	333	X	

Form CS-34
-79

NAME Eileen Shane Bill No. SB 297

ADDRESS 2711 Prospect DATE 2/12/85

WHOM DO YOU REPRESENT MT PSC

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

EXHIBIT 1
BUSINESS & INDUSTRY
February 12, 1985

PUBLIC SERVICE COMMISSION 2701 Prospect Avenue • Helena, Montana 59620
Telephone: (406) 444-6199

SB 297 - Statement of Support by the Public Service Commission

The Public Service Commission strongly supports SB 297.

Several years ago, the Montana Supreme Court decided that the PSC does not have the statutory authority to order a utility to secure an independent audit. Because of that decision, the Legislature later appropriated $200,000, so that the PSC could secure an audit to determine whether the books maintained by the Montana Power Company for the Montana PSC should be the same as those maintained for the Federal Power Commission (now the Federal Energy Regulatory Commission).

The PSC believes that the costs of such audits should more appropriately be a utility or ratepayer expense, rather than a taxpayer expense, since any benefits of audits will flow to the utility or to its ratepayers.

The need for independent audits do not arise in the usual course of regulation; however, there are times when the PSC believes they are necessary to assure that information upon which the PSC bases its decisions is independently verified.

Unless there were some exceptional circumstances, such as clear proof of some kind of imprudence or other bad management by a utility, the costs of such an audit would be considered a ratepayer expense under the Commission's current practices.

EXHIBIT 2
BUSINESS & INDUSTRY
February 12, 1985

2/11/85

Senate Bill 297 - Audit Bill

Statutes in Title 69 of the MCA vest the PSC with full power of supervision, regulation and control of public utilities. This power includes the authority to inquire into the management of the business and to obtain from the public utility all information necessary to enable the PSC to perform its duties. In the face of this existing statutory authority, the authority sought by Senate Bill 297 is superfluous.

The full power of the PSC is not commonly appreciated. Controlling the public utility's purse strings permits the PSC to obtain information that is pertinent and needed. For example , in 1977, MPC undertook what may be termed a "management" audit and provided the results to the PSC. The cost to ratepayers was nearly $452,000. There are many other examples where MPC has provided the PSC information (the item sought by any audit) when it was needed, when it was relevant, and when it was demanded in the conduct of a proceeding before the PSC.

As introduced, Senate Bill 297 distorts the present balance between the utility and the PSC. The bill allows the PSC to order ANY audit, at ANY time. The Bill appears to allow the PSC to order the audit be accomplished by ANY consultant the PSC may select. Further, the bill requires the costs of these audits to be borne by the utility; but it doesn't say whether the costs may be recovered in rates. These are serious faults.

Audits cost a substantial amount of money and they divert a substantial amount of employee time. The costs vary depending upon the nature of the inquiry and the consultant conducting the audit. For example, the cost of annual Price Waterhouse audits of MPC's financial statements, SEC 10-Qs, and payroll savings and retirement plans, for the past five years, have been: $137,200, $170,052, $200,068, $209,950, and $250,526. Given costs of this magnitude, the PSC should not be permitted to willy-nilly order audits.

If the legislature determines the PSC needs the authorization stated in Senate Bill 297, then the legislature should state some limiting conditions to assure: (1) that the utility is entitled to recover the cost of the audit in rates; (2) that the audits are relevant to an on-going proceeding or investigation; and (3) that the utility may negotiate with the PSC in selecting the consultant to perform the work. These conditions would be helpful in limiting potential abuse, limiting costs and assuring that the most information is obtained for the dollars spent.

In conclusion, MPC fully supports the premise that the PSC ought to have and is entitled to all of the information it needs to accomplish its regulatory obligations. We believe, however, that existing authority permits the PSC to obtain the information. We believe existing authority does not encourage expenditure for "audits" that constitute unnecessary "fishing expeditions". If the legislature wants the PSC to do more than is presently done, then it ought to fund the activity directly

through an appropriation from the general fund. In the alternative, the legislature ought to permit the utility to recover the costs of the additional audits through rates.

For: The Montana Power Company

By: Michael E. Zimmerman

Testimony by Wayne A. Hatton, Vice President, Billings Region
Burlington Northern R.R, in support of SB 318, before
the Senate Business & Industry Committee
February 12, 1985

EXHIBIT 3
BUSINESS & INDUSTRY
February 12, 1985

My name is Wayne Hatton and I am the Regional Vice President - General Manager for the Burlington Northern Railroad in Billings. I would like to take this opportunity to comment on Senate Bill No. 318, which essentially eliminates the arbitrary requirement for a railroad station agent in every community with a population of 1,000 people or more. This statutory requirement is a classic example of legislation that has outlived its usefulness and functions as an albatross around the neck of an industry that is trying to offer competitive first-class service to its customers.

I would like to take a moment of your time to outline to you some of the things that a station agent was required to do 30 years ago that, obviously, are no longer requirements of his or her job. Thirty years ago, an agent performed such duties as a daily yard check, abstracting bills, maintaining a cash book, handling western union matters and passenger tickets and baggage, sealing cars, cleaning the depot, filing tariffs, and a host of other essential chores. Today, the station agent performs few, if any, of these functions. The modern railroad agent has moved to a centralized agency, both on the Burlington Northern and other major United States railroads. The centralized agency on today's railroad coincides geographically with

modern computerized billing centers, where the customer deals directly with the center, either by correspondence or, in most cases, a toll-free telephone number. This centralization has not only resulted in increased efficiency, but has given our railroad and the industry, an opportunity to better serve its customers. These agencies provide a complete rail service, twenty-four hours a day, seven days a week, as opposed to the limited service provided by the single person agencies. The customer is provided direct and immediate access to the latest information concerning car location and availability, his orders are expedited and car placement is done with modern computer systems. The net result is not only increased efficiency, as I have said before, but increased productivity and improved rail service to the customers. Obviously, this results in reduced operating expenses, which ultimately benefit the shipping public.

A centralized agency encompasses a number of outlying billing locations. It combines all of the jobs and station functions on the lines that it serves in a given geographical area into one central point. For example, when the Fargo, North Dakota centralized agency was established, seventy-four stations were included in its geographical area. The Grand Forks agency has in excess of eighty stations. All car orders from the

receipt of the order to the furnishing of the equipment and handling car placement, release of records, waybilling and other functions are handled by the centralized agency. All contacts with customers within the centralized agency are handled via a toll-free telephone. When there is an occasion where the physical presence of a company representative is necessary at a station or a customer's facility, a travelling clerk makes the personal call on the customer to handle that customer's specific needs. The system works, and works well, it is not experimental or untested, it is in place and working. In fact, for all practical purposes it is operating in Montana, but because of the 1,000 population statute, we cannot streamline the operation and make it truly as cost effective as it could be.

In Montana, Burlington Northern now maintains 72 agencies and operates 3,224 miles of track. In the he State of North Dakota we maintain thirteen agencies and there is a proposal before the North Dakota Public Service Commission to reduce that number to five, for 3,314 miles of track. In Washington, we have thirty agents and 3,233 miles of track. For you review, I have attached to this testimony a graph depicting the number of station agents that Burlington Northern maintains in various states throughout its system. A quick review of that graph leads one to the inescapable conclusion that

in Montana Burlington Northern is required to maintain far more agents than other states where Burlington Northern does business.

We have an agency where Montana state law requires us to maintain an agent, even though we have not shipped or received a car in over four years. We have several agencies that have shipped very few or no cars in the past two years. Yet, again, we must maintain an open agency because of the statutory requirement of an agent in any town with a population of over 1,000 persons.

It is our desire to ultimately establish five centralized agencies to cover the entire State of Montana. These would be staffed with thirty-two agency personnel. I would like to specifically point out and emphasize that our ultimate goal of five centralized agencies has nothing to do with the location of train operations or the abandonment of rail lines. Those are totally separate and unrelated items.

This concept has been successfully implemented in North Dakota, Minnesota, Nebraska, Washington and other

states, and has been favorably received by an overwhelming majority of our customers.

The expense of maintaining seventy-two unneeded agencies in the State of Montana is great. The annual payroll in the State of Montana for maintaining these agencies is in excess of two and a half million dollars, including benefits and, of course, this cost is ultimately borne by the Montana shipper. While we cannot guarantee rates will go down if the 1,000 population requirement is repealed and some stations are closed, we can state with some degree of assurance that rates will go up if no relief is afforded. In addition, we strongly feel that savings realized with a realistic number of agents will inevitably improve the Burlington Northern's ability to compete on an efficient basis, which ultimately benefits our shippers. Similarly, to the extent that sister states, such as North Dakota, Wyoming, Nebraska and Washington have embraced this concept, shippers on the entire Burlington Northern system, including the State of Montana, have benefited.

Many of these agencies require less than two hours work a day. I question whether there is another industry in the State of Montana that is required, by law, to operate under such conditions. How, for example, would this body react if Montana Power or

Montana Dakota Utility told you that they had over fifty employees that were working less than a couple hours a day, but being paid for an eight hour day. I submit that you would be outraged and require them to take immediate corrective action, and prohibit them from including such wasteful spending in a rate base, but with the rail industry, this statute arbitrarily requires such waste.

I would like to take a minute to comment on the people involved in this proposal. By and large these agents are good people, dedicated to their work, loyal and conscientious. Most of them are not satisfied with a job that is essentially unproductive and many feel frustrated because more and more of their duties are disappearing. Many literally open the door in the morning, sweep the floor and then sit for eight hours with nothing to do. A realistic approach to the station agent problem in Montana will afford Burlington Northern an opportunity to provide the affected agents with meaningful work in other areas of the state where their services are needed. For example, we have areas we are in need of additional clerical work and, these people would be ideal candidates. Of course, any geographical moves that were required by an agent, would be, in part reimbursed at the expense of the carrier.

You should also know that all of the agents involved belong to the Brotherhood of Railway Clerks and carry various kinds of job protection. No station agent would lose a job or his source of income with the closure of these agencies. There is work for all of them and, in addition, they have specific contractual guarantees that would prevent Burlington Northern from laying them off even if it wanted to, which it does not. Many of the agents that might not want to make a physical move to another location, would be afforded contractual benefits that would entitle him to separation benefits or early retirement compensation.

Finally, I would like to emphatically point out to you that the proposed legislation, Senate Bill 318, does not authorize the closure of one station in the State of Montana. It simply grants the Public Service Commision of this State, the authority to evaluate each case on its merits and provides the Commission with the flexibility to make a realistic, meaningful decision without the arbitrary albatross of the 1,000 population requirement. We all realize that insofar as railroads are concerned, the Public Service Commission of the State of Montana views its responsibility as protecting the interests of the citizens of the State of Montana, and regulating the rail carriers. With that in mind, I am sure that we would all agree that this proposed

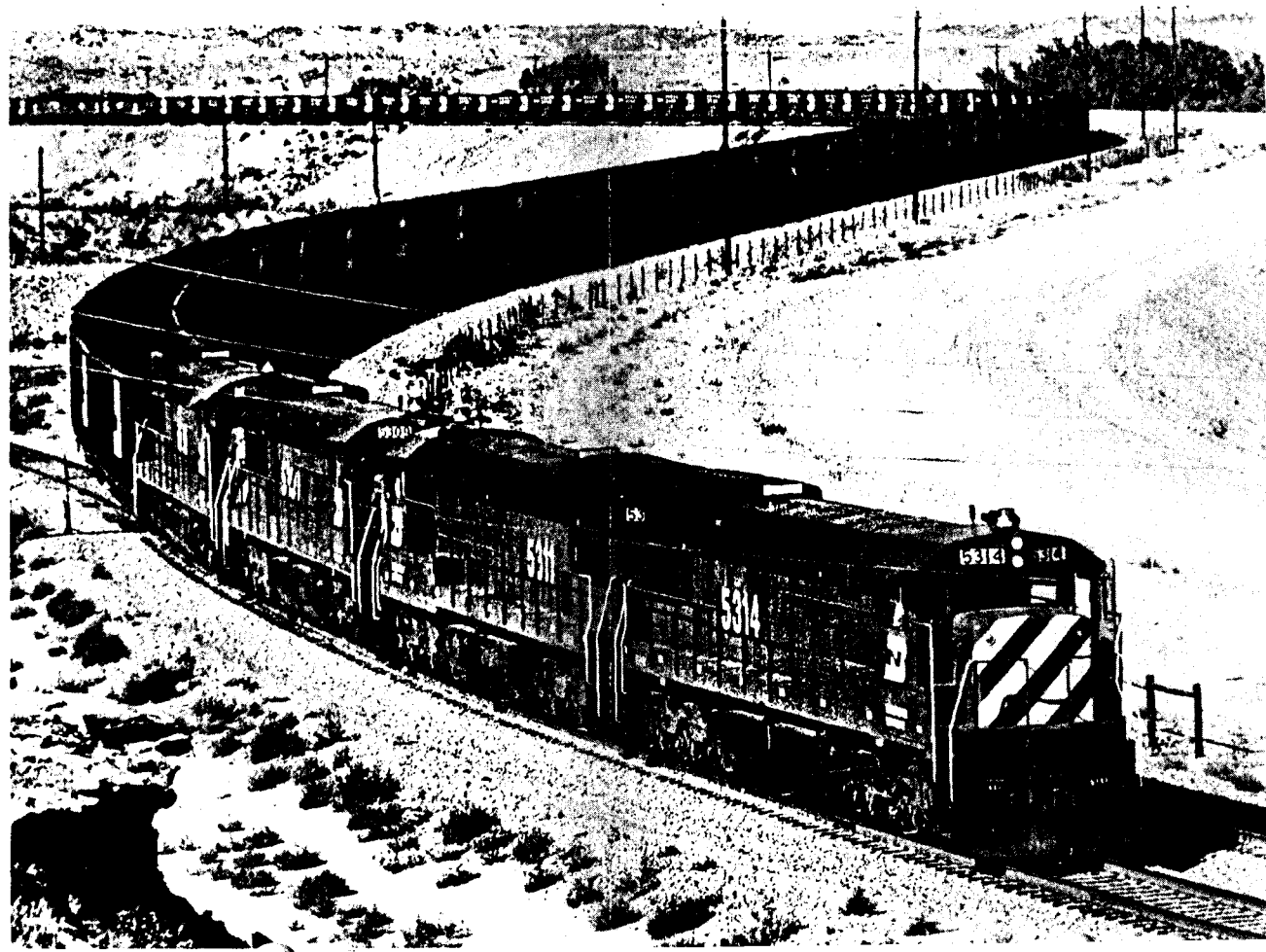
amendment will not result in wholesale closures of agencies overnight. The Commission is going to take a hard look at each proposal, as they have in the past. This amendment simply gives them flexibility and is a step toward bringing statutory requirements of railroad operations in the State of Montana into the 1980's.

Thank you.

Wayne Hatton

BURLINGTON NORTHERN
RAILROAD COMPANY

AGENCY INFORMATION



Whenever Burlington Northern asks a public utilities commission for permission to close a local agency, certain basic questions arise because the closing of an agency represents a change in the way the railroad has done business.

Burlington Northern feels that consolidating agencies into regional service centers will improve service to customers. Here are answers to some of the more common questions about agency closings.

What is an agency?

An agency is a local railroad office staffed by an agent who is primarily responsible for receiving car orders and billing and switching instructions from customers. The agent acts as a middleman in relaying requests for service to a regional customer service center.

Why does a railroad have agencies?

Railroad agencies date to the era when railroads ran passenger trains and computers hadn't even been invented. Local agents in pre-computer days had a multitude of assignments including sale of passenger tickets and the handling of U.S. Mail, baggage and Railway Express. They also were responsible for loading and unloading merchandise which was shipped in less than full carloads, handling livestock, billing and collecting charges, salvage and sale of damaged freight, and physically checking on all inbound and outbound cars. They handled various transportation-related paper work, including maintaining hand-written yard and switch lists and copying train orders, line-ups and clearances. They also handled receipt, delivery and billing of Western Union telegrams.

What effect has modern technology had on the duties of agents?

Computers now perform many of the tasks which the agent once did manually. Demurrage record keeping, freight billing/rating and yard handling have for the most part been computerized. The agent no longer handles either passenger ticket sales or telegram messages for Western Union. Handling livestock and loading or unloading merchandise is rarely done.

Doesn't a railroad still need lots of local agencies to serve local customers?

No. Computers have changed the way that railroads run their operations and the way that customers can best be served. Historically, agents have provided customers with information about what was happening to their shipments. Now that information is computerized. Computers can instantly determine the location, contents, destination and shipper and receiver on any car on BN's 25,000 mile system.

BN customers can gain access to the information and service they need through regional customer service centers. It is not cost-effective or practical to locate elaborate computer centers in all communities on the BN System.

If an agency is closed, how does a BN customer get service?

Customers simply call the regional service center using toll-free lines. This is no different than the way customers routinely contact the regional reservation centers of airlines, car rental agencies, hotels or the regional service offices of trucking companies. There is no cost to the customer.

What happens if there is a problem with a shipment? How does a customer get help without a local agent?

Regional customer service centers are on call 24 hours a day to handle requests for service or inquiries about problems with shipments. If personal contact with a railroad representative is required, staff members at the customer service centers can arrange for it.

How is the closing of an agency related to the depot?

Many agencies are located in rented buildings. Others are in depots which will continue to be used by other departments. In some cases, the closing of an agency can lead to the closing of a depot, but each community is different. BN works with community groups which are interested in preserving their depots.

How is the closing of an agency related to track abandonments?

There is no relationship between agency closings and track abandonments. BN has closed many agencies in important main and branch line communities because their customers can be better served by regional customer service centers. Agency closings have **NO** effect on train schedules or service.

When an agency is closed, what happens to the agent?

The agent remains a BN employee. Normally he has seniority as a member of a union and is entitled to move to another job with the railroad. If he has been employed by the railroad for a specific time period, he is "protected" by agreement. That means he will continue to be paid.

What will the closing of an agency do to BN's local tax bill?

The closing of an agency almost never has a significant impact on local taxes because typically an agency consists of some furniture and office equipment. Many buildings will continue to be used by other departments. Due to the amount of property held by the railroad and assessed for taxes, in most cases the closing of an agency won't even be noticed by local taxing bodies.

Are other railroads doing the same thing?

Agency consolidations are an industry trend because all major railroads face the same pressure to become more efficient, to compete more effectively and to better serve their customers.

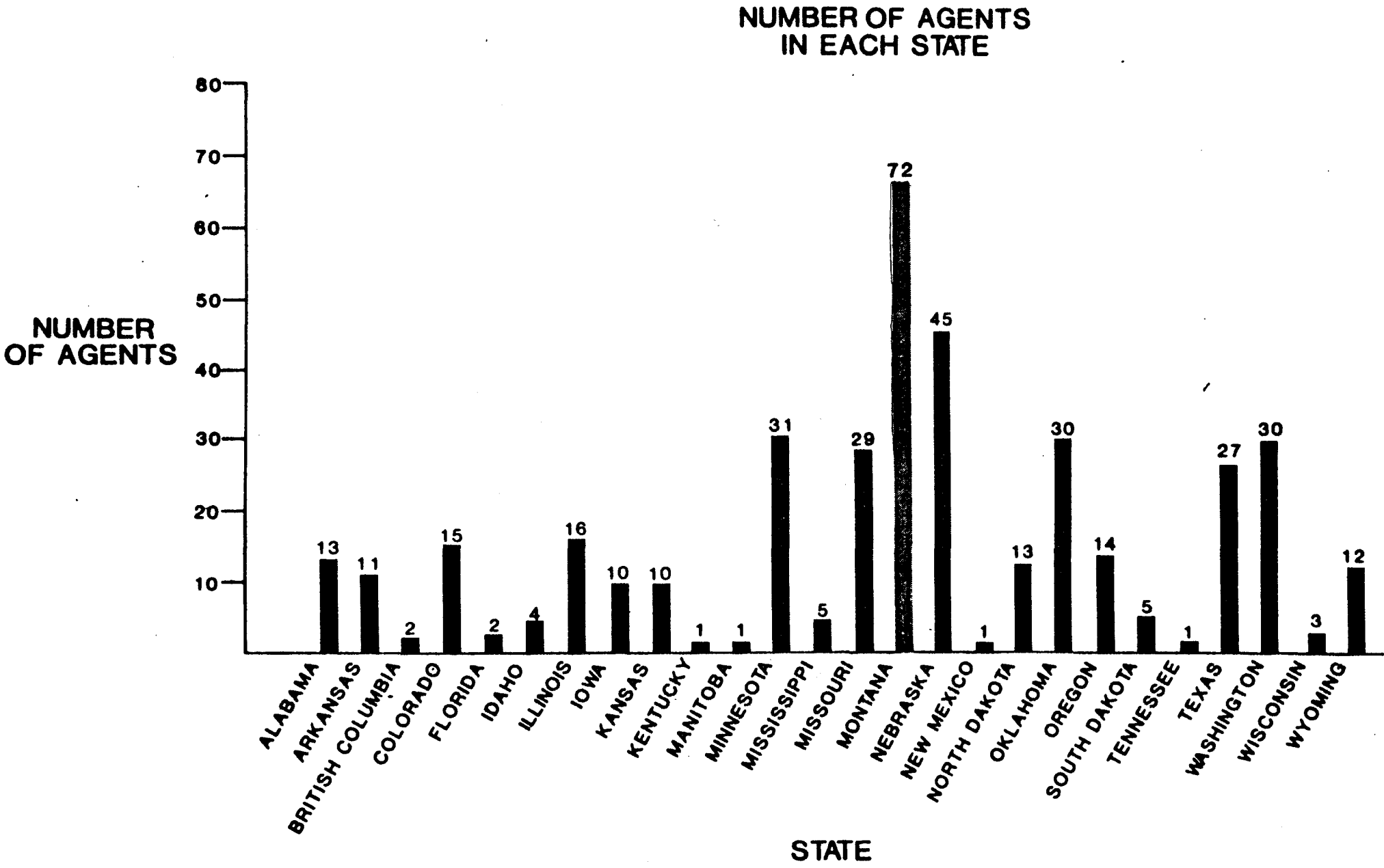

NUMBER OF AGENTS IN EACH STATE
NUMBER OF AGENTS
80
70
60
50
40
30
20
10
13
11
2
15
2
4
16
10
10
1
1
31
5
29
72
45
1
13
30
14
5
1
27
30
3
12
ALABAMA
ARKANSAS
BRITISH COLUMBIA
COLORADO
FLORIDA
IDAHO
ILLINOIS
IOWA
KANSAS
KENTUCKY
MANITOBA
MINNESOTA
MISSISSIPPI
MISSOURI
MONTANA
NEBRASKA
NEW MEXICO
NORTH DAKOTA
OKLAHOMA
OREGON
SOUTH DAKOTA
TENNESSEE
TEXAS
WASHINGTON
WISCONSIN
WYOMING
STATE

EXHIBIT 4
BUSINESS & INDUSTR
February 12, 1985

B E F O R E

THE

BUSINESS AND INDUSTRY COMMITTEE, MONTANA SENATE,
49th LEGISLATION ASSEMBLEY, 12-FEB-1985

Mr. Chairman, members of theCommittee. For the Record my name is James T. Mular, State Legislative Director of the Brotherhood of Railway & Airline Clerks. My address is 440 Roolsevelt Drive, Butte, MT 49701.

I've been directed by out Montana members to appear before this Committee in opposition to SB 318. My office has compiled information pertinent to the issues that proponents are seeking in the bill. The Brotherhool of Railway & Airlines Clerks requested the Congressional Research Service of the Library of Congress to evaluate Section 69-14-202 MCA, and submit an executive summary relating to its standing within the purview of the federal commerce clause. A copy of that summary concludes that the present law would withstand judicial challenge.

Members of the Committee, I submit that the Montana law has stood before State District Court in 1971 and passed state constitutional tests. It has appeared before the U.S. District Court in Billings and held its present Stature. (re BN v PSC et-al Cause No. CV 82 17 3 BLG) It remains an appeal before the 9th Circuit Court of Appeals, and was argued 18-Jan-1985. Ironically, the proponents to SB 318 are seeking to amend the

law to conform to their briefs before Federal Courts.
I submit a question of fact- Are the railroads seeking judicial redress in the amendments appearing in the legislation?
Attempts were made by the same proponents to sunset Sec. 69-14-202 MCA in the 48th Legislative Assembly, (SB 436).
A Senate sub-committee attempted to reduce the population to 500 inhabitants instead of 1,000.
Section 69-14-202 MCA, was inacted in its original form in 1893. Recodified in 1969 by Senator Sheehys Senate Bill No. 202.
This is not a new section of law, it is the legislature minimum difinition of public convenience and necessity. Supported by the threat that adequate station facilities could disappear from Montana communitits. Present laws established a population criterion that a railroad must perform as a condition to doing business in Montana.

We have attached a list of stations with population factors for your deliberations. Since this list was compiled the PSC has made proposed orders to close the dualized stations of Power and Brady, Close Bonner, and dualize Ronan with Polson.

When Senator Sheehys SB 202 was enacted there were approximately 300 stations. Today there are approximately 76 stations. Indicating that the PSC has closed an average of one station per month since 1969. Since 1980 over 20 station closures were granted or denied in part (See attached list)

Since the BN Frisco Lines merger, which was consumated in Dec. 1980, Burlington Northern made a substantial amount of requests from the PSC seeking to close highly profitable stations. Beginning in December of 1980 BN sought to close Troy Montana. During the hearing the Troy City Clerk testified that Troys popultion exceeded 1,000 inhabitants. At that time the 1980 Cencus was not published. The city clerk, further testified, that they ahd made EDA grant applications and one criterion was, whether the Comminity had adequate rail facilities. Such as Public Team Tracks and Docks, warehouse facilities etc. The entire economic infrastructure of a Montana community, centers around adequate station facilities. The present law addresses those economic benefits.

If you will refer to the material I handed you, specifically present open stations- we've included a recent press release made by BN wherein they allege that 4 stations could handle the state of Montana.

Railroad techonology does not pre-empt accountability. And thats what a Montana Railroad Station Facility does, it is the communities touch with the railroad. It makes the railroad a responsible citizen for hazardous commodities, public safety at rail car siding, proper dispatch and renditions of customers cost prodictivity. Along with public docks and warehouses in accomodating rail customers for loading and unloading rail shipments.

Another ancillary highlight relating to station closures on rural branch lines. The most recent comes to mind. Richey and Lambert, Montana were closed by the PSC in 1983. Within a short time BN made application with the ICC to abandon the Track, The same event occured when Brockway Montana was closed. The Hogeland, Turner Loring-Saco Line witnessed the same occurance. The list is impressive and a matter of public record.

In Conclusion, Mr. Chairman, members of the committee, I submit to you that the underlying motive appearing as amendments in SB 318 compose the judicial redress that the railroads are seeking in federal court. If you want the railroads to remain accountable to Montana shippers personal agency representations are the basic ingredients of the present Montana stations law. Thank you.

EXHIBIT 4
BUSINESS & INDUSTRY
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THE CONSTITUTIONALITY OF MONTANA'S STATUTORY REQUIREMENT TO FURNISH RAIL SHIPPING AND PASSENGER FACILITIES

Douglas Reid Weimer
Legislative Attorney
American Law Division
January 21, 1963

Mont. Senate Sec'y, Business and Industry Committee

EXECUTIVE SUMMARY

Interest has recently focused upon a certain provision of the Montana Code Annotated which requires that railroads operating in Montana must provide shipping and passenger facilities under certain circumstances. The question has arisen as to whether this state statutory provision could present constitutional problems. This report examines the statute from a constitutional perspective. The state statute is evaluated in the context of the commerce clause of the Constitution. The report examines whether the statute interferes with interstate commerce in a manner which is prohibited by the commerce clause and if the statute does not interfere with interstate commerce, then, whether Congress, pursuant to legislative authority under the commerce clause, preempted the field of railway regulation by the enactment of the Interstate Commerce Act. In determining whether the Montana statute conflicts with the commerce clause, relevant caselaw was examined and compared to to the statute. From our examination, it appears that the statute under consideration is a valid utilization of the state police power.

The doctrine of federal preemption--which requires that federal law overrides any state regulation when there is a conflict between the two--is examined in this report. The report examines the Montana statute for possible preemption by federal law. Federal preemption in the area of law dealing with railroad regulation is examined in detail. The federal statute in question is considered and its legislative history is examined. Relevant ICC administrative interpretations are reviewed for guidance as to the federal statute and its relationship to state law. The so-called Boston Terminal doctrine is examined and is applied to the Montana statute under evaluation. Judicial determinations made subsequent to the Boston Terminal cases are examined and their modifications to the doctrine are discussed.

The report concludes that the Montana statute is probably able to withstand a judicial challenge. While this report cannot anticipate a judicial determination, it appears that a strong argument can be made for the constitutionality of the Montana statute requiring the maintenance of rail facilities in certain circumstances upon the basis of the Boston Terminal rationale. However, a court may not elect to follow the ICC's reasoning and may reach a conclusion at variance with the Boston Terminal reasoning.

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INTRODUCTION

Interest has recently focused upon a certain provision of the Montana Code Annotated which requires that railroads operating in Montana must provide shipping and passenger facilities under certain circumstances.[1/] The question has arisen as to whether this state statutory provision could present constitutional conflicts. This report examines the statute from a constitutional perspective and analyzes available caselaw authority. From our analysis, it appears that the current Montana statutory requirement to furnish railroad shipping and passenger facilities would probably survive a constitutional challenge.

MONTANA STATUTE

The state statute under consideration provides that every railroad operating in Montana must maintain and staff facilities for the shipment and delivery of freight and must ship and deliver freight and accommodate passengers in certain locations in the State on the basis of location and population.[2/]

> **69-14-202. Duty to furnish shipping and passenger facilities.** (1) Every person, corporation, or association operating a railroad in the state shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in at least one location, preferably the county seat, in each county through which the line

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1/ Mont. Code Ann. § 69-14-202.

2/ Ibid.

of the railway passes and at any point upon the line of such railway where there is a city or town having a population, according to the last federal census, of not less than 1,000; provided, however, that this section shall not require the maintenance and staffing of such facilities in any county or at any city or town in which such facilities were not maintained and staffed on July 1, 1969.

(2) Nothing in this section authorizes the discontinuance of any facility presently established in any city, town, or other location having a population of less than 1,000 without a hearing before the public service commission, as provided by law.

Mont. Code Ann. § 69-14-202

This provision appears to apply to any railroad operating within the boundaries of Montana, on either an intrastate or an interstate route. "Facilities" as used in the section seems to indicate that some provision must be made to accommodate the shipment and delivery of freight and to accommodate passengers. However, specific guidelines or explanations to clarify the actual meaning of "facilities" as used in the section are absent. The absence of a legislative history of the provision precludes the determination of what the legislative drafters actually intended in the use of the term "facilities." 3/ Likewise, the absence of implementing regulations or judicial determinations further hinders a clear understanding of the meaning of the term "facilities." However, "facilities" could be interpreted to include sales facilities, loading platforms or docks, passenger waiting rooms, and other related areas.

3/ There appears to be no extant legislative history of the provision so as to determine what the Montana legislators actually intended by the use of the term "facilities." Nor does there appear to be relevant caselaw interpretation to explain the statutory meaning of the term.

CONSTITUTIONAL ISSUES

The Commerce Clause

Interest has centered upon the Montana statute because of a concern that it may pose potential constitutional problems. The Constitution clearly grants the power to regulate commerce to Congress.[4/] The commerce clause[5/] has been used as the basis for congressional regulation in many areas and has frequently been subject to judicial interpretation. Only one aspect of Congress' ability to exercise its broad power to regulate commerce is the Interstate Commerce Commission (ICC) which regulates surface transportation within the United States[6/] and which is relevant to the topic of this report. One of the major functions of the ICC is the regulation of railroads and rail service in the United States.

The commerce clause also imposes important constitutional limits on the exercise of state power.[7/] The landmark case in the development and interpretation of the commerce clause is Gibbons v. Ogden.[8/] The Supreme Court

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4/ U.S. Const. Art. I, § 8, Clause 3.

5/ Ibid.

6/ The Interstate Commerce Commission was created as an independent regulatory agency by an Act of February 4, 1887 (24 Stat. 379, 383; 49 U.S.C. §§ 1-22), now known as the Interstate Commerce Act, to regulate commerce.

The ICC's responsibilities include regulation of carriers engaged in transportation in interstate commerce and in foreign commerce to the extent that it takes place within the United States. Surface transportation under the ICC's jurisdiction includes railroads, trucking companies, bus lines, freight forwarders, water carriers, and transportation brokers.

7/ See, J. Killian, The Constitution of the United States Analysis and Interpretation at 142 (1976).

8/ 9 Wheat. (22 U.S.) 1 (1824).

held that certain statutes of New York granting an exclusive right to use steam navigation on the waters of the State were null and void insofar as they applied to vessels licensed by the United States to engage in coastal trade.[9/] Chief Justice Marshall interpreted the Constitution's meaning of the term commerce. "Commerce, undoubtedly, is traffic, but it is something more--it is intercourse."[10/] Today, "commerce" in the constitutional sense, and thus interstate commerce" covers nearly every aspect of the movement of persons and things, whether for profit or not, across state lines; communication; and every species of commercial negotiation which will involve sooner or later an act of transportation of persons or things, or the flow of services or power, across state lines.[11/]

To determine whether the Montana statute would survive a judicial challenge lenge based on constitutional grounds, the statute should be examined against two inquiries related to the commerce clause: whether the statute interferes with interstate commerce in a manner which is prohibited by the commerce clause; and if the statute does not interfere with interstate commerce, then, whether Congress, pursuant to legislative authority under the commerce clause, preempted the field of railway regulation by the enactment of the Interstate Commerce Act.

Determining whether the statute interferes with interstate commerce in a

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9/ Act of February 18, 1793, 1 Stat. 305 [licensing statute].

10/ Gibbons v. Ogden, 9 Wheat. (22 U.S.) 1, at 189 (1824).

11/ See, United States v. South-Eastern Underwriters Assn., 332 U.S. 553, at 549-550 (1944).

manner which is prohibited by the commerce clause involves careful consideration of the extensive caselaw interpretations which have occurred in this area. In Gibbons, the Court recognized the existence in the States of an "immense mass" [12] of state legislative power to be used for the protection of their own welfare and the promotion of their own local interest. [13] In a later Supreme Court decision, Chief Justice Marshall named this power "the Police Power" [14] and a great body of constitutional law has evolved from this concept. Marshall used his concept in the context of the case by stating that the power to remove gunpowder was a branch of the police power which remained and ought to remain, with the States. [15] The question arises as to when an otherwise valid exercise of the State's police power poses such incidental burdens on interstate commerce as to be prohibited by the Commerce clause. By analogy, it is useful to examine state railroad regulation cases dealing with rates, service, safety and train lengths to determine whether the Montana statute is a valid use of the state police power.

In quite a few regards, the power remains with the States to require by statute or administrative order a fair and adequate service for their inhabitants from railway companies, which would include interstate carriers operating within their borders, as long as the burdens imposed by this requirement on interstate commerce were, in the Supreme Court's judgment, "reasonable." In a series of cases the Court had to determine whether a carrier, in the interest of providing proper local facilities for commerce, could be required to stop

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12/ Gibbons v. Ogden, 9 Wheat. (22 U.S.) 1 (1824).

13/ Ibid., at 203.

14/ Brown v. Maryland, 12 Wheat. (25 U.S.) 419 (1827).

15/ Ibid., at 443-444.

its interstate trains. In one instance, a state regulation that required all regular passenger trains operating wholly within the State to stop at all county seats was held to have been validly applied to interstate connection trains.[16] But in another case, a statute that required all passenger trains to stop at county seats was held invalid because the Court determined that there was "other and ample accommodation."[17] Upon the basis of these decisions and other similar decisions, the Court has stated "the applicable general doctrine" to be that:

> (1) It is competent for a State to require adequate local facilities, even to the stoppage of interstate trains or the rearrangement of their schedules. (2) Such facilities existing--that is, the local conditions being adequately met--the obligation of the railroad is performed, and the stoppage of interstate trains becomes an improper and illegal interference with interstate commerce. (3) And this, whether the interference be directly by the legislature or by its command through the orders of an administrative body. (4) The fact of local facilities this court may determine, such fact being necessarily involved in the determination of the Federal question whether an order concerning an interstate train does or does not directly regulate interstate commerce, by imposing an arbitrary requirement.[18]

The Court later determined that there was no inevitable test of the instances and that the facts of each case must be considered.[19] In the

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16/ Gladson v. Minnesota, 166 U.S. 427 (1897). This holding was followed in Lake Shore & Mich. South. Railway v. Ohio, 173 U.S. 285 (1899), in which an Ohio statute requiring that "each company shall cause three, each way, of its regular trains carrying passengers,...Sundays excepted, to stop at a station, city or village, containing three thousand inhabitants, for a time sufficient to receive and let off passengers. ..." was sustained.

17/ Illinois Central Railroad Co. v. Illinois, 163 U.S. 142, at 153 (1896).

18/ Chicago, B. & Q. Ry. v. Wisconsin R.R. Comm., 237 U.S. 220, at 226 (1915).

19/ St. Louis & S.F. Ry. v. Pub. Serv. Comm., 261 U.S. 535, at 536-537 (1921).

examination of a variety of state statutes, the Court found some not to be "unduly burdensone"--a state regulation requiring intersecting railways to mark track connections [20/] and a regulation requiring equality of car service between shippers. [21/] On the other hand, the Court found unduly burdensome state requirements requiring the delivery of shipments on private sideways [22/] and a state regulation requiring cars for local shipments to be furnished on demand. [23/]

The Supreme Court has shown marked tolerance in evaluating state regulations which deal with public safety and purport to further the "public safety." [24/] A variety of state statutes have survived the High Court's scrutiny and have been considered in furtherance of promoting the public safety. Among these state police power requirements was that locomotive engineers must be examined and licensed; [25/] a prohibition against heating passenger cars by stoves; [26/] a municipal ordinance

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20/ Wisconsin, M. & P. R. R. v. Jacobson, 179 U.S. 287 (1900).

21/ Missouri Pacific Ry. v. Larabee Mills Co., 211 U.S. 612 (1909).

22/ McNeill v. Southern Railway Co., 202 U.S. 543 (1906).

23/ St. Louis S. W. Ry. v. Arkansas, 217 U.S. 136 (1910).

24/ See, the Court's reasoning in Hannibal & St. J. R. Co. v. Husen, 95 U.S. 465, at 470 (1878); and Minnesota Rate Cases (Simpson v. Shepard), 230 U.S. 352, at 402-410 (1913).

25/ Smith v. Alabama, 124 U.S. 465 (1888).

26/ New York, N.H., & H. Co. v. New York, 165 U.S. 628 (1897).

restricting the speed of trains within city limits;[27] and a variety of other instances which could be considered in furtherance of the public safety. The Court has made considerable concessions to local views that actually had nothing to do with safety.[28]

Another standard to be used in evaluating the use of state police power was provided by Chief Justice Stone in his opinion in Southern Pacific Co. v. Arizona.[29] "The principle that, without controlling Congressional action, a State may not regulate interstate commerce so as substantially to affect its flow or deprive it of needed uniformity in its regulation is not to be avoided by 'simply invoking the convenient apologetics of the police power.'"[30] Applying this standard and the weight of various other case law interpretations, Stone concluded that Arizona, in making it unlawful to operate within the State a railroad train of more than fourteen passenger or seventy freight cars, had gone "too far." In support of this conclusion, Stone cited the heavy burden that would be placed upon the railway companies by the loss of time and the increased trains that would have to be necessary to comply

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27/ Erb v. Morasch, 177 U.S. 584 (1900).

28/ See, Hennington v. Georgia, 163 U.S. 299 (1896).

29/ 325 U.S. 761 (1945).

30/ Ibid., at 779-780.

with the state law. In balancing national interests and the state police power, the Chief Justice reasoned:

> The decisive question is whether in the circumstances the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it and subject it to local regulation which does not have a uniform effect on the interstate train journey which it interrupts. 31/

Three conclusions can be drawn from the Southern Pacific case. Where uniformity is judged by the court to be essential for the functioning of commerce, a State may not interpose its regulation. In resolving this question the Court will canvass what it considers to be relevant facts extensively. The Court's task, in the final analysis, is to weigh competing values.

The Southern Pacific doctrine was utilized in Morgan v. Virginia 32/ which dealt with a state statute providing for segregation, on the basis of race, of railroad passengers. The Court concluded:

> As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it interferes with commerce, as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel. It seems clear to us that seating arrangements for the different races in interstate motor travel require a single, uniform rule to promote and protect national travel. Consequently, we hold the Virginia statute in controversy invalid. 33/

31/ Ibid., at 775-776.

32/ 328 U.S. 373 (1946).

33/ Ibid., at 386.

In another Supreme Court determination, state laws requiring a "full crew" aboard railroads were challenged by the railroads as being unduly burdensome.[34/] The Court rejected the railroads' arguments and determined that the matter was a genuine matter of state concern. The Court said that the only burden which the railroads could really make out was the necessity to stop or slow down at state borders to take on and drop off additional crew members and the Court could not say that the advantage in reduced accidents did not outweigh that burden.[35/]

Applying these criteria to the Montana statute under consideration, it appears that the statute's provisions are probably not unduly burdensome and that an argument could be made that its imposition was a legitimate exercise of the State's police power. The provision of passenger and freight facilities appear to be a genuine local interest and one of state concern, as each individual State has great differences in topography and demography. While it cannot be conclusively determined whether a judicial determination would find the statute a legitimate exercise of the State's police power, it does appear that compelling arguments for the validity of the statute could be made upon the basis of weight of the existing caselaw authority.

34/ Brotherhood of Locomotive Firemen & Enginemen v. Chicago, R.I. & P. Railroad Co., 393 U.S. 129 (1968).

35/ Ibid.

Federal Preemption

Whenever Congress exercises a granted power, such as the regulation of commerce, concurrent conflicting state legislation may be challenged through the use of the doctrine of preemption. The supremacy clause [36/] requires that federal law overrides, i.e., preempts, any state regulation where there is an actual conflict between the two different sets of legislation such that both cannot stand, for example, if the federal law forbids an act which state legislation requires. In addition, where Congress acts pursuant to a plenary power, it may specifically prohibit parallel state legislation i.e., occupy or preempt, the area. Unfortunately, questions of preemption seldom occur under such clear cut circumstances.

In the landmark Gibbons v. Ogden case, Chief Justice Marshall articulated the doctrine of federal preemption.

> In argument, however, it has been contended, that if a law passed by a State, in the exercise of its acknowledged sovereignty, comes into conflict with a law passed by Congress in pursuance of the Constitution, they affect the subject, and each other, like equal opposing powers. But the framers of our Constitution foresaw this state of things, and provided for it, by declaring the supremacy not only of itself, but the laws made in pursuance of it. The nullity of an act, inconsistent with the Constitution, is produced by the declaration, that the Constitution is the supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the State legislatures as do not transcend their powers, interfere with, or are contrary to the laws of Congress, made in pursuance of the Constitution, or some treaty made under the authority of the United States. In every such

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36/ U.S. Const. Art. VI , Clause 2.

> case, the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it. 37/

In recent years Congress has enacted legislation touching more and more areas traditionally subject to state regulation. Often, state statutory plans were enacted before Congressional action. In initiating a new regulatory scheme, Congress seldom articulates a specific intent to preempt an entire field of regulation. Indeed, it is common for Congress to include a typical "savings clause" explicitly legitimizing concomitant state regulation. 38/ While the Interstate Commerce Act did not provide a general blanket savings clause provision, the Staggers Rail Act of 1980 ("Act") 39/ provided a specific savings clause in a very narrow area of railroad regulation. In this particular instance the federal legislation in effect preserved individual state legislation which might have been in effect at the time of the passage of the Act. Nevertheless, the judicial branch has assumed the responsibility for discovering congressional intent and, if necessary, invalidating state laws which are superseded

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37/ 9 Wheat (22 U.S.), at 210-211 (1824).

38/ See, Securities Exchange Act of 1934, Act of June 6, 1934, ch. 404, 48 Stat. 881, codified at 15 U.S.C. § 78bb(a) which requires that . . . Nothing in this chapter shall affect the jurisdiction of the securities commissioner (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this chapter or the rules and regulations thereunder."

See also, Lynch, "A Framework for Preemption Analysis," 88 Yale L.J. 363 (1978); and Catz and Leonard, "The Demise of the Implied Federal Preemption Doctrine," 4 Hastings Const.L.Q. 295 (1977).

39/ Pub. L. 96-448, Title II, § 214(b)(3)(B), Oct. 14, 1980, codified at 49 U.S.C. § 11501 (a)(3)(B). "The standards and procedures existing in each State on the effective date of the Staggers Rail Act of 1980 for the exercise of jurisdiction over intrastate rail rates, classifications, rules, and practices shall be deemed to be certified by the Commission from that date until the date an initial determination is made by the Commission under subparagraph (A) of this paragraph.

because they impair federal superintendence of the field and impermissibly interfere with the effectuation of congressional objectives.[40] Of course, Congress could always reverse such decisions by making clear its intent not to preempt the field.

Preemption decisions are prevalent in the entire range of federal regulation. Before a judicial determination occurs, therefore, the Supreme Court must consider the federal law and its operation compared with the state statute and its operation. Then, the decision is based upon the specifics of the relationship between the relevant statutory provisions within the preemption framework. Through necessity, the nature of the problem of discovering congressional intent has resulted in judicial ad hoc balancing. Thus, while significant criteria may be articulated in this area, even more than in other areas, it is difficult to apply the rationale underlying a decision in one field to the problem in another context.[41] In spite of the diversity of preemption problems, the underlying constitutional principles are designed with a common end in view: to avoid conflicting regulation of conduct by various official bodies which might have some authority over the subject matter.[42] Where there are no indicia of congressional intent, the Supreme Court may have to balance the state and federal interests, to achieve this end.

40/ See, Hines v. Davidowitz, 312 U.S. 52 (1941).

41/ See, Hirsh, "Toward a New View of Federal Preemption," 1972 U.Ill.L.F. 515.

42/ See, Amalgamated Association of Street, Electric Ry. & Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971).

The Operation of Federal Preemption

Since 1900 federal legislation under the commerce clause has penetrated deeper and deeper into areas once occupied by the regulatory powers of the States. One result of this occurrence is that state laws on subjects about which Congress has legislated have been more and more frequently attacked as being incompatible with the acts of Congress based upon the supremacy clause. Various results may occur when a state law is challenged as being incompatible with acts of Congress and the Supreme Court has utilized these results at various times. First, as was argued in Gibbons v. Ogden,[43/] when Congress acts upon a particular phase of interstate commerce, its action appropriates the entire field so that no area is left to be supplemented by state legislation.[44/] In this event, federal provisions are deemed to "occupy the field," so that even complementary state legislation is precluded.[45/] A second alternative might be that, in the absence of a conflict between specific provisions of the state and congressional measures involved, the state regulation may be permitted to supplement the federal regulation.[46/] In this case, the doctrine of preemption would not take effect and both laws were complement each other. A third instance might be that the state

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43/ 9 Wheat. (22 U.S.) 1, at 8-18 (1824).

44/ See, Campbell v. Hussey, 368 U.S. 297 (1961).

45/ See, Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978). But, see, Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947) in which state law was not superceded unless there was a "clear intent and manifest purpose of Congress."

46/ See, Florida Lime & Avocado Growers v. Paul, 373 U.S. 132 (1963); and Rice v. Santa Fe Elevator Co., 331 U.S. 218 (1944).

law is found to conflict with the congressional act and thus is invalidated.[47] In such a case, there is a direct conflict between state and federal law so that compliance with both becomes impossible.[48] Another related instance could occur in the absence of a direct conflict between the state and federal law where the state law interferes with the accomplishment and the full purposes of the federal law.[49]

Justice Black once discussed the preemption doctrine in one of the chief cases dealing with the matter:

> There is not--and from the very nature of the problem there cannot be--any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress. This Court, in considering the validity of state law in the light of treaties or federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference. But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula. Our primary function is to determine, whether under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[50]

Justice Brennan has stated another standard thusly: "The principle to be derived from our decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons--either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained."[51]

47/ See, Warren Trading Post Co. v. Arizona Tax Comm. 380 U.S. 685 (1965).

48/ Free v. Bland, 369 U.S. 663 (1962).

49/ Perez v. Campbell, 402 U.S. 637 (1971).

50/ Hines v. Davidowitz, 312 U.S. 52, at 67 (1941).

51/ Florida Line & Avocado Growers v. Paul, 373 U.S. 132, at 142 (1963).

It must be determined whether the area of railway regulation has been completely occupied or preempted by Congressional legislation or by the implementing regulations of the Interstate Commerce Commission. The argument could be raised that even in the absence of a direct conflict between state and federal law, the Montana statute might have potential preemption problems because of a Congressional intent to occupy the entire field of railway abandonment regulation.

The Hepburn Act of 1906 [52] which amended the Interstate Commerce Act had the impact of demolishing much state enacted railway legislation. Hence, a state statute which authorized the exchange of rail transportation for the payment of printing and advertising costs was held to be in conflict with the unqualified prohibition by Congress of free interstate transportation. [53] Following the same line of reasoning, a state law that penalized a carrier for refusing to accept freight for transportation whenever tendered at a regular station was held to conflict with the congressional provision barring transportation of passengers or freight unless the rates, fares, and charges were filed and published in accordance with the amended Interstate Commerce Act. [54] The Act precluded a State from controlling the delivery of cars for

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52/ 34 Stat. 584, 49 U.S.C. § 1 et seq.

53/ Chicago, I. & L. Ry. Co. v. United States, 219 U.S. 486 (1911).

54/ Southern Ry. Co. v. Reid, 222 U.S. 424 (1912); and Southern Ry. Co. v. Burlington Lumber Co., 225 U.S. 99 (1912).

interstate shipments,[55] from authorizing recovery of a penalty for delay in giving notice of the arrival of freight,[56] or from authorizing a penalty for failure to deliver freight at depots and warehouses within a stated time limit.[57] The Carmack Amendment[58] placed on the initial carrier the responsibility for the loss of or the injury to cargo. The Court held that the Amendment superseded all state statutes limiting recovery for loss or injury to goods in transportation to an agreed or declared value.[59] Legislation enacted at the same time which dealt with employer liability for employee injuries and related matters was held by the Court to have displaced all state legislation so far as interstate commerce was concerned.[60]

Despite these various areas where it was considered that Congress had "occupied the field" of legislation, the States were still able to regulate the time and manner of payment of the employees of the railroad,

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55/ Chicago, R.I. & P. Ry. Co. v. Hardwick Elevator Co., 226 U.S. 426 (1913).

56/ St. Louis, Iron Mt. & S. Ry. v. Edwards, 227 U.S. 265 (1913).

57/ Yazoo & Mississippi R.R. v. Greenwood Grocery Co., 227 U.S. 1 (1913).

58/ 34 Stat. 595 (1906), codified at 49 U.S.C. § 20(11), (12).

59/ Adams Express Co. v. Croninger, 226 U.S. 491 (1913). See also, Adams Express Co. v. New York, 232 U.S. 14 (1914); Chicago, R.I. & P. Ry. Co. v. Cramer, 232 U.S. 490 (1914); Atchison, T. & S.F. Ry. v. Harold, 241 U.S. 371 (1916); and Missouri Pacific R. Co. v. Porter, 273 U.S. 341 (1927).

60/ Second Employers' Liability Cases, 223 U.S. 1 (1912); Southern Ry. Co. v. Railroad Comm. 236 U.S. 439 (1915).

including those engaged in interstate commerce, since Congress had not legislated on the subject.[61/] The States were also permitted to enforce a number of safety regulations,[62/] as well as the "full crew" laws which required a minimum number of employees aboard an operating train.[63/]

The federal scheme of legislation dealing with railway abandonment appears to be comprehensive in its scope of dealing with railway abandonment. However, it does not appear to deal directly with facilities such as loading platforms, station facilities, and related areas. Nor does the federal legislation include a savings clause or preemption clause which specifically reserves or supersedes relevant state laws. Nonetheless, an argument could be raised that the "occupy the field" concept would be implied when federal regulation is pervasive, from the need for national uniformity, or when there is a danger of potential conflict between State law and administration of Federal programs.[64/]

61/ Erie Railroad Co. v. New York, 233 U.S. 671 (1914).

62/ Lehigh Valley Railroad Co. v. Board of Public Utility Comm., 278 U.S. 24 (1928); Southern Railway Co. v. King, 217 U.S. 524 (1910); Smith v. Alabama, 124 U.S. 465 (1888); New York, N.H. & H. Railroad Co. v. New York, 165 U.S. 628 (1897). But see, Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945)

63/ Chicago, R.I. & P. Railroad Co. v. Arkansas, 219 U.S. 453 (1911); and St. Louis Iron Mt. & S. Railroad Co. v. Arkansas, 240 U.S. 518 (1916).

64/ Pennsylvania v. Nelson, 350 U.S. 497 (1956).

Applicable Federal Law

In determining whether there are valid constitutional concerns regarding the Montana statute and the operation of the federal preemption doctrine, it is necessary to examine the applicable federal statute in the area of railroad abandonment. The ICC has established a detailed application and approval system for the abandonment or the discontinuance of railroad lines and rail transportation.

§ 10903. Authorizing abandonment and discontinuance of railroad lines and rail transportation

(a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title may—

(1) abandon any part of its railroad lines; or

(2) discontinue the operation of all rail transportation over any part of its railroad lines;

only if the Commission finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the finding, the Commission shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.

(b)(1) Subject to sections 10904–10906 of this title, if the Commission—

(A) finds public convenience and necessity, it shall—

(i) approve the application as filed; or

(ii) approve the application with modifications and require compliance with conditions that the Commission finds are required by public convenience and necessity; or

(B) fails to find public convenience and necessity, it shall deny the application.

(2) On approval, the Commission shall issue to the rail carrier a certificate describing the abandonment or discontinuance approved by the Commission. Each certificate shall also contain provisions to protect the interests of employees. The provisions shall be at least as beneficial to those interests as the provisions established under section 11347 of this title and section 565(b) of title 45.

49 U.S.C. § 10903

65/

65/ Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1403, as amended by Pub. L. 96-448, Title IV, § 402(a), Oct. 14, 1980, 94 Stat. 1941.

The federal provision requires that a rail carrier that wishes to abandon any part of its railroad lines or discontinue the operation of all rail transportation over any part of its railroad lines is required to file an application with the ICC. The application is then considered by the ICC and is either approved or denied. One possible interpretation of the federal statute would be to include in the definition of railroad lines and rail transportation the shipping and passenger facilities covered in the Montana statute. From a superficial reading of the federal statute it would appear that the ICC has complete control over the determination of the discontinuance of railroad lines and rail transportation and that the Montana statute which requires the maintenance of certain rail facilities is in seeming conflict with the federal law and is preempted by the federal law. However, extensive research into the ICC practice and a careful reading and interpretation of both of the statutes seems to indicate that there may be no preemption conflict between the federal law and the Montana statutory scheme.

ANALYSIS

Legislative History of the Federal Statute

While the statute under consideration has undergone many changes, certain portions of its legislative history are essential to examine in determining the intent of the legislative drafters. The statutory requirement that no carrier by railroad which was subject to the ICC's control should abandon

any portion of its line or its operation until after ICC approval was granted was intended to "provide that there shall be some Federal control over the matter of abandonment."[66] The statutory language was drafted so as to protect industries or homeowners who had located in a particular location upon the reliance on the availability of the railroad lines.[67] At the time of the enactment of the Transportation Act of 1920,[68] which enacted the predecessor to section 10903, there was an extension of Federal power sought, but the emphasis was on coordination and cooperation between the Federal and State authorities, and where to draw the line separating Federal jurisdiction from that left to the States was regarded as being a matter of secondary importance.[69]

ICC Interpretation

The clearest articulation of the the scope of the ICC's power under the federal statute is presented in the so-called Boston Terminal doctrine. A series of cases involving the ICC and the Boston Terminal Company arose as a result of the Boston Terminal Company's bankruptcy and spanned nearly twenty years of ICC consideration and deliberation (1940-1960).[70] While

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66/ 58 Cong. Rec. 8316-8318 (1919).

67/ "Return of Railroads to Private Ownership, Hearings Before the Committee on Interstate and Foreign Commerce of the House of Representatives, 66th Cong. on H.R. 4378," Sept. 25, 1919, p. 2872.

68/ Act of Feb. 28, 1920. chap. 91, § 402, 41 Stat. 476.

69/ "Return of Railroads...," at p. 2958.

70/ The "Boston Terminal" cases consist of: Boston Terminal Company Re-Organization at, 236 I.C.C. 787 (1940); 254 I.C.C. 864 (1943); 271 I.C.C. 851 (1948); 275 I.C.C. 553 (1950); 275 I.C.C. 633 (1950); 282 I.C.C. 801 (1952); 290 I.C.C. 149 (1953); and 312 I.C.C. 373 (1960).

much of the ICC's consideration dealt with aspects of the railroad's bankruptcy and its subsequent reorganization, some consideration was given to an interpretation of the federal statute and what its parameters included.

The ICC, in determining Boston Terminal and the scope of the federal jurisdiction, examined previous ICC determinations.

> As long ago as 1925, we found that we lacked jurisdiction over the proposed retirement of a freight and passenger depot. (94 I.C.C. 691). More recently we made it clear that the construction of a new yard and the consolidation of terminal facilities are not within themselves subject to our jurisdiction and may be accomplished without our approval (Oregon-W.R. & Nav. Co. Construction, 275 I.C.C. 591, 598).
>
> Where, however, a line of railroad is involved, our jurisdiction under section 1(18) [predecessor to § 10903] is invoked and, hence, our approval is necessary for the establishment, construction, and operation of a joint terminal by interstate carriers (Atchison, T. & S.F. Ry. Co. v. Railroad Comm. of Calif., 283 U.S. 380, 390 (1930); Railroad Comm. of Calif. v. Southern Pac. Co. 264 U.S. 331 (1924); Pittsburgh & W.V. Ry. Co. v. United States, 41 F.2d 806, at 811 (1929). 71/

In analyzing the Boston Terminal case, the ICC noted that Congress had been fully aware that the abandonment of stations was ordinarily a matter wholly within the jurisdiction of the State regulatory bodies. 72/

> Indeed, as recently as 1958, the Congress made it clear that it did not wish to transfer such jurisdiction to this Commission (H.Rep. No. 1922 85th Cong. 2d sess. p. 12), and the additional jurisdiction conferred in that year by the enactment of section 13a (i.e. over the discontinuance or change of the operation or services) did not include jurisdiction over "discontinuance or change of the operation or service of stations, depots or other facilities," as was provided in an earlier version of the bill which was later enacted as the Transportation Act of 1958. 73/

71/ 312 I.C.C. 373, at 378 (1960).

72/ Ibid.

73/ Ibid., at 378-379.

The ICC examined the term "line of railroad" as used in the predecessor section of section 10903, and relying on Webster's New Collegiate Dictionary, defined it as a "permanent road or way having rails providing a track for freight and passenger cars and other rolling stock."[74] The ICC concluded that unless the abandonment of a station embraced property which constituted such a line of railroad or a portion of a line, the ICC abandonment requirements did not apply.[75]

Thus, the Boston Terminal doctrine seems to state that the regulation of station or terminal facilities are within the purview of individual state regulation and control. However, the ICC did indicate that under certain circumstances, when the abandonment of a station embraces property, which constitutes such a line of railroad or a portion of such a line, the ICC abandonment requirements would apply.

Subsequent Interpretation of the Boston Terminal Doctrine

In I.C.C. v. Memphis Union Station Company,[76] the U.S. District Court for the Western District of Tennessee held that there had actually been an abandonment of a line of railroad within the meaning of the predecessor section to section 10903 by the closing of a rail terminal and the line of track, and hence the requirements of the I.C.C. abandonment procedure had to be fulfilled. The District Court took great pains to attempt to distinguish the terminal facility from the actual line of railroad. The court determined that the railroads had made an unlawful abandonment through the cessation of

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74/ Ibid.

75/ Ibid.

76/ 230 F.Supp 456 (W.D. Tenn. 1964).

operations at the terminal, even though it was not clear whether all of the tracks or the terminal building itself constituted or were parts of a line of railroad that had been unlawfully abandoned. 77/ The court suggested that terminal buildings might be included under the the scope of section 10903's predecessor section.

> We believe that the substantial power admittedly vested in the I.C.C. to regulate Union Station, as a common carrier by railroad, is at least some indication of an intent to treat terminals and terminal tracks as part of a "line of railroad" under § 1(18). 78/

However, the court never actually determined whether the terminal facilities were in fact a part of the line of railroad or not. As the court concluded in dealing with the issue of the terminals:

> In the first place, while we are clear that there has been an unlawful abandonment of a "line of railroad" at Union Station in that at least some of the tracks there constitute a "line of railroad," it is not so clear whether all of the tracks and the terminal building itself constituted or were parts of a line of railroad and were unlawfully abandoned. 79/

Thus, the court in Memphis Union Station Company, while acknowledging the Boston Terminal doctrine, suggested that terminal facilities in some instances could be considered within the purview of the ICC. However, the court did not actually determine in the instant case whether the terminal building was a part of a "line of railroad." The question as to what involved a "line of railroad" was left open for further deliberation or legislation.

77/ Ibid., at 462-463.

78/ Ibid., at 462.

79/ Ibid., at 467.

In a later case, Brown v. Consolidated Rail Corp.,[80] the U.S. District Court grappled with what was included in the scope of the ICC abandonment requirements. In this case, Conrail abandoned rail service to independently owned dock facilities and rerouted rail traffic. While the court did not directly address the issue of what was included in the definition of a railroad needing ICC abandonment approval, the court intimated that the factual circumstances surrounding each case should be cautiously examined. The court also intimated that other factors, such as economic impact, were involved in the determination of what constituted a line of railroad and what constituted an abandonment.

The most recent cases[81] dealing with the ICC abandonment requirements clearly affirm the ICC's supremacy in reviewing and determining the ability of a rail line to discontinue service. However, the recent cases have not dealt with the issue of what is included within the definition of railroads or rail lines.

While the Boston Terminal case clearly presents a dichotomy as to what is within the jurisdiction of the ICC (federal) authority and what is within the purview of state control, subsequent cases have clouded the Boston Terminal rationale. While the Boston Terminal rationale has never been reversed, Memphis Union Station suggests that terminal facilities could be included within the realm of railroad lines and hence be subject

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80/ 422 F.Supp. 1251 (N.D. Ohio, E.D. 1976).

81/ Chicago & N.W. Tr. Co. v. Kalo Brick & Tile Co., 450 U.S. 311 (1981); and Hayfield Northern Railroad Company, Inc. v. Chicago and North Western Transp. Co., No. 82-1880 (8th Cir. Dec. 3, 1982)

to ICC control. The Brown case, while not confronting the issue of what facilities are part of the railroad line suggests that the ICC's control extends to areas beyond just the actual line of the railroad tracks.

CONCLUSION

A judicial challenge to the Montana statute would probably pose the argument that the statute is either in conflict or has been preempted by the ICC in section 10903. More specifically, it could be argued that since the federal statute provides for when a railroad may abandon its railroad lines or discontinue the operation of certain rail transportation, the preemption doctrine requires that the Montana statute prohibiting the discontinuance of certain railroad shipping facilities is superseded. However, a good defense of the Montana statute could be made by a strong assertion of the Boston Terminal doctrine which appears to present a clear-cut dichotomy between those portions of a railroad which are to be controlled by the ICC and those portions which are to remain under the control of the individual States.

In addition, it could be argued that even if the coverage of the two statutes overlaps to some degree, in the absence of conflict between specific provisions of the state and the congressional measures involved, the state regulation may be permitted to supplement federal regulation.[82/] The argument could be made that the two pieces of legislation complement each other, rather than the federal regulation superseding the Montana statute.

82/ See note 20, at 8.

However, the court may be compelled to take a close look at the factual situations involved. The factual situations involved may be influential in how a court may determine what constitutes a line of railroad. In addition to the factual situation involved, cases subsequent to the Boston Terminal cases have suggested that in some instances rail facilities such as stations, terminals, loading docks, and related areas could be included within the scope of the ICC's abandonment procedures. Similarly, if "facilities" in the Montana statute were interpreted by the courts to include the railroad line, the state law would more likely be found superseded by the federal enactment as applied to line abandonment situations.

While this report cannot anticipate a judicial determination, it appears that a strong argument can be made for the constitutionality of the Montana statute requiring the maintenance of certain rail facilities in circumstances upon the basis of the Boston Terminal rationale. However, a court may not elect to follow the ICC's reasoning and may reach a conclusion at variance of the Boston Terminal rationale.

Douglas Reid Weimer
Legislative Attorney

ated or in any county where any such rule or order of the commission is applicable, against the commission as defendant, to determine whether or not any such rule or order made, fixed, or established by said commission under provisions of Chapter 105, Laws of 1913, is just and reasonable.

(2) Until the final decision in any such action, the rule or order of said commission affecting any railroad, railway, or common carrier shall be deemed final and conclusive. In any action, hearing, or proceeding in any court, the rules and orders made, fixed, and established by said commission shall, prima facie, be deemed to be just, reasonable, and proper.

(3) All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as may seem just and equitable to the court.

History: En. Sec. 6, Ch. 105, L. 1913; re-en. Sec. 3840, R.C.M. 1921; re-en. Sec. 3840, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-162.

69-14-137. Violations. If any railroad shall willfully violate any provision of Chapter 37, Laws of 1907, shall do any other act herein prohibited, or shall refuse to perform any and all lawful orders emanating from said commission relating to rates and charges or any other duty enjoined upon it, for which a penalty has not herein been provided, for every such act of violation it shall pay to the state a penalty of not more than $500.

History: En. Sec. 29, Ch. 37, L. 1907; Sec. 4392, Rev. C. 1907; re-en. Sec. 3811, R.C.M. 1921; re-en. Sec. 3811, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-134.

Part 2

Requirements for Railroads

69-14-201. General duties of railroad corporation. Every railroad corporation must:

(1) start and run its cars for the transportation of persons and property at such regular times as it shall fix by public notice;

(2) furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or are offered for transportation at the place of starting, at the junction of other railroads, and at sidings or stopping places established for receiving and discharging way passengers and freight; and

(3) take, transport, and discharge such passengers and property at, from, and to such places on the due payment of tolls, freight, or fare therefor.

History: En. Sec. 971, Civ. C. 1895; re-en. Sec. 4324, Rev. C. 1907; re-en. Sec. 6558, R.C.M. 1921; Cal. Civ. C. Sec. 481; re-en. Sec. 6558, R.C.M. 1935; R.C.M. 1947, 72-602.

69-14-202. Duty to furnish shipping and passenger facilities. (1) It is hereby made the duty of every person, corporation, and association operating a railroad in the state to maintain and staff facilities for shipment and delivery of freight and to ship and deliver freight and accommodate passengers in at least one location, preferably the county seat, in each county through which the line of the railway passes and at any point upon the line of such railway where there is a city or town having a population, according to the last federal decennial census, of not less than 1,000; provided, however, that this section shall not require the maintenance and staffing of such facilities in any county or at any city or town in which such facilities were not maintained and staffed on July 1, 1969.

(2) Nothing in this section shall be construed to authorize the discontinuance of any facility presently established in any city, town, or other location having a population of less than 1,000 without a hearing before the public service commission, as provided by law.

EXHIBIT 4
BUSINESS & INDUSTRY
February 12, 1985

49th Legislative Assembly 1985

Montana Communities with 1,000 or more ihhabitants having open Railroad Station Facilities pursuant to Section 69-14-202 MCA. (Source 1980 Federal Decenial Census Tables B-4 and 5)

Place	Population	Railroad	Place	Population	Railroad
1. Anaconda	12,518	BA&P	26. Harlem	1,023	BNRC
2. Belgrade	2,336	BNRC	27. Havre	10,891	BNRC
3. Big Timber	1,690	BNRC	28. Helena	23,938	BNRC
4. Billings	66,798	BNRC	29. Kalispell	10,648	BNRC
5. Bonner	1,742	BNRC	30. Laurel	5,481	BNRC
6. Bozeman	21,645	BNRC	31. Lewistown	7,104	BNRC
7. Browning	1,226	BNRC	32. Libby	2,748	BNRC
8. Butte SBow	37,205	* BAP - BNRC * UP	33. Livingston	6,994	BNRC
9. Chinook	1,660	BNRC	34. Malta	2,367	BNRC
10. Choteau	1,798	BNRC	35. Miles City	9,602	BNRC
11. Columbia Fls	3,112	BNRC	36. Missoula	33,388	BNRC
12. Columbus	1,439	BNRC	37. Pillipsburg	1,138	BNRC
13. Conrad	3,074	BNRC	38. Paradise &	Uncopr	BNRC
			39. Plains	1,116	BNRC
14. Deer Lodge	4,023	BNRC	40. Polson	2,798	BNRC
15. Dillon	3,976	U.P.	41. Ronan	1,530	BNRC
16. E. Helena	1,647	BNRC	42. Scobey	1,382	BNRC
17. Eureka	1,119	BNRC	43. Shelby	3,142	BNRC
18. Fairview	1,366	BNRC	44. Sidney	5,726	BNRC
19. Forsyth	2,553	BNRC	45. St.Regis &	Uncorp	BNRC
			46. Superior	1,054	BNRC
20. Ft. Benton	1,693	BNRC	47. Thompson Fls	1,1478	BNRC
21. Glasgow	4,455	BNRC	48. Three Forks	1,247	BNRC
22. Glendive	5,978	BNRC	49. Townsend	1,587	BNRC
23. Great Falls	56,725	BNRC	50. Troy	1,088	BNRC
24. Hamilton	2,661	BNRC	51. Whitefish	3.703	BNRC
25. Hardin	3,300	BNRC	52. Whitehall	1,030	BNRC
			53. Wolfpoint	3.074	

Montana Communities with less than 1,000 inhabitants with open Railroad Station Facilities pursuant to Section 69-14-202 MCA
(Source: 1980 Federal Decenial Census Table 5)

PLACE	POPULATION	RAILROAD
1. Big Sandy	835	BNRC
2. Bridger Dual	724	BNRC
3. Fromberg		BNRC
4. Chester	963	BNRC
5. Circle	993	BNRC
5. Culbertson	887	BNRC
6. Darby	581	BNRC
7. Drummond	414	BNRC
8. Dutton	359	BNRC
9. Froid	323	BNRC
10. Hingham	186	BNRC
11. Hysham	449	BNRC
12. Lodge Grass	771	BNRC
13. Medicine Lake	408	BNRC
14. Nashua	495	BNRC
14. Ophiem	210	BNRC
15. Sheridan Dual	646	BNRC
16. Alder		BNRC
17. Stanford	595	BNRC
18. Terry	929	BNRC
19. Wibaux	782	BNRC
20. Vaughn/ Dual	640	BNRC
21. Power		BNRC
22. Trident unincorp		BNRC

* 22. Moccasin	unicorp	DSA BNRC
*23. Hobson	pop 261	DSA BNRC
* 24. Judith Gap	Pop 213	DSA BNRC
* 25. Kolin	unicorp	DSA BNRC
* 26. Moore	pop 229	DSA BNRC

* These stations are served by a mobile direct station Agent (DSA) who is based out of Standford Mt.
BNRC has made application to close service to these 5 stations. Hearing held 1-18-85

27. Garrison Unincorp BNRC

With the exception of Drummond Montana all of these stations were subjects of PSC Hearings.

Wherever a station was the County Seat the Commission ordered them to remain open pursuant to Section 69-14-202 MCA:

ie: Circle- Sheridan/Alder
Terry- Wibaux - Whitehall

Stations awaiting PSC Decision

Lodge Grass Sheridan Alder

Trident- Garrison - DSA Moccasin Hobson Judith Gap Moore Kolin Dutton Vaughn /Power

BN touts deregulation as a 'win-win' decision

Railroad deregulation has been a boon to Montana grain farmers, elevator operators and consumers, Montana grainmen were told Wednesday by a Burlington Northern official.

Wayne Hatton, vice president and general manager of BN's Billings division, said Montana wheat actually is transported much cheaper than it was four years ago.

The freight rate on Great Falls wheat going to the Pacific North Coast was $1.52 per hundredweight in 980 before deregulation, he said, and oday stands at $1.16 per bushel.

"Those rate reductions initiated in 1980 mean that somewhere in the neighborhood of $50 million (that would have been spent on freight) has stayed in Montana and been invested here," Hatton said.

Deregulation and the coming of 52-car unit trains also have increased BN's grain-car efficiency by about 30 percent, he said. This year, the typical BN hopper car made 23 "revenue trips," compared to 17.2 trips in 1980.

While BN hauled only about 50 percent of Montana's exported grain four years ago, Hatton said, it has more than a 90 percent share today.

Deregulation has been a "win-win situation for the producer, for the consumer, for transporters including BN," Hatton said.

He asked the grain growers not to try to overhaul the Staggers Act which deregulated the nation's railroads.

"Deregulation let us do what we do best, and that is provide wholesale transportation," Hatton said. "The grain you sell now sells by the trainload. We look at ourselves now as really a wholesaler of transportation rather than a retailer" (as was the case during the era of single-car rates.

He said BN has no preference one way or the other on "secret" contract rates that are allowed by Staggers. "The confidentiality of our contract rates has been accepted by most customers, except for certain small grain shippers," he said.

Addressing or changing that portion of the Staggers Act, he said, is "an area we're going to leave to you as customers — we don't have a big problem either way."

He said problems of deregulation mainly are "more in the area of administration by the ICC (Interstate Commerce Commission) than with the act istelf."

"The market economy is always a far better regulator than any government regulation," he said.

"There's a new spirit of cooperation here in Montana" with more than 50 state elevators investing in setting up subterminals capable of loading the unit trains in a few hours, he said.

Hatton, asking for a little more cooperation, urged lowering of property taxes on BN trackage in the state. "In Montana, our taxes per operating mile of railroad are twice what they are in North Dakota," he said. "We do object to paying more than other industries in Montana do for similar investments." He said BN paid about $7 million in Montana taxes last year, including property, license and income taxes.

He said BN has 4,800 Montana employees and a state payroll of $162 million.

But he said employees must realize that their job security must be maintained in the marketplace, not by state or federal regulation. He noted the state's rules requiring the line to have about 70 local freight agents when, he said, four to six "strategically located" agents in the state would be enough.

"These excess personnel cost annually, right now, about $2½ million in the State of Montana," reducing the efficiency of the nation's largest railroad, Hatton said.

Those unneeded freight agents would be offered other jobs within BN, he said, adding that: "In Burlington Northern, we are in the midst of what we call a corporate culture change with our employees."

Hatton also said the spirit of "combativeness" between BN and grainmen has subsided somewhat.

"We've simply got to be working together," he said. "We've got to settle our problems face to face, and not do it through some kind of judicial procedure."

Hatton also said that BN "is not on a crash course or strategy to rid ourselves of each branch line in the State of Montana." But he noted that 26 percent of BN's total Montana trackage handled 84 percent of the railroad's tonnage last year.

BURLINGTON NORTHERN RAILROAD COMPANY DOCKETS

Year	Docket	Petition	Action
1980	T-4901 Order 2951a	Close Fairview Agency and Station Mobile Direct Agent at Watford City, ND	Denied 4-16-80
	T-4902 Order 2933	Discontinue Caretaker Service, Stevensville	Granted 8-12-80
1981	T-5693 Order 4198	Removal of Twin Bridges Depot Building	Granted 2-8-82
	T-5694 Order 4197	Removal of Sheridan Station Facilities	Granted 2-8-82
	T-5695 Order 4247	Eureka and Fortine Dualization	Granted 4-26-82
	T-5696 Order 4245	Discontinue Troy Agency Service	Denied 4-26-82
	T-5797 Order 4364	Remove Philipsburg Depot	Dismissed 9-2-82
1982	T-6191 Order 4425	Establish Centralized Customer Service Center in Glendive, Montana	Denied in Part
	T-6329 Order 4364	Consolidate Agency Operations, Browning	Dismissed 8-23-82
	T-6330 Order 4826	Consolidate Agency Operations, Poplar	Granted 2-7-83
	T-6375 Order 4529	Consolidate Belt, Carter and Choteau	Granted in Part Denied in Part
	T-6376 Order 4456	Establish Centralized Customer Service Center at Sidney to serve Richey, Lambert and Fairview	Granted In Part
	T-6452 Order 4403	Consolidate Whitehall with Three Forks	Denied 8-16-82
	T-6453 Order 4457	Consolidate St. Regis with Superior	Granted 11-29-82
	T-6454	Consolidate Hamilton and Darby	Withdrawn
	T-6455 Order 4429	Consolidate Columbus and Rapalje with Laurel	Dismissed 11-15-82

Burlington Northern Railroad Company Dockets (Continued)

Year	Docket	Petition	Action
	T-6457 Order 4428	Consolidate Big Timber with Livingston	Denied 8-16-82
	T-6603 Order 4461	Establish Centralized Customer Service Center at Shelby	Granted 3-23-83
	T-6604 Order 4447	Establish Centralized Customer Service Center at Glasgow	Granted 11-10-82
	T-6605 Order 4429	Establish Centralized Customer Service Center at Laurel	Granted in Part 11-15-82
	T-6952 Order 4854a	Consolidate Opheim and Glentana DSA, Richland and Peerless DSA, and Four Buttes Station with Scobey Agency	Denied 4-6-84
	T-6953	Consolidate Bainville with Williston, ND	Withdrawn
	T-6954 Order 4812	Consolidate Froid and Homestead DSA, Medicine Lake, Reserve, Redstone and Flaxville DSA into Plentywood Agency	Granted in Part Denied in Part 1-4-84
1983	T-7201 Order 4665	Establish Glacier Park Caretaker Service	Granted 7-18-83
	T-7202 Order 4664	Belton Caretaker Requirement	Granted 7-18-83
	T-7203 Order 4088	Discontinue Dualized Stations at Avon and Elliston	Granted 4-10-83
	T-7249 Order 5025a	Consolidate Bainville and Culbertson	Granted 7-30-84
	T-7284 Order 4891	Consolidate Manhattan and Three Forks	Granted 3-29-84
	T-7323	Garrison and Deer Lodge Consolidation	Pending
	T-7343	Dualize Alder and Whitehall	Pending
	T-7344	Consolidate Bonner and Missoula	Pending

Burlington Northern Railroad Company Dockets (Continued)

Year	Docket	Petition	Action
	T-7377 Order 4839	Establish Havre Centralized Customer Service Center Hingham/Rudyard - Big Sandy - Chappell, K-G, Inverness/ Joplin	Granted and Denied in Part 4-30-84
	T-7401 Order 5075a	Trialize Conrad, Ledger and Valier	Granted 9-19-84
	T-7402	Consolidate Dutton, Brady and Power with Great Falls	Pending
	T-7403 Order 4810	Dualize Harlem and Chinook	Denied 4-30-84
	T-4706	Dualize Polson and Ronan	Pending
	T-7407 Order 4871a	Dualize Belgrade and Bozeman 3-26-84	Denied
	T-7408 Order 5189a	Trialize Big Timber, Columbus and Rapalje	Granted in Part 1-14-85
	T-7503	Consolidate Trident, Toston and Townsend	Withdrawn 1-9-84
	T-7504 Order 4892	Consolidate Silver Bow with Butte	Denied 7-16-84
1984	T-7923	Townsend and Toston Consolidation	Withdrawn 7-30-84
	T-8018	Trialization of Hamilton, Stevensville and Darby	Pending
	T-8187	Consolidate Trident and Three Forks	
	T-8400	Discontinue DSA at Stanford	
	T-8502	Dualize Bozeman and Belgrade	

EXHIBIT 4
BUSINESS & INDUSTRY
February 12, 1985

PUBLIC SERVICE COMMISSION

2701 Prospect Avenue • Helena, Montana 59620
Telephone: (406) 444-6166
Home Address: 1711 Flowerree
Helena, Montana 59601
(406) 449-6191

Danny Oberg, Commissioner
District 1

January 24, 1985

Mr. John Dalano
Montana Railroad Association
Helena, MT 59601

Dear John,

The Commission has received your draft of the depot closure bill. We have a number of problems with the proposal and will actively oppose its adoption by the Legislature.

The Commission's position has been we will enforce the law of the state. It has been clear through the last several sessions, that the will of the Legislature has been to retain agency service in communities of over 1,000 people and also county seats. As you are aware the federal court has upheld the Commission interpretation.

The Commission believes that if the BN seeks to repeal that statutory requirement it should offer the Legislature a straight forward repealer of the 1,000 population requirement and county seat standard.

We view this draft as confusing and at cross purposes. If enacted, a legislator would expect there would still be service in those communities while, in fact, the new language is so strict, in all likelihood agency service would end.

The proposed new language appears to us to introduce a more stringent standard for retention of agency service than the public convenience and necessity established by Commission rulings and transportation case law. We are concerned that the adoption of your language would also shift the burden of proof from the BN as the applicant to the Commission, who would have to conclude continued depot service was "essential to the reasonable accommodation of the public". The Commission can envision lengthy debate and litigation over what is essential and reasonable accommodation.

In summary, this draft is unacceptable to us. The question of depot service standards is an issue of public transportation policy. If the BN seeks to change that policy we believe it is incumbent on the railroad to offer legislators a more clear alternative.

Sincerely,
Danny
Danny Oberg
Commissioners

cc: Senator Tom Keating - Montana Senate
Mr. Tom Spence

PUBLIC SERVICE COMMISSION

2701 Prospect Avenue • Helena, Montana 59620
Telephone: (406) 444-6166
Home Address: 1711 Flowerree
Helena, Montana 59601
(406) 449-6191

Danny Oberg, Commissioner
District 1

January 25, 1985

EXHIBIT 4
BUSINESS & INDUSTRY
February 12, 1985

Mr. John Delano
Montana Railroad Association
Helena, MT 59601

Dear John,

The Commission has reviewed the new draft of the agency closure bill. We find it to be a more reasonable approach that gives the Legislature a clear policy determination.

The Commission response to legislators inquiries will be to point out the bill is a policy change that could result in significant consequences. We will not be an active opponent or proponent of the measure but offer our agency as a resource. Points that the Commission will ask the Legislature to consider:

1) The PSC has been vigorously defending the present statute and has a judicial action pending from the 9th Circuit Court of Appeals. Enactment of this legislation prior to announcement of the decision could moot that ruling.

2) We will point out to the Legislature that adoption of this measure could potentially result in the closure of the majority of Montana depots.

3) We will offer an explanation of the legal meanings of public convenience and necessity that the Commission is required to use in determining the fate of a depot closure.

We will leave it up to the Legislature to determine if they want to retain a population figure or use the PC&N standard to consider agency closures.

Sincerely,

Danny Oberg
Commissioner

DO:tls

cc: Senator Tom Keating
Mr. Tom Spence, BN Counsel
Jim Mular, BRAC Legislative Director

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING AUTHORITY TO THE PUBLIC SERVICE COMMISSION TO ALLOW CLOSURE OF CERTAIN RAILROAD FACILITIES NOT REQUIRED BY THE PUBLIC CONVENIENCE AND NECESSITY: AMENDING SECTION 69-14-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-14-202, MCA, is amended to read;

"69-14-202. Duty to furnish shipping and passenger facilities. (1) Every person, corporation, or association operating a railroad in the state shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers;

(a) in at least one location, preferably the county seat, in each county through which the line of the railway passes; and

(b) at any point upon the line of such railway where ~~there-is-a-city-or-town-having-a-population-according-to-the last-federal-census,-of-not-less-than-1,000;-provided,-however, that-this-section-shall-not-require-the-maintenance-and-staffing-of-such-facilities-in-any-county-or-at-any-city-or-town in-which-such-facilities-were-not-maintained-and-staffed-on July-1,-1969.~~ such facilities were maintained and staffed on January 1, 1985; provided, however, that if it is demonstrated to the Public Service Commission, following an opportunity for a public hearing, that the public convenience and necessity does not require such facilities, the Commission shall authorize the discontinuance, consolidation or centralization of them.

(2)--Nothing-in-this-section-authorizes-the-discontinuance of-any-facility-presently-established-in-any-city,-town,-or other-location-having-a-population-of-less-than-1,000-without a-hearing-before-the-public-service-commission,-as-provided by-law."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the public service commission to make rules on the subject of the provisions of this act is extended to the provisions of this act.

-End-

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EXHIBIT 5
BUSINESS & INDUSTRY
February 12, 1985

NAME Rick Van Aken Bill No. S/B 318

ADDRESS 102 Cove Ct, Missoula 59803 DATE 2/12/85

WHOM DO YOU REPRESENT BRAC (Ry. Clerks) Missoula Lodge #4 AND Montana People's Action (Missoula)

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I rise in opposition to the passage of S/B 318. I would like the Committee to consider the broader ramifications of revising the station closure law in this manner. There ~~are~~ is more at stake here than elimination of remote stations and agents. Among the deeper ramifications, please consider:

1.) Loss of ~~pay~~ payroll in small, rural ~~areas~~ communities
2.) Continuing erosion of accessability of railroad representatives and service
3.) Continuing erosion of the tax base in rural counties just when these counties are clamoring for additional revenue sources
4.) Montana's willingness to roll over and play dead when the only state-

an "end run" around the pending ~~litigation~~ appeal from the 9th Circuit Court of Appeals.

5.) Montana's traditional demand for viable rail service and accountability ~~from~~ in exchange for the enormous value and power given the BN ~~Road~~ (through its predecessors) in the form of the land grants

Form CS-34
79

NAME Joseph Moore Bill No. SB 318

ADDRESS 444 Stephens #1, Missoula 59801 DATE 2/12/85

WHOM DO YOU REPRESENT Montana Peoples Action

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

EXHIBIT 6
BUSINESS & INDUSTRY
February 12, 1985

Testimony against S.B. 318 presented by Joseph Moore of Montana Peoples Action

Montana Peoples Action urges a no pass vote on this particular bill.

It is our opinion, despite allegations to the contrary by the Burlington Northern Rail Road and Burlington Northern Inc. that the B.N.R.R. and the holding companies that were constructed from lands, minerals, timber and other assets formerly owned by Rail Roads, are in existence now due to lands granted by the Federal Government to open the West to settlement and provide these areas with ongoing, efficient, affordable rail transportation. This does not imply rail transportation for ~~the~~ a few selected areas designated by the B.N. management at their whims, but transportation for the entire region serving all the farms, ranches, businesses and ~~communities~~ communities in the area.

The current administration in Washington as everyone knows, is pursuing a program that seeks to return much Federal power to the states and communities - but at the same time they are cutting programs and block grant aid to the states. Montana is currently desperately searching for revenue to support minimal programs - and having a tough time of it. It is our opinion at Montana Peoples' Action, that our

legislators and our communities must look now and in the future to state and regional economic development, and that we, the people of Montana, not some corporation headquarter out of state that serves stock holders out of state, should have the major say in what life will be like in Montana. Rail Transportation is the most fuel efficient and cost effective means of transportation. Without it the future of Montana's farms, ranches, businesses and communities will look grave indeed.

We believe that more effort is needed by our elected representatives, our business leaders and our community organizations to bring about a sustained dialogue aimed at building a rewarding and dignified future for us all in Montana. To pass a bill of this nature, at this time, has a real possibility of narrowing our future options and would be a great disservice to the people of Montana

EXHIBIT 7
BUSINESS & INDUSTRY
February 12, 1985

Feb 12, 1985

Lavina Lubinus
Women Involved in Farm Economics.
1501 Chestnut - Helena, MT

SB 318

<u>Oppose</u> SB 318

Mr Chairman and members of the committee, We in WIFE oppose SB 318 because we feel this would remove even further from the local ~~station~~ communities, people ~~that is~~ that grain shippers, and our elevator people can go ~~to in times~~ to with shipping problems.

People who live and work in a local community seem to have an understanding of the local problem. The further away they are from the problem and the source the harder it is to make them understand.

It seems when the weeds grow around the Station they soon appear between ~~the~~ the tracks.

Thank you.

Montana League of Cities and Towns

P.O. BOX 1704 HELENA, MONTANA 59624 PHONE (406) 442-8768

EXHIBIT 8
BUSINESS & INDUSTRY
February 12, 1985

Senator Mike Halligan
Montana Senate
State Capitol
Helena, MT 59620

Dear Senator Halligan:

Many of the members of the Montana League of Cities and Towns are concerned about the consequences of SB 318, the measure that would allow closure of certain railroad stations across the state.

I intended to testify against this bill on behalf of the cities and towns, but had to appear in another committee at the same time.

The cities that have called our office to discuss this legislation have expressed concern about the loss of jobs and the services associated with the depots.

The purpose of this letter is to inform the members of the Senate Business and Industry Comittee of the concerns of Montana cities and towns regarding SB 318.

I would appreciate the inclusion of this letter in the committee record.

Sincerely,

Alec

Alec N. Hansen
Executive Director

Form CS-34
1-79

NAME Les Alke Bill No. SB 333

ADDRESS #1 East Chance Gulch DATE 2/12/85

WHOM DO YOU REPRESENT Mont. Bankers Ass'n

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

EXHIBIT 9
BUSINESS & INDUSTRY
February 12, 1985