

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)	APPLICATION NO. 28364
THE ATCHISON, TOPEKA AND SANTA FE)	
RAILWAY COMPANY, BURLINGTON NORTHERN,)	
INC., THE COLORADO AND SOUTHERN)	RECOMMENDED DECISION OF
RAILWAY COMPANY, AND UNION PACIFIC)	THOMAS M. McCAFFREY,
RAILROAD COMPANY FOR AUTHORITY TO)	EXAMINER
ABANDON THE DENVER UNION STOCKYARDS)	
AGENCY AT DENVER, COLORADO.)	DENYING APPLICATION

November 10, 1975

Appearances: Willard L. Peck, Esq.,
 Denver, Colorado, and
 John J. Mullins, Esq.,
 Denver, Colorado, for
 Applicants;
 John S. Walker, Esq.,
 Denver, Colorado, for
 The Denver & Rio Grande
 Western Railroad Company,
 Intervenor;
 Allen I. Mendleson, Esq.,
 and Bruce Davis, Esq.,
 of Glassie, Pewett, Beebe,
 & Shanks, Washington, D.C.,
 for Denver Recycling Co.,
 Liberty Commodities Co.,
 and Litvak Meat Company,
 Protestants;
 John E. Archibold, Assistant
 Solicitor General, Denver,
 Colorado, for the Commission.

PROCEDURE AND RECORD

On May 23, 1975, the Atchison, Topeka and Santa Fe Railway Company; Burlington Northern, Inc.; The Colorado and Southern Railway Company; and Union Pacific Railroad Company filed the above-titled application with this Commission requesting authorization to discontinue agency service at the Denver Union Stockyards Station, Denver, Colorado.

The Commission assigned Docket No. 28364 to the application and after due and proper notice to all interested persons, firms, or corporations, set the application for hearing to be held on Friday, August 8, 1975, at 10 a.m. in the Hearing Room of the Commission, 500 Columbine Building, 1845 Sherman Street, Denver, Colorado. This hearing date was subsequently vacated and reset for hearing at the said location on Friday, October 17, 1975, at 10 a.m. at which time and place the hearing was held by Thomas M. McCaffrey, Examiner, to whom the matter had been duly assigned.

Subsequent to the filing of the application, letters of protest were received from the following firms: Liberty Commodities Company; Qual-Pet, Inc.; Globe Products Company; Merchants Refrigerating Company; Denver Recycling Co.; Processors, Inc.; Colorado/Utah/Idaho/International; and Pepcol Manufacturing Company. On June 20, 1975, the Colorado Meat Dealers Association, of which the aforementioned Denver Recycling Company and Litvak Meat Company are members, filed its protest to the granting of the application.

On July 28, 1975, counsel for the Commission requested that Applicants submit to the Commission copies of any and all exhibits to be introduced into evidence in the hearing, specifically setting forth certain information to be contained in Applicants' exhibits. These exhibits were duly filed.

In the hearing, Exhibits 1 through 13, inclusive, were offered and admitted into evidence; and, at the conclusion of the hearing, the subject matter was taken under advisement.

Pursuant to the provisions of 40-6-109, CRS 1973, Examiner Thomas M. McCaffrey now transmits herewith to the Commission the record and exhibits of this proceeding, together with a written recommended decision containing his findings of fact, conclusions thereon, and the recommended order or requirement.

FINDINGS OF FACT

Based upon all the evidence of record, the following is found as fact that:

1. Applicants in this proceeding are the Atchison, Topeka and Santa Fe Railway Company; Burlington Northern, Inc.; The Colorado and Southern Railway Company, and the Union Pacific Railroad Company (all hereinafter referred to collectively as "Applicants").

2. By this application Applicants request an order from this Commission authorizing Applicants to discontinue agency service at their Denver Union Stockyards Station and remove the same from the open and prepay lists. This agency station has for many years been a joint agency operated on behalf of the Applicants and also The Denver & Rio Grande Western Railroad Company and Chicago, Rock Island & Pacific Railroad Company. Neither of these two additional railroad companies are Applicants in this proceeding, and The Denver & Rio Grande Western Railroad Company does in fact oppose this application.

3. Protestant Denver Recycling Co. is engaged in the production of blood meal, bone tankage, and edible and unedible tallow. Denver Recycling Co. is located at 5350 North Washington Street in Denver and is associated with Globe Products Company; Qual-Pet, Inc.; and Liberty Commodities Company, all of which firms filed letters of protest to this application and all of which are located at the same address.

4. Protestant Litvak Meat Packing Company, located at East 59th Avenue and York Street in Denver, in addition to its principal function as a meat packing firm, is also engaged in the shipments of cattle by-products, primarily tallow, which is shipped over the entire nation to approximately 20 different locations.

5. The joint agency at the Denver Union Stockyards has in the past and is presently operated on behalf of the other railroads by Applicant Colorado and Southern Railway Company, which is now a subsidiary

company of Applicant Burlington Northern, Inc. Expenses of operating the agency are borne by the Applicants, together with The Denver & Rio Grande Western Railroad Company and Chicago, Rock Island and Pacific Railroad Company, in proportion to the amount of business handled on behalf of each respective railroad. No livestock shipments are originated at the Denver Union Stockyards, and the forwarding shipments consist mainly of animal by-products such as tallow, which is the solid rendered fat of cattle used chiefly in soap, margarine, candles, and lubricants. Most of the commodities forwarded from the Denver Union Stockyards can be shipped only by rail.

6. Applicants contend that all services rendered by the joint agency at Denver Union Stockyards can be performed by phone at any of Applicants' other offices. The present agent at the Union Stockyards, Mr. Lee M. Sheard, now cuts waybills, issues weight certificates, issues bills of lading, and assists the shipper in routing shipments and calculating rates. Mr. Sheard is authorized to execute documents on behalf of all of the railroads operating the joint agency. The majority of shippers utilizing the joint agency, specifically the Protestants herein, now send their representative to the agency office for the purpose of delivering shipping orders and bills of lading and for receiving the weight certificates. The shippers also have numerous occasions upon which they must call upon Mr. Sheard for routing, rate, switching, and car location information and assistance.

Applicants contend that all of the services presently performed by Mr. Sheard could also be obtained by telephone from the respective railroads. The proposed procedure to be followed would be initiated by the shipper's calling the appropriate office of the railroad on which the shipment is to originate, and furnishing to this office the necessary information to issue a waybill. The shipper would then prepare a bill of lading and forward it by mail to the office issuing the waybill, with this office returning the issued bill of lading, together with the weight certificate by mail to the shipper. Applicants contend that, since a bill of lading is unnecessary before a shipment is actually commenced, there would be no delay to the shipper. It would be necessary, however, for any shipper wishing to ship collect to be on an approved credit list or to make a required deposit before any shipment would be initiated. Any information the shipper may desire concerning rates, switching, or car location could be obtained from any of the respective Applicants' appropriate offices. All work presently performed by Mr. Sheard could thus presumably be absorbed by Applicants' present personnel.

7. Substantial evidence in this proceeding shows that the Applicants' agent at the Denver Union Stockyards performs efficient and time-saving functions for and on behalf of the shipping public, particularly the Protestants herein. Shippers desiring to originate shipments at the stockyards are now able to call one individual who can furnish, in the great majority of cases, immediate information concerning rates, switching, and can also lend immediate assistance in locating cars. The joint agency accepts bills of lading, furnishes information regarding the correct routing and other matters of concern to the shipper, and in general renders valuable, efficient, and personalized service to the shipper which would not otherwise be available if this joint agency were closed. Under Applicants' proposed procedures, the shipper, assuming that he has sufficient knowledge to know which of Applicants' offices to call initially, must either await return of the bill of lading and a certificate by mail or send a representative to the appropriate office, which may be located a considerable distance from the shipper's office, to have the bill of lading issued and obtain the weight certificate. Since the shipper must have the bill of lading and weight certificate before billing the customer, Applicants' proposed procedure to be

followed upon closing the joint agency would, as shown by substantial evidence in this proceeding, result in unnecessary inconvenience, delay, and/or expense to the shipping public.

8. Although Applicants do not rely solely upon economic necessity for closing the Union Stockyards agency, they presented evidence to show that such closing would result in an unknown reduction in expenses. Three-year volume and revenue figures for carload forwarding operations at the agency show that in 1972 the total number of carloads forwarded was 780 with \$1,101,163 in freight revenue; 772 carloads in 1973 with \$1,058,105 in revenue; and 741 carloads resulting in revenues in \$1,074,718 in 1974. The costs of operating the agency during this three-year period were \$30,548 in 1972; \$33,913 in 1973; and \$38,019 in 1974. As can be seen from these figures, the number of carloads and revenues have declined slightly since 1972, while operating costs have increased approximately \$8,000. The change in the ratio of revenues to costs for the agency operation, even when the inflationary trends are considered, is not of substantial significance when compared with the benefit the shipping public derives from the Stockyards agency.

It is parenthetically noted that Intervenor The Denver & Rio Grande Western Railroad Company, which takes the Protestants' position in this proceeding, paid \$4,822 of the 1974 operating expenses, which amount exceeds that of either the Atchison, Topeka and Santa Fe Railway Company or Burlington Northern, Inc.

9. The Denver & Rio Grande Western Railroad Company and Protestants contend, and substantial evidence in this proceeding shows, that the joint agency at the Denver Union Stockyards is rendering a valuable and necessary service justifying the expenses incurred in the operation of this agency. It is thus hereby found as fact that the present and future public convenience and necessity requires, and will require, the existing agency at Denver Union Stockyards at Denver, Colorado. The granting of this application to close said agency would thus not be in the public interest and should be denied.

CONCLUSIONS ON FINDINGS OF FACT

Based on the foregoing findings of fact, it is concluded that:

1. This Commission has jurisdiction over the Applicants, Intervenor, and subject matter of this proceeding.

2. Applicants have failed to show that public convenience and necessity requires the abandonment of the Denver Union Stockyards agency, and this application should therefore be denied.

3. Pursuant to 40-6-109, CRS 1973, it is recommended by the Examiner that the following Order be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. Application No. 28364, being the application of the Atchison, Topeka and Santa Fe Railway Company; Burlington Northern, Inc; The Colorado and Southern Railway Company; and Union Pacific Railroad Company for authority to abandon the Denver Union Stockyards agency at Denver, Colorado, be, and hereby is, denied.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if such be the case, and is entered as of the date hereinabove set out.

3. As provided by 40-6-109, CRS 1973, copies of this Recommended Decision shall be served upon the parties, who may file exceptions thereto; but if no exceptions are filed within twenty (20) days after service upon the parties or within such extended period of time as the Commission may authorize in writing (copies of any such extension to be served upon the parties), or unless such Decision is stayed within such time by the Commission upon its own motion, such Recommended Decision shall become the Decision of the Commission and subject to the provisions of 40-6-114, CRS 1973.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Examiner

ds/rw