(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF UNION PACIFIC RAILROAD COMPANY TO TRANSFER LOCAL AGENCY SERVICES IN THE STATE OF IDAHO TO THE NATIONAL CUSTOMER SERVICE CENTER AT ST. LOUIS, MISSOURI. | )  )  )  )  )  )  ) | CASE NO. UP-RR-95-4  ORDER NO.  26548 |

In July 1995, Union Pacific Railroad Company (UP) filed an Application to close its seven remaining local freight agencies in Idaho and transfer their functions to its National Customer Service Center (NCSC) located in St. Louis, Missouri.  UP currently maintains one-person freight agencies in Aberdeen, Idaho Falls, Montpelier, Parma, Pocatello, Sandpoint/Bonners Ferry and Weiser/Payette.  UP asserted that the NCSC can perform customer services more efficiently and effectively than the local agencies.  The Railroad maintained that closure of the Idaho agencies will allow it to “cut costs, meet competition, show a profit, and eliminate unnecessary or redundant services.”  Application at 3.

The Commission convened field hearings in late 1995 at those communities where freight agencies are located.  In addition, the Commission convened an evidentiary hearing in this matter on April 3, 1996.

After reviewing the testimony presented at the field hearings, the evidence presented at the April hearing, and the post-hearing briefs of the parties, UP’s Application is granted in part and denied in part.  The Commission authorizes UP to close the Aberdeen, Idaho Falls, and Pocatello agencies.  UP is further authorized to close the Parma and Weiser/Payette agencies but shall provide customer services to shippers in southwestern Idaho with an employee attached to the Superintendent’s office in Boise.  Finally, UP’s Application to close the Sandpoint and Montpelier agencies is denied in part and granted in part.  These agencies shall continue to provide local customer services to shippers in the Sandpoint and Montpelier areas for a period of at least two years.  During this time period, the Railroad shall institute measures to transition local customer services to the NCSC.  UP shall file a report of its transition activities and address the status of transferring the remaining agencies to the NCSC.  If UP demonstrated Idaho shippers are adequately served by the NCSC and its local workforce, UP may close the local agencies and transfer local customer service functions to the NCSC at the end of the transition period without further proceedings.

I.  BACKGROUND

A. History

The history of agency closures in Idaho has been long and is well documented.  Historically local agents provided shippers and receivers of freight with services such as: granting rates; switching instructions; car ordering; spotting and releasing cars; and settling demurrages, claims, and shortages.  Advances in technology have allowed UP to improve its internal efficiencies in providing customer services.  Since 1983, UP has gradually consolidated its freight agency functions.  The duties performed by the one-person Idaho agencies were consolidated at four regional customer service centers(footnote: 1) in the mid-1980s.  See Order No. 19866.  In 1988, the Commission authorized the closure of the regional centers and their functions were transferred to UP’s National Customer Service Center (NCSC) located in St. Louis after it opened in 1986.  Order No. 21876.  The abandonment of branch lines and the sale of other branches to short line operators has also resulted in the closure of local agencies.  This case involves the requested closure of the seven remaining freight agencies in Idaho.

B.  The Parties

The Commission held seven public hearings in those communities where freight agencies are located during October and November 1995.  In addition, an evidentiary hearing in this matter was convened on April 3, 1996 in Boise.  The following parties entered appearances at the hearings.

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| Union Pacific Railroad | Jim Jones  Jim Jones & Associates  1275 Shoreline Lane  Boise, ID 83702-6870 |

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| Commission Staff | Donald L. Howell II  Deputy Attorney General  Idaho Public Utilities Commission  PO Box 83720  Boise, ID 83720-0074 |
| Idaho Joint Rail Labor Legislative Board | James T. Mular  Secretary  440 Roosevelt Dr. R-1  Butte, MT 59701 |

The Commission granted the Labor Board intervention in Order No. 26130 issued August 25, 1995.

C.  UP’s Application

In its Application to close the seven remaining agencies, UP stated that Idaho customers can communicate with the NCSC 24-hours a day, 365 days per year via a toll-free telephone number.  The Railroad maintained that the NCSC can reasonably satisfy all customer service requirements including ordering and releasing cars, car tracing, switching instructions, rate quotes, preparing bills of lading and weight bills.  In the event that the Commission allows UP to close the freight agencies, the Railroad stated that it will still be able to provide superior customer service.  UP claimed that even with the closure of the local agencies, sufficient numbers of management and clerical personnel will remain in Idaho “to serve as resources in facilitating use of the superior customer services provided by the NCSC.  In addition, train crew personnel will be available to assist in assuring efficient and prompt customer service.”  Application at 3.

In Order No. 26294, the Commission established a discovery and evidentiary hearing schedule.  UP prefiled its direct testimony on February 5, 1996.  On February 26, 1996, Staff and the Labor Board prefiled their direct testimony and UP filed its rebuttal testimony on March 11, 1996.  The final evidentiary hearing was held April 3, 1996.

Following the field hearings, the Railroad modified its Application concerning the freight agency located at Montpelier. UP recognized that the Montpelier agent still performs agency functions.  UP Post-hearing Memo at 2.  Consequently, the Railroad requested that the agency position at Montpelier be converted to a supervisor of train operations (STO) position.  Tr. at 784, 789.  The STO would continue to provide customer services “for the next two years in order to provide a transition period until everything has been operating smoothly for an extended period at NCSC.”  Tr. at 789.

UP also proposed creating a “trouble-shooter” position at Superintendent Heavin’s office in Boise.  The trouble shooter’s primary responsibility would be to support the 10 MTOs in Mr. Heavin’s operational area located in Oregon, Idaho, Montana and Washington.  Tr. at 784.  The employee would also perform customer service functions and facilitate communications among customers, the NCSC, local MTOs and the Harriman Dispatch Center.  Tr. at 798.

D.  Course of Proceedings

Shipper and public attendance at the field hearings was sporadic.  At some hearings none or only one or two shippers testified, while other hearings were well attended by shippers and the public.  The testimony provided at the field hearings is set out below.

1. Aberdeen.  Two customers appeared at the Aberdeen hearing.  The representative from Simplot Soilbuilders testified that he hardly contacted the agent during the preceding two years but does like having a local agent available.  Tr. at 155, 158-59.  The representative from Simplot Food Division testified that having a local agent available might have resulted in more timely corrective action when 10 cars were misrouted on two occasions during the last two years.  Tr. at 166.  She acknowledged that both shipping problems had occurred while the agent was off duty so the agent might not have had any role in correcting the shipping problems.  Tr. at 169.

The Board sponsored the testimony of the local agent and George Millward, the Legislative Director for the United Transportation Union.  The local agent stated he has been the agent for 10 years and has no computer interface with NCSC.  Tr. at 93.  He testified that he performed daily yard checks and received on an average one call per week and one customer visit per month.  His authorized railroad activities can be accomplished in about 10 minutes each workday.  Tr. at 101, 116, 121, 128. Under cross-examination, he agreed that he felt like the “Maytag repairman.”  Tr. at 122.

Mr. Millward testified that local agents assist the train crews in providing efficient customer service.  More specifically, performing yard checks and updating car inventories save the train crew valuable operating time.  Tr. at 142.  Elimination of the yard checks would increase costs (rather than decrease costs) and train crews would expend more time in preparing, updating car inventories and hunting for specific cars.  He suggested that this added burden would result in train crews reaching the limits of the “twelve hours of service” rule prior to the completion of their work assignments.

2.  Idaho Falls.  No Union Pacific customers appeared at the Idaho Falls hearing.(footnote: 2)  The local agent Jim Valentine testified that his primary duties are serving the Anheuser-Busch and Pillsbury facilities in Idaho Falls.  His instructions from the local manager of train operations (MTO) are to take the car orders from the two shippers, FAX them to the NCSC, prepare a switch instruction list for the train crew, and then check the computers to determine whether the instructions prepared by the NCSC are correct.  Tr. at 178, 198. He testified that his agency duties for Anheuser-Busch and Pillsbury consume roughly half of his day.  Tr. at 199.

3.  Pocatello.  Only one customer testified at the Pocatello hearing.  The traffic manager for FMC Corporation testified that he no longer has any need to contact the local agent and has not contacted the agent in six months.  Tr. at 233-34.  When the NCSC is not able to adequately handle his inquiries, he contacts the local MTO or yard personnel at Pocatello.

4.  Parma.  The local agent and one shipper testified at the Parma hearing.  The agent indicated that most of his work is done at the direction of the MTO.  Tr. at 423.  Since beginning his tenure as agent in May 1995, his primary duty is checking the Nyssa, Oregon rail yard twice a day and updating the NCSC computer.  Tr. at 427-28.  This activity usually takes approximately four hours each day.  Tr. at 428.

Kristine Bruins of Bruins Commodity testified that the local agent is the “eyes and ears” of the MTO.  Tr. at 438.  Although she does not normally transact business with the local agent, she testified that it was important for the Railroad to have someone in the area available to handle customer service problems.  “I want someone there that’s able to handle my problems when I have a problem and he doesn’t have to have ‘agent’ after his name to satisfy me . . . .”  Tr. at 472-73.  She expressed frustration in dealing with the NCSC and estimated that the average time she spends on hold when contacting the NCSC is between 30 minutes to an hour.  Tr. at 450.  She also noted that following UP’s merger with the Chicago and Northwestern Railroad (C&NW), that service “has just gone down hill terribly.”  Tr. at 437; 438.

5.  Sandpoint.  Three customers and several public officials testified at the Sandpoint hearing.  Louisiana Pacific (LP) has seven lumber mills in the Sandpoint area.  The shipping superintendent at the Sandpoint mill calls the local agent daily to confirm that his orders placed with the NCSC have been entered into the system.  Tr. at 7.  He stated that no one has contacted him on how the NCSC system works and he has received incorrect information from the NCSC.  Tr. at 15.  The transportation manager for LP’s outbound lumber shipments from the various mills also testified.  He indicated that the Sandpoint and Moyie Springs mills have expressed the importance of having a local agent.  Although the NCSC is “very good, . . . they don’t know our specific needs at our mills.”  Tr. at 21.  He testified that when tracing cars he usually calls the NCSC but he has experienced difficulty in getting through to the NCSC following UP’s recent merger with the C&NW.  Tr. at 24.

An employee with the Idaho Forest Industries also testified that he deals with the local agent daily when obtaining or allocating cars.  Tr. at 59-61.  He explained his difficulty in reaching the NCSC and testified that contacting the local agent is much easier and efficient.  Id.  The public witnesses generally expressed concerns about safety issues.  In particular, closure of the local agency office would mean that accidents and safety reports would be made to a non-local office—to someone not familiar with the local area.

6.  Weiser-Payette.  Two shippers and the local agent testified at the Payette hearing.  The shipping foreman at Ore-Ida Foods in Ontario, Oregon, testified that he contacts the local agent several times a month and asserted that service will deteriorate “a little because of the closing of the local agencies.”  He testified as having numerous problems in contacting the NCSC and that the average period of time he is placed “on hold” is probably 10 to 15 minutes.  Tr. at 498.  He stated that his main concern “was to have somebody in the local vicinity” who can respond and correct problems as they arise.  Tr. at 493.  Even though his facility is located in Oregon, he utilizes the services of the local Idaho agent.  He expressed dismay with the possibility of losing the local agent and referenced an Oregon Public Utility Commission order allowing UP to close the Ontario agency because local customer service functions would be available at Nampa.  Tr. at 482; Board Exhibit No. 205.

The shift supervisor for Americold stated he orders refrigerated cars through the Pacific Fruit Express (PFE) representative located in Nampa.  He has daily contacts with the PFE representative although he contacts the local agent a couple times a week.  Tr. at 505.  His primary concern was that the Railroad retain someone locally to handle his customer service inquiries.  Tr. at 509-10.

The local agent, JoDee Alderson, testified that her work duties are assigned by the MTO and consist of checking and inventorying in the rail yards at Weiser, Payette, Ontario and Huntington, Oregon.  Her yard checks ensure that train crews and the NCSC are advised of the actual locations of cars on specific tracks.  Tr. at 517.  She revises shipping instructions and train crew work orders.  Id.  She explained that the Payette yard is the interconnection point for the Idaho Northern & Pacific Railroad.  Proper car identification and location means that the train crew can operate more efficiently instead of hunting for cars identified at an incorrect location.  She speaks to the Idaho Northern a couple times a day at least.  Tr. at 539.  The conductor also testified that the “agent” is a big help in keeping UP’s operations in her area running smoothly.  Tr. at 548.  The local agent is “[r]eal important for us to getting the cars to the customers.”  Tr. at 554.

7.  Montpelier.  Several area shippers and members of the public testified.  Nu-West ships 40-50 cars per day and is served by the Montpelier agency.  Nu-West’s material manager, Kerry Haddock, testified that the agent is “our vital communication link with what the train crews are doing on a real-time basis.”  Tr. at 266.  He talks to the local agent several times a day to ensure that the proper cars are delivered in a timely fashion.  Tr. at 273.

Louisiana Pacific also is a shipper at Montpelier.  LP’s representative stated there is “no real substitute for having a good person on the ground that knows the local situation, particularly here where there is a lot of things going on, as the gentleman from Nu-West had stated.”  Tr. at 294; 310.  Although he contacts the local agent two or three times a week, his service through the NCSC has been satisfactory.  Tr. at 299-300.

Monsanto’s traffic manager indicated that she contacts the local agency every day to order cars and to make last minute changes.  Tr. at 363.  She discussed at length the importance of receiving shipments on a timely basis.  “If we don’t have raw materials, there are times when our stockpiles are very low.  If we don’t get those raw materials in, we’re going to have to shut a furnace down, which costs us production time. . . . we could lose shipments there too if we don’t have preloaded cars.”  Tr. at 364-65.  The importance of receiving timely shipments are further emphasized by the fact that Monsanto sometimes has to heat the rail cars before loading them with phosphate.  Tr. at 364.

The local agent, Danny Sanders, testified that he performs a number of functions relating to customer service including filling car orders for Monsanto, car tracing, preparing yard lists for the Montpelier yard and giving messages to the seven local train crews, as necessary.  Tr. at 389, 395-96.  By maintaining an up-to-date car inventory in the Montpelier Yard, he estimated that he saves between an hour to two hours  for each train crew.  Tr. at 390.   Although it is the responsibility of the train crew conductor to enter the appropriate location of each car, not every train is equipped with an onboard computer terminal (OBT).  Tr. at 332.  The crew members rely on the local agent to identify the appropriate location of cars within the yard.  Otherwise, they may spend a great deal of time “hunting” for cars that they are supposed to transport.  Tr. at 338-41.  One conductor estimated that it would take approximately four hours of his crew time by not having the yard inventoried when he reports to work.  Tr. at 347.

THE TECHNICAL HEARING

The parties in this case have all espoused different positions.  UP requested that the remaining six agencies (except Montpelier) be closed and their functions transferred to the NCSC.  The Staff maintained that it was appropriate to close three agencies (Aberdeen, Idaho Falls, Pocatello) and transfer their functions to the NCSC.  However, Staff asserted that customer service functions should be continued at the remaining agencies of Montpelier, Sandpoint, Weiser/Payette and Parma.  Finally, the Board argued that all the agencies should be retained.

1.  Union Pacific Testimony.  UP’s first witness was James Carter, Director of Operations Support at the NCSC.  He explained that the duties of the local agent, with the exception of the Montpelier agency, are redundant with those services now provided by the NCSC.  Even the yard inventories conducted by the agents are the responsibility of the train conductor or foreman.  Tr. at 591.

He estimated that UP would save more than $440,000 in wages, benefits and operating expenses if the six agencies (excluding Montpelier) were closed. Tr. at 582.  He acknowledged, however, that this will not be necessarily a “direct savings” but the savings will be realized by taking “employees who do not have a fully productive role and put them in positions where they are actually used to carry out necessary work.”  Tr. at 583.  He testified that of the 14 manned agencies across the UP system, seven are located in Idaho.

Mr. Carter also discussed the occurrence of customer service problems when UP  merged with the C&NW.  “I would agree with Mrs. Bruins’ observation that there were substantial delays in the phone system.  This was unacceptable to Union Pacific and we were considerably embarrassed by it.”  He stated the NCSC installed a new telephone system in the fall of 1995 which will allow customers to contact a specific representative.  Tr. at 598.  "During that period of time, our top management sent out letters to our customers to apologize and to let them know what the problem was.  . . . [S]ince that time, service has improved and we are back to the preference levels expected by our customers.”  Tr. at 588; Exhibit No. 8.  He also acknowledged that most of the customer satisfaction indexes contained in UP Exhibit No. 14 and Staff Exhibit No. 103 declined following the C&NW merger in October 1995.  Tr. at 597.  “However, most of those customer service indexes have been on the upswing since the first of the year, including the index for the problem resolution system.”  Tr. at 597.

Carter also addressed Mr. Law’s concern about the possible deterioration of customer service with the proposed Union Pacific-Southern Pacific merger.  Carter distinguished the UP-SP merger with the C&NW merger.  He testified that with “more lead time and greater ability to integrate the two systems, we shouldn’t experience the service problems that occurred in the previous merger.”  Tr. at 599.

UP’s next witness was Cheryl Peterson, team leader of the fresh and frozen foods at the NCSC.  Tr. at 745.  She also acknowledged that the NCSC did “experience some serious service interruptions immediately after the cut over of the Chicago and Northwestern Railroad.”  Tr. at 748.  In interpreting the trends portrayed in Staff Exhibit No. 103 and UP Exhibit No. 14, she indicated that there was a strong correlation between train service and customer satisfaction.  In particular, she noted that when train service goes down, problem logs go up, and customer satisfaction goes down.  Tr. at 763, 767.  She further testified that one of the advantages of a new telephone system is that the customer can speak with representatives who are familiar with the shippers’ products and traffic needs.  Tr. at 751.

UP’s final witness was Jerry Heavin, the Superintendent for the Idaho territory.  He described the Company’s offer to establish an STO at Montpelier for the next two years “in order to provide a transition period until everything has been operating smoothly for an extended period at NCSC. . . . [W]e are willing to give our Montpelier customers some additional reassurance and some additional assistance during an extended transition period.  Tr. at 789.  He described the Montpelier agent’s duties as more of a helper to the conductor and train crews and described the work of the Weiser-Payette and Montpelier agents as work “done at the behest of the local MTO.”  Tr. at 788, 791.  He described the agent’s role today as “at best, the agent serves as an extension of the local supervisor and, at worst, they perform redundant services that can serve to impede services to the customer.”  Tr. at 796.

With regard to Payette/Weiser and Parma, the MTO and his crew will continue to serve customers.  He also explained his intent to place a person officed at Boise “who will, among other things, facilitate functions among NCSC, the Harriman Dispatching Center, local MTO’s, and customers.”

On rebuttal, Mr. Heavin pointed out that the relationship between the agent and customer often prevents a customer from developing the relationship he needs with the NCSC, the local MTO and the sales-marketing department.  He also took issue with the Staff’s concern that the UP-SP merger may result in a decline in service.  Mr. Heavin observed that UP did not have adequate time to plan ahead or to address service problems before the C&NW merger.  Tr. at 810-11.  He maintained that the resources of UP were strained especially locomotive power because of the merger.  Tr. at 818-19. He noted that the SP merger is a top priority and “high priority is being given to make sure that the transition goes smoothly.”  Tr. at 811.  Although he acknowledged the Railroad did experience service problems with the C&NW merger, he asserted that the Railroad is better equipped to handle the SP merger now that the C&NW merger was behind the Railroad.  When the Commission asked whether UP’s commitment to service quality is sufficient to sustain small shippers and low volume stations, he replied that the best way to help our customers grow is to have them avail themselves of the considerable resources at their disposal: the NCSC; the OBTs which represent a significant investment in both capital and technology; and probably most important, the training and quality of the personnel.  Tr. at 886-87.

2.  Legislative Board.  The Board presented the testimony of several witnesses.  These witnesses argued that eliminating the agencies would not result in cost savings or efficiencies to the Railroad and, in fact, customer service would deteriorate because train crews could not absorb all of the functions normally performed by the agent.

The Board’s witness Laurence Shields testified that local agents may provide more reliable customer services than solely relying on information entered in the OTBs.  Tr. at 955-56.  He argued that reliance on centralized computer systems cannot adequately provide efficient customer service without the aid of rail personnel on the ground.  Tr. at 956.  He observed that although service at the NCSC had been improving, the C&NW merger seriously disrupted customer service.  He stated that the customer service performance standards contained in the Railroad’s Exhibit No. 14 portrays the decline of customer satisfaction with the NCSC.  Tr. at 973.

The state director of the Transportation Communication Union, Michael Metcalfe next testified that removal of the local agency will cause the level of customer service to suffer.  Tr. at 990.  He stated that one of the primary benefits that agents perform for the Railroad is to conduct yard checks and update car inventories.  These activities allow train crews to operate more efficiently thereby reducing costs and delays in traffic to shippers.  Tr. at 991.  He calculated that the gross operating revenues attributed to stations with an agent represents only .3% of the gross operating revenue generated by these stations.  Tr. at 992.

The newly elected chairman of the Legislative Board, Dale Wheeler testified that the Railroad will not realize a cost savings by eliminating the agents because even if “separated,” these employees will continue to receive wages for a period of six years.  Tr. at 1002.  He also maintained that train crews without OBT or with OBT problems, may not always be located near a Railroad facility with an OBT.  Thus, the car inventories may not always be updated in a timely manner.  Tr. at 1003.  John Bryant also highlighted problems with car inventory at interchange points with the short line railroads.  For example, he indicated that when UP drops cars off for Idaho Northern in Payette, the cars are no longer carried on the NCSC car inventory.  Tr. at 1024.  As a conductor, he stated that agents perform valuable services by conducting yard checks and preparing updated car inventories.

3.  Staff.  Regulated Carrier Administrator Ron Law testified that several agents have developed effective working relationships with their customers.  He, too, stated that agents performing the yard checks and updating car inventories saves “the railroad both time and money, as well as providing speedier and more efficient service to the customers.”  Tr. at 1034.  Following his review of the NCSC operations, Mr. Law testified that from January 1994 through December 1995, customer satisfaction with the NCSC has declined in 10 of 13 measurement categories.  Tr. at 1046, Exhibit Nos. 103 and 14.  Despite implementation of the problem resolution system, he noted that customer satisfaction has continued to gradually decline.  Tr. at 1044, Exhibit No. 103 at p. 5.  His concern with the declining customer service measurements at the NCSC is further heightened by the anticipated merger of the UP and SP systems. Given the serious service disruptions following the C&NW merger, he was concerned that similar disruptions could occur if the larger UP-SP merger were approved by the Surface Transportation Board.

Turning to his specific agency recommendations, Mr. Law indicated that the agencies at Idaho Falls and Pocatello may appropriately be closed because these communities have sufficient numbers of management personnel that can adequately provide customer service.  Tr. at 1052.  He also recommended that the Commission authorize the closure of the Aberdeen agency because its closure would not greatly diminish the quality of customer service to area shippers.  Tr. at 1053.  He did recommend that the Railroad retain agents at the other four stations.

Although he observed that creating a trouble-shooter supervisory position in Mr. Heavin’s office was a step in the right direction, Mr. Law was concerned that this employee may be “spread ‘too thin’ if the duties encompassed too large a geographic area.”  Tr. at 1050.  Accordingly, he argued that the Parma and Weiser/Payette agency should be retained because the benefits gained by the Railroad would be outweighed by the adverse affects that result from a reduction in customer service.  Tr. at 1051. Given the shippers dependence and relationships with the local agents, he also recommended that the agencies at Sandpoint and Montpelier be retained.  Although pleased that UP recognized the importance of customer services provided by the Montpelier agency, he was concerned that the Railroad supplemental proposal would dilute the ability of the Railroad to respond to customer service needs of area shippers.  Tr. at 1049. Unlike those agencies recommended for closure, shippers in Sandpoint and Montpelier use the local agency for customer services and access to UP managers is not close-by.

DISCUSSION

A. Standards of Review

At the outset, we note that Idaho Code § 61-316 provides that public utilities (i.e., UP) may profit from efficiencies or improvements in the delivery of their public services, subject to the Commission’s authorization. The Railroad also has a statutory duty to provide and maintain such service as necessary to maintain adequate and efficient service to its customers. UP carries the burden of  showing that the transfer of agency functions from its one-person agencies to the NCSC would be in the public interest.  Idaho Code § 61-302; In re Union Pac. R.R., 64 Idaho 597, 134 P.2d 1073 (1943). With these standards in mind, we turn first to the evidentiary issues.

                                                                  B.  Evidentiary Issues

1.  Staff Testimony.  Prior to the hearing and again at the hearing, UP moved to strike three portions of Staff witness Ron Law’s testimony.  UP objected to Mr. Law’s opinion testimony because he “does not yet have the credentials to testify as an expert in a matter of this nature and his conclusions are not supported by competent evidence in the record.”  UP Post-hearing Memo at 27-28.  In denying UP’s Motion, the Commission noted that Mr. Law is entitled “to state his opinion.”  Tr. at 563-64.  The three statements that UP objected are set out below:

1.The familiarity of the local agents with their specific areas and shippers provides a valuable tool in providing Union Pacific customers with excellent customer service tailored to customer needs.  Tr. 1032-33, L. 23-1.

2.. . . Staff feels that it is not appropriate nor in the best interest of anyone at this time to remove the local agent who is an important tool in providing good customer service to UPRR’s customers.  Tr. 1051, L. 12-16.

3.It is the Staff’s position that if those local agencies are  shut down, there is no doubt that the quality of service will be diminished no matter what measures are taken at the National Customer Service Center in St. Louis and that the customers that are served by those agencies will see a definitive decline in customer service provided to them by UPRR.  Tr. 1052, L. 1-8.

Having reviewed the testimony and the arguments of the parties, we reaffirm our ruling allowing these statements to remain in the hearing record.

Although not bound by the technical rules of evidence, Idaho Code § 61-601, we note that I.R.E. 702 allows the trier of fact to admit expert testimony if such testimony assists us to understand the evidence or determine a fact in issue.  A witness may testify as an expert if he or she possesses specialized knowledge, skill, experience, training, or education and may give opinion testimony.  Id.  Whether a witness is sufficiently qualified as an expert and whether such testimony is admissible or inadmissible is within our discretion.  Burgess v. Salmon River Canal Company, 127 Idaho 565, 903 P.2d 730 (1995); State v. Hopkins, 113 Idaho 679, 747 P.2d 88 (Ct. App. 1987).

In response to UP’s prehearing motion to strike, Staff outlined Mr. Law’s qualifications to testify as an expert.  In particular, Staff argued that as administrator of the Commission’s Regulated Carrier Division, Mr. Law is responsible for the regulatory oversight of Idaho’s railroads.

He manages the Commission’s rail program including hazardous-material rail inspections, formulation of Commission rail policy, coordinates with various federal agencies (FRA, STB, Department of Transportation) and serves as the Commission’s representative on the Governor’s Rail Advisory Committee.  During his tenure at the Commission as well as his eighteen years in public service (Montpelier City Council, the mayor of Montpelier, and Bear Lake County Commissioner), Mr. Law has developed analytical skills and expertise that permit him to examine and evaluate a wide range of management issues.

In preparation for this case, Mr. Law has attended each of the seven public hearings that the Commission has conducted in this matter.  In addition to hearing all the public testimony offered in this case, Mr. Law has inspected the National Customer Service Center (NCSC) located at St. Louis, Missouri.  While there, he received briefings from UP representatives, including James Carter, a witness in this proceeding.  Mr. Law monitored actual conversations between customers and a NCSC customer service representative.  This gives him first-hand knowledge into the interactions between shippers and customer service representatives at the NCSC.  He also received briefings on the Railroad’s problem resolution procedures including the assigning of priorities to the various types of problems, communicating with operational management, and working with customers to handle critical shipments.

Mr. Law received briefings and toured the Railroad’s headquarters and operations center (Harriman Dispatch Center) in Omaha, Nebraska.  His interviews, observations and briefings, have also apprised him about UP’s coordination between the NCSC and the local operational units to ensure that customer needs are met.  He has observed the daily management review of operations conducted by UP Superintendent Heavin, the Harriman Dispatch Center, and his managers of train operations (MTOs).  Mr. Law has also interviewed shippers, UP employees and public officials, and reviewed correspondence forwarded to the Commission concerning this case.  Simply put, Mr. Law is qualified to be an expert in this matter.

Staff Answer to UP Motion to Strike at 2-3.  Taking all these qualifications together, we find that Mr. Law does possess specialized knowledge pertinent to the issue of freight agency operations to assist us in our fact finding capacity.

We further conclude that there are sufficient facts in the record to substantiate a basis for his opinions.  His opinions were based upon the testimony of prior witnesses, his review of the NCSC, and the exhibits to this proceeding.  These three excerpts from his testimony were properly admitted.

2.  The NCSC Customer Surveys.  In its post-hearing brief, UP also objects to the Staff’s testimony based upon the Railroad’s customer satisfaction data contained in Exhibit Nos.103 and 14.  As previously mentioned, these exhibits contain charts prepared by UP showing its customers’ satisfaction on several individual and combined measurements.  These charts generally show that customer satisfaction with various facets of NCSC operations have declined since January 1994.  The Railroad argues that without the customer service surveys, Mr. Law’s recommendations concerning the retention of the four agencies is without foundation.  UP’s Post-hearing Memo at 37.  The Railroad asserts that the customer satisfaction surveys do not represent competent evidence of the level of service provided to Idaho customers.  Id. at 31. This argument is ill-founded for several reasons.

First, the Railroad’s objection is untimely.  If it objected to the admission of Exhibit No. 103 (or the testimony based upon the exhibit), it should have done so at the time the exhibit (or testimony) was offered for admission.  The Railroad neither objected to the admission of Staff Exhibit 103 in its prehearing motion or at the hearing, nor objected to Staff’s testimony.  Given the simultaneous filing of the post-hearing briefs, other parties have not been afforded an opportunity to address this issue. Second, UP moved for the unconditional admission of the very same data with the addition of two months’ data.  Exhibit No. 14.  In fact, UP’s Exhibit No. 14 was admitted into evidence before the Staff exhibit was even offered. Tr. at 573-74, 661. In addition, these surveys were prepared by UP, conducted for UP, used by UP, and purportedly show levels of customer satisfaction with the NCSC.  Finally, taken as a whole, we believe that the record indicates both satisfaction and dissatisfaction with the Railroad’s customer service.  Although  some shippers testified that NCSC service was satisfactory, other witnesses expressed frustration with being placed on hold, the inability to consistently deal with a specific individual, and service disruptions following the C&NW.  Even the CEO of the Railroad acknowledged “unprecedented problems with service” following the C&NW merger.  UP Exhibit No. 8.

C. Findings

As UP correctly observed, this Commission has recognized in the past that local agencies will someday be replaced by the NCSC.  Our task in this matter is two-fold: to ensure that Idaho shippers are adequately served during the transitional period from one-person agencies to the NCSC and to ensure that the NSCS provides satisfactory services to Idaho customers.

The concept of “customer service” is not as easy as simply dividing tasks between shipper contacts and train crew contacts. UP employees stationed at the local agencies provide both customer service and operational assistance.  As was amply demonstrated at our hearings, the concept of “customer service” includes access to company officials, insuring the timely delivery of cars and services, and the ability to resolve problems.  Finally, several of the agents perform valuable service in assisting the local managers of train operations in conducting railroad business.  We believe that the Railroad is to be commended for utilizing these dedicated employees to the full extent of their capabilities.  At the same time, some of the agents indicated that their “agency” duties are completed in only a few hours per day.  Recognizing the inevitability of moving to the National Customer Service Center, we believe the appropriate focus is on how to best accomplish the transition.

After reviewing the hearing record and the post-hearing briefs in this matter, we grant UP’s Application to close its Aberdeen, Idaho Falls, and Pocatello agencies. We find that shippers served by these agencies did not oppose the transfer of agency duties to the NCSC. As supported by the Staff and UP witnesses, we further find that shippers served by these agencies may appropriately rely on nearby management personnel to provide the necessary customer services.

We next turn to the Parma and Weiser/Payette agencies. Although the record reflects greater shipper, Staff, and Board support for retention, we find that the record cannot support retention of these agencies. The testimony of the shippers at the field hearings suggested that the primary contact with the local agent was for problem resolution. Consequently, we find it is reasonable to allow UP to close its Parma and Weiser/Payette agencies and we adopt its alternative proposal to create a “trouble-shooter” position in the Superintendent’s Boise office with one condition. The Railroad proposed that this position will, among other things, facilitate functions among NCSC, the Harriman Dispatching Center, local MTOs, and customers.  However, we shall require the Railroad to utilize this employee during the transitional period (described more fully below) to also provide customer service for shippers in the Parma and Weiser/Payette areas of southwestern Idaho.

Unlike the other agencies, shippers at the Montpelier and Sandpoint hearings testified that they rely heavily on the local agent to perform customer service functions.  Many of the shipper witnesses testified that the local agent provides them better access and service than the NCSC.  Even the Railroad acknowledges that the Montpelier agent provides direct customer service to shippers in his area.  In addition, we are concerned with the level of customer service provided by the NCSC.  Although we believe that the level of service should improve over time, we find the gradual decline in customer service satisfaction portrayed in Exhibits 14 and 103 troublesome.  Based on the concerns expressed by the shipper, Staff, and the Board, we find that the Railroad has not adequately demonstrated that the NCSC is now providing a level of customer service that is sufficient and convenient for Idaho shippers in these two areas.

Although we believe that the Railroad has not demonstrated that the NCSC is adequately meeting the present needs of Idaho shippers, neither are we convinced that the long term solution for the delivery of satisfactory customer services requires the continuation of local agencies.  Accordingly, we shall require the Railroad to maintain agencies in Sandpoint and Montpelier for at least two years.  This two-year period will provide an opportunity for the Railroad to address those lingering or remaining customer service problems and allow it to devise appropriate procedures to transfer those functions to the NCSC.  This period will also allow the Railroad to train shippers on the appropriate use of the computer network system and NCSC procedures.

To ensure that customer services are adequately addressed during this transition phase, we shall further require UP to report on the status of its final agency conversions in Idaho.  To that end, the Railroad shall file a report with the Commission Secretary outlining the actions it has taken to ensure that the transfer of agency functions to the NCSC is progressing smoothly, that Idaho shippers are being advised and trained on the conversion and any new NCSC procedures, and that essential customer service requirements are being met.  If UP demonstrates that it is providing adequate customer services through the NCSC and local workforce, it shall be allowed to close its remaining one-person freight agencies and transfer their duties to the NCSC at the conclusion of the transition period.  We do not contemplate a need for a subsequent Application to initiate this final action.

 Given the competing interest in this case, we believe that this Order strikes the appropriate balance between the Railroad’s need to streamline its operations and the  shippers’ needs for effective customer service.  Although the Railroad shall not be required to resubmit an Application to close the three remaining offices, we anticipate that any person experiencing the lack of appropriate customer services during the transition period or as evidenced in the status report will bring such matters to our attention.

O R D E R

IT IS HEREBY ORDERED that Union Pacific’s Application to close the Aberdeen, Idaho Falls, Pocatello, Parma, and Weiser/Payette agencies is granted. We adopt the Railroad’s alternative proposal to station an employee in the Superintendent’s office with one change. In addition to the proposed duties, this employee shall continue to perform customer service duties for shippers formally served by the Parma and Weiser/Payette agencies.

IT IS FURTHER ORDERED that the Railroad’s Application to close the Sandpoint and Montpelier agencies is granted in part and denied in part.  The Railroad shall be required to maintain these agencies for a period of two years.  During this “transition” period, the Railroad will take such actions as is necessary to ensure that Idaho customers are properly served by the NCSC.

IT IS FURTHER ORDERED that the Railroad submit a report no later than August 1, 1997, outlining those actions undertaken to ensure a smooth transition from the remaining agencies to the NCSC.  In particular, the Railroad should supply evidence of Idaho customer satisfaction with the NCSC.

IT IS FURTHER ORDERED that this Order shall become effective 30 days after the service date of this Order.

THIS IS A FINAL ORDER.  Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. UP-RR-95-4  may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. UP-RR-95-4 .  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of August 1996.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

bls/O-uprr954.dh

**FOOTNOTES**

1:

The Regional CSCs were located at Nampa, Pocatello, Idaho Falls, and Spokane, Washington.

2:

The only Idaho Falls area customer testifying in this case was a representative from Idaho Supreme Potatoes in Firth.  She testified at the Boise hearing that her Company no longer needs the agent in Idaho Falls.  Tr. at 717.  She testified that when necessary, the Company contacts the manager of train operations (MTO) at Idaho Falls for customer services.

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

August 8, 1996