

Service Date: September 29, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF RON KINDSFATHER,	)	TRANSPORTATION DIVISION
dba BILLINGS TROLLEY CO., Billings,	)	
Montana, Application for a Montana Intrastate	)	DOCKET NO. T-00.24.PCN
Certificate of Public Convenience and	)	
Necessity	)	ORDER NO. 6489

Introduction

On February 23, 2000, Ron Kindsfather, dba Billings Trolley Company (Billings Trolley), applied for a Class A (regular route) motor carrier authority in the Billings, Montana, service area. City Cab, of Billings, protested the application. Hearing was held on May 19, 2000, before Commissioner Nancy McCaffree as hearings examiner. Billings Trolley and City Cab have submitted arguments and have stipulated that a proposed order is not necessary and the PSC may issue a final order. The PSC now determines that the authority requested should be granted for the following reasons.

Service Proposed

Billings Trolley already holds a Class B (not regular route) authority for vintage trolley service in the Billings area. The Class A regular route service proposed by Billings Trolley could involve up to four vehicles (not necessarily trolleys) in scheduled service between certain points in Billings. The apparent primary objective of the proposed operations is to establish links between the Billings Met Transit System (Billings municipal bus), the Metra (Yellowstone County events center located in Billings), the local international airport, other Billings areas, and specific points within the Billings downtown area. Apparently a local Billings downtown association is one of the driving forces behind the proposed transportation service.

### Discussion

There are certain factors the PSC must consider in granting or denying an application for motor carrier authority. Fitness of the applicant is one factor. The applicant must establish that it is fit, willing, and able to provide the service proposed. The applicant in this case is an existing carrier in good standing. There was little evidence provided at hearing, one way or the other, regarding how complete and accurately the actual operations have been planned. However, it appears that sufficient planning has been done to demonstrate that Billings Trolley, with assistance from a Billings planning group working on transportation, parking, and other concerns in the downtown Billings area, could make the proposal work and accomplish at least a significant part of the intended purpose, subject only to funding. Apparently planning cannot be further considered until funding is known and funding cannot be considered in earnest until authority is granted by the PSC. The PSC concludes that Billings Trolley has established that it is fit, willing, and able to provide the service proposed.

Public need is another factor. The applicant must establish that there is a public need for the proposed service. Public need has been established by Billings Trolley. A sufficient number of witnesses who would actually use the service or would otherwise benefit from the service testified in support of the proposed service at hearing. Also in regard to public need it must be established that existing carriers cannot meet the need. The existing carrier protesting this application, City Cab, under its present operations does not provide the service or a service equivalent to that proposed by Billings Trolley and therefore does not meet the need established. City Cab meets some of the need, transporting passengers individually or in small groups in taxis, but not on the scale proposed by Billings Trolley. The PSC concludes that Billings Trolley has established the required need and the inability of the existing carrier to meet the need.

The effect of the proposed service on existing carriers is another factor the PSC must consider. The legal standard applicable is that the PSC cannot grant a proposed authority if the grant will harm the operations of existing carriers in such a way that the grant would be contrary to the public interest. In regard to effect on existing carriers, Billings Trolley has not made entirely sound factual or legal arguments. Billings Trolley presented no compelling evidence in

its case-in-chief regarding the point and shed no further light on the matter in any significant way through cross-examination of City Cab at hearing. Billings Trolley's referenced legal support that the authority should be granted pertains only to Class D principles (e.g., competition) which do not apply in the present case. Billings Trolley's only other argument is that its proposed service is unlikely to compete with City Cab and could even enhance City Cab's operations. Considering only Billings Trolley's proposed transportation of passengers between Billings downtown and the Billings airport and Metra, City Cab predicts that its revenues will be reduced by up to 15 percent. City Cab points out that this does not even account for revenues lost to the proposed service to motels, hospitals, and other businesses.

The PSC determines that a granting of the authority requested by Billings Trolley could harm City Cab. However, harm to an existing carrier is an acceptable thing in motor carrier law so long as the harm is not contrary to the public interest. The PSC is not persuaded by City Cab's argument that the harm which may result from a grant of this authority is not in the public interest. Testimony at hearing demonstrated that the public interest will be well served by the Billings Trolley authority in many regards, ranging from additional convenience to passengers served by the Billings Met, new transportation options being made available to and from the Billings Metra, the international airport, and other Billings areas, and possible reduction of downtown Billings parking problems.

#### Order

IT IS HEREBY ORDERED that the application of Ron Kindsfather, dba Billings Trolley Company, is granted as follows:

Class A – Passengers between all points and places in the City of Billings, Montana.

Done and dated this 22nd day of August, 2000, by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chair

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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GARY FELAND, Commissioner  
(voting to dissent)

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Amended Briefing Schedule issued in Docket T-00.24.PCN in the matter of Ron Kindsfather dba Billings Trolley Co., Billings, Montana has today been sent to all parties listed.

MAILING DATE: July 27, 2000

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FOR THE COMMISSION

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