

Service Date: November 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 UNDERDAHL FARMS, )	TRANSPORTATION DIVISION
INC., dba U.F.I. SANITATION SERVICE, )	
Conrad, Montana, Application for a Montana )	DOCKET NO. T-00.56.PCN
Intrastate Certificate of Public Convenience )	
and Necessity )	ORDER NO. 6498

PROPOSED ORDER

Introduction

1. On June 21, 2000, Underdahl Farms, Inc., dba UFI Sanitation Service (UFI), Conrad, Montana, filed before the Public Service Commission (PSC) an application for Class D (solid waste) motor carrier authority. UFI's application is protested by the following existing Class D motor carriers: Bayside Disposal, Inc., dba Disposal Services of Montana (Disposal Services), Lewistown, Montana; Montana Waste Systems, Inc. (Waste Systems), Great Falls, Montana; and James Sherman, dba Sherman's Service and Supply (Sherman), Sunburst, Montana.

2. On October 12, 2000, a public hearing on UFI's application was held in Conrad, Montana. At hearing UFI and the protestants stipulated that the authority applied for by UFI, all points and places within the town of Pendroy, Montana, and a forty mile radius, would be amended to limit the proposed service to areas within Teton County. UFI already holds authority in Glacier County and Pondera County, by the time of hearing had already limited its application to exclude service in Toole County, and at hearing stated that it is not intending to serve in areas in counties other than Teton County that might be reached by the 40 mile radius from Pendroy.

3. At hearing UFI presented several witnesses in support of its application. Each witness stood cross-examination by the protestants and the PSC. Following the close of UFI's case in chief, protestant Waste Systems, joined by protestant Disposal Services, moved to dismiss UFI's application on the basis that UFI had failed to establish that an authority should be granted. The undersigned hearing examiner granted the motion to dismiss and adjourned the

4. hearing, this written order to follow. This order is a proposed order. Please see the instructions following the signature and attest, below, for procedures pertaining to proposed orders.

#### Discussion

5. An application for motor carrier authority, including Class D motor carrier authority, is granted or denied in accordance with the requirements of § 69-12-323(2), MCA. The PSC has historically interpreted and applied the requirements of § 69-12-323(2), MCA, in the following fashion: (a) the evidence must demonstrate a public need for the proposed service exists; (b) the evidence must demonstrate that existing carriers cannot or will not meet that public need; (c) the evidence must demonstrate that a grant of authority will not harm existing carriers contrary to the public interest; and (d) the evidence must demonstrate that the applicant is fit, willing, and able to provide the service. Discretionary in Class D applications, competition may be considered by the PSC as justification of a grant of authority, if there is a need and the applicant is fit, even if existing carriers can meet the need or might be harmed by the grant, if the competition would promote the public interest.

6. UFI's case in chief did not establish that the public need for transportation service could not be met by the existing carriers. Although each witness for UFI demonstrated a need for service, each witness for UFI either had not contacted existing carriers regarding the ability of an existing carrier to meet any referenced special transportation needs, expressed that past problems with existing transportation services had been remedied by the existing carriers, or stated that they had no problem with the existing carriers. UFI's case in chief also did not establish that competition in the area would promote the public interest. UFI's witnesses, to the extent competition was referenced at all, merely viewed UFI competition in the area as a perceived good thing. UFI did not establish that the existing carriers have done or are doing anything unreasonable in regard to services to customers or in regard to rates charged to customers within the service area proposed by UFI.

7. It is essential to the granting of Class D motor carrier authority that it be established that the existing carriers are either not able to meet the public need or that competition with the existing carriers would promote the public interest. Neither of these things were established by UFI.

Order

For the reasons expressed above, it is hereby ordered that the application of Underdahl Farms, Inc., dba UFI Sanitation Service, Conrad, Montana, for Class D motor carrier authority, all points and places within Pendroy and a 40 mile radius in Teton County, is dismissed.

DONE AND DATED this 27th day of November, 2000.

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GARY FELAND, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: This Proposed Order is a proposal for decision. Each party has the opportunity to file exceptions, present briefs, and have oral argument before the PSC prior to Final Order. See § 2-4-621, MCA. Exceptions and briefs must be filed within 20 days of the service date of this Proposed Order. Briefs opposing exceptions must be filed within 10 days thereafter. Oral argument, if requested, must be requested at or prior to the time of briefing. See ARM 38.2.4803 and 38.2.4804.

No transcript of the hearing on this matter has been ordered by any party or the commission. If exceptions are filed as to any finding of fact, the party making the exception shall provide a complete transcript and reference the portions of the transcript which pertain to the exception.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Proposed Order No. 6498, issued in Docket T-00.56.PCN, in the matter of Underdahl Farms, Inc. dba U.F.I. Sanitation Service, has today been sent to all parties listed.

DATED: November 29, 2000

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FOR THE COMMISSION

FIRST CLASS:

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