

Service Date: May 2, 2002

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

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IN THE MATTER OF KENNETH J. WILSON,)	TRANSPORTATION DIVISION
INC., dba HAVRE TAXI & LIMOUSINE,)	
Havre, Montana, Application for a Montana)	DOCKET NO. T-02.19.PCN
Intrastate Certificate of Public Convenience)	
and Necessity)	ORDER NO. 6514

FINAL ORDER

Findings of Fact

1. On January 15, 2002, Kenneth J. Wilson, Inc., dba Havre Taxi & Limousine (Havre Taxi), Havre, Montana, filed before the Public Service Commission (PSC) an application for a Montana Intrastate Certificate of Public Convenience and Necessity (PCN, motor carrier authority). Havre Taxi requests the PSC grant Class B authority, passengers between all points and places in Blaine, Choteau, Hill, Liberty, and Phillips Counties, Montana.

2. On February 13, 2002, Louis (Pat) Bibeau, dba PS Limo Service (PS Limo), Havre, filed a protest to the Havre Taxi application. PS Limo is a PSC-certificated motor carrier, Class B, passengers in limousine service between all points and places in Blaine, Chouteau, Hill, Liberty, Phillips, and Toole Counties, Montana (transportation of railroad crews prohibited). PS Limo protests the Havre Taxi application on the bases of absence of need for additional limousine authority and harm additional limousine authority would cause to PS Limo's existing services.

3. On April 18, 2002, the PSC conducted a hearing on the Havre Taxi application, PSC Chairman, Gary Feland, presiding as designated hearings examiner. The hearing was held in Havre. Havre Taxi appeared, PS Limo appeared, and several members of the public appeared at hearing. Evidence and public comments were received.

4. At hearing Havre Taxi and PS Limo agreed that Havre Taxi's proposed taxi service would not be protested and could be granted. Several members of the public made preliminary comments regarding an immediate need for taxi service in Havre and expressed concerns about the delay in a PSC order on Havre Taxi's efforts to provide taxi service. Following Havre Taxi's fitness

presentation, the hearings examiner ruled from the bench, granting the proposed taxi service, subject to Havre Taxi compliance filings (*e.g.*, insurance, tariffs) and affirmation of the ruling by the PSC.

5. Havre Taxi's proposed limousine service (as opposed to the proposed taxi service) remained contested by PS Limo. The central contested issues were whether need for additional limousine service in the service area exists and whether the grant of additional limousine authority would harm PS Limo's existing limousine service.

6. Havre Taxi demonstrated at hearing that it is fit, willing, and able to provide the proposed services, including that it has the financial resources necessary, will implement driver background check and training programs, will implement vehicle maintenance and safety programs, and has the necessary understanding of regulations governing passenger transportation. Fitness of Havre Taxi was not contested.

7. Havre Taxi did not demonstrate a need for additional limousine service. Havre Taxi essentially limited its presentation to theories related to competition (the grant of additional authority) being in the public interest. PS Limo provided testimony that a grant of additional authority would harm its operations, pointing out that the limousine business is not a thriving enterprise in Havre and PS Limo's surrounding service areas at this time. PS Limo suggested it would have expanded its business (presently operating one limousine) if such need existed.

8. At the close of hearing Havre Taxi and PS Limo agreed to waive their rights to file briefs prior to any order by the hearings examiner or PSC. Havre Taxi and PS Limo also agreed that the PSC may issue a final order (as opposed to a proposed order by the hearings examiner). Reconsideration of this final order is available in accordance with PSC rules.

Conclusions of Law

9. All findings of fact which can properly be considered conclusions of law and which should be considered as such to preserve the integrity of this order are incorporated herein as conclusions of law.

10. Before a contested application for motor carrier authority can lawfully be granted there are several elements which must be considered. These include whether there is a public need for the authority, whether existing carriers can and will meet that need, whether the grant of authority will harm existing carriers contrary to the public interest, and whether the applicant is fit,

willing, and able to perform the proposed service. *See, e.g., § 69-12-323, MCA; Matter of Jones Brothers Trucking, Inc., PSC Docket No. T-9469, Order No. 5987(a), p. 8 (July 17, 1990); State ex rel. H.R. Roberts v. PSC, 242 Mont. 242, 250, 790 P.2d 489, 494 (1990).* Competition is not a factor in granting or denying motor carrier authorities (except in Class D, solid waste authorities). *See, H.R. Roberts, supra., 242 Mont., @ 250.*

11. If any of the above elements (*i.e.*, public need, existing carrier not meeting the need, no harm to existing carrier contrary to public interest, and fitness) do not exist the PSC must deny the requested authority. *Jones Brothers, p. 8.* The public need element required for a grant of additional limousine service was not shown by Havre Taxi to exist. Havre Taxi's application for limousine service must be denied. The PSC denies Havre Taxi's application for limousine service. The PSC affirms the hearings examiner's grant of the balance of the authority requested by Havre Taxi.

ORDER

IT IS HEREBY ORDERED, in accordance with the above findings of fact and conclusions of law, the January 15, 2002, application of Kenneth J. Wilson, Inc., dba Havre Taxi & Limousine is GRANTED REGARDING TAXI SERVICES (and all other general passenger services allowed by the following stated authority) and DENIED REGARDING LIMOUSINE SERVICE. The authority granted is as follows:

Class B -- Passengers between all points and places in Blaine, Choteau, Hill, Liberty, and Phillips Counties, Montana. Limitation: Transportation of passengers in limousines or in limousine services is prohibited.

The dba of Kenneth J. Wilson, Inc. (*i.e.*, dba "Havre Taxi & Limousine") must be amended to remove the reference to "limousine."

Done and dated this 30th day of April, 2002, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman

JAY STOVALL, Vice Chairman

BOB ANDERSON, Commissioner

MATT BRAINARD, Commissioner

BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons
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 Final Order No. 6514 issued in Docket T-02.19.PCN in the matter of Kenneth J. Wilson, Inc. dba Havre Taxi & Limousine, Havre, Montana has today been sent to all parties listed.

MAILING DATE: May 2, 2002

FOR THE COMMISSION

FIRST CLASS MAIL

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AS ITS INTERESTS MAY APPEAR:

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