

Service Date: February 7, 1986

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

* * * * *

IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of Smith Oilfield Water Service)	
for a Class B Certificate of)	DOCKET NO. T-8360
Public Convenience and Necessity.)	ORDER NO. 5633a

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FINAL ORDER

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Pursuant to 2-4-621, MCA, a proposed order authorizing a grant of the authority requested was issued in this matter on October 28, 1985. On November 15, 1985, Protestant Power Fuels, Inc., filed exceptions to the proposed order and requested oral argument. Oral argument was held on February 6, 1986, before Commissioners Danny Oberg, Tom Monahan, and Howard Ellis. As had been the case at the hearing, John P. Moore appeared for the Applicant, and Edmund F. Sheehy, Jr., appeared for Power Fuels, Inc.

Having reviewed and considered the proposed order, exceptions, memorandum in support of the exceptions, and oral argument, the Commission concludes that the proposed order adequately and properly addresses the issues raised in this matter. The full Commission hereby adopts the proposed order as its final order in this matter.

APPEARANCES

FOR THE APPLICANT:

John P. Moore, Frisbee, Moore & Stufft, P.O. Box 997, Cut Bank, Montana 59427

FOR THE PROTESTANT:

Jerome Anderson, Anderson, Brown, Gerbase, Cebull & Jones, P.C., P.O. Drawer 849, Billings, Montana 59103-0849; appearing on behalf of Matador Service, Inc. and Zimmerman Trucking, Inc.

Edmund F. Sheehy, Jr., Cannon & Sheehy, 3021 Eleventh Avenue, Helena, Montana 59601; appearing on behalf of Power Fuels, Inc.

Marc G. Buyske, Aronow, Anderson, Beatty & Lee, Drawer D, Shelby, Montana 59474; appearing on behalf of Big Chief Water Service

FOR THE COMMISSION:

Robert A. Nelson and Robin A. McHugh, Staff Attorneys, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

DANNY OBERG, Commissioner and Hearing Examiner

BACKGROUND

1. On October 11, 1984, the Commission received an application from Smith Oilfield Water Service (Applicant), Box 10, Sunburst, Montana 59482. Applicant seeks a Class B Certificate of Public Convenience and Necessity to transport water between all points in Toole, Glacier, Pondera, Liberty and Hill Counties.

2. Following public notice of the application the Commission received protests from Zimmerman Trucking, Inc., of Poplar, Montana; from Matador Service, Inc., of Wichita, Kansas;

from Power Fuels, Inc. of Minot, North Dakota; and from Big Chief Water Service of Shelby, Montana.

3. After issuance of proper notice a public hearing was held, beginning at 9 a.m., Wednesday, January 9, 1985, in the Hospitality Room, Marias River Electric Co-op, Shelby, Montana. After a continuance the hearing was concluded on March 12, 1985.

SUMMARY OF TESTIMONY

Testimony of Applicant

4. Mrs. Nila Smith appeared and gave testimony on behalf of the application. Mrs. Smith, along with her husband Joseph and their two sons, constitutes Smith Oilfield Water Service. Mrs. Smith does the bookkeeping and answers the phone for this family operation.

5. The Smiths bought their first water truck in 1972 primarily so that Joseph Smith could haul water for his employer, Comanche Drilling Company. Comanche is primarily active in Toole County, but also does work in Glacier, Pondera, Liberty and Hill Counties. At the present time Smith Oilfield Water Service has two trucks: a 1959 Kenworth and a 1965 Kenworth, both equipped with 100 barrel tanks and three inch Bowie water pumps. The trucks are kept in good working order and their mechanical condition is good.

6. Smith Oilfield Water Service is open for business 24 hours a day. Calls for service often come at odd hours and all calls are responded to unless both trucks are busy on other jobs. Mrs. Smith estimated that there is a truck available and ready to respond to 90 percent of the calls. In addition to hauling for Comanche, the Smiths haul water for any oil operation in need of their services within the five county area of the application. The Smiths have a written agreement with

Comanche to haul water whenever Comanche has need of it. If a truck is committed to Comanche the Smiths have only one truck remaining to service others in the area. Comanche is in need of a truck at least 50 percent of the time. Mrs. Smith sponsored the introduction of the agreement with Comanche into evidence as Exhibit No. 2.

7. In addition to Joseph Smith, the Smith Oilfield Water Service trucks are operated by the two Smith sons, ages 32 and 22. Mrs. Smith testified that her sons grew up in the oilfields and can undertake most jobs with little or no supervision. They are available for work 24 hours a day, 365 days a year.

8. Mrs. Smith testified that Smith Oilfield Service has not solicited business from people in the five county area. Business has come from people who discovered, by word of mouth, that the Smiths were available to do the work. Until the time of the present application, the Smiths did not seek a permit from the Public Service Commission because they were unaware that a permit was required. They learned of the need for a permit sometime in the early fall of 1984 when the PSC was in the area checking for authority. They applied for a permit as soon as they realized one was required; but they continued their service despite the lack of a permit and the knowledge that one was needed. Joseph Smith talked to Getter Trucking and a number of other people in an attempt to lease authority and run the business legally. However, no agreement on a lease was ever reached. The Smiths did not discuss a lease with Power Fuels, Inc., and they were unaware that Big Chief Water Service had a permit from the Public Service Commission. Mrs. Smith testified that Smith Oilfield Water Service complied with every regulation of which it was aware.

9. Mrs. Smith testified that she did not believe the Smiths provided service in Hill County in 1984. However, she stated that they did provide service in Liberty and Glacier Counties.

She was uncertain whether they provided service in Pondera County. The majority of their water service is provided in Toole County although Comanche has had occasion to use the Smith's service in each of the five counties included in the application. Mrs. Smith claimed that since 1979 there has been an increased demand for the Smith's service in the Kevin-Sunburst oilfield.

Testimony of Shipper Witnesses

10. Mr. Curtis Dahlgaard, an independent oil producer in the Kevin-Sunburst field, appeared and testified in support of the application. Mr. Dahlgaard said that water is very important to his business and that it needs to be delivered promptly when ordered. His experience with Big Chief Water Service has been generally good but there have been times when trucks and drivers were not available. In Mr. Dahlgaard's opinion, the drivers who work for Big Chief are generally less qualified than the Smiths and therefore require more supervision. Mr. Dahlgaard prefers the work that the Smiths do and believes there is a need for their services in the area. He has not inquired whether any certificated carriers other than Big Chief could meet his needs but believes that hiring a carrier from outside the area would be uneconomical. Mr. Dahlgaard stated that he operates only in Toole County and is not familiar with the services that Smith provides in other counties. Mr. Dahlgaard sponsored Exhibit No. 1, a graph based on statistics from the Montana Oil and Gas Commission which shows an increase in oil production from the Kevin-Sunburst field since 1979. He maintained that there is a relationship between increased oil production and increased need for water, though he admitted that the two cannot be correlated precisely.

11. Mr. Joseph Montalban, president of MSR Exploration Limited, an independent oil and gas producer in Pondera, Glacier and Toole Counties, appeared and testified in favor of the

application. He said that the service he has received from Big Chief has not been satisfactory and that his company has a need for the Smith Water Service. Mr. Montalban testified that, other than Big Chief, he was not familiar with the services of protestants and has not sought their services.

12. Mr. Adrian Walls, a resident of Oilmont and owner of A&G Drilling and A&G Oil & Gas Production, appeared and testified in support of the application. He indicated that he prefers Smith over Big Chief and used the Smith Water Service on three or four occasions in 1984. He said that the Smiths have a reputation in the oilfields for doing excellent work. Mr. Walls stated that he would be willing to use the services of the other protestants if he needed them and if they had trucks in the area. On cross-examination Mr. Walls admitted that, though he had had several bad experiences with Big Chief in the past, he could not comment on the quality of service Big Chief was providing at the present time, nor could he comment on the need for Smith Oilfield Water Service outside of Toole County.

13. Mr. Daniel O'Connell of Cut Bank, General Manager for Minden Oil and Gas in Montana, appeared and testified in support of the application. Mr. O'Connell manages 400 wells in the Kevin-Sunburst field and often has need for water service. He has had a bad experience with Big Chief and now uses the Smiths who have been cooperative and done quality work. Mr. O'Connell stated that he does not pay much attention to whether a carrier has a permit. His primary interest is to get water to a well when he needs it. If one of the protestant carriers were to station trucks in the area he would have no objection to using them. But he would use the Smiths first because they are local and have provided reliable service in the past. Mr. O'Connell said that he foresees an increasing need for water in the area and is concerned that there be enough trucks available.

14. Mr. Jay Everett, operator of an oil reclamation facility in the Kevin-Sunburst field, appeared and testified in support of the application. Mr. Everett had a bad experience with Big Chief and has not returned to them for further service. At the time of the hearing he had had no need for water service; but he anticipated such need in the future and testified that he would call the Smiths because he considers their service first rate. Mr. Everett has not heard of Zimmerman trucking; he has dealt with Matador on one occasion and found the service unacceptable.

15. Mr. Thomas Seymour of Sunburst, Montana, a contract pumper and field representative for Kassa Oil and Gas, appeared and testified in support of the application. Mr. Seymour stated that in the course of his business he has had occasion to use Big Chief Water Service. He indicated that when he could contact Big Chief their service was first class but they were often unavailable. Mr. Seymour further indicated that when Big Chief was unable to respond he has called Smith and received excellent service. When asked to compare Big Chief with Smith, Mr. Seymour responded that Smith Water Service was both more available and provided faster service. He concluded that there was a definite need for a water hauler such as Smith in Toole County. Further, he indicated a strong preference for local truckers over those from outside the area.

16. Mr. Hank Coolidge from Sunburst, Montana, owner of an oilfield construction company, appeared and testified in support of the application. He said that his company does work in Liberty, Pondera, Toole and Glacier Counties. Because he had several bad experiences with Big Chief, he indicated that he now uses Smith. He said that he is satisfied with the service the Smiths provide and that there is a need for their services in the area. Like Mr. Seymour, Mr. Coolidge

prefers local carriers, but if he had no choice he would use the services of other carriers such as Zimmerman or Matador.

17. Mr. Fred Walters of Cut Bank, president of Montana Oilwell Cementers, Inc., appeared and testified in support of the application. Mr. Walters stated that he has received generally suitable service from Big Chief. However, he also indicated that the trend in the area is to use other carriers, like Smith, because they provide generally faster and more efficient service. He indicated that his business could not operate without adequate water service and therefore declared his support for the Smith application.

18. Mrs. Connie Everett, who, along with her husband, owns an oil well consulting firm, appeared and testified in support of the application. Mrs. Everett indicated that she has dealt with both Big Chief and Smith Water Service and has come to rely on Smith because Big Chief has often been unsatisfactory. She stated that Big Chief is often unavailable to perform the service required. Further, she believes that the service provided by the Smiths is necessary to her business.

19. Mr. T.C. Everett of Cut Bank, a consulting engineer for Northern Montana Oil Services, appeared and testified in support of the application. He indicated that he has extensive background in the oil business, having done oil engineering work in the Northern Montana area for 21 years. Mr. Everett testified that until two years ago he used Big Chief Water Service but that since that time he has used Smith. He said that it was often difficult to contact Big Chief, that their trucks were often unavailable, and that they provided slow service. On the other hand, he said that the Smiths were nearly always available and performed fast and efficient service. He opined that the Smith Service is necessary to the oil business in the area. As with previous shipper witnesses, he indicated that he would give priority to local carriers over those from outside the area. Mr. Everett

stated that his company did the bulk of its work in Liberty, Glacier, and Toole Counties but that on occasion it operated in Hill and Pondera Counties as well. The ability of a carrier to perform a required service, rather than the legal authority to perform the service, is of primary concern to Mr. Everett.

20. Mr. Carl Joseph Jansky, an independent oil producer in the Northern Montana area for 40 years, appeared and testified in support of the application. Mr. Jansky indicated that he has used both Big Chief and Smith in the course of his business. He stated no preference for one over the other. However, he gave as his opinion that there is a need for another certificated water carrier in the Kevin-Sunburst area. Mr. Jansky's wells are all located in Toole County.

Testimony of Protestants

21. Mr. Gary Feland, owner of Big Chief Water Service, appeared and testified in opposition to the application. Mr. Feland has a Class B certificate of authority to operate in Glacier, Hill, Pondera, Liberty, and Toole Counties. He does not believe that there is a need for another certificated carrier in the area. Big Chief has eight water trucks of which three are active in the oilfields. The others are either idle due to lack of business or are employed in other projects. Mr. Feland contends that Big Chief has been losing business as a result of unauthorized haulers in the area. He noted that the last year his company earned a net profit was 1982. But he admitted that Smith does not charge less than Big Chief so that cost is not a factor in shipper preference for Smith. On the question of availability, Mr. Feland said that he provides a list of his drivers to his steady customers, so that if Big Chief is not open the drivers can be contacted directly at home. His drivers are experienced and receive on-the-job training.

22. Mr. Paul Behm, vice-president of operations for Power Fuels, Inc., appeared and testified in opposition to the application. Power Fuels is a Class B certified carrier in the State of Montana; three of its trucks are located in Sidney, Montana. Mr. Behm said that Power Fuels has solicited business in the area which Smith seeks authority to service, but has never actually provided service in the area. He further said that Power Fuels has trucks that are idle and that if there were enough business it would operate out of Shelby and hire local people. However, Power Fuels would have to reconsider stationing trucks in the Shelby/Cut Bank area if the Smith application is granted. Mr. Behm indicated that Power Fuels would have been willing to let the Smiths lease on to its authority.

23. Mr. Behm testified that he and another employee of Power Fuels travelled to the Shelby/Cut Bank area in order to survey the potential for water hauling and to solicit business. Mr. Behm sponsored the following exhibits:

1. A sheet showing the companies in the Shelby/Cut Bank area that Power Fuels contacted in the course of the above noted business survey.
2. A document showing the terminal locations that Power Fuels has in Montana and North Dakota, along with advertisements for its services that Power Fuels has run in various publications.
3. A record of the survey that Power Fuels conducted in the Shelby/Cut Bank area.

Power Fuels did not receive any requests for service as a result of the survey and solicitation.

24. Representatives of Protestants Matador Service, Inc. and Zimmerman Trucking, Inc. did not testify at the hearing but it was stipulated by all parties that the content of their testimony would have been as follows: 1. Both have the necessary operating or trucking equipment to perform the described service. 2. Both have terminal facilities, Matador's located at Sidney, Montana;

Zimmerman's at Poplar, Montana. 3. Both would now have to respond for service calls from those terminals, it taking Zimmerman five hours and Matador eight hours from the time of departure. 4. Both would station equipment in the Shelby/Cut Bank area if sufficient business were available to support the equipment on an economical basis. 5. Both have the necessary certificated authority issued to each of them by the PSC to perform the service proposed by the Applicant. 6. Both Matador and Zimmerman Trucking purchased their operating authority.

DISCUSSION, ANALYSIS AND FINDINGS

25. A threshold determination to be made by the Public Service Commission in ruling on an application for a Certificate of Public Convenience and Necessity is whether the applicant is fit, willing, and able to provide the service. Several factors need to be considered in making this determination: first, the financial condition of the applicant; second the intention of the applicant to perform the service sought; third, the experience of the applicant in conducting the service sought; fourth, the adequacy of the equipment the applicant has to perform the service; fifth, whether the applicant has in the past performed illegal operations. The present application does not present an issue with respect to the first four factors. Smith Oilfield Water Service is in sound financial condition and the Smiths fully intend to perform the service sought upon the granting of their application. Further, the experience of the Smiths in the oilfield water business is unquestioned, as is the adequacy of their equipment to perform the service. However, the fifth factor, concerning past illegal operations of the Applicant, presents serious questions about the fitness of this applicant and needs to be fully discussed.

26. The Smiths operated their oilfield water service for over ten years before learning that they need authority from the Public Service Commission. This good faith illegal operation does not disqualify the Smiths in their attempt to gain authority. In fact, a record of these operations can be used as evidence of need for the services provided.

27. However, the Smiths continued to operate illegally after being informed that they did not have the requisite authority. Such bad faith illegal operation is a very serious matter and has been found on occasion to justify a finding of unfitness without further consideration of the applicant's case. See e.g., H.R. Ritter Trucking Co., Extension, 111 M.C.C. 771 (1970); and Antietam Transit Company, Inc., Common Carrier Application, 84 M.C.C. 459 (1961). This Commission expressed its opinion of bad faith illegal operation in the Application of Power Fuels, Inc., Docket No. T-4986, Order No. 3038, when it wrote that "evidence of knowledgeable illegal operations casts a serious doubt as to whether Applicant is fit to provide the proposed service should this application be granted."

28. Despite our strong condemnation of bad faith illegal operations, this Commission does not take the inflexible position that such operations are automatic grounds for denial of an application. Rather, we consider past willful misconduct as one element in assessing an applicant's present and future fitness. This position is in accord with that taken by the I.C.C. See Armored Carrier Corporation v. United States, 260 F.Supp. 612, 615 (1966). As noted above, in Ritter and Antietam the I.C.C. has found willful illegality a bar to a grant of authority. But in other cases, with different facts, it has found the reverse. See e.g. B.D.C. Corporation, Extension-Five Counties, 99 M.C.C. 126 (1965); and Howard Sober, Inc., Extension-Variou States, 83 M.C.C. 361 (1960). We find that when determining the fitness of an applicant who has engaged in willful illegality, two

things need be considered: 1) the severity and circumstances of the illegal conduct and 2) the public interest in the prospective service. In both B.D.C. Corporation and Howard Sober, supra, the I.C.C. found the willful illegalities minor compared with the public interest in the anticipated service. Therefore, it ruled that sound economic regulation justified findings of fitness and the granting of the applications. By contrast, in our order in Power Fuels, we found that a sophisticated carrier, knowledgeable of public service regulations, willfully violated those regulations. To overcome such misconduct a clear, if not overwhelming, case for public convenience and necessity would have to be made. No such case was made in Power Fuels and the application was denied.

29. In this case the circumstances surrounding the illegal operations, and the public interest in having adequate oilfield water service in the five county area of the application, militates in favor of a finding of fitness. Smith Oilfield Water Service is a small, family owned, operation, unsophisticated in the ways of public service regulation. The Smiths began their business in 1972 as an adjunct of Joseph Smith's employment with Comanche Drilling Company. They complied with every business requirement of which they were aware. From 1972 to 1984, the year they were informed they needed PSC authority, the Smiths developed their water service business to the point that a significant percentage of their livelihood is derived from it. In addition, a sizeable number of shippers in the five county area have come to rely on their service. When the Smiths learned that they were operating illegally they continued service and immediately applied for authority. The fact that they continued service cannot be condoned, but it can and should be distinguished from the following, much more egregious forms of willful misconduct: 1) the situation in which a carrier, knowing that it needs and lacks authority, begins to operate, and then applies for authority, basing its case for public convenience and necessity on a bad faith illegal operation; and 2) the situation,

as in Power Fuels, where a carrier, experienced with public service regulation and in little danger of financial hardship due to possible delays in receiving legal authority, continues to operate in bad faith.

30. We note first that the evidence in support of the Smith application for a Class B Certificate of Public Convenience and Necessity is derived from over ten years of good faith illegal operation, and not from the few months of bad faith illegal operation. Second, as a small family operation the Smiths were unfamiliar with PSC regulatory requirements. Moreover, ceasing operation in order to be in complete compliance would undoubtedly have resulted in severe financial hardship. We do not believe that the Smiths deliberately set out to flout the authority of the Commission by continued operation. Rather, we think that a small carrier, unaware of potential legal consequences, continued to deliver service to customers who had come to rely on it. The alternative was hardship to the shippers and loss of substantial livelihood to the Smiths. These circumstances, when combined with the public interest in continued service to be discussed below, lead us to conclude that the Smiths are fit, willing, and able to provide the service applied for.

31. The next question is whether or not public convenience and necessity require that we grant the requested authority. Section 69-12-323(2), MCA, provides:

If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefore shall be issued.

In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation

service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

The questions to be considered in determining public convenience and necessity, implicit in the statute, were best stated in the case of Pan American Bus Lines Operation, 1 M.C.C. 190 (1936):

The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

1 M.C.C. at 203.

32. The first question, therefore, in determining public convenience and necessity, is whether there is shipper demand and need for the service applied for. The evidence is that there is significant need and demand for the Smith Oilfield Water Service. Eleven shipper witnesses testified in support of the application. All indicated that the Smiths provide a service that either has been, is, or will be crucial to their various oilfield operations.

33. The second question is whether this clearly expressed need can be satisfied as well by existing carriers. Most of the shipper witnesses indicated a strong dissatisfaction with the service of Big Chief Water Service, the local certificated carrier. This dissatisfaction is based on specific instances when Big Chief was either unable or unavailable to perform a requested service, or performed the service inefficiently. It may or may not be true that Big Chief has the capacity to provide the needed service. But the evidence indicates that Big Chief has not and therefore, it is reasonable to assume, will not meet the need. Even those witnesses who did not express disgruntlement at Big Chief's service, indicated that there was a need for an additional water service.

We find therefore that the need for water service in the five county area of the application will not be met by the local authorized carrier.

34. Several protests have come from carriers who are not local but who have authority to operate throughout the State of Montana. They argue that they are ready and willing to meet the water service need in the five county area of the application and that they would station trucks there if business required it. There is no question that these carriers could provide the same service as that proposed in the Smith application. The question is whether they would provide the service if the Smith application were denied. It is the opinion of the Commission that they would not. First, they all have their principal place of business in Eastern Montana or Western North Dakota, hundreds of miles and many hours driving time from North Central Montana. Second, none of these protestants has ever provided water service to the area in question and most of the shipper witnesses had never heard of them. This leads the Commission to question the desire of the protestants to market their services in the five county area of the Smith application. Third, all of the shipper witnesses indicated a need for timely and efficient water service. They indicated that the need for water is often unpredictable in the oilfields but that when it is needed it is needed urgently. Waiting for water delivery costs money and is therefore very harmful to marginal operations of the kind that several witnesses described. Obviously, the nonlocal carriers could not meet the water needs testified to with trucks dispatched from hundreds of miles away. And though the nonlocal carriers indicated a willingness to station trucks in the five-county area if there were sufficient business, the Commission is not convinced that such an arrangement would well serve the local shippers. As with most other businesses, the fortunes of the oil business fluctuate. A nonlocal carrier may be willing to station trucks in North-Central Montana when economic conditions are good. But when economic

conditions worsen, it is not unreasonable to expect that a nonlocal carrier would seek business elsewhere. The Commission is convinced from the testimony that the water needs of persons in the oil business in the five county area in question are best met by a carrier with strong local ties and commitments. The Commission is persuaded from the record that the Smiths will provide water service during good times and bad, and that the service they provide will not be duplicated by presently certificated carriers.

35. The final question to be considered is whether granting the Smith application would impair the operations of existing carriers contrary to the public interest. The nonlocal carrier protestants have never operated in the area of the Smith application. Obviously, therefore, granting the present application will not endanger operations that have never served, and have only perfunctorily sought to serve, the public interest in the area in question. With respect to Big Chief Water Service, the evidence indicates that any diminution of business it has suffered has not been the result of competition from Smith, but rather has resulted from its own unsatisfactory service. Several witnesses indicated that there is more than enough business to support both Smith and Big Chief. Thus, the Commission finds that granting the Smith application would not endanger Big Chief Water Service and would further the public interest.

36. Applicant has made a motion to strike the reply brief of protestant Power Fuels, Inc., on the grounds that it was submitted after the date stipulated to on the briefing schedule. The Commission feels strongly that in order to expedite the issuance of orders, all parties should submit their briefs according to schedule. However, in this case the Reply Brief of Power Fuels was submitted shortly after the agreed date, which did not delay the deliberative process of the

Commission, and therefore did not prejudice the applicant. Applicant's motion is consequently denied.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, MCA.
2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.
3. The Application does propose an operation that will serve a useful public purpose responsive to a public demand.
4. The foregoing public demand cannot satisfactorily be met by existing carriers and authorities.
5. The authority granted in this order will not endanger or impair the operation of existing carriers contrary to the public interest.
6. After hearing upon the application and after giving reasonable consideration to the effect of the proposed operation upon other transportation agencies, the Commission concludes from the evidence that public convenience and necessity require the authorization of the proposed service as described below. Section 69-12-323(2), MCA.

ORDER

NOW THEREFORE IT IS ORDERED that the Application in Docket No. T-8360 be granted. Applicant is granted the following authority:

Class B - Water, between all points and places in the following counties: Toole, Glacier, Pondera, Liberty, Hill.

IT IS FURTHER ORDERED that Applicant's Motion to Strike the Reply Brief of Power Fuels, Inc., is denied.

IT IS FURTHER ORDERED that the Applicant must within thirty (30) days of the mailing of the notice of the rights herein granted, comply with all rules and regulations of the Montana Public Service Commission.

Done and Dated this 7th day of February, 1986 by a vote of 3-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Commissioner and
Hearing Examiner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

ATTEST:

Acting 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.