

Service Date: February 7, 1986

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

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of Dave D. and Jannell A. Whitt,)	
d/b/a Whitt Construction Company)	DOCKET NO. T-8453
for a Class B Certificate of)	
Public Convenience and Necessity.)	ORDER NO. 5638a

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FINAL ORDER

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Pursuant to 2-4-621, MCA, a proposed order authorizing a partial 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 Applicants, 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;
appearing for Dave and Jannell Whitt, d/b/a Whitt Construction Company

FOR THE PROTESTANTS:

Edmund F. Sheehy, Jr., Cannon & Sheehy, 3021 Eleventh Avenue, Helena, Montana 59601;
appearing for Power Fuels, Inc., Vernon Justice, Zimmerman Trucking, Inc., and Matador,
Inc.

Marc G. Buyske, Aronow, Anderson, Beatty and Lee, Drawer D, Shelby, Montana 59474;
appearing for 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 November 16, 1984, the Commission received an application from Dave D. and Jannell A. Whitt, d/b/a Whitt Construction Company (Applicant), P.O. Box 233, Kevin, Montana 59454. In the application the Whitts seek a Class B Certificate of Public Convenience and Necessity to transport waste oil from tank bottoms for reclamation and disposal, and drilling fluids (water and

mud) between all points and places in Toole, Glacier, Pondera, Liberty, Teton, Flathead, Lake, Lincoln and Sanders Counties.

2. Formal protests were filed by Vernon Justice, d/b/a Oil Field Water Service, Matador Service, Inc., Zimmerman Trucking, Inc., Power Fuels, Inc., Big Chief Water Service, and Getter Trucking. Getter Trucking did not appear and was not represented at the hearing on the above application.

3. Following issuance of proper notice, the Commission conducted a public hearing to consider the application on Wednesday, March 13, 1985, in the Hospitality Room, Marias Electric Coop., 910 Roosevelt Highway, Shelby Montana. At the conclusion of the hearing it was agreed by all parties that the record in the Application of Smith Oilfield Water Service, Docket No. T-8360 be incorporated into the record of the present application. In addition, answers to Interrogatories from the Applicant to the Protestants were made part of the record.

SUMMARY OF TESTIMONY

Testimony of Applicants

4. Dave Whitt appeared and gave testimony in support of the application. Mr. Whitt explained that he has been working in general oilfield contracting in the Kevin-Sunburst field since 1975. In that capacity he prepares drilling sites and, after the wells are drilled, cleans up the sites and returns the ground to its normal state. Cleanup includes picking up waste fluids and disposing of them.

5. Until 1980 Dave Whitt had been employed by others. But in that year he and Rod Frost bought equipment and began their own business. Their business broke up in February of 1984

and Dave Whitt continued on his own. His equipment includes a Caterpillar crawler tractor with a backhoe, a tractor-trailer, and a 1958 White vacuum truck with a 46 barrel vacuum tank. Dave Whitt completely rebuilt the truck in 1980 and declared that it is in good condition.

6. Mr. Whitt claimed that he is available to do cleanup work on a seven day a week, twenty-four hour basis. His phone system is fixed so that a customer can always get through with a request. Mr. Whitt has a shop that is located in Kevin. He stated that his growing business indicates that there is a need for his service. He noted that time is money in the oil business and claimed he can provide faster service than Big Chief.

7. Mr. Whitt was informed in October of 1984 that he was operating illegally and needed to get authority from the PSC. He contacted the PSC immediately and filed an application for authority in November of 1984. However, he did not desist operations on being told they were illegal and his operations were continuing at the time of the hearing. He contended that he could not afford to shut down his operation pending a decision on his application.

8. Mr. Whitt stated that the bulk of his business is conducted in Toole County, but that he has also done work in Glacier, Pondera, and Liberty Counties. He admitted that he had never done any work in Flathead, Sanders and Lake Counties.

9. Jannell Whitt appeared and gave testimony in support of the application. Jannell is Dave Whitt's wife and does the bookwork and answers the phone for Whitt Construction Company. She testified that prior to the fall of 1984 she did not realize that a permit was needed from the PSC. She stated that upon so discovering, she has done everything possible to comply with the law.

Testimony of Shipper Witnesses

10. Mr. Steve Gardner, field supervisor for Madison Joint Ventures, an oil production company, appeared and testified in support of the application. Mr. Gardner has had occasion to use Big Chief Water Service and has found its service unsatisfactory. He stated that he would not use Big Chief for vacuum truck work because of poor service he has received from it on other types of work. In addition to the poor service, Mr. Gardner indicated that it is not economical for his company to pay for the travel time it takes Big Chief to respond from Shelby. Mr. Gardner stated that he has had good vacuum truck service from Whitt Construction Company. He had no opinion of the need for vacuum truck service outside Toole County.

11. Mr. Dan Mitchell, owner of Comanche Drilling Company, testified in favor of the application. Mr. Mitchell stated that his business is often in need of a vacuum truck in order to clean up an oil drilling site. The need for a vacuum truck is often unpredictable and time is very important when such a need arises. Mr. Mitchell uses Whitt Construction for vacuum truck work because Whitt also has a backhoe which is a big help in cleaning up a location. Mitchell assumes that Big Chief does reliable vacuum truck work, but he does not use them because they lack earth moving equipment. He stated that he believes there is a need for Whitt Construction, that it provides a unique service with its vacuum truck, Cat, and backhoe, and that Whitt is nearly always available. He admitted that he used the Whitts' service even after he knew that they lacked the proper authority.

12. Mr. Stuart Howell, president of Cavalier Petroleum of Shelby, appeared and testified in support of the application. He stated that there is a need for the Whitts' service in Glacier, Liberty, Toole, and Pondera Counties, though he admitted that his company has not required vacuum service

in either Glacier County or Liberty County. Like Mr. Mitchell, Mr. Howell considers the Whitts' combined service of vacuum work and dirt moving invaluable and unique in the area. He believes Dave Whitt is competent and qualified to do the work. Mr. Howell has used Big Chief for vacuum service and found the work satisfactory. However, he considers the Whitts' service more efficient and economical, both because they can provide a dual service, and because they are more conveniently located and require less travel time.

13. Mr. Curt Dahlgaard, an independent oil producer from Oilmont, Montana, testified in favor of the application. Mr. Dahlgaard works in Toole County but has considered leases in Glacier and Pondera Counties as well. He has used the Whitts' vacuum truck service and feels there is an economic need for the service they provide. Like Mr. Howell, Mr. Dahlgaard mentioned the Whitts' convenient location, the ability to contact them with a request for service, the combined service provided, and Dave Whitt's knowledge of oilfield operations as reasons for supporting the application. Mr. Dahlgaard stated that his only criticism of Big Chief is that they are occasionally difficult to contact.

14. Mr. Paul Coolidge, an independent oil producer from Sunburst, Montana, appeared and testified in support of the application. He has used Whitt Construction Company and does not know of another business in the area that provides a similar service. For the reasons mentioned by previous shipper witnesses, Mr. Coolidge believes there is a need and necessity for Dave Whitt to be permitted to continue his work. He stressed especially the need for the rapid service Whitt provides in cleaning up oil spills. Mr. Coolidge stated that he had not used Big Chief's vacuum truck service and could not say that it was inadequate. He maintained that neither Zimmerman, Matador, Power Fuels, nor Vernon Justice had ever contacted him concerning vacuum work.

15. Mr. Paul Nichols, an independent oil producer and owner-operator of a Conoco bulk plant in Sunburst, Montana, testified in favor of the application. He stated that he has used the Whitts' vacuum truck and cleanup services, and that there is a need for those services in the Kevin-Sunburst field. The need is especially urgent for small, marginal operators. Mr. Nichols said that he has lived in the Kevin-Sunburst area since 1949 and was not aware that Big Chief had a vacuum truck. He indicated that his reasons for preferring the Whitts are that they are easy to contact and are conveniently located. Mr. Nichols only needs the Whitts' services in Toole County, and needs a vacuum truck only three or four times a year.

16. Mrs. Connie Everett of Cut Bank, Montana, co-owner of Northern Montana Oil Services, appeared and testified in support of the application. Mrs. Everett testified that she has had a very difficult time contacting Big Chief and for that reason prefers to use the Whitts. Other than Big Chief, Mrs. Everett has not used any of the Protestants' services. She could not say that these Protestants were unavailable but maintained that it would be uneconomical to bring in nonlocal carriers. She stressed that proximity is a major reason for supporting Whitt.

17. Mr. Harry Knaup of Kevin, a pumper/producer for Quinque Oil, testified in support of the application. He stated that he uses Dave Whitt when he needs vacuum trucks because Whitt is available, knows the oilfields, and does not have to be supervised. He believes that there is a need for the Whitts' services in the Kevin-Sunburst area, and knows of no company that can provide the same service. Mr. Knaup admitted that he had never used Big Chief and was not aware that it had a vacuum truck; he therefore could not testify that Big Chief provides inadequate service.

18. Mr. Chris Owen of Cut Bank, co-owner of Rimrock Drilling Company, testified in favor of the application. Mr. Owen stated that vacuum truck service is important to his business.

He uses the Whitts because of their proximity to his wells and the combined vacuum truck, earth moving service they provide. He indicated that he has never used Big Chief and does not know of the need for vacuum travel service outside of Toole County.

19. Mr. John Alstad of Sunburst, Montana, owner of Boone Manufacturing, appeared and spoke on behalf of the application. He stated that the Kevin-Sunburst area has need of the services Dave Whitt provides.

20. Mr. Duane Enneberg, a welder from Kevin who has four producing wells, appeared and testified in support of the application. He stated that he has a need for prompt and responsive vacuum truck service. He has used Dave Whitt and believes there is a need for the services he provides. Mr. Enneberg could not comment on the service that Big Chief provides but stated that his preference for the Whitts was due to their proximity to his wells.

21. Mr. Henry Alme of Cut Bank, Montana, owner of Alme Construction, appeared and testified in favor of the application. Mr. Alme's primary business is laying pipe lines but he also does oilfield maintenance work. He indicated that he has done work all over the State of Montana. On the occasion when a pipe breaks in the oil fields, it is important to have a vacuum truck close at hand. The Whitts' vacuum truck is strategically located in the Kevin-Sunburst field. Mr. Alme stated that he has used Dave Whitt and received good service. He also stated that he has used Big Chief on numerous occasions and has no complaints about the service. When there is an oil spill that Mr. Alme needs cleaned up, he calls the closest available equipment. He would have no hesitation about using another carrier if it were to locate in the area.

22. Mr. Hank Coolidge of Sunburst, owner of Oilfield Construction Company, appeared and testified in support of the application. Mr. Coolidge stated that he often needs a vacuum truck

in his business. He explained that he calls Dave Whitt for vacuum truck work because Whitt is close and provides good service. He does not call Big Chief because of the time and expense involved in getting a truck out from Shelby. Mr. Coolidge has used the Whitts' vacuum truck service in both Glacier and Toole Counties.

Testimony of Protestants

23. All parties agreed that the testimony of Mr. Gary Feland in the application of Smith Oilfield Water Service could be incorporated into the record in the present case. Mr. Feland is the owner of Big Chief Water Service. In addition to water trucks, Big Chief operates three vacuum trucks. Mr. Feland testified that his business has been hurt due to the operations of noncertificated carriers; he stated forcefully that Big Chief is available to provide the service that the Whitts have been providing and that there is not a need for another certificated carrier in the area in question.

24. A 1975 letter to Mr. Melvin Fugle from Mr. Richard Beatty was introduced into evidence as Big Chief's Exhibit No. 1. Mr. Fugle, a vacuum truck operator from Cut Bank sought advice from Mr. Beatty, an attorney from Shelby, on the question of whether Mr. Fugle needed a motor carrier permit. It was Mr. Beatty's opinion that since Mr. Fugle primarily did cleanup work he did not need a permit. When Dave Whitt learned that he might need a permit for his operation, he contacted Mr. Fugle who assured him, based on this letter, that a permit was not required. Dave Whitt relied on this assurance and continued operating.

25. The testimony of Mr. Paul Behm of Power Fuels, Inc., given in the hearing on the Application of Smith Oilfield Water Service was incorporated into the present record. Implicit from that testimony is that Power Fuels has vacuum trucks and is willing and able to provide the service

anticipated in the Whitt Application. Power Fuels has, however, never provided vacuum truck service in North Central Montana.

26. Representatives from Protestants Matador Service, Inc., Zimmerman Trucking, Inc., and Vernon Justice did not appear at the hearing. However, it was agreed that their testimony would have been as follows: 1. All have the necessary operating or trucking equipment to perform the described service. 2. All have terminal facilities: Matador at Sidney, Montana, Zimmerman at Poplar, Montana, and Justice at Dagmar, Montana. 3. All at the present time would have to respond to service calls from those terminals. 4. All would station equipment in the Shelby-Cut Bank area if sufficient business were available to support the equipment on an economical basis. 5. All have the necessary authority to perform the service proposed by the Applicant.

DISCUSSION, ANALYSIS AND FINDINGS

27. An initial determination to be made by the 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 are considered in making this determination: 1) the financial condition of the applicant; 2) the intention of the applicant to perform the service sought; 3) the experience of the applicant in conducting the service sought; 4) the adequacy of the equipment the applicant has to perform the service; 5) 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. Whitt Construction is sound financially and the Whitts intend to perform the proposed service upon the granting of their application. Further, the experience of Dave Whitt in the oilfield vacuum truck business has not been seriously questioned, nor has the adequacy of his equipment to perform the

service. However, the fifth factor, concerning past illegal operations of an applicant, presents serious questions about the fitness of these Applicants and needs to be considered.

28. Dave Whitt operated an oil well site cleanup/vacuum truck business for nearly five years before he was informed that he needed authority from the Public Service Commission. A record of these good faith illegal operations can be used as evidence of a need for the services provided.

29. However, after being informed in October of 1984 that they needed authority, the Whitts continued to operate illegally. Such bad faith illegal operation is a very serious matter and has been found 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 operations⁵ casts a serious doubt as to whether Applicant is fit to provide the proposed service should this application be granted."

30. 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.

31. In this case the circumstances surrounding the illegal operations, and the public interest in having adequate oil well site cleanup and vacuum truck service, militates in favor of a finding of fitness. Whitt Construction is a small husband and wife operation, obviously unsophisticated in the ways of public service regulation. From 1980 to 1984 Dave and Jannell Whitt developed Whitt Construction into a sound business, relied upon by numerous shippers. When they learned that they were operating illegally they continued service, but immediately applied for authority. The fact that they continued service cannot be condoned, but it can and should be distinguished from the following, more egregious forms of willful misconduct: 1) the situation where 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; 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.

32. We note first that the evidence in support of the Whitts' application is derived from over four years of good faith illegal operation, and not from the few months of bad faith illegal operation. Second, as a small husband and wife operation the Whitts were unfamiliar with PSC regulatory requirements. Moreover, ceasing operations in order to be in complete compliance would undoubtedly have resulted in severe financial hardship. We do not believe that the Whitts 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 livelihood to the Whitts. These circumstances, when combined with the public interest in continued service to be discussed below, lead us to conclude that the Whitts are fit, willing, and able to provide the service applied for.

33. 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.

34. 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 vacuum truck and oil-well site cleanup service of Whitt Construction. Thirteen shipper witnesses testified in support of the application. Twelve of the thirteen said that they had used Whitt Construction and found the service excellent. Further, they indicated that the combined vacuum truck/earth moving service that Whitt provides is unique to the area. This, combined with the proximity of the Whitts to the oilfields, makes using their services economical. There is no question that the Whitts provide a service that is crucial to numerous oilfield operations.

35. The second question is whether this clearly expressed need can be satisfied as well by existing carriers. Several of the shippers indicated that they have been dissatisfied with the service of Big Chief Water Service, a certificated carrier out of Shelby. Most, however, indicated that it is not economical to use Big Chief because of travel time required from Shelby to the oilfields.

Whitt Construction is more strategically located, and, in addition, can provide the earth moving equipment that is often needed in conjunction with a vacuum truck. Big Chief does not provide earth moving equipment. The evidence indicates that, because of distance and lack of equipment, Big Chief has not and cannot meet the needs expressed by the shippers in a convenient and economical manner. We find therefore that the need for vacuum truck/cleanup service will not be met by Big Chief Water Service.

36. Several protests have come from carriers who operate far from the area served by Whitt Construction but who have authority to operate throughout the State of Montana. These carriers argue that they are ready and willing to meet the vacuum truck needs of shippers in the 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 vacuum truck service proposed in the Whitt application. The question is whether they would provide the service if the Whitt 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, these nonlocal Protestants have provided minimal, if any, service to the area in question. Few shipper witnesses had heard of them. This leads the Commission to question the desire of the Protestants to market their services in the area of the application. Third, most shipper witnesses indicated a need for timely and economical vacuum truck service. They noted further that the need for a vacuum truck is often unpredictable, placing a premium on a service that is local and available. Most shipper witnesses stressed the importance of minimizing the travel time required for vacuum truck service.

37. Obviously, nonlocal carriers could not meet the needs testified to with vacuum trucks dispatched from hundreds of miles away. Though the nonlocal carriers indicated a willingness to station trucks in the area served by the Applicant if there were sufficient business, the Commission is not convinced that this 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 a distant location when economic conditions there 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 vacuum truck needs of persons in the oil business in the area in question are best met by a carrier with strong local ties and commitments. The Commission is persuaded from the record that the Whitts will provide vacuum truck/cleanup service during good times and bad, and that the service they provide will not be duplicated by presently certificated carriers.

38. The final question to be considered is whether granting the Whitts' application would impair the operations of existing carriers contrary to the public interest. Since the nonlocal Protestants have never served the area which the Whitts serve, it is difficult to envisage how granting the present application would damage their operations contrary to the public interest. With respect to Big Chief Water Service, the evidence indicates that if its vacuum truck business is underutilized, it is the result of location, lack of earth moving equipment, and less than satisfactory business practices. The Commission does not find that granting the present application would imperil Big Chief Water Service. Rather, we find that there is enough vacuum truck business to support both Big Chief and Whitt, in furtherance of the public interest. The evidence does not establish that the

shortage of vacuum truck work which Big Chief suffers at present is a result of competition from Whitt Construction.

39. 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, 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-8453 be granted. Applicant is granted the following authority:

Class B - Waste oil from tank bottoms for reclamation and disposal, and drilling fluids (water and mud), between all points and places in the following counties: Toole, Glacier, Pondera, Liberty, and Teton.

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

IT IS FURTHER ORDERED that Applicants 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 in Open Session 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.