

Service Date: September 16, 1985

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 DAN B. TURCOTTE, Billings,	)	
Montana, for a Class B Certificate	)	DOCKET NO. T-8746
of Public Convenience and	)	
Necessity.	)	ORDER NO. 5619a

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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 August 21, 1985. No exceptions, briefs or requests for oral argument have been received. Therefore, the Commission adopts the proposed order as its final order in this matter.

APPEARANCES

FOR THE APPLICANT:

Dan B. Turcotte, 1528 St. John Ave., Billings, Montana, 59101,  
appearing on his own behalf

FOR THE PROTESTANT:

Manley Gauger, 2015 Montana Avenue, Billings, Montana 59101,  
appearing on behalf of City Delivery and Transfer

FOR THE COMMISSION:

Timothy R. Baker, Staff Attorney, 2701 Prospect Avenue,  
Helena, Montana 59620

BEFORE:

TOM MONAHAN, Commissioner and Hearing Examiner

BACKGROUND

1. On March 28, 1985, the Commission received an application from Dan B. Turcotte, 1528 St. John Avenue, Billings, Montana 59101. Applicant seeks a Class B Certificate of Public Convenience and Necessity, to authorize the transportation of pianos and organs between all points and places within the City of Billings, Montana and a fifty (50) mile radius thereof.

2. Following issuance of notice, the Commission conducted a public hearing to consider the application on July 31, 1985, at the Parmly Library, 510 North Broadway, Billings, Montana.

3. At the hearing, the Applicant testified and presented the testimony of one shipper witness, Mr. Sy Zabrocki. One protestant appeared at the hearing, Mr. Manley Gauger of City Delivery and Transfer. All witnesses made prepared statements to the hearing examiner. It did not appear that cross-examination of any of the witnesses was required for a "full and true disclosure of the facts," Section 2-4-612(5), MCA. Further, a hearings examiner is encouraged to avoid unnecessary cross examination. Northern Plains

Resource Council v. Board of Natural Resources, 181 Mont. 500 (1979).

SUMMARY OF TESTIMONY

Testimony of Applicant:

4. Dan B. Turcotte appeared and testified in support of the application. In addition to being a microbiologist, Mr. Turcotte has been moving pianos on a part-time basis for five years. This is a service he has performed for several dealers in the Billings area, including Zabrocki Pianos.

5. The Applicant testified that he proposed, and sought authority only to move pianos and organs. In this regard, he would offer both weekend and evening service, which was not offered by other carriers in the Billings area.

6. The Applicant further stated that moving pianos and organs is a specialized service requiring a particular knowledge of pianos. The Applicant testified that as a result of his experience, he possesses such knowledge. Many larger cities have carriers which specialize in this service.

7. The Applicant also testified that he has the support of many piano dealers in the Billings area, and that all of these dealers had experienced problems with the use of existing carriers for the movement of pianos and organs.

Testimony of Shipper Witness:

8. Sy Zabrocki, owner of Zabrocki Pianos, Piano Tuning and Sales, Billings, appeared and testified in support of the application. Mr. Zabrocki testified to the unique nature of moving pianos and organs. He has been in piano sales for 27 years. In that time, he has been involved in moving hundreds of pianos and organs. To be properly moved, most pianos or organs need to be disassembled at least in part. To prevent damage to the piano or organ from disassembly, special knowledge is required as to how they are constructed.

9. Mr. Zabrocki further testified that the Applicant has moved pianos for him on several previous occasions. Mr. Zabrocki stated that he has no complaints regarding the Applicant's services. Further, he has not heard of any complaints or objections regarding the Applicant's services either from customers or other dealers. The Applicant is competent and possesses the special knowledge required to properly move pianos and organs.

10. Mr. Zabrocki also stated that he would not hire any local carriers to move pianos. In his opinion, the local movers do possess the proper equipment, but do not have the requisite special knowledge. Mr. Zabrocki testified that because of this inadequacy he has not used any local movers in over eight years. Further, he stated that he sells several pianos and organs every week, each of

which must be moved. Many of these items cost in excess of \$8,000, and require special care. He also stated that local movers will not work on weekends, and most will not work evenings.

11. Mr. Zabrocki testified that several years ago, he hired PDQ of Billings, to move a piano for him. The employees that PDQ sent to move the piano did not possess the special knowledge of piano construction required to facilitate a move that would not damage the piano. As a result, Mr. Zabrocki stated that he was forced to spend several hours of his time supervising the movers, so that the move would be accomplished properly. Mr. Zabrocki further stated that this lack of expertise and competence in moving pianos and organs was typical of the other carriers that he had experienced in the Billings area.

12. Mr. Zabrocki also stated that for the most part, standard moving equipment would be required to properly move a piano or organ. A van or truck would also be needed. The Applicant possesses all of the needed equipment, as did the local movers.

#### Testimony of Protestant

13. Manley Gauger, d/b/a City Delivery and Transfer, Billings, Montana, appeared and testified in opposition to the application. Mr. Gauger operates under PSC Certificate No. 1571 authorizing transportation of Class B (Sub A), household goods in the immediate Billings area. Mr. Gauger briefly described his

operation and stated that there are as many as eight other local movers in the Billings area who are competent and qualified to move pianos.

14. Mr. Gauger testified that he has moved many pianos and organs in 50 years of service to the Billings area. He stated that he still moves at least one piano or organ a week, and that City Delivery averages at least two moves per day. The only complaints he has received were in regard to cost. Mr. Gauger also testified that he was competent and available to move pianos or organs in the Billings area. Further, Mr. Gauger stated that quite a few years ago, he had moved several pianos for the shipper witness, Mr. Zabrocki and Zabrocki Pianos.

#### DISCUSSION, ANALYSIS AND CONCLUSION

15. An applicant desiring to transport pianos and organs as a Class B carrier is required to obtain a certificate of public convenience and necessity from the Commission. Sections 69-12-311 through 69-12-313, MCA.

16. The Commission must consider several factors in reviewing an application for a Certificate of Public Convenience and Necessity. In this regard, 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.

17. The Commission has broken this concept down into three standards which are to be applied in considering applications for Class B operating authority, as follows:

- (a) First, the Commission must determine that "public convenience and necessity require the authorization of the service proposed." This necessarily will include consideration of the existing service.
- (b) Second, the Commission must consider the ability and dependability of the Applicant to meet any perceived additional public need.
- (c) Third, the Commission must consider the impact that the proposed service would have upon existing transportation services. (Order No. 4296, Finding No. 59; Docket No. T-6167a.)

18. Finally, the decisions of the Commission as to each of these standards must be based upon competent substantial evidence. Thus, in order for the requested authority to be granted, it is incumbent upon the Applicant to meet this burden as to standards (a) and (b). Likewise, the Protestants must satisfy the burden of proof as to standard (c).

19. By the analysis described above, the first step is to consider the public convenience and necessity. This necessarily includes consideration of existing services. The Applicant testified that local movers would not move pianos or organs on evenings or weekends. This contention finds support in the testimony of Mr. Zabrocki. Mr. Zabrocki stated that none of the local carriers were competent to move pianos or organs, and that he had not hired a local mover in eight years. Mr. Zabrocki testified that the local carriers possessed the necessary equipment to properly move pianos and organs, but did not have the requisite specialized knowledge of construction to prevent damage. Both the Applicant and Mr. Zabrocki stated that they knew of several other dealers who had complaints about the local carriers. However, this is not competent evidence for the Commission to consider, as it is based upon hearsay. Further, Mr. Zabrocki stated that he sells several pianos and organs every week, each of which has to be moved. Some of these items cost in excess of \$8,000, and require special care. Mr. Gauger testified that his operation has moved many pianos and

organs during his 50 years of service in the Billings area. He also stated that aside from cost, he had never had any complaints about his service, and therefore considered his operation to be competent in moving pianos and organs. Mr. Gauger also testified that in the past, he had moved several pianos for Mr. Zabrocki, and had not received any complaints. Further, Mr. Gauger stated that there are as many as eight other local movers in the Billings area who were competent and qualified to move pianos.

20. The Applicant has presented sufficient evidence upon which to base a finding of public convenience and necessity. The Applicant and his shipper witness, have established a need for a specialized service in the Billings area, namely, the transportation of pianos and organs. The Applicant and Mr. Zabrocki both testified to the specialized knowledge that is required in order to facilitate a proper move, without resulting damage. Mr. Zabrocki has not used local movers in over eight years, and presented a specific instance illustrating the need for such a specialized service in the Billings area. In addition, Mr. Zabrocki was the only disinterested witness to testify at the hearing, and his testimony is entitled to significant weight. Although certainly not overwhelming in nature, this evidence is enough to satisfy the Applicant's burden. In this case, the Applicant is proposing to offer only a very specialized service in a limited area. Accordingly, all that needs to be established is

a public need for the specialized service. See Application of Martinez, 78 M.C.C. 25. In that regard, the Applicant has met his burden. The Protestant witness, Mr. Gauger, stated that many years ago he had moved several pianos for Mr. Zabrocki, and had not received any complaints. Mr. Zabrocki stated that he had not used local movers in over eight years. Further, he stated that his experiences with local carriers convinced him that they did not possess the specialized knowledge of pianos and organs required to properly transport them. It is clear then, that Mr. Zabrocki did not consider the Protestant, City Delivery and Transfer, to be competent in this area.

21. Second, the Commission must consider the ability and dependability of the Applicant to meet any perceived additional public need. The Applicant proposes to also offer both evening and weekend service, which according to both the Applicant and Mr. Zabrocki, is not presently available with the local movers. In addition, Mr. Zabrocki testified that the Applicant possesses all of the equipment required to properly move pianos and organs. Further, he testified that the Applicant was competent and possesses the required knowledge of pianos and organs. Mr. Zabrocki also stated that he has never had any complaints regarding the Applicant's services. None of this testimony was challenged. Mr. Gauger testified that he still moves at least one piano each week. From the record, it is evident to the Commission

that the Applicant has the equipment and knowledge to meet the public need. The Applicant is also offering his specialized service to the public at times which are presently not filled by the existing carriers. Overall, given the limited nature and requirements of the Applicant's proposed operations, the Commission finds that the Applicant has satisfied this standard.

22. Third, the Commission must consider the impact that the proposed service would have upon existing transportation services which would be contrary to the public interest. When the Applicant has met the required burden of proof as to the first two standards, the burden shifts to the Protestants to establish this element. Of the eight carriers in the Billings area with authority to move pianos and organs, only one, City Delivery and Transfer, appeared to protest. Mr. Gauger testified that City Delivery still moves at least one piano or organ each week. Mr. Gauger further stated that City Delivery averages at least two moves per day. This evidence was not contradicted. The Commission finds that granting the authority requested by the Applicant would not have a serious impact upon existing transportation services which would be contrary to the public interest.

CONCLUSIONS OF LAW

1. 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. Section 69-12-323(2), MCA, requires that "public convenience and necessity" be shown prior to the granting of additional operating authority.

4. Based upon the evidence in this record, the Commission finds that the Applicant has met his burden.

5. Applicant has demonstrated that Public Convenience and Necessity supports authorization of the proposed service in the requested area.

6. The authority granted in this order will not endanger or impair the operation of existing carriers contrary to the public interest.

7. After hearing upon the application and after giving reasonable consideration to the effect of the proposed operation on other transportation agencies, the Commission concludes from the evidence that public convenience and necessity require authorization of the proposed service. Section 69-12-323(2), MCA.

ORDER

NOW, THEREFORE, IT IS ORDERED that on the basis of 69-12-323(2)(a), MCA, the application for Class B authority to transport pianos and organs, filed by Dan B. Turcotte, is GRANT ED as follows:

Class B - The transportation of pianos and organs between all points and places within the City of Billings, Montana, and a fifty (50) mile radius thereof.

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.

Dated this 16th day of September, 1985 by a vote of  
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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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CLYDE JARVIS, Chairman

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JOHN B. DRISCOLL, Commissioner

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HOWARD L. ELLIS, Commissioner

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TOM MONAHAN, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Trenna Scoffield  
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.