

Service Date: January 20, 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 Marc W. Johnson, Ronan, Montana)	
for a Class D Certificate of)	DOCKET NO. T-8773
Public Convenience and Necessity.)	ORDER NO. 5664

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

M. Richard Gebhardt, Attorney at Law, 515 U.S. Highway 93 South, Ronan, Montana 59864

FOR THE PROTESTANT:

Robert Skelton, Attorney at Law, Skelton & Cooley, 127 East Main, Missoula, Montana 59801, appearing on behalf of Browning Ferris Industries of Montana, Inc.

Leonard Kaufman, Attorney at Law, Murray, Kaufman, Vidal & Gordon, P.C., Second West Centre, P.O. Box 728, Kalispell, Montana 59903, appearing on behalf of Evergreen Disposal

Richard Pinsoneault, Attorney at Law, P.O. Box 250, St. Ignatius, Montana 59865, appearing on behalf of Gary Plouffe, d/b/a Plouffe Disposal Service

Matthew H. O'Neill, Attorney at Law, Christian, McCurdy & Wold, P.O. Box 1172, Polson, Montana 59860, appearing on behalf of MacDonald Disposal

Verlan Smith, Box 337, Hot Springs, Montana 59845, appearing on his own behalf

Merle Cook, 1005 Three Mile Drive, Kalispell, Montana 59901, appearing on his own behalf

FOR THE COMMISSION:

Robert A. Nelson, Staff Attorney, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

HOWARD L. ELLIS, Commissioner & Presiding Officer
JOHN B. DRISCOLL, Commissioner
TOM MONAHAN, Commissioner

1. On June 7, 1985, the Commission received an application from Marc W. Johnson (Applicant), Route 1, Box 83, Ronan, Montana 59864. Applicant seeks to amend Certificate of Public Convenience and Necessity, PSC 1448, Class D, to read as follows: ashes, trash, waste, refuse, rubbish, garbage, organic and inorganic matter within the town of Ronan, Montana and between all points and places within a fifty (50) mile radius thereof.

2. Following issuance of notice, a public hearing was held to consider the application on August 15, 1985, in the Lake County Courthouse, Polson, Montana.

3. Marc Johnson appeared and testified in support of the application. Mr. Johnson is the owner of PSC No. 1448, and is authorized to transport ashes, trash, waste, refuse, rubbish, garbage, organic and inorganic matter, Class D, within the town of Ronan, Montana, and "to or from points tributary thereto," within a fifty mile radius. He filed the instant application upon discovering

that the wording of this certificate requires that the material transported be either picked up, or dumped, in Ronan. This interpretation excludes service to certain customers in the Flathead Lake area. Mr. Johnson sponsored the following exhibits:

1. Letter of support from Patrick E. Collins, on behalf of Custom Wood Products, Polson, Montana.
2. Letter of support from Terry Knupp, Regional Park Manager, Montana Department of Fish, Wildlife & Parks.
3. Certification of Support by Lilly Wooris, Sitting Duck, Woods Bay.
4. Certification of Support by Todd Olson, Manager of Diamond Horseshoe Lounge, Big Arm, Montana.
5. Certification of Support by Glenn W. Ross, Yellow Bay Store, Big Fork, Montana.
6. Certification of Support by Debra Fegler, Administrative Assistant, University of Montana Biological Station, Big Fork, Montana.
7. Letter of support from Richard E. Owings, Assistant Manager, Flathead Lake Cherry Growers, Finley, Point, Montana.
9. Certification of Support by T.L. M_____, Jette Meadows, Polson, Montana.
10. Certification of Support by Pat Sands, Manager, Jette Store, Polson, Montana.
11. Certification of Support by Frances Reid, Grizzly Fudge, Highway 93.
4. Glen Rogers, the prior owner of PSC No. 1448, appeared and testified regarding the

history of the Certificate. Paddy Trusler, Administrator of the Lake County Land Services Department, also appeared and testified regarding the history of landfills in the service area. In recent years, the number of landfills has been reduced to one, located at Kerr Dam.

5. Gary Plouffe, d/b/a Plouffe Disposal, and owner of PSC No. 3329, appeared and testified regarding his understanding that the Commission has no jurisdiction on Indian Reservations.

6. Merle Cook, Kalispell, appeared and testified regarding his opinion, based on past operating experience, that customers would ultimately suffer if another carrier were added in the area.

7. Sandra MacDonald, Polson, co-owner of PSC No. 1842, also appeared and testified in opposition to the application. Ms. MacDonald sponsored Exhibit No. 8, a letter from the PSC Transportation Division staff indicating that Marc Johnson's existing authority does not allow provision of garbage service north of Polson, unless returned to a landfill in Ronan.

DISCUSSION AND FINDINGS

8. The Commission must consider several elements in reviewing an application for a Certificate of Public Convenience and Necessity. The first consideration is the Applicant's fitness, i.e., whether or not it is a suitable carrier to operate in Montana. In this case, the Commission is assisted by the fact that Applicant has been operating a successful motor carrier operation for several years, and the proposed amendment does not significantly alter past operations. The Commission, therefore, finds Applicant fit to perform the proposed motor carrier operations.

9. The next general determination 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 concept has perhaps best been described in the landmark 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.

10. The first part of determining public convenience and necessity, then, is a consideration of shipper needs. In this case, no shipper witnesses presented testimony. Several letters and Certifications of Support were, however, admitted as exhibits without objection. One letter, for example, notes that Applicant's service is required as the most dependable in the area (Exhibit No. 1); another notes that Applicant's service was once the only option available for handling certain refuse (Exhibit No. 7). The Commission concludes that these several statements are sufficient to establish a minimal showing of unmet shipping needs.

11. Although at least one witness testified regarding the dangers of excess competition, no evidence was presented from which the Commission could conclude that the proposed operations would harm existing carriers in a manner inconsistent with the public interest.

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. Following hearing on the application the Commission concludes that public convenience and necessity require the grant of the application for amended authority.

ORDER

NOW THEREFORE IT IS ORDERED that the Application in Docket No. T-8773 be GRANTED. Applicant is granted the following amended authority under PSC No. 1448:

Class D - ashes, trash, waste, refuse, rubbish, garbage, organic and inorganic matter within the town of Ronan, Montana, and between all points and places within 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.

Done and Dated this 20th day of January, 1986 by a vote of 3 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Commissioner
& Presiding Officer

JOHN B. DRISCOLL, Commissioner

TOM MONAHAN, Commissioner

ATTEST:

Trenna Scoffield
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.