

Service Date: March 28, 1995

FINAL ORDER NO. 6360

**DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION
1701 Prospect Avenue, P.O. Box 202601
Helena, Montana 59620-2601**

**IN THE MATTER OF Browning-Ferris)
Industries of Montana, Inc., Missoula,)
Montana, application for a Montana) Docket No. T-93.140.PCN
Intrastate Certificate of Public) Order No. 6360
Convenience and Necessity.)**

The Commission, being fully advised in the premises, makes the following findings, conclusions and order:

FINDINGS OF FACT

1. On October 7, 1993, Browning-Ferris Industries of Montana, Inc., P.O. Box 8449, Missoula, Montana 59807, filed an application with the Montana Public Service Commission under Title 69, MCA, for a Certificate of Public Convenience and Necessity authorizing transportation of the following:

Class D - Garbage and recyclables in roll off box service and/or transfer trailer and recycling service from the Powell County Refuse District in Powell County to licensed landfills and recycling centers.

2. In accordance with Section 69-23-321, MCA, this matter was noticed to the public November 5, 1993. That notice said in pertinent part:

If no written protests are received by November 25, 1995, a hearing may not be held and a final order may be issued in this Docket. If a protest is received, a hearing will be scheduled. Individual notice of the hearing will be given only to Protestants and Applicant.

The application included affidavits of support.

3. A protest was filed by McGree Trucking, Inc.

4. On December 3, 1993, Applicant filed a Motion to Dismiss the protest. The Commission denied the motion.

5. The docket was notice for public hearing on February 18, 1994, with hearing scheduled for March 17, 1994, in Deer Lodge, Montana. The hearing was vacated at the request of the Applicant.

6. Applicant filed a conditional amendment of the application on March 15, 1994. Protestant responded to that amendment on March 30, 1994, indicating that the county attorney for Powell County would be filing descriptions of the solid waste districts. Final stipulations could not be filed prior to confirmation of district boundaries.

7. On December 17, 1994, Powell County provided a copy of the North Powell Solid Waste District description; however, they indicated a "more accurate" description would be provided at a later date.

8. On January 3, 1995, Applicant filed an amendment with the Commission restricting the proposed transportation by excluding transportation to points located within a ten (10) mile radius of Deer Lodge, Montana.

9. Protestant on March 8, 1995, filed a withdrawal of their protest to the docket, conditional upon Commission approval. At that time Protestant provided the Commission a copy of the solid waste districts located within Powell County.

10. The Commission notes that federal legislation effective January 1, 1995, preempts states' economic regulation of intrastate transportation of property. At this time, the intrastate transportation of recyclables is no longer regulated by the Montana Public Service Commission.

11. The record of this application is available for inspection at the Public Service Commission Office, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and subject matter in this proceeding.
2. The Commission afforded all parties interested in this proceeding proper notice and an opportunity to participate.
3. Public Convenience and Necessity require a partial grant of the authority sought by the Applicant.

ORDER

NOW THEREFORE, at a session of the Public Service Commission, Department of Public Service Regulation of the State of Montana, held in its offices at 1701 Prospect Avenue, Helena, Montana, on the 6th day of March, 1995, there being present a quorum of Commissioners, there came regularly before the Commission for final action the matters and things in Docket No. T-93.140.PCN, and the Commission being fully advised in the premises;

IT IS ORDERED by the Commission that the application of Browning-Ferris Industries of Montana, Inc., Missoula, Montana for a Certificate of Public Convenience and Necessity IS GRANTED to the following extent:

Class D - Garbage in roll off box service and/or transfer trailer service from the Powell County Refuse District in Powell County to licensed landfills.

Limitations: Transportation within the City of Deer Lodge, Montana and points within a ten (10) mile radius thereof is prohibited.

IT IS FURTHER ORDERED that a full, true and correct copy of this order be sent forthwith by first class mail to the applicant and all parties herein.

THE FOREGOING ORDER was adopted by the Department of Public Service Regulation of the State of Montana, Public Service Commission, IN OPEN SESSION at Helena, Montana, this 13th day of March, 1995, by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

NANCY McCAFFREE, Chair

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
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.