

A GUIDE TO ASSIST APPLICANTS WHEN APPLYING FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (PC&N) TO TRANSPORT HOUSEHOLD GOODS OR GARBAGE

This is a guide to assist applicants and potential applicants. While the PSC has made every effort to ensure that this guide conforms to the law of PC&N, the PSC does not claim that it is a comprehensive guide to all aspects of PC&N. Applicants with additional questions about motor carrier PC&N should research relevant statutory, administrative and case law, consult a private attorney, or contact PSC staff.

General procedural and substantive requirements applicable to motor carriers: The laws and rules governing motor carriers are found at Title 69, Ch. 12, MCA; Title 2, Ch. 4, MCA (MAPA); ARM Title 38, Ch. 3 (PSC Motor Carrier Rules); and ARM Title 38, Ch. 2 (PSC Procedural Rules).

Do I need to obtain Motor Carrier Authority? Generally, transportation for hire within Montana of garbage or household goods requires motor carrier authority from the PSC.

How do I apply for Motor Carrier Authority? Get an application from the PSC (see below). Fill it out completely and accurately, and return it to the PSC. An application is a formal request for the opportunity to demonstrate that the public actually needs additional motor carrier services and that the person making the application can and will provide those services as a motor carrier. The PSC will publish notice of the application in the local newspaper and bill the Applicant for the cost of publication. A Notice of Application gives the public, existing motor carriers, and other transportation services the opportunity to participate or comment on and protest the application.

An application form may be printed and is located at <http://psc.mt.gov/transportation/>; or to request an application call (406) 444-6199, or write to the PSC, Transportation Division, P.O. Box 202601, Helena, Montana 59620-2601. Complete the application then submit it to the PSC with the required application fee of \$500.00. If an application is submitted by the 25th of the month it will be noticed to existing carriers, interested parties, and the general public the following month.

Do I need an Attorney? Although not required of individuals, all persons have the right to legal counsel at their own expense. Corporations, partnerships, associations or other business entities jointly owned or controlled must be represented by legal counsel.

What is a Protestant? A protestant is a person who has legal standing to object to an application for motor carrier authority (PC&N), and who objects and is made a party to the PSC contested case proceeding that determines whether to grant motor carrier authority.

What is a Shipper Witness: A shipper witness is a person who has used or will use the transportation service.

What is Discovery? Discovery is a formal request for information in pending legal actions. Failure to respond to discovery can result in dismissal of the application or protest.

What standard must I meet to get a grant of authority? The PSC will approve a grant of motor carrier authority if the record demonstrates that public convenience and necessity requires it.

What are the elements of Public Convenience and Necessity?

- (1) **Applicant must demonstrate a public need for the service.** Public need means a real demonstrated need for the service, not a mere preference for the service. Public need must be established by shipper witnesses. The number of shipper witnesses necessary to establish need could be one or more. One shipper witness might establish need if he/she demonstrates the transportation service is required by the shipper within the entire area. Multiple shippers might establish need in a proposed service area if the sum of the shippers establish that transportation is required within the entire area. The PSC will grant authority only to the extent need is established. Requested authorities can be denied, limited or granted in part to reflect the need established.
- (2) **Applicant must prove that existing motor carriers cannot or will not meet the public need.** If existing carriers can and will meet the public need in a reasonable and timely manner, considering all circumstances, authority will not be granted.
- (3) **Applicant must show that existing transportation services (including motor carriers) will not be harmed by the grant of authority.** Harm caused to existing carriers may be a basis for denying authority if the harm is contrary to the public interest.
- (4) **Applicant must be fit to perform the services proposed.** The applicant must be fit, willing and able to provide permanent, continuous, reliable, safe and adequate transportation service. A determination of fitness may include experience in business and motor carrier operations, financial condition, availability, adequacy and condition of equipment and facilities for service and maintenance, past or present illegal operations and any other relevant criteria.
- (5) **For purposes of a Class D certificate (transportation of garbage), in addition to consideration of standards 1-4, a determination of public convenience and necessity may include a consideration of competition.**

Does the Applicant have to participate in a formal hearing or can the PSC grant Authority without a hearing? Absent a protest the PSC may approve the application and grant authority without a formal hearing. However, if a protest is filed and not withdrawn, a formal hearing is necessary.

What should an Applicant know about the Hearing?

The PSC follows the common law and the Montana Rules of Evidence. All testimony to be considered by the PSC at the Hearing, except matters officially noticed or entered by stipulation, shall be taken under oath or affirmation.

It is important to show up on time. Not showing up or being late could result in a dismissal of the application.

Only applicants and protestants are parties. Only parties have the right to formally participate in the case including the right to discovery, make motions, argue, request reconsideration and appeal, and cross examine witnesses.

Applicants present evidence through live witness “shipper” testimony. Witnesses will be sworn in.

All exhibits must be marked and entered into the record. Parties should arrange in advance with the court reporter the manner of identifying exhibits. When exhibits are offered in evidence, the original and two copies shall be furnished to the reporter and the party offering exhibits should also be prepared to furnish a copy to each commissioner or examiner sitting, each party, and the staff unless such copies have previously been furnished or the presiding officer directs otherwise. Whenever practicable, the parties should interchange copies of exhibits before or at the commencement of the hearing.

Any evidence offered in whatever form shall be subject to appropriate and timely objection. The Commission, in its discretion, either with or without objection, may exclude inadmissible, incompetent, cumulative or irrelevant evidence. Parties objecting to the introduction of evidence shall state the grounds of the objection at the time the evidence is introduced. Evidence must be material and relevant to the issue.

The public, although not a party, may comment on the issues. The PSC allows all public comment in writing or orally at hearing.

Parties may file briefs after hearing. Details of briefing - deadlines, sequence, etc., will be determined at the close of hearing and entered in the record.

There are two records, administrative and evidentiary, pertaining to transportation cases. The administrative record includes all things about the case. The evidentiary record includes only items admitted at hearing. If the case goes to hearing, only the evidentiary record will be used as the basis for the decision. Parties must submit evidence at the hearing in order for it to be part of the evidentiary record.

Unless a later date is requested by the applicant, the PSC must issue an order within 180 days of the filing of a completed application.