Service Date: February 9, 1994

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

* * * * *

IN THE MATTER OF WESTRAN, INC., Missoula, Montana, Application for a Montana Intrastate Certificate of Public Convenience and Necessity.)	TRANSPORTATION DIVISION DOCKET NO. T-93.138.PCN ORDER NO. 6279

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Edward A. Murphy, Datsopoulos, MacDonald, and Lind, P.C., Attorneys at Law, 201 West Main, Suite 201, Central Square Building, Missoula, Montana 59802.

FOR THE PROTESTANTS:

Ray F. Koby, Swanberg, Koby, and Swanberg, Attorneys at Law, P.O. Box 2567, Great Falls, Montana 59403, on behalf of Transystems, Inc.

John R Davidson, P.C., Attorney at Law, 490 North 31st, Transwestern II, Suite 111, Billings, Montana 59101, on behalf of Byford Trucking, Ltd.

FOR THE COMMISSION:

Martin Jacobson, Staff Attorney, Wayne Budt, Transportation Division Administrator, 1701 Prospect Avenue, Helena, Montana 59620.

BEFORE:

DANNY OBERG, Commissioner and Hearings Examiner

FINAL ORDER BEFORE:

BOB ANDERSON, Chairman
BOB ROWE, Vice Chairman
DAVE FISHER, Commissioner
NANCY MCCAFFREE, Commissioner
DANNY OBERG, Commissioner

INTRODUCTION

1. On October 7, 1993, Westran, Inc. (Westran), filed before the Montana Public Service Commission (PSC) an Application for Intrastate Certificate of Public Convenience and Necessity. Westran requests motor carrier authority, Class C, coal, between Bull Mountain Coal near Roundup, Montana, and all points and places in Montana, with transportation restricted to that provided for the account of RBM Mining, Inc. (RBM).

2. Protests to Westran's request for authority were filed by Byford Trucking, Ltd., Roundup, Montana, and Transystems, Inc., Black Eagle, Montana. Both Protestants are motor carriers having some authority to provide the services within the statewide scope proposed by Westran.

3. A public hearing was held January 11, 1994 in Roundup. At hearing the Applicant and the Protestants were represented by counsel, submitted testimony and exhibits, agreed that there would be no briefing, and stipulated to a Final Order by the PSC.

The PSC has now considered the matter and has concluded that the application of Westran must be denied.

FINDINGS OF FACT

4. All introductory statements which can properly be considered as findings of fact and which should be considered as such to preserve the integrity of this Order are incorporated herein as findings of fact.

5. Westran is a motor carrier holding certain interstate and intrastate authority. It proposes to provide transportation of coal to RBM, from the RBM mine site to all points and places in the state.

6. RBM is a mining company, mining coal south of Roundup. It presently has a contract to supply Malmstrom Air Force Base (Malmstrom), Great Falls, Montana, with approximately 12,000 tons of coal through a period from about October, 1993, through March, 1994. The exact period can vary depending upon weather and stockpiling. RBM expects that it can and will renew the coal supply contract through future bidding processes.

7. RBM presently transports its coal through what it identifies as "owner operators." Apparently these "owner operators" lease vehicles and equipment and drivers to RBM. The details of these "owner-operator" agreements are not clear.

8. RBM initially contacted Westran for service, having been familiar with Westran from experience in observing transportation Westran conducted for a neighboring mine or a former operator of the RBM mine site.

9. The record discloses that RBM has a need to transport coal from RBM's mine site to Malmstrom. No other need for transportation to any other point or place within the state was established at hearing.

10. Byford is a motor carrier. It does have coal transportation authority in several counties. It does not have authority to transport coal from Roundup to Great Falls and cannot, therefore, meet the need expressed by RBM.

11. Transystems is a motor carrier. It does have authority to transport coal in roughly the eastern two-thirds of the state, including authority to transport coal from RBM to Malmstrom. Transystems has equipment and operational abilities to meet the need of RBM. Transystems can meet the need expressed at hearing.

12. RBM had contacted Transystems, but did not enter a transportation agreement. There is some dispute in the record as to what RBM actually requested or what Transystems actually responded. However, at that time, whether Transystems wanted only the whole project, would take part of the project, or one or two loads, the PSC determines that there then was no specific

request for the entire project (as now proposed) and that Transystems can and is willing to provide the service and fill the need expressed by RBM at the present time.

13. The extent to which a grant of authority to Westran would harm Transystems is unclear. A grant, if limited to the need expressed by RBM would not harm Byford, as Byford does not have the authority to perform the service. The record does not disclose any harm to other existing transportation systems contrary to the public interest.

14. The record demonstrates that Westran is fit to provide the services proposed. Westran has the equipment and operational capabilities to provide the service requested by RBM and can fill the need expressed by RBM.

CONCLUSIONS OF LAW

15. All findings of fact which can properly be considered as conclusions of law and which should be considered as such to preserve the integrity of this Order are incorporated herein as conclusions of law.

16. At the close of the hearing on this matter, Byford moved to limit the scope of Westran's authority from the applied-for "statewide" to the evidenced "RBM to Malmstrom." The hearing examiner granted this motion and the PSC affirms. Westran

offered no support for any authority beyond the scope of RBM to Malmstrom. Absent support, additional authority cannot be granted.

17. At the close of hearing Transystems moved to dismiss the Westran application in its entirety. The hearings examiner took this motion under advisement. The motion itself is neither granted nor denied. However, by the terms of this Order it can be considered ruled upon indirectly.

18. The PSC will grant motor carrier authority when the public convenience and necessity require it. Section 69-12-323, MCA. The "public convenience and necessity" requires a grant of motor carrier authority if there is: (a) a public need; (b) existing carriers will not or cannot meet that need; (c) existing transportation services and motor carriers will not be harmed by the grant of authority contrary to the public interest; and (d) the applicant is fit willing and able to perform the services proposed. See, In the Matter of Lutz, PSC Docket No. T-93.29.PCN, Order No. 6276, p. 10 (Jan. 25, 1994); State ex rel. H.R. Roberts v. Public Service Commission, 242 Mont. 242, 250, 47 St. Rptr. 774, 780, 790 P.2d 489, 494 (1990); In the Matter of Big Z, PSC Docket No. T-9511, Order No. 6019a, pp. 24-25 (Sept. 20, 1990); and In the Matter of Jones Brothers Trucking, PSC Docket No. T-9469, Order No. 5987a, p. 8 (July 17, 1990).

19. In this case there is a public need. RBM does have a need to transport coal from its mine site near Roundup to Malmstrom, 12,000 tons during a period of October through March. The need may extend from year to year depending upon bid acceptance.

20. However, the need can and will be met by an existing carrier. Transystems has the equipment and operational abilities to meet the established need. When the expressed need can and will be met by an existing carrier, through existing authority, the applied-for authority must be denied. See, Lutz, supra.

21. Although it is unnecessary to further evaluate this case, it does not appear that any existing carrier (except, possibly, Transystems) or other transportation service would be harmed by a grant of authority.

22. It also appears that Westran would be fit to provide the requested service.

23. One of the required elements of "public convenience and necessity" having not been met (existing carrier can fill the need), an authority cannot be granted.

ORDER

1. All conclusions of law which can properly be considered as orders and which should be considered as such to preserve the integrity of this Order are incorporated herein as orders.

2. It is HEREBY ORDERED that the application of Westran, Inc., is DENIED.

Done and Dated this 31st day of January, 1994 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

_____
BOB ANDERSON, Chairman

_____
BOB ROWE, Vice Chairman

_____
DAVE FISHER, Commissioner

_____
NANCY MCCAFFREE, Commissioner

_____
DANNY OBERG, 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.