

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 Weston Lee MacDonald and Sandra)	
M. MacDonald, Polson, Montana for)	DOCKET NO. T-8772
a Class D Certificate of Public)	
Convenience and Necessity.)	ORDER NO. 5666

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Matthew H. O'Neill, Attorney at Law, Christian, McCurdy & Wold, P.O. Box 1172, Polson, Montana 59860

FOR THE PROTESTANTS:

M. Richard Gebhardt, Attorney at Law, 515 U.S. Highway 93 South, Ronan, Montana 59864, appearing on behalf of Flathead Disposal

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

FOR THE COMMISSION:

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

BEFORE:

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

BACKGROUND AND TESTIMONY

1. On May 21, 1985, the Commission received an application from Weston Lee MacDonald and Sandra M. MacDonald (Applicants), Box 1430, Polson, Montana 59860. Applicants seek a Certificate of Public Convenience and Necessity, Class D, for transportation of ashes, trash, waste, refuse, rubbish and garbage and organic and inorganic matter, within an area 3 miles south and/or west of U.S. Highway 93 from Polson Bridge to where Highway 28 intersects U.S. Highway 93 in the town of Elmo, Montana, bounded on the north and/or east by the shores of Flathead Lake, and from the afore-described territory to certified landfills.

2. Following issuance of notice, a public hearing was held to consider the application on August 14, 1985, in the Lake County Courthouse, Polson, Montana.

3. Weston MacDonald appeared and testified in support of the application. Mr. MacDonald explained that Applicants have operated a garbage service under PSC No. 1842 within the City of Polson for the past seven years. He briefly described his current operations and equipment, noting that no additional investment would be required to provide service under the authority sought in this application. Mr. MacDonald sponsored the following exhibits:

No. 1 - Letter of Support from Clifford E. Jacobson, Indian Bay, Flathead Lake

No. 2 - Letter of Support from Monty Kotila, West Shore
Rte., Polson, Montana

No. 3 - Letter of Support from R.K. Helm, West Shore
Rte., Polson, Montana

No. 4 - Letter from Bonnie Allen, PSC Transportation
Division, regarding scope of authority for PSC Nos. 2870 and 1448.

4. Vicky Moore-Gallagher, Black Point, Flathead Lake, appeared and testified in support of the application. Ms. Moore-Gallagher indicated that she was dissatisfied with the service of her current carrier, Best Way, because there would be periods as long as six weeks with no pickups.

5. The following witnesses also appeared and testified in support of the application, citing service failures of existing garbage carriers: Barbara Blankenship, Rocky Point Road, Flathead Lake; Barbara Grindy, Polson Stove Shop, Polson; and Tim McIntosh, Manager of 4B's restaurant, Polson.

6. Edwin Courville, Assistant Director, Housing Authority, Confederated Salish-Kootenai Tribes, appeared and testified on behalf of Protestant Flathead Disposal. Mr. Courville stated that he had found Flathead's service very satisfactory, and sponsored Exhibit No. 5: a letter from Robert Gautier, Executive Director, Salish & Kootenai Housing Authority.

7. Robert McCrea, Confederated Salish & Kootenai Tribal Council Member, also appeared and testified concerning his satisfaction with Flathead Disposal's service.

8. Marc Johnson, owner and operator of Flathead Disposal, appeared and testified in opposition to the application. Mr. Johnson is the owner of PSC Nos. 1448 and 2870, authorizing Class D service in portions of the territory which is the subject of this application; such service was

not authorized, however, at the time of the hearing on this application. See Order No. 5664, Docket No. T-8773, January 20, 1986.

9. Mr. Johnson briefly described Flathead Disposal's operations in the area, and offered his opinion that there is not enough business to justify the operation of two trucks in the affected area. He sponsored the following exhibits:

No. 6 - Certification of Support by Frances Reid, Grizzly
Fudge, Highway 93.

No. 7 - Certification of Support by T.L. _____,
Box 1209, Jette Meadows, Polson.

No. 8 - Certification of Support by Pat Sands, West
Shore Route, Polson.

10. Merle Cook appeared and testified in opposition to the application. Mr. Cook stated that no special equipment is necessary to provide service to Ms. Moore-Gallagher's residence. He further stated his belief that there is not enough business in the area for more than one carrier, since many of the residents leave for winter.

DISCUSSION, ANALYSIS & FINDINGS

11. 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.

12. 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.

13. The first part of determining public convenience and necessity, then, is a consideration of shipper needs. In this case, four shipper witnesses supported the application. All four testified regarding their inability to obtain reliable service from existing carriers. Although none had apparently contacted Flathead Disposal, that carrier was not authorized at that time to provide service to those individuals.

14. The Commission finds that there is an unmet need for additional garbage service as proposed in this application.

15. The Commission further finds no basis for concluding that authorizing the proposed operations would impair 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 authority.

ORDER

NOW THEREFORE IT IS ORDERED that the Application in Docket No. T-8772 be GRANTED. Applicant is granted the following authority:

Class D - ashes, trash, waste, refuse, rubbish and garbage and organic and inorganic matter, within an area 3 miles south and/or west of U.S. Highway 93 from Polson Bridge to where Highway 28 intersects U.S. Highway 93 in the town of Elmo, Montana, bounded on the north and/or east by the shores of Flathead Lake, and from the afore-described territory to certified landfills.

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.