

Service Date: September 16, 1985

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 Dennis L. Johnston, d/b/a Big)
Sky Haul-Away, Billings, Montana) DOCKET NO. T-8781
for a Class D Certificate of)
Public Convenience and Necessity.) ORDER NO. 5628

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Paul Olsen, Olsen, Christensen, Gannet & Waller, 720 North
30th, Billings, Montana

FOR THE PROTESTANT:

Marvin Mintyala, Mr. "M" Disposal, Gilt Edge Route, Lewistown,
Montana 59456, Pro Se

FOR THE COMMISSION:

Geralyn Driscoll, Staff Attorney, 2701 Prospect Avenue,
Helena, Montana 59620

BEFORE:

TOM MONAHAN, Commissioner & Hearing Examiner

1. On June 11, 1985, the Commission received an application from Dennis Johnston, d/b/a Big Sky Haul Away, P.O. Box 30331, Billings, Montana 59107. The Applicant sought a Certificate of Public Convenience and Necessity, Class D, to transport ashes, trash, waste, refuse, rubbish and garbage between all points and places in Musselshell County, servicing the Musselshell Disposal District utilizing roll-off and roll-on containers and further transporting refuse to a certified landfill in Billings, Montana.

2. Following receipt of a protest and issuance of notice, the Commission held a public hearing to consider the application on September 10, 1985 in the Musselshell County Courthouse, Roundup, Montana.

3. At the hearing Marvin Mintyala orally withdrew his protest and informed the Commission that he would send a written withdrawal of protest.

SUMMARY OF TESTIMONY

4. Testimony was received from Dick Walker, a Musselshell County Commissioner, Linda Blessing, a Musselshell County Refuse Disposal Board member, Dennis Johnston and John Geach.

5. Commissioner Walker testified concerning Musselshell County's refuse disposal problems and the County Commissioner's solution. Roundup and Musselshell County operated a landfill on Bureau of Land Management (BLM) land for 10 years. In 1984,

because BLM refused to grant permission to operate the landfill after 1985, the Commission began looking for an alternative site for a solid waste disposal system for 2000 homes and 35 commercial businesses. The city and the county formed a joint committee which decided to contract with private refuse carriers. The Board awarded the contract to the lowest responsible bidder, Big Sky Haul Away, pending issuance of a permit by this Commission.

6. Linda Blessing testified concerning how the Musselshell County Refuse Disposal Board determined the need for a disposal system. The Board considered the options of using a private carrier or operating a county owned landfill. The Board chose to use a private carrier because of the difficulties involved in operating a landfill. In choosing a private carrier the board used five criteria: price, adequacy of the proposal, experience, ability, and equipment and specifications.

7. Dennis Johnston testified concerning his operations and the service he would provide to Musselshell County. Johnston has been in business for eight years. He picks up commercial and residential garbage in Yellowstone and Big Horn Counties, for which he holds PSC certificates. He operates two garbage collection companies -- Big Sky Haul Away and Yellowstone Sanitation. All of Johnston's testimony concerning equipment relates to Big Sky Haul Away equipment.

8. Johnston sponsored two exhibits. Exhibit A was a floor diagram of the proposed facility and Exhibit B was a photograph of a transfer site with the type of equipment Johnston intends to use.

Johnston currently owns four trucks. Three trucks are adequate for his current workload so he will be able to commit the fourth truck to the Roundup area. He will be able to provide an adequate number of containers for the operation and, if granted this certificate, Johnston will purchase a compacter.

DISCUSSION, ANALYSIS AND FINDINGS

9. Parties desiring to haul garbage for hire are required to obtain a Class D certificate of public convenience and necessity from the Commission. There are no factual disputes in this matter.

The only protestant, Marvin Mintyala d/b/a Mr. "M" Disposal, withdrew his protest.

10. In considering applications for operating authority the Commission is governed by the provisions of 69-12-323, MCA. Paragraph (2) provides:

(a) 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 therefor 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.

(b) For purposes of Class D certificates, a determination of public convenience and necessity may include a consideration of competition.

11. There is no need for the Commission to consider the existing service because no Class D carrier is presently operating in the area in question and no authorized carrier protested this application.

12. The testimony introduced by the Applicant is sufficient to establish that the Applicant has the equipment and ability to meet the public need.

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 and based upon the evidence in the record, the Commission concludes that public convenience and necessity require the granting of the application herein.

ORDER

NOW THEREFORE IT IS ORDERED that the application of Big Sky Haul Away for a Certificate of Public Convenience and Necessity, Class D, authorizing the transportation of ashes, trash, waste, refuse, rubbish and garbage between all points and places in Musselshell County, servicing the Musselshell Disposal District utilizing roll-off and roll-on containers, and further transporting refuse to a certified landfill in Billings, Montana is GRANTED.

DONE IN OPEN SESSION THIS 16th day of September, 1985 by a vote of 5 - 0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Trenna Scoffield
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.