

## **STATEMENT OF DISSENT BY COMMISSIONER ROGER KOOPMAN**

### **IN THE MATTER OF DOCKET NO. T-18.6.PCN, ORDER 7594b**

#### **L&L Site Services, Inc's Application for a Certificate of Public Convenience and Necessity between all points and places in Missoula County.**

The Commission was quite correct in affirming the fitness of this Applicant. L&L has established an admirable record of reliable Class D service in Gallatin and Madison Counties since receiving Commission authority in those counties in 2015. Following a logical business plan for staged growth, L&L has begun addressing the market where the needs are greatest, while turning down no business in any location. The record shows that their customer service has been exemplary and their pricing highly competitive. Not surprisingly, L&L has experienced a 45% annual growth rate, and continues to add 30 to 40 new containers per week. Their cash flow and overall financial strength is such that lending institutions confidently finance their acquisition of new vehicles and equipment. There is every indication that this is an extremely well-run company.

The Commission was also correct in its judgment with two of the remaining four standard "tests" it applies to Class D solid waste hauling applicants. But in this commissioner's opinion, the Commission gives insufficient weight to the "competition in the public interest" test, given that Missoula County is an entirely monopolized market, with the incumbent Republic Services enjoying unusually high net profits (six-year average profit margins of over 32 percent -- an astronomical margin for the industry in general.) At the same time, Missoula residential customers are burdened with reportedly the highest rates in the state. (Note: L&L's 3-year average profit margin in Gallatin County is 11 percent, and they testified that a 10 percent margin in Missoula would be sufficient.) Under these circumstances, is the introduction of competent, qualified competition more likely to harm or to benefit local consumers and the public interest? The answer to that question, which somehow evaded the Commission majority, couldn't be more obvious.

Yet the greatest puzzlement to this commissioner is the degree to which the hand-wringing and hair-splitting of some commissioners led the Commission stumbling down the wrong path on the basic question of need. In this commissioner's view, market "need" is one of the least difficult and least complicated of the five criteria to satisfy. Yet the Commission majority chose to make what was clear obscure, and what was uncomplicated hopelessly complex. Conscience, common sense and good judgment flew out the window. Conscience would tell us that the Applicant deserved a fair shake and a reasonable opportunity to pursue his entrepreneurial dreams. Common sense would dictate that unmet need is what attracted L&L to the Missoula market in the first place, and that ample testimony confirmed that consumer need existed for more options, better service and more competitive prices – benefits that only

competition can bring about. Good judgement required that the Commission focus on the needs and desires of the general public, not the desires of the Protestant, wishing to preserve its abnormally high profit margin.

A brief review of the record in this docket leaves little doubt that the public need test was fully satisfied. Certainly, Republic Services' bloated net profit and comparatively high consumer rates speak to there being considerable room for price competition in Missoula County. The Protestant counters that L&L's 3-year record in Gallatin County has not driven local rates down, but the facts in this docket prove otherwise. While it may be true that if L&L is attempting to align area rates more accurately to their marginal cost of service, they may be "over-priced" in areas that Republic heavily subsidizes. The record is not complete on this. But what the evidence does show, is that L&L competition in Gallatin County has, in at least two specific instances, had the effect of markedly driving down Republic's quoted rates.

In one case, the Applicant's bookkeeper testified that a significant number of customers who had informed Republic of their intention to cancel their service and switch to L&L, were soon after contacted by Republic with an offer of greatly reduced rates. Certainly, those lower rates would never have been offered if not for L&L's competition.

In another instance, involving a large contract with the Belgrade School District, when L&L submitted a competitive bid for the district's garbage hauling, Republic Services, up until then the monopoly provider, came forward with a bid that was approximately half of what they had previously been charging the Belgrade Schools. Republic's charges were actually more than what the much larger Bozeman School District was paying them – where Republic was forced to compete with the City of Bozeman. Apparently so "turned off" were the Belgrade School officials to Republic's pricing practices that they awarded the contract to the higher bid from L&L.

Add to these evidences, the 8 shipper witnesses who attested to a variety of customer service frustrations and complaints, including missed pick-ups, limited commercial container choices, alleged over-charges and discriminatory rates, repeated unreturned phone messages, and a sometimes non-accommodating attitude by Republic personnel, and unquestionably not all Missoula County residents are pleased with the service they currently receive from the incumbent monopoly. Does this establish that Republic is, in general, doing a poor job? Not at all. The Commission is not required to find that the Protestant is a poor or failing operation. The need criteria requires only that the preponderance of evidence shows a local desire for consumer choice, with the reasonable expectation that this will result in a downward pressure on prices and an expansion and improvement in customer service and customer choice.

This Order in part makes the argument for a shift in Commission policy in the determination of need, by de-emphasizing the often anecdotal shipper testimony, and weighing more heavily "empirical, market-driven evidence," to include requiring a detailed market analysis by both the

Applicant and Protestant. I am not necessarily opposed to this suggestion, although it needs more Commission study and deliberation. What I am opposed to is applying that standard to the current docket, where neither party was previously informed of any change in Commission policy or evidentiary requirements going in. In my opinion, it is profoundly unfair to judge the Applicant's case deficient in this area, when L&L had no prior notice from the Commission that these newly-emphasized areas of information were now required.

To this commissioner, one of the most revealing aspects of this docket was the testimony of Republic's general manager, Glenda Bradshaw. Ms. Bradshaw argued that "competition in this industry has more downside to consumers than upside." She appealed to the Commission to not introduce "instability" into the Missoula market by creating "winners and losers" (in other words, competition.)

This, of course, is a classic argument for the maintenance of monopoly and an unchanging status quo. Free markets, by their nature, are dynamic, innovative, ever-changing and disruptive of the status quo. Republic argues that change is bad, that it disrupts and "destabilizes." It is true that change disrupts. Healthy, competitive markets are always changing. But is that bad? The question is, bad for whom?

This commissioner has no desire to "stabilize" garbage hauling companies in their existing monopolies. This commissioner's overriding desire is to serve the public interest. If that means "de-stabilizing" incumbent monopolies that are enjoying above-market profits and below-market customer service requirements, then that is a good thing for all concerned, not bad. And if, in the process, it enhances entrepreneurial freedom, that is a good thing also. Competition and economic freedom are the public friend, not the public enemy.

This case was not a difficult one. One majority commissioner lamented that he was split "51-49" on the question. This commissioner finds that hard to understand, given the evidence on the record and the clear picture of where the public interest resides. Unfortunately, the Commission went head-long down Monopoly Road, and straight off the cliff. In the six years I have served, this was possibly the most disappointing Commission decision of all.

SIGNED:

Roger Koopman

Commissioner, District 3

