

DEPARTMENT OF PUBLIC SERVICE REGULATION  
MONTANA PUBLIC SERVICE COMMISSION  
P.O. Box 202601  
Helena, Montana 59620-2601

In the Matter of Bull Mountain Sanitation )  
LLC, Melstone, Montana, Application for a ) Docket T-15.1.PCN TA  
Temporary Montana Intrastate Certificate of )  
Public Convenience and Necessity. )

**DISSENTING OPINION OF COMMISSIONER ROGER KOOPMAN**

I suppose I am one of those quaint individuals who still entertains the notion that governmental commissions can, from time to time, operate on the basis of common sense. I'm idealistic enough to believe that the defense of fundamental principles -- like freedom of enterprise and freedom of choice -- can elevate a commission above the malaise of sometimes confusing, unreasonable and unworkable regulation, to a higher and nobler place where justice and the public interest invariably converge.

Unfortunately, in this case, that did not happen.

The applicant, Bull Mountain Sanitation, is a small, family-owned garbage hauler that has provided reliable service to Melstone and throughout rural Musselshell County since March of 2013. Following a recent decision by the Commission, denying their Petition for Declaratory Ruling, Bull Mountain accepted Commission jurisdiction, and promptly applied for permanent authority to continue its operations as a licensed Class D hauler. (It should be noted that the Commission ruling stopped short of addressing certain contested legal issues, including the definition of "village.")

Given that the approval process could easily consume several months, the company in the meantime requested temporary authority (TA) from the Commission to maintain uninterrupted service to its customers. The Commission turned down their TA application, on the basis of what commissioners apparently felt was their obligation to narrowly and strictly apply the "immediate and urgent need" standard expressed in Mont. Code Ann. § 69-12-207(1), with this commissioner registering the sole dissent.

While well-intended, I believe this was an unnecessarily strained decision, made within the confines of the bureaucratic box where state agencies so often dwell – a box where everyday reality is often seen dimly through legalistically filtered light. Taking one step back and considering the full picture in Musselshell County, our decision to deny temporary operating authority to Bull Mountain Sanitation produced outcomes that were in every sense bad and in no sense good. The greater and broader public interest (to which all that the Commission does is inextricably bound) was lost sight of in the debate over flawed and confused public law.

Curiously, the last time the Commission ruled on a temporary authority application (only a few months ago), the vote was unanimous approval. In that docket, involving Nelson Studios of Nevada City, the applicant (like Bull Mountain) had been operating without a license and (also like Bull Mountain) was seeking permanent authority from the Commission. The company provided charter tours to remote mining camps in a surplus military vehicle. It is difficult for this commissioner to understand how, in one case, a very specialized and seasonal tourist attraction could be deemed qualified for a TA under the "immediate and urgent need" standard, but a more broadly used, year-around garbage collection service for rural residents was not. In my opinion, Bull Mountain Disposal could legitimately question whether their case was dealt with by the Commission in an equitable and consistent manner.

By denying the temporary authority of the applicant to continue serving its rural customers, the Commission has essentially forced those consumers to either (a) give their business to a Bull Mountain competitor which they had not previously chosen to use, or (b) forego garbage service entirely, and go back to burying, burning, and the like. While it is apparently true that Republic Services and Bayside Disposal offer service to parts or all of rural Musselshell County, I cannot perceive of any public benefit to simply removing a consumer choice that is preferred by many residents. Moreover, it hardly seems fair to allow these competitors to freely harvest Bull Mountain's customer base, while in good faith, that company must wait for a state agency to slowly act upon its application for permanent authority – a contested case process that takes considerable time. What are the chances that Bull Mountain will be able to recapture those lost customers that they took 21 months to establish, should they eventually get licensed? What "irreparable harm" will have been visited upon this small business by the Commission's denial of the temporary authority?

It is clear when the law was written that it did not anticipate, let alone make provision for, these contingencies. Instead, the *immediate and urgent need* language for TA approval seems to confer virtual monopoly status on pre-existing haulers in their licensed areas, making new entry into those markets almost impossible, while very possibly putting out of business existing unlicensed garbage haulers who are waiting for the Commission to decide their permanent status.

The law, as written, is not only unreasonable and nearly impossible for a company like Bull Mountain (operating in a competitive market) to comply with, but it is incomplete. Where is the acknowledgement that fostering *choice and competition* is good public policy, and the maintenance of such is in the public interest? Where is the recognition that companies that have developed a customer base have a reasonable expectation that the law will not encourage the raiding of those customers while the complying company waits for permanent approval? Should not they be afforded some reasonable protection in the form of a temporary authority to continue their operations?

Both common sense and a common sense of justice say yes. Moreover, the Public Service Commission's overriding responsibility to serve the greater public interest demands a different, more balanced decision in this matter. Commissioners will be hard put to argue that the public interest was served to those many Bull Mountain rural customers who have just had their preferred garbage hauler yanked away from them, based on a law that lacks clarity, and suggests a standard that few if any can meet.

I therefore DISSENT.



Roger Koopman, Commissioner (dissenting)