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ATTORNEYS FOR ALLIED WASTE
SERVICES OF NORTH AMERICA, LLC,
D/B/A REPUBLIC SERVICES OF MONTANA

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

IN THE MATTER OF L&L Site Services,)	
Inc.'s Application for a Certificate of Public)	REGULATORY DIVISION
Convenience and Necessity between all points)	
and places in Missoula County.)	DOCKET NO. T-18.6.PCN
)	

REPUBLIC SERVICES OF MONTANA'S POST-HEARING BRIEF

Allied Waste Services of North America, LLC, d/b/a Republic Services of Montana ("Republic"), by and through its counsel, Holland & Hart LLP, submits this Post-Hearing Brief to the Montana Public Service Commission (the "Commission" or the "PSC").

1. INTRODUCTION

L&L Site Services, Inc.'s ("L&L") application for a Class D certificate of public convenience and necessity to provide waste-hauling service "from all points and places in

Missoula County to a lawful disposal site” should be denied. The record shows that L&L is unfit and unable to provide the proposed services within Missoula County, and granting the certificate would harm Republic’s customers. The public convenience and necessity does not require the certification of an additional Class D garbage hauler in Missoula County. The proof in the hearing demonstrated no unmet demand and an infinitesimal number of concerns regarding the adequacy of Republic’s services or its rates given the approximately 25,000 residential customers served by Republic in Missoula. Rep.’s Response to Data Request L&L-005. Additionally, the history of garbage hauling in Montana and L&L’s recent conduct in Gallatin County demonstrate that competition in Missoula County would adversely impact consumers.

2. LEGAL STANDARD

Section 69-12-323, MCA, sets forth the factors the PSC considers when rendering a decision on an application for a Class D motor carrier certificate to transport waste materials:

(2)(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.

The PSC has interpreted § 69-12-323, MCA, as requiring it to address five factors when considering an application for a Class D certificate, namely:

1. Is the applicant fit and able to perform the proposed service?

2. Does the public convenience and necessity require the authorization of the proposed service?
3. Can and will existing carriers meet the public need for the proposed service?
4. Would the proposed service have an adverse impact on existing transportation services?
5. If there is a public need for the service and the applicant is fit to provide the service (even if existing carriers could meet the need or might be harmed by granting the application), would competition with the existing carrier promote the public interest?

Waste Mgmt. Partners of Bozeman, Ltd. v. Mont. Dep't of Pub. Serv. Regulation, 284 Mont. 245, 250-51, 944 P.2d 210, 213-14 (1997).

3. BACKGROUND

The PSC has previously granted L&L a Class D certificate to provide service in Gallatin and Madison Counties. *See* L&L Amend. Application, Dkt. T-15.23.PCN (June 10, 2015) (the proceeding regarding this application is referred to as “L&L I”). Republic believes that decision was incorrect and has appealed that decision to the Montana Supreme Court. Moreover, even if that decision were to be upheld, the fact that L&L successfully applied for one certificate does not mean that its application in this proceeding must, or should, be granted. Instead, the record reflects that L&L’s presence in the Bozeman area prior to 2015 was radically different from its pre-application presence in the Missoula area. L&L had been providing disposal services in the Bozeman area since 2006. L&L already had facilities, equipment, and employees in the Bozeman area. In addition, Republic stipulated to L&L’s fitness. The record in this case is completely different, and L&L’s approach to the Bozeman market after its application was granted is indicative of how it would operate in Missoula County if its application is granted. A

review of the five factors in connection with this record mandates a different result than in Gallatin and Madison Counties.

4. ARGUMENT

A. **L&L is not fit or able to perform the proposed services in Missoula County.**

As a threshold issue, the PSC must determine whether L&L is fit and able to perform the proposed services in Missoula County. When considering whether an applicant is fit, willing, and able to provide service, the PSC has considered the following factors:

1. The financial condition of the applicant;
2. The intention of the applicant to perform the service sought;
3. The adequacy of the equipment the applicant has to perform the service;
4. The experience of the applicant in conducting the service sought; and
5. The nature of the previous operations, if there are allegations of illegal operations.

Waste Mgmt., 284 Mont. at 252, 944 P.2d at 215.

Here, L&L proposes to operate from all points and places within Missoula County, Montana, to a lawful disposal site. L&L has no history or experience providing services in Missoula County. It has no equipment or facilities in Missoula County. It has no existing customers in Missoula County. It has only one *temporary* employee in Missoula County, Luke Riley, whose job was “[t]o inform Missoulians about the L&L brand and the fact that they are trying to get a garbage permit in Missoula.” Transcript of Public Hearing, vol. 1 at 500, *In re L&L’s Application for a Certificate of Public Convenience and Necessity between all points and places in Missoula County*, Dkt. No. T-18.6.PCN (2018) (hereinafter, the “Transcript,” followed by the volume and page number). It has not disclosed to the Commission what rates it would charge or what routes it would serve, which implicate the first three prongs of the test and its

fitness pursuant to them. *See* L&L Response to PSC-005 (stating “L&L declines to provide its existing rates for competitive reasons” and “L&L has not reached any conclusions regarding rate schedules in Missoula County”); L&L Response to PSC-002 (“L&L has not made a final decision on proposed routes and plans to decide on its initial routes after analyzing customer interest, as well as the revenue and probable operating characteristics of particular neighborhoods.”). In addition, prior to filing its application, L&L did not analyze the Missoula market, prepare a business plan, or ask its bank to provide any analysis of its financial ability to enter a new market. L&L Response to PSC-001; Transcript, vol. 1 at 115, 187-88. Moreover, even though L&L recognized that access to a disposal site would be required to provide garbage hauling service in Missoula, L&L never inquired of the owner of the Missoula landfill, Republic, about the process for or cost of dumping waste at the landfill. Transcript, vol. 3 at 689. Nor did L&L figure out an alternative disposal site. *See, e.g.*, Transcript, vol. 2 at 365, 367. In short, the applicant filed an application with the Commission without clarity about where it would dispose of garbage if its application were granted and the costs associated with disposal. Despite these facts, L&L made almost no effort to demonstrate fitness either in its application, through its discovery responses, or at the hearing. L&L failed to meet its burden of establishing fitness, ability, and willingness to perform the proposed services, and the application should be denied on that basis alone.

1. L&L has not established that it is financially fit to provide service in Missoula County.

In support of its application, L&L provided almost no information regarding its financial condition and instead intentionally withheld relevant information. After filing its application, L&L prepared a business plan “to prove that our finances are where they need to be, give us some personal projections of where we’re looking into, and to give the Commissioners a little

insight of what my future and my plans are.” Transcript, vol. 1 at 28. Instead of shedding light on L&L’s finances or plans, the business plan is vague and based on guesswork. John Pinczes, L&L’s accountant, testified that the business plan is based on guesses for the number of customers, the wages, payroll expenses, and benefits L&L will pay, the cost of dumping the waste at an unknown disposal site, and the rent L&L will pay. Transcript, vol. 2 at 369, 373. Even more troubling, Lance Johnson, the owner of L&L and its president/manager, testified that he intentionally obfuscated to avoid giving Republic a competitive edge. Transcript, vol. 1 at 29. Regarding L&L’s projected revenue numbers, Mr. Johnson testified that “the intent was to essentially confuse Republic so they don’t know that number, that price margin or that pricing.” Transcript, vol. 1 at 190.

Instead of providing a cogent business plan to meet L&L’s burden of demonstrating fitness and ability, Mr. Johnson is “relying on the Commissioners to rely on [his] judgment.” Transcript, vol. 1 at 190. Mr. Johnson has chosen to withhold information from Republic when the information was sought in data requests and candidly noted that “it’s unfortunate” if that means he also withholds information from the Commission. Transcript, vol. 1 at 191. Mr. Johnson acknowledged that the Commission is not in a position to know what rate L&L will charge customers in the market or to understand the basis for the projected revenue numbers. Transcript, vol. 1 at 173. Indeed, L&L’s litigation strategy means the Commission does not know how many customers L&L intends to serve in Missoula, what they will be charged, or the location of those potential customers throughout Missoula County. This means the Commission has no basis on which to make a determination of financial fitness.

2. L&L's approach to providing service in the Bozeman area and stated intention to follow the same approach in Missoula County demonstrate that it is not fit.

Not only is the record almost completely devoid of facts addressing fitness and ability, but the few facts in the record indicate that L&L does not intend to provide services throughout Missoula County and is not fit or able to do so. Mr. Johnson testified that the approach L&L used in the Bozeman market is the approach that it will use in the Missoula market. Transcript, vol. 1 at 341. And L&L has chosen not to serve every customer in the market in Gallatin County, instead operating a limited scope, limited service business. Glenda Bradshaw, Republic's General Manager, summarized L&L's conduct in the Bozeman area as follows:

And I guess I would say if after two years you only have 4,000 customers and you are not actively engaging in trying to acquire more customers but instead trying to move to another market with a very similar business plan, heavily industrial, right, they are going to have three trucks, three routes, how can you possibly service this entire county with three routes? I know they have said, oh, that's just sort of a minimum or we're going to do more. I guess I would say they said that in L&L One, but they really stopped right there in Bozeman and now they are moving here. So I guess his own conduct is more illuminating to me than their assertions in this hearing that they are going to serve everybody. It's not how it works today. And everything in their business plan tells me it's exactly what they are going to do here.

Transcript, vol. 3 at 746.

L&L chose to terminate its recycling service after it proved to be unprofitable. Transcript, vol. 1 at 201-03. This decision resulted in several former Republic customers who had switched to L&L deciding to return to Republic. Transcript, vol. 3 at 834-35. Tyler Zaichkin, the division sales manager for Republic, testified that in the Bozeman area, "[w]e've seen a competitor come into the market who has been primarily focused on serving the areas closest to the landfill" but is not as interested in competing in the City of Bozeman itself and has actually priced itself out of that market. Transcript, vol. 3 at 832-33. L&L has chosen not to compete in other parts of its permitted operating area too, such as West Yellowstone. Transcript,

vol. 1 at 233; Transcript, vol. 3 at 833. These decisions fly in the face of Mr. Johnson’s on-the-record “promise” to Commissioner Koopman to provide lower residential rates than those Republic offers, Transcript, vol. 1 at 286-87, and indicate that L&L does not intend to provide service in *all points* of Missoula County. L&L’s conduct in Gallatin and Madison Counties should give the Commission no confidence that it will do what has been pledged for Missoula County customers.

3. L&L failed to provide sufficient information for the Commission to determine whether its equipment is adequate to provide service in Missoula County.

The application includes an equipment list and a statement of assets and liabilities. In its equipment list, L&L includes two roll-off trucks, one trailer, one pickup truck, and three rear-loader waste collection vehicles. L&L Ex. 1 at 3. At the hearing, Mr. Johnson testified that he has “enough” equipment and that he could easily get additional equipment within “a strategic timeline” were the application to be granted. Transcript, vol. 1 at 39-40. It is impossible to know whether L&L has “enough” equipment given that, even after a three-day hearing, it remains unclear what garbage hauling markets L&L plans to serve in Missoula County, to whom L&L will provide service, what routes L&L would run,¹ how L&L would serve any area outside of the City of Missoula, where L&L will dispose of its collected waste, or how many customers it will service. Without adequate equipment, L&L will be physically unable to provide the proposed services, whatever they may be. And the Commission does not have sufficient

¹ In response to data requests by the PSC, L&L indicated that L&L has not made a decision on the proposed routes. L&L Response to PSC-002. At the hearing, Mr. Johnson stated that “I don’t have a route system until we actually get into the area and know it,” but he also stated that “[w]e have our L&L side of what we propose we’re going to do. As far as me disclosing it, no, I won’t disclose it.” Transcript, vol. 1 at 165. This leaves the PSC blind to what the applicant would do were its application granted.

evidence to determine whether the equipment identified by L&L is adequate to provide service from all points and places within Missoula County to a lawful disposal site.

B. The public convenience and necessity do not require the authorization of the proposed service.

Even if the Commission could determine that L&L is fit and able to provide the proposed service, L&L failed to demonstrate that the public convenience and necessity *require* the PSC to grant its application. L&L has failed to establish that there is any unmet need for waste-hauling services in Missoula County. In its application, L&L suggested that a public need exists for the proposed service because of “inadequate service in area including poor customer service, lack of inventory and sizes of residential/commercial containers, excessive time to service roll off containers.” L&L Ex. 1 at 3. The evidence does not support this assertion. Instead, the record indicates that Republic’s customer service is “fine” or “good” and that Republic can now provide a wider array of container sizes. No witness testified about the “excessive time to service roll off containers” mentioned in the application.

While L&L claims in its business plan that the company analyzed the Missoula County market “extensively” to find there is a need for a waste hauling competitor, L&L did not analyze the Missoula market or perform an analysis of the numbers or customers in the market. L&L’s Response to PSC-001; L&L’s Response to AWS-006. The only description of need in L&L’s business plan is the claimed need for *competition*. L&L’s Response to AWS-006; Transcript, vol. 2 at 389-90. And the extent of the analysis engaged in by L&L to determine this alleged need was Mr. Riley talking to people in Missoula County about L&L and competition, Mr. Johnson talking to his personal connections in the County, and Mr. Johnson reviewing Montana waste-related magazines and articles. Transcript, vol. 1 at 64-65, 195-96. When asked how he assessed need, Mr. Johnson testified that: “In my mind, I thought I was pretty

comfortable knowing it. I knew what I've talked to, the business owners that are over here and do business in Gallatin County, had those conversations. For me to be secure about it and positive moving forward, I contacted and hired an employee[, Mr. Riley,] to hit the ground over here prior to me applying. And I hired him at the end of January and had him go out on the street, very neutral, nongarbage-knowing person, and had him just, without offering pricing or anything, just go to the street." Transcript, vol. 1 at 64-65.

In more than four months of interacting with Republic's customers in Missoula, Mr. Riley spoke to approximately 400 or 500 people about L&L's application and competition in the garbage industry. Transcript, vol. 1 at 268, vol. 2 at 505. Mr. Riley testified that he heard many complaints about Republic, but that he only gathered around 100 affidavits from when he was hired in late January to when the application was filed on March 1, 2018. Transcript, vol. 2 at 505, 508-09. L&L also attempted to solicit comments in support of its application via Facebook. Transcript, vol. 1 at 212-14, vol. 2 at 502; Rep.'s Ex. 8. After all of this effort to goad Republic customers into supporting L&L's application, eight customers appeared at the hearing. Based on Mr. Riley's work, Mr. Johnson determined that there "was definitely a need." Transcript, vol. 1 at 65. This subjective assessment of need is clearly speculative, as "L&L has not made a decision on proposed routes and plans to decide on its initial routes after analyzing customer interest, as well as the revenue and probable operating characteristics of particular neighborhoods." L&L Response to PSC-002. In other words, L&L will find a need only when it is in L&L's interest to do so.

At the hearing, the Commission had the opportunity to examine whether the alleged need for the proposed service exists through the witnesses who testified. The testimony demonstrated that Republic has never denied a customer service, Transcript, vol. 3 at 885, 905, which is

consistent with the fact that the shipper witnesses had received services from Republic over an extended period of time. *See, e.g.*, Transcript, vol. 2 at 444 (Tuni LeFever testified she had been a Republic customer as long as Republic had been providing garbage services in Missoula). Of the almost 100 affidavits L&L included with its application, only eight affiants appeared to testify, even though every affiant indicated by signing the affidavit that he or she would be available to testify. Of the eight shipper witnesses, two were current or former roommates of Mr. Riley (John Collins and Brendan Hagen), the L&L employee responsible for drumming up support for the application in Missoula County, one was the relative of another L&L employee (Nancy Jean Beck), and one (Jordan Goldsmith) does not receive waste-hauling service from Republic at all, only receives recycling services, and would be interested in having another available recycling service (which L&L is not proposing to provide), Transcript, vol. 1 at 77, 85, 91.

Each shipper witness was approached by someone at L&L about providing an affidavit. Mr. Collins has known Mr. Riley since high school in Flathead County, and Mr. Riley essentially “just called up and said, hey, I want to talk to you about your garbage service” and “the monopoly that Republic has.” Transcript, vol. 1 at 136-37, 147. Mr. Collins could not remember where he lived when he signed the affidavit, but he is now Mr. Riley’s roommate. *See* Transcript, vol. 1 at 144 (answering the question of where he lived by stating: “It’s an interesting question. I was in a relationship and I ended up ending that relationship and I had moved out It was in a transition process and I really had no official address.”); Transcript, vol. 2 at 493. Mr. Goldsmith was approached by Mr. Riley to complete the affidavit when Mr. Riley rang his doorbell “and said that he was with a company looking to add additional garbage service to the Missoula County area.” Transcript, vol. 1 at 74. Ms. Beck was also approached by

Mr. Riley. Transcript, vol. 1 at 312. Mr. Miewald was approached by Mr. Johnson about providing an affidavit. Transcript, vol. 2 at 412. Mr. Johnson said he should not write about customer service issues and should focus on “the lack of service provided by Republic.” Transcript, vol. 2 at 419. Tuni LeFever was approached by Mr. Riley, who asked her if she “would be interested in another garbage service.” Transcript, vol. 2 at 442. Dave Frese’s wife, Diane, was approached by Mr. Johnson about completing an affidavit. Transcript, vol. 2 at 516. Brendan Hagen could not remember when he signed the affidavit because he’s “had a lot going on, so my time frame is a bit—I don’t know exactly when I signed it.” Transcript, vol. 2 at 552-53. He learned about L&L’s application because he “live[d] with Luke and [Luke] was just talking about work.” Transcript, vol. 2 at 562.

The shipper witnesses indicated that even were the application granted, they might not switch carriers to L&L. Mr. Goldsmith was interested in having another available recycling service, Transcript, vol. 1 at 85, but L&L is not proposing to provide such services. Mr. Miewald testified that he “can’t say that we would ever flip all of our business one way or the other, but we would at least have the option to pick and choose.” Transcript, vol. 2 at 410. Mr. Miewald indicated that he “probably will go with the cheaper brand.” Transcript, vol. 2 at 413. Mr. Collins complained that Republic picks up his trash weekly and said it “would be nice” if there were a service offered in Missoula with fewer pickups. Transcript, vol. 1 at 139. Ms. Beck also indicated that she does not require weekly pickups and does not receive a discount for days when she does not put out her trash. Transcript, vol.1 at 304. As Mr. Johnson acknowledged, “there is a rule out there that says you are supposed to pick up weekly,” Transcript, vol. 1 at 216; Mr. Johnson suggested he would somehow try to offer a service in

violation of this rule, but L&L cannot establish need by pointing to a service that Republic is prohibited from providing.

Several of the witnesses indicated that Republic's customer service was "fine" or "good." Ms. LeFever testified that since Republic had provided services to her residence, there were between two and five missed pickups. Transcript, vol. 2 at 445. Mr. Frese, when asked about Republic's customer service, testified that he has been satisfied with Republic's response and "they have been good." Transcript, vol. 2 at 522. Mr. Collins testified that "the service is there," and "their service has been fine." Transcript, vol. 1 at 142. Though there were a few complaints regarding container size options, the witnesses indicated their concerns would be alleviated if Republic could provide another size. Transcript, vol. 1 at 319 (Ms. Beck was asked if she would be happy if a smaller container were available to her and answered "Absolutely. Well, I would be happier."). As Ms. Bradshaw summarized: "if we have 1.2 million customers in this town and the villagers are not coming at us with pitch forks, the number and, frankly, quality of the affidavits and the shipper witnesses I don't think paint a picture that should leave any question that this community or the consumers in this community feel underserved or price gouged." Transcript, vol. 3 at 765. In fact, for the most part, the record indicates that when shipper witnesses complained to Republic, Republic tried to promptly resolve their issues. *See, e.g.*, Transcript, vol. 3 at 907 (Billy Fisher testified that when Mr. Hagen called in on August 8, 2017, regarding a missed pickup, "we went back for no charge and serviced him that day."); Transcript, vol. 3 at 910-11 (Mr. Fisher testified that he visited Kathy Brodie's shop after a driver was injured to try "to work with them" to resolve the issue with the rain gutter); Transcript, vol. 2 at 547-48 (Ms. Brodie testified that Republic was willing to work with them, "[w]e all worked

together to try to come up with something that would work, even though it didn't," and they were given several discounts after complaining).

The resounding consensus of the shipper witnesses was simply that competition is good. Ms. Brodie supported L&L's application because "Republic could use some competition. It's that easy." Transcript, vol. 2 at 545. Mr. Collins "would like to support some competition." Transcript, vol. 1 at 136-37. Mr. Collins further opined that "there needs to be competition. This is a capitalistic society and we need that. That's the biggest threat to us is monopoly." Transcript, vol. 1 at 142. He indicated that "everyone that I talk to personally, they feel the exact same way." Transcript, vol. 1 at 142. Ms. Beck thought that commercial rates in Bozeman went down after L&L entered the market and testified that it would "possibly" affect her view on L&L's application if the prices had not gone down. Transcript, vol. 1 at 313-14. Mr. Frese supported L&L's application because he "would like to see competition to see where prices should be." Transcript, vol. 2 at 523. As much as L&L attempts to conflate competition and need, the two remain separate factors for the Commission to determine and one cannot establish the other.

The Commission also had the opportunity to examine this question through Republic's witnesses. Missoula County Commissioner Jean Curtiss testified that she did not believe, based on her interactions with her constituents over the 17 years of her tenure on the County Commission, that there was a need for another service provider. Commissioner Curtiss testified that, though she receives many comments and complaints on a variety of issues, she has not heard complaints about Republic or waste hauling (except for calls inquiring about when a dead deer will be picked up off of the side of the road). Transcript, p. 589. Similarly, Linda McCarthy works with numerous downtown businesses in her role as the executive director of the

Downtown Missoula Partnership, and she testified that she had not heard any complaints about Republic or waste hauling. Transcript, pp. 710-11. She further testified that she did not see a need for another garbage hauler and that Republic is providing “really good” service for the downtown community. Transcript, p. 713.

Ms. Bradshaw agreed that Republic serves Missoula County well. Ms. Bradshaw testified that Republic has “always operated as if we were a local company,” and that it is “so integrated into this community and we’re very proud of the work we’ve done here over the last 45 years.” Transcript, vol. 3 at 669. Ms. Bradshaw testified that Republic is “committed to recycling” and “committed to the environment,” and that she “do[es]n’t see us withdrawing from that market either locally or nationally.” Transcript, vol. 3 at 694-95. She indicated that Republic is constantly looking at ways to make recycling more efficient and effective. Transcript, vol. 3 at 695. Republic is also committed to the City of Missoula’s initiative to eliminate waste by 2050. Transcript, vol. 3 at 695. Republic gives \$250,000 a year to the City of Missoula in free disposal for its street sweeping. Transcript, vol. 3 at 757. Republic’s role in Missoula County is unique; “a lot of the things we have been able to do in terms of a million dollar donation for open space or quarter million dollar annual donations for street sweepings or hazardous waste days or bear buffer carts have been more Missoula focused . . . because of the competitive infrastructure which is a little different here. No other market do we operate the hauling, the [Material Recovery Facility] and the landfill.” Transcript, vol. 3 at 786.

C. Republic can and will meet the public need for the proposed service.

The purpose articulated by L&L in its application is being served by the existing carrier, Republic, as indicated by the witness testimony described above. Republic has actively served the entire county for years and there is no evidence in the record suggesting that they cannot continue to serve the citizens of Missoula County. L&L failed to meet its burden of showing that

existing authority, infrastructure, assets, and personnel at Republic are incapable of meeting the public need. Nothing suggests Republic cannot or will not meet any public need that exists. In fact, there is no evidence showing that Republic has refused to provide a customer service, Transcript, vol. 3 at 667, and Republic recently added additional bin sizes to accommodate customer demand for more options, Transcript, vol. 3 at 942.

In addition, the customer complaints against Republic cited by the shipper witnesses are similar to those Mr. Johnson faces in the Bozeman area. L&L Response to PSC-004. Billy Fisher, Republic's Operations Manager for Western Montana, testified about Republic's system for dealing customer complaints. Mr. Fisher testified that Republic's "number one goal is to service the customer." Transcript, vol. 3 at 904. Republic tracks customer complaints in a system called Info-Pro. Transcript, vol. 3 at 905. He stated that when a customer reports a missed pickup, the probability that the pickup will occur within 24 hours is very close to 100 percent. Transcript, vol. 3 at 903-04. Since Mr. Fisher started at Republic, almost two years ago, there have only been three customer complaints from Missoula County filed with the PSC. Transcript, vol. 3 at 916.

Mr. Fisher also testified about Republic's safety record. Republic had no OSHA violations since he started at Republic. Transcript, vol. 3 at 930. In addition, last year there was only one accident liability claim in Missoula County. Given that Republic drivers covered 300,000 miles last year, Mr. Fisher was "super impressed" by the safety record. Transcript, vol. 3 at 914. There were only two safety-related injuries last year, one involving a shoulder injury from repetitive motion and one involving a fall. Transcript, vol. 3 at 914.

To the extent there is a need for additional hauling services in Missoula County, which Republic disputes, Republic has demonstrated its ability and willingness (and, indeed, its belief

that it is required) to meet that public need. *See* Transcript, vol. 3 at 716 (stating Republic has “always been under the operating understanding that we service the entire permitted area”). Republic is “here to serve everybody in Montana . . . and that’s urban and rural folks.” Transcript, vol. 3 at 720.

D. The proposed service would have an adverse impact on Republic.

The proposed service would have an adverse impact on the existing carrier. Ms. Bradshaw testified that L&L’s entry into the market could mean “a significant number of my drivers . . . may be out of a job.” Transcript, vol. 3 at 671. Republic has “a very tenured staff” with “almost no turnover, other than planned retirements, in our driver workforce here.” Transcript, vol. 3 at 699. Running short-handed leads to safety issues and missed customer pickups. Transcript, vol. 3 at 699. Ms. Bradshaw stressed the importance of having “tenured drivers who understand the routes, who understand how to be safe on those routes and who can drive efficiently” when Republic has “10,000 customer touches” on a given day and “1.2 million customer contacts” in a year in just one line of business. Transcript, vol. 3 at 699.

In addition, Mr. Pinczes indicated that L&L will rely on Republic continuing to provide service while L&L builds its capacity to compete, Transcript, vol. 2 at 491, that is to say, while it effectively cherry picks the profitable routes. This reliance on Republic to continue providing low- or no-margin services while L&L picks off the profitable routes would adversely impact Republic. As Ms. Bradshaw testified, “volume is central to the needs of an organization like Republic or any utility in order to both cover their fixed costs and then be able to offer a variable cost service as well.” Transcript, vol. 3 at 719.

E. Competition would not promote the public interest in Missoula County.

The evidence presented at the hearing indicates that competition in the Missoula County waste-hauling market would not promote the public interest. Republic’s unique position in

Missoula County has allowed Republic to participate in the community in a significant way, which has benefited the public interest. As Commissioner Curtiss, Ms. McCarthy, and Ms. Bradshaw testified, Republic is an active community partner. Ms. Bradshaw testified that competition works well in markets with low barriers to entrance, but that in an industry like the garbage business that has high fixed costs, competition does not serve the good of the public because it does not necessarily lower prices and is associated with negative repercussions. Transcript, vol. 3 at 652-53. Ms. Bradshaw testified that “when you determine that what is in the best interest of the consumers of Montana is to compete on price, you begin a race to the bottom And when you break that system, you introduce instability . . . then you force business people to look at how they run their business and how they are making decisions.” Transcript, vol. 3 at 755-56. Ms. Bradshaw stated that “it’s naïve to think that we wouldn’t be making changes in how we do business. We’re very appreciative of having had this market. We take great care of our customers. We do not price gouge them. We do not have lapses in service beyond very minimal issues that we take care of promptly. We feel like we have been playing by the rules set forth by the PSC and we feel there is no reason to have another entrant in the market and it would just have a destabilizing effect.” Transcript, vol. 3 at 757. “[T]here is an impact to the public. And right, that’s what is going to change, is the public experience.” Transcript, vol. 3 at 758.

The statement that competition in this industry does not necessarily translate to lower costs is borne out by the evidence of what has happened in Gallatin County. Mr. Zaickhin testified that the rate for new commercial customers has actually increased in Gallatin County by 25% since L&L entered the market. Transcript, vol. 3 at 834, 838. Ms. Bradshaw testified that

prices have essentially remained flat in the Bozeman market after L&L's application was granted. Transcript, vol. 3 at 750.

Mr. Johnson promised to charge rates that are lower than Republic's, Transcript, vol. 1 at 286-87. but he also indicated that he plans to be profitable, Transcript, vol. 1 at 171. Mr. Johnson also testified that he plans to charge certain customers prices to essentially outprice L&L from that part of the market. He indicated that though he "can't turn down a customer," he can "choose to put a higher price on that person" and "they may not like the price." Transcript, vol. 1 at 170. "If they are willing to pay, I'm going to staff it. Yeah, I've taken care of the customers' needs at that point." Transcript, vol. 1 at 171. Such a pricing practice is harmful to consumers of an essential service like garbage hauling because a competitor like L&L who decides to serve only the profitable areas limits another competitor's ability to subsidize the low- or no-margin services like rural hauling. Competition in this context effectively means competition only in certain parts of the market, where competition benefits L&L, with the per unit cost associated with providing the service recovered with fewer customers who face a price increase.

Looking to what happened after L&L entered the Bozeman market, Ms. Bradshaw identified several negative repercussions, namely that L&L does not service every customer in the market, Transcript, vol. 3 at 653, that haulers may discontinue no- or low-margin business segments, *id.* at 662, 665, that rural customer might be priced out of the market, *id.* at 663-664, and that there are environmental and safety costs to having two trucks on the roads, as well as wear and tear on community infrastructure, *id.* at 671.

5. CONCLUSION

L&L decided to apply for a permit to haul waste in Missoula County as a competitor to Republic, yet chose to not to provide key details to the Commission to support its application in an attempt to “confuse” Republic. Without knowing any specifics about its plan, the Commission is expected to blindly rely on Mr. Johnson’s judgment and business sense. Mr. Johnson’s judgment and business sense cannot substitute for the factors the Commission is statutorily required to consider or the evidence is needs to support its decision.

L&L did not show that it is fit and able (and willing) to provide hauling services *from all points* within Missoula County to a lawful disposal site. In addition to failing to meet this threshold requirement, L&L has not demonstrated that the public convenience and necessity require the authorization of the proposed service or that Republic is unwilling or unable to meet the alleged need for service.

The garbage business is unique, and competition in this context is not unequivocally good. Customers in Missoula have benefitted from stability for their garbage service, but Republic will have to reevaluate its business decisions if a competitor enters the market in Missoula County. And competition could mean that some of Republic’s tenured drivers will lose their jobs. Based on what has happened in Gallatin County after L&L’s entrance into the market, the negative repercussions of competition in this industry will far outweigh any perceived inherent benefits of competition in Missoula County.

For these reasons, L&L’s application should be denied.

Dated this 29th day of June, 2018.

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CERTIFICATE OF SERVICE

I certify that on the 29th day of June, 2018, Allied Waste Services of North America, LLC, d/b/a Republic Services of Montana's Post-Hearing Brief was e-filed with the Commission and served via U.S. mail and e-mail, unless otherwise noted, to the following:

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