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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**

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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
)	

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**REPUBLIC SERVICES OF MONTANA'S POST-HEARING RESPONSE BRIEF**

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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 Response Brief to the Montana Public Service Commission (the "Commission" or the "PSC").

**1. INTRODUCTION**

Republic agrees with L&L Site Services, Inc. ("L&L") that the Commission "should look at this case through the lens of the people of Missoula County." L&L's Post-Hearing Opening

Br. (“L&L Br.”), p. 1. The record shows that L&L is unfit and unable to provide the proposed services within Missoula County, and granting the certificate would harm “the people of Missoula County.” L&L bases its case on the eight shipper witnesses who testified at the hearing as stand-ins for the “Missoula customers [who] want and deserve a choice of providers for garbage service.” L&L Br., p. 2. The fact that only eight shipper witnesses testified when Republic serves approximately 25,000 residential customers is telling. The proof in the hearing demonstrated no unmet demand and few concerns regarding the adequacy of Republic’s services or its rates. Instead, the record indicates that Republic can and will meet any alleged need, and that competition in Missoula County would adversely impact consumers. For these reasons, L&L’s application should be denied.

## 2. ARGUMENT

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

L&L proposes to operate from “all points and places within Missoula County to a lawful disposal site.” To establish its fitness and ability to perform these proposed services, L&L relies on its current operations in Gallatin and Madison Counties. L&L Br., pp. 27-30. The vague plans and “if and when” statements offered by L&L are not sufficient to demonstrate fitness and ability to perform the proposed services in *Missoula County*. Regardless of L&L’s experience providing waste-hauling services in other counties, L&L has no history or experience providing services in Missoula County and made no effort to give the Commission any details establishing its fitness to do so. Instead, L&L decided not to disclose to the Commission what rates it would charge or what routes it would serve. *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.”). L&L refused to describe the garbage hauling markets that it plans to serve within Missoula County or to discuss how it would serve any area outside the City of Missoula. L&L Response to PSC-001. And despite acknowledging that issues associated with access to a landfill was L&L’s “number one fear coming into” Missoula, L&L did not even contact Republic regarding the Missoula landfill for this application. Transcript, vol. 1 at 182, 186. Remarkably, the applicant seeks authorization from the Commission without a plan to dispose of any garbage the PSC allows it to pick up in Missoula County. L&L cannot meet its burden of establishing fitness, ability, and willingness to perform the proposed services on this (intentionally) sparse record.

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

L&L has provided almost no information regarding its financial condition and instead points to its performance in Gallatin and Madison Counties as an indication of its financial condition. L&L suggests it will rely on those operations to prop up the proposed Missoula operation. *See* L&L Br., p. 28 (stating “L&L’s operations in Gallatin County and Madison County will support the proposed Missoula operation”). “If and when L&L needs to borrow money for Missoula operations,” L&L states it will be able to do so. L&L Br., p. 28. But while American Bank “stands ready” to loan money to L&L, it also has a loan approval process, and L&L has not even applied for a loan to initiate that process. Transcript, vol. 1 at 109-10, 119. Further, L&L suggests that a “mere glance” at its annual revenue growth and current cash flow establishes financial fitness. L&L Br., p. 27. A “mere glance” at its financials is all that L&L has offered. Lance 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, 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. 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.**

L&L states that its model for servicing customers in Missoula County will be the same model it implemented in the Bozeman area. L&L Br., p. 28. This does not bode well for “the people of Missoula County.” L&L has chosen not to serve every customer in the market in Gallatin County but has instead “cherry-picked” which areas to serve.

When describing its process for engaging new customers in its brief, L&L represents that the “customer will get a quote for the cost of service and L&L will offer to provide service to that customer.” L&L Br., p. 28 (citing Transcript, vol. 1 at 67). L&L suggests it will not seek out or avoid serving any areas. *Id.* However, this statement is inconsistent with the testimony before the PSC. Mr. Johnson testified that when L&L quotes a price to a customer, it sometimes chooses to essentially price itself out of that market. Transcript, vol. 1 at 170-71; Transcript, vol. 3 at 832-33. Moreover, the record reflects that L&L chooses not to engage in low- or no-margin services. L&L chose to terminate its recycling service after it proved to be unprofitable. Transcript, vol. 1 at 201-03. L&L’s operation in Gallatin and Madison Counties is strongly indicative that it does not intend to provide services throughout Missoula County and is not fit or able to do so.

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

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. L&L argues it “has a substantial amount of durable and reliable equipment available to perform the proposed service in Missoula County” and can easily get additional equipment or containers if needed. L&L Br., p. 29.

Mr. Johnson suggests that his equipment is better than Republic’s, and he testified that L&L generally experiences fewer equipment breakdowns than the competition. Transcript, vol. 2 at 476. As argued in Republic’s Post-Hearing Brief, it is impossible to know whether the listed equipment is adequate when L&L cannot or will not give notice of 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, 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. There is nothing to substantiate L&L’s claims that its equipment breaks down less than the competition’s or is “more than 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.**

L&L has failed to establish that there is any unmet need for waste-hauling services in Missoula County. “The public need to meet in an application for a certificate of public convenience and necessity is shipper need.” *In re Sanitation, Inc.*, Dkt. No. T-97.91.PCN, Order No. 6444a, ¶ 90 (July 21, 1998). According to L&L’s own business plan, the only need L&L identified in Missoula is a need for competition, not meeting the needs of any unserved shippers. Transcript, vol. 2 at 389-90. To support its argument that the public convenience and necessity

require authorization of the proposed service, L&L relies on the eight shipper witnesses who testified at the hearing out of 24,601 customers in a county of 117,441 citizens.<sup>1</sup> The caselaw does not appear to establish a requisite number of shipper witnesses or percentage of customers necessary to support a successful application, but if the Commission grants L&L application, the test will be rendered meaningless. *See Waste Mgmt. Partners of Bozeman, Ltd. v. Mont. Dep't of Pub. Serv. Regulation*, 284 Mont. 245, 254, 944 P.2d 210, 216 (1997) (finding “overwhelming” evidence of “unmet shipper need” after 40 shipper witnesses testified about their dissatisfaction with Three Rivers); *In re Sanitation, Inc.*, ¶ 90 (finding a sufficient showing of unmet shipper need when 12 out of 520, or 2.3% of, customers testified). Specifically, it is striking that after months of work trying to convince Republic customers to support L&L’s application, only eight customers, or 0.03% of Republic’s customers, appeared at the hearing.<sup>2</sup> Of these eight, two were current or former roommates of Luke Riley, the L&L employee responsible for drumming up support for the application in Missoula County, one was the relative of another L&L employee, and one does not receive waste-hauling service from Republic at all, Transcript, vol. 1 at 77, 85, 91. And one of the shipper witnesses, Mr. Collins, testified that Republic’s service was “fine,” that he received the service he deserved from Republic for the price he paid in Missoula, and his experience with Republic’s customer service was “pleasant.” Transcript, vol. 1 at 140-42.

Despite Mr. Collins testimony that he received the service he “deserved” for the price he paid Republic, L&L argues that the shipper witness testimony by Ms. LeFever, Ms. Beck, and Ms. Brodie “demonstrates a need for fair pricing in Missoula County.” L&L Br., p. 33.

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<sup>1</sup> U.S. Census Bureau Pop. Est., Missoula County, MT, [www.census.gov](http://www.census.gov) (July 1, 2017).

<sup>2</sup> L&L also suggests there is some large number of people who “were reluctant to sign affidavits out of fear that Republic, the only service provider in Missoula County, might retaliate or refuse to continue providing service.” L&L Br., p. 31 (citing Transcript, vol. 2 at 497-98). This unidentified population cannot support a finding of substantial unmet shipper need.

Ms. LeFever testified that she pays “over \$100 more per quarter than her two neighbors located on the same driveway.” Transcript, vol. 2. at 435. However, she also clarified that her container and her neighbor’s container are some distant apart; while seated at the witness table at the hearing, Ms. LeFever guessed that the containers were as far apart as the distance from her “to the door twice.” Transcript, vol. 2 at 456. Ms. LeFever receives a different service than her neighbor and pays more as a result. Republic has repeatedly told her that she would be charged the same rate as her neighbors if she walked her container to the street. Transcript, vol. 2 at 437. Ms. Beck testified that her service in Missoula County “costs nearly four times as much as the identical service would cost her in rural Texas.” Transcript, vol. 2 at 309. Ms. Beck agreed that the market for garbage hauling and disposal is different in Texas than in Missoula County and acknowledged that she does not know all of the factors that go into pricing, such as the distance between the property and the disposal site and any relevant regulations or ordinances. Transcript, vol. 1 at 315-16. Ms. Brodie testified that “[w]e do get charged the overages on occasions.” Transcript, vol. 2 at 537. She testified that Republic has taken “some of the charges off,” “worked with [her] to make payments,” and “gave [her] a discount.” Transcript, vol. 2 at 539. Republic takes pictures of all overages, but Ms. Brodie did not request such photographs. Transcript, vol. 2 at 548. Moreover, Ms. Brodie indicated that her business has had average overage charges over three months of \$20, hardly the “exorbitant amounts” L&L decries. Transcript, vol. 2 at 548; L&L Br., p. 33-34.

Republic has never denied a customer service. Transcript, vol. 3 at 885, 905. Rather than describing “substantial issues and deficiencies with Republic’s existing service” as alleged by L&L, the shipper witnesses testified that they might not switch carriers to L&L even if the application is granted, Transcript, vol. 2 at 410, 413, and that Republic’s customer service is

“fine” or “good,” Transcript, vol. 1 at 142; Transcript, vol. 2 at 522. Though there were a few complaints regarding container size options, the witnesses indicated their concerns would be alleviated if Republic could provide another size. *See* 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.”). Republic is now able to provide the requested smaller container sizes. Transcript, vol. 3 at 939-42. The complaints raised by the shipper witnesses are a far cry from those justifying a finding that the public convenience and necessity required the authorization of the proposed service in *Waste Management*. In that case, “Three Rivers’ service was spotty and unreliable,” “customers had to routinely monitor Three Rivers to ensure that garbage would actually be hauled away on the date and time it was scheduled for pickup,” “Three Rivers’ staff treated the public with disdain,” “Three Rivers discontinued service to some of the customers who complained,” and “Three Rivers charged customers dramatic rate increases.” *Waste Mgmt.*, 284 Mont. 255, 944 P.2d 210, 216.

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 413 (Mr. Miewald testified that he ultimately receive two bear-proof containers from Republic); 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).

Glenda Bradshaw testified that she takes any customer services lapses seriously. Transcript, vol. 3 at 773. Several shipper witnesses testified that they had difficulty reaching Republic customer service representatives. Ms. Bradshaw admitted that for several months the “telephone answering probably wasn’t nearly to the standards that I expect it to be.” Transcript, vol. 3 at 774. However, she testified that Republic has “made significant improvements” after a move to a national call center was cancelled and the local call center was rebuilt. Transcript, vol. 3 at 774. Nothing suggests that the problems experienced during this transition are systematic or ongoing.

Republic’s continual efforts to improve service in Missoula County even absent competition are well documented, and the record does not support L&L’s argument that competition is necessary to improve service. Transcript, vol. 3 at 667 (“So the customer interface part of that is something that we’re working to improve.”); Transcript, vol. 3 at 744 (“So I think always having goals and the idea of continuous improvement, whether that’s self imposed and internal rather than external in position, does make us stronger. Do I think competition is the only way to achieve that? Absolutely not.”); Transcript, vol. 3 at 773 (“So when I hear we’ve let a customer down and haven’t returned phone calls or maybe have been less sympathetic to their concerns than we should be, I take that very seriously and I’ll definitely take that back and be thinking about ways to improve.”); Transcript, vol. 3 at 774 (“[B]ecause even prior to hearing that during testimony, we had self-identified that we had opportunities to improve.”); Transcript, vol. 3 at 843 (Republic has a sales representative who “continue[s] to look for opportunities, whether it be with us or another provider, to improve upon services”). As argued in Republic’s Post-Hearing Brief, competition and need are separate factors for the Commission to determine, and one cannot establish the other.

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

“[W]hether the existing service is *capable* of providing adequate service means nothing if it is *unwilling* to provide adequate service.” *Waste Mgmt.*, 284 Mont. at 255, 944 P.2d at 216. Here, the evidence shows that the existing carrier, Republic, is capable of providing adequate service and is in fact already doing so. There is no evidence showing that Republic has refused to provide a customer service. Transcript, vol. 3 at 667. To support its argument that there is an unmet need, L&L points to Republic’s limited container size options and one customer’s difficulty obtaining a small locking container and bear-proof container. L&L Br., p. 34. Republic recently added additional bin sizes to accommodate customer demand for more options. Transcript, vol. 3 at 942. Therefore, to the extent there is a need for more container sizes, Republic can meet that need. Billy Fisher testified that Republic does not offer containers larger than the 4-yard container, which do not have wheels, “because of the accessibility. We like to be able to wheel these things out and move them and transport them where they need to go. So having the ability to have wheels on the bottom of things is a huge advantage to everybody else.” Transcript, vol. 3 at 941. In addition, the record reflects that Mr. Miewald did receive a locking container and a bear-proof container, Transcript, vol. 2 at 398, 400-02, and that all of Republic’s options are “available locking, bear-proof,” Transcript, vol. 3 at 940-41.

L&L also argues there is a need for better customer service and fair pricing. L&L Br., p. 35. Notably, this argument is inconsistent with the shipper testimony that Republic’s prices are fair for the service it provides, and that Republic’s customer service was pleasant to deal with. Transcript, vol. 1 at 140-42. And, as described above, Republic takes seriously any lapse in customer service and is constantly working to improve its customer service, regardless of whether there is competition in the market. Moreover, 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. In addition, L&L's examples of unfair pricing are not persuasive; as argued above, the price of Ms. Beck's service in Texas has no bearing on the price of her service in Missoula County and is not at all indicative of what appropriate pricing in a completely different market is. Ms. LeFever receives a different service from her neighbors, which is why she is charged a higher amount. Ms. Brodie's overage charges are not arbitrary, and she has received discounts and other accommodations from Republic. Rather than reflecting unfair pricing, the record reflects that Republic seeks "rates that are competitive" and fair. Transcript, vol. 3 at 658. Ms. Bradshaw testified that Republic has a simple rate structure in Missoula County "where we've tried to smooth out the pricing to make it fair but also competitive for us." Transcript, vol. 3 at 658.

L&L's assertion that a need exists because "Republic will continue to provide inadequate container options, avoid returning numerous phone calls, and fail to offer fair pricing" is not persuasive. L&L Br., p. 36. To the extent there is a need for additional hauling services in Missoula County, which Republic disputes, Republic has demonstrated its ability and willingness to meet that public need.

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

The proposed service would have an adverse impact on Republic. L&L ignored Ms. Bradshaw's testimony 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. 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. Instead, L&L focuses on Republic's revenue and the fact that Republic does not provide service to all households in Missoula County, seemingly suggesting this somehow

means that Republic's ability to service customers in rural areas will not be affected. L&L Br., p. 37. Republic serves approximately 25,000 residential customers. Rep.'s Response to Data Request L&L-005. However, Ms. Bradshaw testified that this number includes "discrete households" and multi-unit buildings. Transcript, vol. 3 at 794-95. "So it's 24,000 discrete households," but "one stop could indicate 600 actual pickups" because "we summary route a lot of our stops." Transcript, vol. 3 at 795. A trailer home complex might have "a couple thousand stops," and there are "multiple multi-family dwellings or one property management company that handles 500 units." Transcript, vol. 3 at 795. Republic has not captured the whole residential market in Missoula County, but Republic still believes the entry of L&L into the market would impact its ability to service the residents of Missoula County, as discussed below.

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

"Consideration of competition may be beneficial in some cases, although certainly not all cases." *Waste Mgmt.*, 284 Mont. at 251, 944 P.2d at 214. This is a case where competition in this industry will not be beneficial to the "people of Missoula County." Though there are many unanswered questions regarding L&L's application, the Commission has a clear picture of how L&L operates in a competitive market. L&L's participation in the Bozeman market suggests that competition does not necessarily lower prices and might cause 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.

L&L suggests that it “will provide lower prices, more container options, and local customer service personnel.” L&L Br., p. 40. As an initial matter, it is impossible to know if or how L&L would provide lower rates when it does not know the rates it would charge or what routes it would serve. Moreover, the record indicates that L&L also intends to be profitable and to charge certain customers in such a way as to essentially outprice L&L from that part of the market. Transcript, vol. 1 at 171. L&L seeks a profit margin of between 25% and 40%. L&L Br., p. 10. It is unclear how prices could lower for customers when the applicant seeks the same profit margin that the existing provider has. Instead, it is more likely that rates would remain flat, which is consistent with Republic’s witnesses’ testimony about what happened in the Bozeman area after L&L entered the market.

The record also indicates that Republic offers the smaller containers sought by the shipper witnesses and that Republic’s customer service personnel are based in Missoula. As to the containers larger than 4-yards that Republic has chosen not to carry, L&L can hardly base its argument on the public interest on a service that Republic does not provide when it works to meet its customers’ needs by providing a container with wheels and by offering more frequent pickups of the containers as needed. Dave Frese testified that when his 4-yard container was overflowing, Republic said “we’ll dump twice a week to cure the problem, which did cure it.” Transcript, vol. 2 at 520.

L&L argues that competition would promote the public interest because the shipper witnesses discussed the need for competition in Missoula County. As argued above and in Republic’s Post-Hearing Brief, the alleged need for competition cannot also be a consumer need that an existing carrier has failed to meet. L&L suggests that Republic’s customer service has already improved after the filing of its application. L&L Br. 35, 39. Rather than indicating that

competition will promote the public interest, this is consistent with the fact that, when Republic is made aware of issues, it attempts to resolve them. *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 sat 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).

L&L makes the unsubstantiated assertion that “the evidence presented implies that Republic’s Missoula County rates, in fact, subsidize Republic’s competition with the municipal residential service in Bozeman.” L&L Br., p. 40. Instead, the testimony indicated that Republic’s Missoula rates are based on the two identified markets, with an in-town rate and an out-of-town rate. Transcript, vol. 3 at 726. This rate structure allows “rural customers to have garbage service.” Transcript, vol. 3 at 658. Adding a competitor could mean that rural customers are priced out of the market and unable to receive services. Transcript, vol. 2 at 594; Transcript, vol. 3 at 663. Such a result would clearly not promote the public interest.

### 3. CONCLUSION

L&L decided to apply for a permit to haul waste in Missoula County without sharing any specifics about its plan. L&L’s decision to create a sparse record means it cannot 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.

Republic customers in Missoula, and the public at large, have benefitted from stability for their garbage service and from Republic's role in the community. Republic will have to reevaluate its business decisions if L&L's application is granted, and some of Republic's tenured drivers will lose their jobs. L&L's conduct in the Bozeman market makes clear that the negative repercussions of competition will far outweigh any perceived benefits of competition in Missoula County.

For these reasons and those stated in Republic's Post-Hearing Brief, L&L's application should be denied.

Dated this 16th day of July, 2018.

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**CERTIFICATE OF SERVICE**

I certify that on the 16th day of July, 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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