

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

IN THE MATTER OF THE COMPLAINT OF
SHOSHONE CONDOMINIUM HOTEL
OWNERS ASSOCIATION, A MONTANA
CORPORATION,

Complainant,

v.

ABACO ENERGY SERVICES, LLC a North
Dakota Limited Company,

Defendant.

UTILITY DIVISION

Docket No. D2013.9.71

ABACO'S ANSWER TO COMPLAINT

ABACO, Energy Services, LLC, ("ABACO") by and through its undersigned counsel of record, hereby responds to the Complaint filed by Shoshone Condominium Hotel Owners Association ("Plaintiff"), filed in this Docket.

1. ABACO is without sufficient information to form a belief as to the allegations asserted in Section 1 and therefore denies the same.
2. Section 2 of the Complaint purports to list the name and address of "each Respondent" to the Complaint. However, while Plaintiff named two entities in the opening paragraph of its

Complaint, Plaintiff only lists information for ABACO in paragraph 2. The contact information listed for ABACO is accurate. ABACO asserts it is not affiliated in any way with Boyne, USA, Inc. (“Boyne”) and denies the contact information listed in Section 2 is the contact information for Boyne. ABACO is represented by the undersigned counsel.

3. ABACO denies the allegations contained in the first paragraph of Section 3. ABACO admits it provides propane delivery service to selected, specific customers located at Boyne’s Big Sky Resort located in Big Sky Montana. ABACO denies that it offers service to the general public, that it holds itself open for business to the general public, or that it is a public utility. ABACO denies this Commission has jurisdiction over it. See generally, Affidavit of Stacy Tschider filed in this Docket on or about November 11, 2013 and Second Affidavit of Stacy Tschider filed in this Docket on or about March 13, 2015.

With respect to the second paragraph of Section 3, ABACO admits it has executed an Agreement to Provide Propane Service (“Agreement”) with Boyne in which ABACO has agreed to deliver, and Boyne has agreed to take a minimum of 600,000 gallons per year of propane. The Agreement sets forth the contract price and terms for the propane. With Boyne’s knowledge and input, ABACO engages in a competitive bid process each year to secure a propane supply at a locked in price, which ABACO then delivers to Boyne pursuant to the terms of the Agreement. ABACO has no knowledge of how Boyne uses the propane delivered under the Agreement or to whom Boyne delivers propane or what Boyne charges for any propane it delivers to any of its customers or its end users. The Plaintiff is not ABACO’s customer. ABACO does not provide propane to Plaintiff and ABACO does not invoice Plaintiff for any propane. There is no contractual relationship between Plaintiff and ABACO. ABACO’s contractual relationship is with Boyne. ABACO denies all other allegations in the second paragraph of Section 3

With respect to the third paragraph of Section 3, ABACO denies it is a public utility and denies it is obligated to file its rates, charges, or any tariffs with this Commission. If Plaintiff has any complaint with its propane service or the charges for its service, those complaints are against its propane supplier, Boyne, and not with ABACO. As a result, ABACO denies any investigation of its services is warranted or necessary. ABACO denies Plaintiff has standing to initiate or request any investigation of its practices. ABACO denies this Commission has jurisdiction. ABACO denies all remaining allegations in the third paragraph of Section 3.

With respect to the fourth paragraph of Section 3, ABACO is without sufficient information to form a belief with respect to any of the allegations set forth therein, and therefore ABACO denies all such allegations.

4. With respect to the relief Plaintiff requests in the first paragraph of Section 4, it appears the basis for Plaintiff's request is to impact charges Plaintiff receives from Boyne, not from ABACO. ABACO has no say over the cost of Plaintiff's propane from Boyne. Boyne might pass through costs it receives from ABACO; but Boyne might just as easily charge Plaintiff more or less than it pays to ABACO. Therefore, no changes in the rates ABACO charges to Boyne will directly impact the Plaintiff's costs as the decision for what Boyne may charge to Plaintiff is entirely within Boyne's discretion and ABACO is not a party to any agreements between Boyne and Plaintiff. It is ABACO's understanding and belief that Plaintiff's dispute related to costs it pays to Boyne for propane is part of a larger dispute Plaintiff has with Boyne and how Boyne is managing the Condominium Hotel under a management agreement the Condominium Hotel entered into with Boyne. That larger dispute does not involve ABACO, and ABACO is not a party to the Condominium Hotel's contractual arrangements with Boyne. For all of these reasons, and because ABACO is not a public utility and does not hold itself out as providing

service to the general public, ABACO denies Plaintiff has standing to bring this Complaint against ABACO, and requests this Commission deny the request that the Commission investigate, assert jurisdiction over ABACO, or set its rates.

5. With respect to Section 5, ABACO denies the Complaint raises issues that are within this Commission's jurisdiction. Plaintiff is not a customer of ABACO and lacks standing to assert these complaints against ABACO. Plaintiff's complaints are disputes between Boyne and Plaintiff that do not involve ABACO.

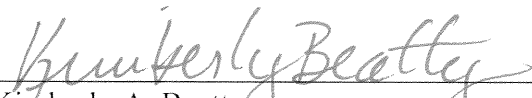
6. Section 6 of Plaintiff's Complaint is a request that the Commission serve the Complaint upon ABACO and order it to file an Answer. Therefore, no response by ABACO to this Section 6 is necessary.

7. Section 7 of Plaintiff's Complaint requests any other relief the Commission deems appropriate. ABACO denies any relief, equitable or legal, in Plaintiff's favor and against ABACO is appropriate.

8. ABACO requests it be dismissed from this case and that the investigation requested by Plaintiff be denied as outside this Commission's regulatory purview as pled because Plaintiff is not a customer of ABACO, has no contract with ABACO, and has no standing to assert any complaints against ABACO.

Dated this 9th day of December, 2015.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By 

Kimberly A. Beatty
Attorneys for ABACO Energy Services, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2015, a true and correct copy of the foregoing was this day served as follows:

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Justin Kraske
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