

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

**SHOSHONE CONDOMINIUM HOTEL OWNERS ASSOCIATION'S ANSWERS AND
OBJECTIONS TO DATA REQUESTS ABACO-030 THROUGH ABACO-050
SUBMITTED BY ABACO ENERGY SERVICES, LLC'S**

Shoshone Condominium Hotel Owners Association, a Montana Corporation
("SCHOA") hereby submits the following answers to Data Requests submitted by ABACO
Energy Services, LLC ("ABACO").

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ABACO-030

RE: Communications with ABACO
Murray Morgan/Robert Orsello

(a) Please state in detail each occasion Shoshone or any of its agents or representatives contacted ABACO directly regarding ABACO's provision of propane, rates charged, or services rendered between 2007 and the present.

(b) Please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, or other writings that support your responses to 030(a).

RESPONSE:

(a) ABACO as a vendor was not contacted by SCHOA as Boyne was managing the property on SCHOA's behalf. Boyne's representatives as managers for SCHOA apparently had numerous communications with ABACO as evidenced by prior Data Requests, Testimony and documents previously submitted.

(b) Already provided.

ABACO-031

RE: Invoices for Services
Murray Morgan/Robert Orsello

(a) Please admit that ABACO never mailed bills for propane delivery or propane services to Shoshone directly during any portion of the period of 2007 through the present.

(b) If your response to 031(a) is anything other than an unqualified admission, please state each fact that supports your response.

(c) If your response to 031(a) is anything other than an unqualified admission, please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, or other writings that support your responses to 031(a) and 031(b).

RESPONSE:

(a) Invoices were sent to a generic post office box of Boyne as was all other vendor invoices for the SCHOA. Assessment, Payments, etc. The SCHOA did not maintain a separate post office box until a separate accounting firm was attained.

(b) See answer to (a).

(c) ABACO is in possession to the billing that it delivered to Boyne for SCHOA's

propane.

ABACO-032

RE: Ownership of Propane
Murray Morgan

- (a) Please state each fact known to you and/or to Shoshone which supports the assertion made in your testimony beginning on page 6 that “It appears the propane is ABACO’s until it is delivered to the Shoshone boiler.”
- (b) Please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, or other writings that support your response to 032(a).

RESPONSE:

- (a) ABACO invoices are based on the SCHOA meter located at the SCHOA’s boiler. There would be no record of any propane that did not go through the SCHOA’s meter if ABACO is providing Boyne with a different invoice as the propane is delivered into the tanks, SCHOA would like to see those charges as SCHOA has previously asked for them. Further if the SHCOA’s meter is being used as part of a composite of the entire Boyne complex, which is supplied propane by ABACO, the SCHOA would like to know that. That is, ABACO is adding up the total of the systems meters against what is delivered into the tanks.
- (b) See documents previously provided.

ABACO-033

RE: Complaint
Murray Morgan/Robert Orsello

- (a) Please admit that ABACO does not own the boiler or any propane-related fixtures within the Shoshone Condominium Hotel downstream from the meter.
- (b) If your response to 033(a) is anything other than an unqualified admission, please state each fact that supports your response.
- (c) If your response to 033(a) is anything other than an unqualified admission, please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, or other writings that support your responses to 033(a) and 033(b).

RESPONSE:

- (a) Admit.

ABACO-034

RE: Provision of Services
Murray Morgan/Robert Orsello

- (a) Please admit that ABACO has never provided services or any kind within the Shoshone Condominium Hotel, to Shoshone, or to any individual unit owner.
- (b) Please admit that ABACO has never provided any repair or maintenance service of any kind to the Shoshone Condominium Hotel or to Shoshone downstream from the intake delivery point at the meter.
- (c) Please admit that ABACO has never provided any repair or maintenance service of any kind to any unit owner downstream from the intake delivery point at the meter.
- (d) If any of your responses are anything other than an unqualified admission, please state each fact that supports your responses.
- (e) If any of your responses are anything other than an unqualified admission, please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, or other writings that support your responses.

RESPONSE:

- (a) SCHOA does not know what is meant by “services or any kind”. SCHOA is unaware if ABACO representatives have provided labor at SCHOA’s boiler. If propane is included as services this is denied. ABACO provides propane that goes into every Shoshone unit fire place, therefore every Shoshone owner is an ABACO customer. This propane comes from the same supply of propane that goes into the boiler that provides hot water to every Shoshone owner.
- (b) SCHOA is not aware of any repair or maintenance performed by ABACO in each condominium unit.
- (c) SCHOA is not aware of any repair or maintenance performed by ABACO in each condominium unit.
- (d) Please see answer to a,b,and c.
- (e) Not applicable. To the extent that ABACO intends services to include propane, see documents previously provided.

ABACO-035

RE: Contract for Services
Murray Morgan/Robert Orsello

- (a) Please admit there is no written contract between ABACO and the Shoshone Condominium Hotel for the delivery of propane.
- (b) Please admit there is no verbal contract between ABACO and the Shoshone Condominium Hotel for the delivery of propane.

- (c) Please admit there is no written contract between ABACO and the Homeowners' Association for the delivery of propane.
- (d) Please admit there is no verbal contract between ABACO and the Homeowners' Association for the delivery of propane.
- (e) Please admit there is no written contract between ABACO and the Shoshone Condominium Hotel for any repair or maintenance services of any kind.
- (f) Please admit there is no verbal contract between ABACO and the Shoshone Condominium Hotel for any repair or maintenance services of any kind.
- (g) Please admit there is no written contract between ABACO and the Homeowners' Association for any repair or maintenance services of any kind.
- (h) Please admit there is no verbal contract between ABACO and the Homeowners' Association for any repair or maintenance services of any kind.
- (i) Please admit that none of the board members of the Shoshone Condominium Hotel has ever contacted ABACO to request the delivery of propane.
- (j) Please admit that none of the board members of the Homeowners' Association has ever contacted ABACO to request the delivery of propane.
- (k) Please admit that none of the board members of the Shoshone Condominium Hotel has ever contacted ABACO to request any repair or maintenance services of any kind.
- (l) Please admit that none of the board members of the Homeowners' Association has ever contacted ABACO to request any repair or maintenance services of any kind.
- (m) If your responses to any of these requests are anything other than an unqualified admission, please state each fact that supports your responses.
- (n) If your responses to any of these requests are anything other than an unqualified admission, please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, or other writings that support your responses.

RESPONSE:

Objection is made that this Data Request exceeds the five subparts allowed by the discovery rules of this Commission.

- (a) The only contract that SCHOA is aware of was negotiated in 2007 between Boyne who was then SCHOA's manager and ABACO which has been the subject of previous data requests and disclosed in earlier documents. The management contract

with Boyne specifically states the contract will be in SCHOA's name which was not followed by Boyne. The SCHOA was contracted with Boyne to request propane as well as other utility services such as TV and telephone. That was Boyne's job, however, the SCHOA Board was asked every year by Boyne for the propane price lock for delivery to ABACO tanks. If the SCHOA and the individual unit owners were not customers, why was the Board asked to confirm the propane price lock and as suggested by Courtney Jones, the board could have gone with a floating rate and the accounting was done specifically to the float.

- (b) Admit.
- (c) See answer to a.
- (d) Admit.
- (e) The contract between ABACO and Boyne as Shoshone's manager provides duties and responsibilities of ABACO in the maintenance and repair of the distribution system.
- (f) Objection as beyond the number of allowed data request subparts.
- (g) Objection as beyond the number of allowed data request subparts.
- (h) Objection as beyond the number of allowed data request subparts.
- (i) Objection as beyond the number of allowed data request subparts.
- (j) Objection as beyond the number of allowed data request subparts.
- (k) Objection as beyond the number of allowed data request subparts.
- (l) Objection as beyond the number of allowed data request subparts.
- (m) Objection as beyond the number of allowed data request subparts.
- (n) Objection as beyond the number of allowed data request subparts.

ABACO-036

RE: Restrictive Covenants
Murray Morgan/Robert Orsello

- (a) Please admit that ABACO is not a party to any of the restrictive covenants related to the Shoshone Condominium Hotel.
- (b) Please admit that ABACO is not party to any Bylaws, Declarations, or Covenants of the Homeowners' Association.

- (c) If your responses are anything other than an unqualified admission, please state each fact that supports your responses.
- (d) If your responses are anything other than unqualified admissions, please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, or other writings that supports your responses.

RESPONSE:

- (a) Admit.
- (b) Admit.
- (c) Not applicable.
- (d) Not applicable.

ABACO-037 RE: Restrictive Covenants
 Murray Morgan/Robert Orsello

- (a) Please state whether the Homeowners' Association has engaged counsel to render any opinions as to whether the restrictive covenants may be amended.
- (b) Please state whether the Shoshone Condominium Hotel has engaged counsel to render any opinions as to whether the restrictive covenants may be amended.
- (c) In your response to ABACO-016(b) and (d) and in your response to ABACO-019(b), you state "it is the *SCHOA's impression Boyne believes* the amended covenants of Mountain Village subdivision prevents the SCHOA from having a propane tank located within the subdivision." (Emphasis added). What is the SCHOA's belief as opposed to Boyne's belief?

RESPONSE:

- (a) Not at this time.
- (b) Not at this time.
- (c) At this time the SCHOA has not formed an opinion as to the applicability of that provision to the SCHOA.

ABACO-038 RE: Restrictive Covenants
 Murray Morgan

(a) The SCHOA does not have that detail at this time. The R&R Committee was not trying to maintain that level of detail. It was only trying to find out if it was easy to find someone to post an order for a few cents per gallon and that the SCHOA could order full loads from the refinery. It was the concept rather than the identity that was important.

Further, a broker apparently is now unnecessary as Phillips has approved SCHOA to buy directly. The SCHOA has provided current quotes for transportation.

ABACO-041

RE: New Users
Diane Bartzick

- (a) Please produce the list of 750 users who you claim on page 4 of your testimony use the propane field.
- (b) Please define what you mean by the term “propane field.”
- (c) Please specifically identify by name who will be “added with ongoing development” as asserted on page 2 of your testimony.

RESPONSE: Ms. Bartzick has been extremely ill. She has not been physically able because of her illness to assist the SCHOA in answering this data request. This request will be answered shortly after she recovers.

ABACO-042

RE: Service to New Users
Diane Bartzick

- (a) Please state whether you have any personal knowledge of which of the 750 additional new customers you assert will be created under Boyne’s “Big Sky Resort Mountain Village Overall Development Plan” will meet their power or heating needs with propane as opposed to another source or form of power or heat.
- (b) Please state whether you have any personal knowledge of who, if anyone, will serve the 750 additional new customers you assert will be created under Boyne’s “Big Sky Resort Mountain Village Overall Development Plan” with propane service.
- (c) Please state in detail each fact that supports your responses and please state how you acquired such knowledge.
- (d) Please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, or other writings that support your responses.
- (e) Please admit you are not an owner of or employed by either ABACO or Boyne, U.S.A.

RESPONSE: Ms. Bartzick has been extremely ill. She has not been physically able because of her illness to assist the SCHOA in answering this data request. This request will be answered shortly after she recovers.

ABACO-043 RE: Regulated Propane Distribution Companies
Diane Bartzick

- (a) Please identify by name the five propane distribution companies currently regulated by the Montana Public Service Commission and please describe the nature of each such system, how propane is delivered, and whether such systems are situated on public property, in public or municipal rights of way, or on privately owned property.
- (b) Please state with specificity your personal knowledge of each such system and how you acquired your knowledge.

RESPONSE: Ms. Bartzick has been extremely ill. She has not been physically able because of her illness to assist the SCHOA in answering this data request. This request will be answered shortly after she recovers.

ABACO-044 RE: Communications with ABACO
Matthew Paine

- (a) Please state in detail each occasion Village Center in Big Sky or its Homeowners' Association or any of its agents or representatives contacted ABACO directly regarding ABACO's provision of propane, rates charged, or services rendered between 2007 and the present, describing the subject of the conversation, the date the conversation took place, and the result of the conversation.
- (b) Please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, or other writings that supports your responses to 044(a).

RESPONSE:

- (a) ABACO was not contacted directly by the Village Center or its Homeowners Association as Boyne is managing the property on the Homeowners Associations behalf. Boyne's representatives as managers for the Homeowners Association apparently had numerous communications with ABACO as the manager including negotiating annual prices for propane.
- (b) The Association is attempting to locate this information and will provide if discovered.

ABACO-045 RE: Invoices for Services
Matthew Paine

- (d) Please admit there is no verbal contract between ABACO and the Village Center in Big Sky's Homeowners' Association for the delivery of propane to the Shoshone Condominium Hotel.
- (e) Please admit there is no written contract between ABACO and the Village Center in Big Sky for any repair or maintenance services of any kind.
- (f) Please admit there is no verbal contract between ABACO and the Village Center in Big Sky for any repair or maintenance services of any kind.
- (g) Please admit there is no written contract between ABACO and the Village Center in Big Sky's Homeowners' Association for any repair or maintenance services of any kind.
- (h) Please admit there is no verbal contract between ABACO and the Village Center in Big Sky's Homeowners' Association for any repair or maintenance services of any kind.
- (i) Please admit that none of the board members of the Village Center in Big Sky has ever contacted ABACO to request the delivery of propane.
- (j) Please admit that none of the board members of the Village Center in Big Sky's Homeowners' Association has ever contacted ABACO to request the delivery of propane.
- (k) Please admit that none of the board members of the Village Center in Big Sky has ever contacted ABACO to request any repair or maintenance services of any kind.
- (l) Please admit that none of the board members of the Village Center in Big Sky's Homeowners' Association has ever contacted ABACO to request any repair or maintenance services of any kind.
- (m) If your responses to any of these requests are anything other than an unqualified admission, please state each fact that supports your responses.
- (n) If your responses to any of these requests are anything other than an unqualified admission, please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, or other writings that supports your responses.

RESPONSE: Objection is made that this data request exceeds the five subparts allowed by the discovery rules of this Commission.

(a) The Village Center understands Boyne negotiated in 2007 a contract with ABACO. At that time Boyne was the manager of the Village Center. The Village Center and its homeowners Association understood the contract was negotiated, in part, for the benefit of the Village Center and the Homeowners Association.

ABACO is aware that the Village Center and the Homeowners Association together with its unit owners are downstream customers supported by this contract as evidenced by the annual price locking exercise and email correspondence between Boyne and ABACO to which propane prices were locked.

(b) Admit.

(c) The contract between ABACO and Boyne as the Village Center's manager provides duties and responsibilities of ABACO in the maintenance and repair of the distribution system.

(d) Admit.

(e) See c.

(f-n) Objection is beyond the number of allowed data request subparts.

ABACO-049

RE: Surcharges and Fees
Matthew Paine

- (a) Please state in detail the type and amount of each “surcharges and fees hidden in our annual bills” as described on page 3 of your testimony.
- (b) Please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, or other writings that supports your responses to 049(a).
- (c) You assert on page 4 of your testimony that ABACO is the “sole provider of propane in the area.” Please state whether you have ever investigated whether there are other providers of propane in the Big Sky area, and if you have, please state in detail the investigation you conducted, the date or dates of such investigation, who you contacted, and what you learned.

RESPONSE:

- (a) The lock price billed was \$1.28 a gallon. Boyne broke it down for us at .71 propane, .36 for distribution and .21 for O&M.

Propane is only 55% of the aggregate amount. Talking with other homeowners comparing our ABACO situation to private individuals who have to request a truck to drive out to fill up their tank which is a whole lot less than the Boyne infrastructure and they still pay less for the distribution and O&M charges so that is how we based it as outrageous fees.

- (b) Not applicable.

- (c) The Village Center has investigated another propane source and the only option would be to buy and install their own tanks which they cannot do because they do not have enough land to do so.

ABACO-050

RE: Shoshone Contracts and Litigation
Witness Unknown

- (a) Please admit that ABACO is not a party to any contract, agreement, covenant, or management agreement between Shoshone and Boyne, U.S.A.
- (b) Please admit that ABACO is not a party to the litigation between Shoshone and Boyne, U.S.A. pending in the Eighteenth Judicial District Court.
- (c) If your responses to any of these requests are anything other than an unqualified admission, please state each fact that supports your responses.
- (d) If your responses to any of these requests are anything other than an unqualified admission, please produce all documents, communications, letters, emails, notes, invoices, billing statements, contracts, pleadings, court documents or other writings that supports your responses.

RESPONSE:

- (a) Admit
- (b) Admit

Dated this 15th day of March, 2016.

LANDOE, BROWN, PLANALP & REIDA, P.C.

By _____


J. Robert Planalp, attorney for SCHOA

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 2016, a true and correct copy of the foregoing was this day served as follows:

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