

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

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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.

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UTILITY DIVISION

Docket No. D2013.9.71

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**SHOSHONE CONDOMINIUM HOTEL OWNERS ASSOCIATION'S  
COMBINED MOTION AND BRIEF TO STRIKE ABACO LATE FILED EXHIBITS 1&2**

Comes now the Shoshone Condominium Hotel Owners Association("SCHOA") and requests that the Public Service Commission of the State of Montana ("Commission") strike the purported Late Filed Exhibits of ABACO 1&2 on the grounds and for the reasons these exhibits were not the exhibits to which the request to allow a Late Filed Exhibit applies and secondly do not support ABACO's claim that Mr. Tschider sent Robert Orsello an email in September 28, 2012. For these reasons it is requested the purported Late Filed Exhibits of ABACO 1&2 be stricken from the record.

## ARGUMENT

1) The purported Late Filed Exhibits 1&2 are irrelevant to ABACO's motion made during the hearing. ABACO shortly before closing of this hearing held on July 11-12, 2016 moved for the opportunity to file a late exhibit into the record if Mr. Tschider could locate an email he claimed to have sent to Robert Orsello on or about September 28, 2012. SCHOA did not object to that request.

The filing on July 25, 2016 of purported Late Filed Exhibits 1&2 do not relate, in any way, to the establishment that Mr. Tschider sent an email to Robert Orsello on or about September 28, 2012. ABACO counsel's statement that Mr. Tschider was unable to locate any email he sent to Mr. Orsello on or about September 28, 2012 means the requested late file exhibit may not have existed and certainly cannot be located. ABACO fails to explain if other officers of ABACO received copies of the alleged email to Mr. Orsello dated September 28, 2012. The first communication Mr. Orsello received from Mr. Tschider is attached to this motion which is an email dated November 15, 2012 indicating that copies of the email were sent to Dave Tschider, Su-Lin Tschider and Jeff Johnson. The apparent business practice of Mr. Tschider in sending copies of an email to Mr. Orsello to other ABACO officers on November 15, 2012 but ABACO's failure to produce the alleged September 28, 2012 email to Mr. Orsello allows a logical conclusion the email of September 28, 2012 to Mr. Orsello was not sent. A fair review of the November 15, 2012 email from Mr. Tschider to Mr. Orsello allows a conclusion that it is introductory in nature indicating no earlier communication from Mr. Tschider to Mr. Orsello email. A fair reading of the email also implies there were no earlier efforts to communicate by telephone by Mr. Tschider to Mr. Orsello.

The Late Filed Exhibit 1&2 do not substantiate Mr. Tschider's testimony that he sent an email to Mr. Orsello on September 28, 2012 consequently this motion to strike should be granted.

2) Purported Late Filed Exhibits 1&2 do not support ABACO's claim.

The two exhibits attached to ABACO's "Notice" of July 25, 2016 in no way substantiate or confirms Mr. Tschider's testimony. At a minimum Late Filed Exhibit 1 is an email chain showing that Su-Lis Tschider forwarded a letter to Boyne addressed to the SCHOA members pursuant to Barb Rooney Starz request. That substantiates the SCHOA's testimony at the hearing. The email chain does not suggest let alone substantiate that Mr. Tschider sent the correspondence via email to Mr. Orsello. Consequently on that issue Late Filed Exhibit 1 is irrelevant.

ABACO Late Filed Exhibit 2 is similarly irrelevant to the purported issue. That email chain of November 20, 2012 substantiates the SCHOA testimony that the first communication from Mr. Tschider to Mr. Orsello was not in September of 2012. The email Mr. Tschider refers to in his email to Barb Rooney Starz of November 20, 2012 is the November 15, 2012 email attached to this motion. The attached email is clearly introductory in format and nature. Mr. Tschider's email to Barb does not claim that he sent Mr. Orsello any emails in September of 2012. Thus Late Filed Exhibit 2 is irrelevant and should be stricken.

### **CONCLUSION**

The "Notice" filed by ABACO on July 25, 2016 contains two purported Late Filed Exhibits that are irrelevant to the purpose of the request made at the end of the hearing to file a Late Filed Exhibit. However if the Commission finds them relevant, it supports Shoshone's position that no email was sent by Mr. Tschider to Mr. Orsello on September 28, 2012 and

Shoshone's testimony that Mr. Tschider first attempted to communicate with Mr. Orsello in November of 2012. It is respectfully requested the two Late Filed Exhibits be stricken from the record.

Dated this 2nd day of August, 2016.

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

By

  
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J. Robert Planalp, attorney for Shoshone Condominium  
Hotel Owners Association

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of August, 2016, a true and correct copy of the foregoing was this day served as follows:

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

## Robert J. Planalp

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**From:** Robert Orsello <robert.orsello@theshoshone.com>  
**Sent:** Monday, August 1, 2016 2:25 PM  
**To:** 'bob'  
**Subject:** FW: Abaco Energy Services

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**From:** Stacy Tschider [mailto:s.tschider@rainbowenergy.com]  
**Sent:** Thursday, November 15, 2012 2:08 PM  
**To:** robert.orsello@theshoshone.com  
**Cc:** John Alke; Dave Tschider; Su Lin Tschider; Deb Jonson; Jeff Jonson  
**Subject:** Abaco Energy Services

Good afternoon Mr. Orsello,

I'm Stacy Tschider President of Abaco Energy Services which is your supplier of propane at Big Sky Montana. I was informed yesterday that you (Shoshone HOA Board Treasurer) had filed a complaint with the PSC of Montana. I would welcome an opportunity to talk with you about our operation and I hope to shed some light on how we run our business. We take our business seriously and the accusation you listed in your complaint are false and misleading. I have talked with the PSC and I plan to have a sit down with them. I'm confident after I have the opportunity to talk with you, you will have a better understanding of how the propane business works and more importantly Abaco Energy Services relationship with Boyne. Just so you know, we have no affiliation with Boyne and I have never met any of the Boyne family. I look forward to your response.

Best regards,

Stacy L. Tschider

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