

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

<p>IN THE MATTER OF THE COMPLAINT OF SHOSHONE CONDOMINIUM HOTEL OWNERS ASSOCIATION, A MONTANA CORPORATION,  Complainant,</p> <p>v.</p> <p>ABACO ENERGY SERVICES, LLC a North Dakota Limited Company,  Defendant.</p>	<p>UTILITY DIVISION  Docket No. D2013.9.71</p>
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**ABACO ENERGY SERVICES'S OPPOSITION TO MOTION TO STRIKE  
LATE FILED EXHIBITS**

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ABACO Energy Services ("ABABO") hereby opposed Shoshone Condominium Hotel Owners' Association's Motion to Strike Late Filed Exhibits. In its Motion, Shoshone misstated the content of ABACO's Notice of Filing Late Filed Exhibits.

As this Commission is aware, towards the conclusion of the second day of the hearing on July 12, a question arose related to whether Mr. Stacy Tschider could produce a copy of the email he sent to Robert Orcello on or about September 28, 2012. During the hearing, Mr.

Tschider stood by his sworn testimony, and indicated that he would search his records for the email and if he could find it, he would file it with the Commission as a late filed exhibit.

Following the hearing, Mr. Tschider searched his computer files. As noted in the Notice of Late Filed Exhibits, in the nearly four years since he originally sent his emails to Mr. Orcello, he has replaced his computer and in that process, chunks of his electronic files and emails were lost or cannot be retrieved or accessed. As a result, Mr. Tschider was unable to locate the email he sent to Mr. Orcello. However, as noted at the conclusion of the hearing, and as noted in the Notice of Filing Late Filed Exhibits, Mr. Tschider he stands by his sworn testimony that he sent the referenced email to Mr. Orcello and placed phone calls to Mr. Orcello. While Mr. Tschider could not locate the exact email he had in mind, ABACO was able to locate other related emails and provided those to the Commission as Late Filed Exhibits. The Commission can assign the weight and relevance it believes is proper to these emails and to Mr. Tschider's sworn hearing testimony based on the totality of the record.

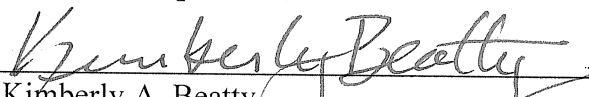
Because it was improper to engage in further comment or testimony about the Late Filed Exhibits, ABACO elected not to engage in such extraneous arguments in its Notice of Filing Late Filed Exhibits. However, in its Motion to Strike, Shoshone seeks to misstate ABACO's filing and Mr. Tschider's testimony, and requests this Commission draw certain conclusions. Such arguments, if they are relevant in any way to the issues before this Commission in this Docket, are more appropriately left to post-closing briefs.

Mr. Tschider stands by the sworn testimony he gave during the hearing and with the statement made in ABACO's Notice of Filing Late Filed Exhibits that due to a change of computer systems, he cannot locate a copy of the email he recalls sending.

Striking the Late Filed Exhibits is unnecessary. If however, the Commission chooses to strike the Late Filed Exhibits, then the Commission should likewise disregard the arguments set forth in the Motion to Strike as well as the email that Shoshone attaches to its Motion, and instead evaluate the relevance of this matter and the credibility of the witnesses on this topic based on the record developed at the hearing. ABACO believes that this issue is little more than an effort by Shoshone to distract this Commission from the real issues in this case: whether Shoshone is ABACO's customer; whether Shoshone has alternative fuel sources available; and whether ABACOP should be deemed a public utility regulated by this Commission. It is ABACO's position that whether or not it can prove beyond doubt that this particular email was sent is not relevant or helpful in answering any of the questions in this Docket.

DATED this 9th day of August, 2016.

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 August, 2016, a true and correct copy of the foregoing was this day served as follows:

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