

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

IN THE MATTER OF the Application of Big)
Foot Dumpsters & Containers, LLC for Class D) DOCKET NO. T-18.2.PCN
Garbage Service between all points and places) ORDER NO. 7590
within Flathead County)

PROCEDURAL ORDER

1. On January 8, 2018, Big Foot Dumpsters & Containers, LLC (“Big Foot”) filed an Application for a Montana Certificate of Public Convenience and Necessity with the Montana Public Service Commission (“Commission”). Specifically, Big Foot seeks a Class D motor carrier certificate for the transportation of garbage on a regular basis between all points and places within Flathead County.

2. On February 12, 2018, Allied Waste Services of North America, LLC (“Allied Waste”), Evergreen Disposal Inc. (“Evergreen”), and Montana Waste System, Inc., d/b/a North Valley Refuse (“North Valley”), filed protests of Big Foot’s application. Allied Waste is represented by Doney Crowley P.C.; and Evergreen and North Valley are jointly represented by Ugrin Alexander Zadick, P.C.

3. “[W]ithin 180 days from the date of the completed filing of an application, the [C]ommission shall issue its finding, order, or decision on the application and the evidence presented in support of the application at the time of the hearing.” Mont. Code Ann. § 69-12-323 (2017). The 180-day statutory time limit began to run on January 8, 2018, making the statutory deadline July 9, 2018.

4. On February 23, 2018, counsel from Bryan, diStefano & Mattingley, PLLP, filed a *Notice of Appearance* for Big Foot.

5. When a protest is received, the Commission shall fix a time and place for a hearing on the application. The hearing must be set for no later than 60 days after receipt of a protest. Mont. Code Ann. § 69-12-321.

6. The Commission, through delegation to staff, hereby establishes the Procedural Order to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or staff. A party may seek reconsideration of this Procedural Order within ten (10) days of its service date. Mont. Admin. R. 38.2.4806 (2017).

Schedule

7. This Order sets the following procedural schedule for this Docket:
- (a) March 15, 2018: Final day for data requests to the Applicant and Protestants. Copies of data requests must be emailed to the parties and the Commission by the deadline.
 - (b) March 27, 2018: Final day for the Applicant and Protestants to respond to data requests. Copies of data responses must be emailed to the parties and the Commission by the deadline.
 - (c) April 3, 2018: Final day for parties to file stipulations and settlement agreements.
 - (d) April 5, 2018: Final day for parties to file pre-hearing memorandum.
 - (e) April 6, 2018: Final day for parties to file a notice of withdrawal from the proceeding.
 - (f) April 11, 2018: Hearing commences and continues from day-to-day as necessary.

Service and Filing

8. A party must serve a copy of every pleading, motion, brief, objection, data request or response, and other document it files in this proceeding on every other party with a copy sent to the Commission. All documents sent out must also be emailed to other parties' counsel of record and the Commission by the deadline. Emailed copies to the Commission must be sent to: jhill-hart@mt.gov and jlangston@mt.gov. The Commission will not post an emailed document to its website until it receives the original from the filing party. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

Discovery

9. "The exchange of information among parties pursuant to data requests is the primary method of discovery in proceedings before the [C]ommission." Mont. Admin. R. 38.2.3301(2). The Commission directs parties to use the following guidelines for data requests:

- (a) Assign a unique, consecutive number to each data request (e.g., MCC-001), regardless of the party to whom the request is directed (e.g., the Commission

may direct PSC-001 through -008 to MCC, PSC-009 through -016 to BF, and PSC-017 through -019 again to BF).

- (b) At the beginning of each data request, consistently describe its subject in five words or less. In addition, a party may direct the request to a particular witness or include citations to exhibits or testimony.
- (c) For multi-part requests, use lower case letters (a–e) to denote up to five parts.
- (d) The following is an example of an acceptable data request:

PSC-006 RE: Purchased Gas Contracts
Witness Doe, JBD-4:13-15.

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

10. Parties must begin the response to each new numbered data request on a new page, and respond to data requests by the deadline in the schedule.

11. Parties must respond to data requests within fourteen (14) calendar days of the service date of the data request or by the deadline to respond, whichever is earlier.

12. A party may file an objection to a data request by the deadline to respond. Objections must be sufficiently specific for the Commission to adequately rule on whether to sustain or object. The responding party need not object if an answer has been provided to a discovery request. If the requesting party finds the response inadequate, they may file a motion to compel. *See infra* ¶ 15. Only objections based on discoverability will be considered; objections on admissibility will be overruled. The failure to object to a data request does not waive the right to subsequently object to the admissibility of the information provided in response. If a party objects based on privilege, it must file a privilege log by the deadline to respond with enough information for the Commission to determine whether the privilege applies. The Commission may schedule oral argument before ruling on an objection.

13. If a data request asks for protected information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond to the data request.

14. A party may submit a data request after a deadline established in this Order either by agreement of the parties or with approval of the Commission upon a showing of good cause that addresses why the discovering party missed the deadline.

15. If a response to a data request fails to answer the request, the discovering party may move within fourteen (14) calendar days after service of the response for an order compelling an answer. The motion, which the party must file with the Commission and serve on all parties, must identify the relief requested. The responding party may file a brief in opposition within fourteen (14) days of service of the motion to compel. The Commission may schedule oral argument before ruling on a motion to compel, and will set a new response deadline if it grants the motion.

16. In response to a party's failure to answer a data request, the Commission may: (1) refuse to allow it to support or oppose related claims; (2) prohibit it from introducing related evidence; (3) strike pleadings, testimony, or parts thereof; (4) stay the proceeding until the request is satisfied; or (5) dismiss the proceeding, or parts thereof.

17. In order to promote the efficiency of the administrative process, staff attorneys Jennifer Hill-Hart and Jeremiah Langston will act as examiners for the limited purpose of disposing of discovery disputes (including objections to data requests and motions to compel) and motions for protective order in this proceeding. Mont. Code Ann. §§ 69-2-101, 69-3-103; *see also* Mont. Admin. R. 38.2.306, 38.2.1501. "Any party may apply for reconsideration in respect to any matter determined" in a Commission order or decision, including the examiner's final written decision. Mont. Admin. R. 38.2.4806.

Pre-hearing Motions, Conferences and Memoranda

18. The Commission may schedule a pre-hearing conference at any time prior to the hearing to discuss the feasibility of settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing.

19. Unless the parties agree to file jointly, each party must file and serve a pre-hearing memorandum listing the following information regarding the hearing: (1) contested issues; (2) uncontested issues; (3) witnesses that it intends to call; (4) exhibits and responses to data requests that it intends to introduce (other than responses to data requests related to additional issues response testimony); and (5) any special accommodations sought regarding witness sequence or scheduling. Each party's pre-hearing memorandum must also list any responses to data requests that the parties have collectively agreed to introduce. Whenever a party moves for the admission of a response to a data request, it must identify the number of the request.

Hearing

20. The Montana Rules of Evidence in effect at the time of the hearing will govern the hearing. *See* Mont. Code Ann. § 2-4-612(2).

21. Prior to the hearing, the parties must arrange with the court reporter and Commission staff to consistently mark all proposed exhibits, responses to data requests, and pre-filed testimony for reference.

22. A party must make each person that authored a data request response available for cross-examination at the hearing unless the Commission approves an agreement among the parties to waive cross-examination. A witness need not recite pre-filed testimony before counsel moves to admit the testimony into the record.

23. When a party seeks to examine a witness based on a document not previously filed in this proceeding, it must make copies of the document available to each Commissioner, party, and staff member, unless it shows good cause why copies are not available. A party seeking to introduce a document not previously filed in this proceeding must also provide a copy of the document to the court reporter.

24. At the discretion of the Commission, members of the public may comment on the proceeding at the hearing.

DONE AND DATED this 6th day of March, 2018, by delegation to Commission staff as an Order of the Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman
TRAVIS KAVULLA, Vice Chairman
ROGER KOOPMAN, Commissioner
BOB LAKE, Commissioner
TONY O'DONNELL, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Procedural Order issued in Docket T-18.2.PCN in the matter of Big Foot Dumpsters & Containers, LLC, Whitefish, Montana has today been sent to all parties listed.

MAILING DATE: March 6, 2018


FOR THE COMMISSION

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