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RECEIVED

APR 10 2018

MONT. P.S. COMMISSION

Attorneys for Montana Waste Systems, Inc. d/b/a North Valley Refuse
and Evergreen Disposal, Inc.

IN THE MATTER OF Big Foot Dumpsters &) Docket No. T-18.2.PCN
Containers, LLC Application for Certificate of)
Public Convenience and Necessity) **EVERGREEN DISPOSAL, INC.'S**
) **RESPONSES TO THE MONTANA**
) **PUBLIC SERVICE COMMISSIONS**
) **DATA REQUESTS**
)

Evergreen Disposal, Inc. (hereinafter "Evergreen"), by and through counsel, Gary M. Zadick,
UGRIN ALEXANDER ZADICK, PC, submits the following responses to the Montana Public
Service Commission Data Requests (PSC001-PSC010) in this matter:

PSC-001

Regarding: Services Provided

Witness: As Appropriate

Please identify every person, business or entity in Flathead County that requested service from Evergreen and was denied service since January 1, 2015. For each person, business or entity, please identify:

- a. The type of service requested;
- b. The date service was requested;
- c. Whether such request was in writing, by phone or communicated by some other means;
- d. The Evergreen employee contacted; and
- e. Any reasons given for denying service.

ANSWER: Evergreen objects to this Data Request as improper and beyond the scope of discovery in this matter as described in the procedural Order in this case, as well as beyond the power granted to the PSC in the Motor Carrier Act, and beyond the powers and procedures described in the PSC's administrative rules. Admin.R.Mont. 38.2.3301 makes clear that the parties may exchange discovery, but makes no provision for the PSC acting as "court" to also propound discovery. Evergreen further objects to responding to this discovery request on the basis that the PSC's requiring such response, and undertaking a role both as advocate in seeking discovery and seeking to direct the hearing by obtaining discovery, and as quasi-judicial officer, violates Evergreen's due process rights to a fair and impartial hearing. Evergreen further objects that the discovery sought seeks to shift the burden in this case away from the Applicant and onto Evergreen although it is the Applicant's burden to demonstrate that it is entitled to the applied-for PCN.

PSC-002

Regarding: Services Provided

Witness: As Appropriate

Please identify every person, business or entity in Flathead County that complained whether in writing or verbally, about the type, quality, or rate charged for service in any form from Evergreen at any time since January 1, 2015. Your response should include the following information.

- a. The person making the complaint;
- b. The address that service was provided to;
- c. The phone number of the person making the complaint; and
- d. A description of the complaint and Evergreen's response.

ANSWER: Evergreen objects to this Data Request as improper and beyond the scope of discovery in this matter as described in the procedural Order in this case, as well as beyond the power granted to the PSC in the Motor Carrier Act, and beyond the powers and procedures described in the PSC's administrative rules. Admin.R.Mont. 38.2.3301 makes clear that the parties may exchange discovery, but makes no provision for the PSC acting as "court" to also propound discovery. Evergreen further objects to responding to this discovery request on the basis that the PSC's requiring such response, and undertaking a role both as advocate in seeking discovery and seeking to direct the hearing by obtaining discovery, and as quasi-judicial officer, violates Evergreen's due process rights to a fair and impartial hearing. Evergreen further objects that the discovery sought seeks to shift the burden in this case away from the Applicant and onto Evergreen although it is the Applicant's burden to demonstrate that it is entitled to the applied-for PCN.

PSC-003

Regarding: Witnesses

Witness: As Appropriate

Please identify by name, address, and telephone number each witness, or otherwise, Evergreen may call at the schedule hearing in this matter, and describe the expected testimony of each witness.

ANSWER: Evergreen objects to this Data Request as improper and beyond the scope of discovery in this matter as described in the procedural Order in this case, as well as beyond the power granted to the PSC in the Motor Carrier Act, and beyond the powers and procedures described in the PSC's administrative rules. Admin.R.Mont. 38.2.3301 makes clear that the parties may exchange discovery, but makes no provision for the PSC acting as "court" to also propound discovery. Evergreen further objects to responding to this discovery request on the basis that the PSC's requiring such response, and undertaking a role both as advocate in seeking discovery and seeking to direct the hearing by obtaining discovery, and as quasi-judicial officer, violates Evergreen's due process rights to a fair and impartial hearing. Evergreen further objects that the discovery sought seeks to shift the burden in this case away from the Applicant and onto Evergreen although it is the Applicant's burden to demonstrate that it is entitled to the applied-for PCN.

PSC-004

Regarding: Services Provided

Witness: As Appropriate

Please describe all of the garbage hauling markets Evergreen serves within Flathead County. For instance, if Evergreen views the Kila market distinct from the Kalispell market, please explain the distinction between these markets. Describe the unique operating characteristics of each and provide the number of customers within each market. Please provide any supporting or explanatory documentation, including any mapping documentation. Please provide supporting documentation, including excel files with formulas used to arrive at your calculations, as applicable.

ANSWER: Evergreen objects to this Data Request as improper and beyond the scope of discovery in this matter as described in the procedural Order in this case, as well as beyond the power granted to the PSC in the Motor Carrier Act, and beyond the powers and procedures described in the PSC's administrative rules. Admin.R.Mont. 38.2.3301 makes clear that the parties may exchange discovery, but makes no provision for the PSC acting as "court" to also propound discovery. Evergreen further objects to responding to this discovery request on the basis that the PSC's requiring such response, and undertaking a role both as advocate in seeking discovery and seeking to direct the hearing by obtaining discovery, and as quasi-judicial officer, violates Evergreen's due process rights to a fair and impartial hearing. Evergreen further objects that the discovery sought seeks to shift the burden in this case away from the Applicant and onto Evergreen although it is the Applicant's burden to demonstrate that it is entitled to the applied-for PCN.

PSC-005

Regarding: Services Provided

Witness: As Appropriate

- a. Please provide the number of residential customers for which Evergreen provides door-to-door garbage hauling services in Flathead County and for the markets identified in PSC-004.
- b. Please provide the number of commercial customers for which Evergreen provides door-to-door garbage hauling services in Flathead County and for the markets identified in PSC-004.

ANSWER: Evergreen objects to this Data Request as improper and beyond the scope of discovery in this matter as described in the procedural Order in this case, as well as beyond the power granted to the PSC in the Motor Carrier Act, and beyond the powers and procedures described in the PSC's administrative rules. Admin.R.Mont. 38.2.3301 makes clear that the parties may exchange discovery, but makes no provision for the PSC acting as "court" to also propound discovery. Evergreen further objects to responding to this discovery request on the basis that the PSC's requiring such response, and undertaking a role both as advocate in seeking discovery and seeking to direct the hearing by obtaining discovery, and as quasi-judicial officer, violates Evergreen's due process rights to a fair and impartial hearing. Evergreen further objects that the discovery sought seeks to shift the burden in this case away from the Applicant and onto Evergreen although it is the Applicant's burden to demonstrate that it is entitled to the applied-for PCN.

PSC-006

Regarding: Rate Schedule

Witness: As Appropriate

Please provide Evergreen's current rate schedule in Flathead County. If the rates are determined on a case-by-case basis, list all relevant factors considered in the determination of setting a rate for the residential customer and the commercial customer, if applicable. Please include the rate schedules for:

- a. Residential customers;
- b. Commercial customers;
- c. All markets identified in PSC-004; and
- d. Any other customers by customer category.

ANSWER: Evergreen objects to this Data Request as improper and beyond the scope of discovery in this matter as described in the procedural Order in this case, as well as beyond the power granted to the PSC in the Motor Carrier Act, and beyond the powers and procedures described in the PSC's administrative rules. Admin.R.Mont. 38.2.3301 makes clear that the parties may exchange discovery, but makes no provision for the PSC acting as "court" to also propound discovery. Evergreen further objects to responding to this discovery request on the basis that the PSC's requiring such response, and undertaking a role both as advocate in seeking discovery and seeking to direct the hearing by obtaining discovery, and as quasi-judicial officer, violates Evergreen's due process rights to a fair and impartial hearing. Evergreen further objects that the discovery sought seeks to shift the burden in this case away from the Applicant and onto Evergreen although it is the Applicant's burden to demonstrate that it is entitled to the applied-for PCN. Evergreen further objects to this request on the basis it seeks confidential, trade-secret business information, and asks competitors to share pricing information in violation of anti-trust laws.

PSC-007

Regarding: Revenue

Witness: As Appropriate

In Evergreen's Protest to Application for Class D Certificate of Public Convenience and Necessity received February 12, 2018, Evergreen listed \$5,503,765 in revenue derived from customers in the Applicant's listed service area, Flathead County. Please describe how much of that revenue is derived from residential customers in Flathead County and for the markets identified in PSC-004 to which Evergreen provides door-to-door garbage hauling services. Please provide supporting documentation, including excel files with formulas used to arrive at your calculations.

ANSWER: Evergreen objects to this Data Request as improper and beyond the scope of discovery in this matter as described in the procedural Order in this case, as well as beyond the power granted to the PSC in the Motor Carrier Act, and beyond the powers and procedures described in the PSC's administrative rules. Admin.R.Mont. 38.2.3301 makes clear that the parties may exchange discovery, but makes no provision for the PSC acting as "court" to also propound discovery. Evergreen further objects to responding to this discovery request on the basis that the PSC's requiring such response, and undertaking a role both as advocate in seeking discovery and seeking to direct the hearing by obtaining discovery, and as quasi-judicial officer, violates Evergreen's due process rights to a fair and impartial hearing. Evergreen further objects that the discovery sought seeks to shift the burden in this case away from the Applicant and onto Evergreen although it is the Applicant's burden to demonstrate that it is entitled to the applied-for PCN.

PSC-008

Regarding: Revenue

Witness: As Appropriate

In Evergreen's Protest to Application for Class D Certificate of Public Convenience and Necessity received February 12, 2018, Evergreen listed \$5,503,765 in revenue derived from customers in Flathead County. Please describe how much of that revenue is derived from Commercial Customers in Flathead County and for the markets identified in PSC-004. Please provide supporting documentation, including excel files with formulas used to arrive at your calculations.

ANSWER: Evergreen objects to this Data Request as improper and beyond the scope of discovery in this matter as described in the procedural Order in this case, as well as beyond the power granted to the PSC in the Motor Carrier Act, and beyond the powers and procedures described in the PSC's administrative rules. Admin.R.Mont. 38.2.3301 makes clear that the parties may exchange discovery, but makes no provision for the PSC acting as "court" to also propound discovery. Evergreen further objects to responding to this discovery request on the basis that the PSC's requiring such response, and undertaking a role both as advocate in seeking discovery and seeking to direct the hearing by obtaining discovery, and as quasi-judicial officer, violates Evergreen's due process rights to a fair and impartial hearing. Evergreen further objects that the discovery sought seeks to shift the burden in this case away from the Applicant and onto Evergreen although it is the Applicant's burden to demonstrate that it is entitled to the applied-for PCN.

PSC-009

Regarding: Revenue

Witness: As Appropriate

Please describe the source(s) of the \$5,503,765 revenue provided on Evergreen's protest form and explain how the number was derived. Please provide supporting documentation, including excel files with formulas used to arrive at your calculations.

ANSWER: Evergreen objects to this Data Request as improper and beyond the scope of discovery in this matter as described in the procedural Order in this case, as well as beyond the power granted to the PSC in the Motor Carrier Act, and beyond the powers and procedures described in the PSC's administrative rules. Admin.R.Mont. 38.2.3301 makes clear that the parties may exchange discovery, but makes no provision for the PSC acting as "court" to also propound discovery. Evergreen further objects to responding to this discovery request on the basis that the PSC's requiring such response, and undertaking a role both as advocate in seeking discovery and seeking to direct the hearing by obtaining discovery, and as quasi-judicial officer, violates Evergreen's due process rights to a fair and impartial hearing. Evergreen further objects that the discovery sought seeks to shift the burden in this case away from the Applicant and onto Evergreen although it is the Applicant's burden to demonstrate that it is entitled to the applied-for PCN.

PSC-010

Regarding: Market Share

Witness: As Appropriate

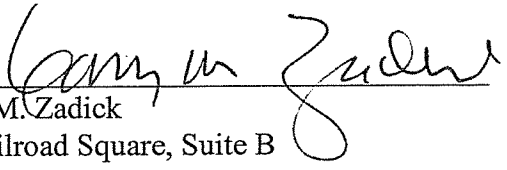
- a. Please indicate, to the best of your knowledge, other parties that provide Class D (garbage hauling) service in Flathead County who have not yet intervened in this docket.
- b. Please calculate and share the volume market share of Evergreen in Flathead County for markets identified in PSC-004.
- c. Please calculate and share the value market share of Evergreen in Flathead County for the markets identified in PSC-004.

ANSWER: Evergreen objects to this Data Request as improper and beyond the scope of discovery in this matter as described in the procedural Order in this case, as well as beyond the power granted to the PSC in the Motor Carrier Act, and beyond the powers and procedures described in the PSC's administrative rules. Admin.R.Mont. 38.2.3301 makes clear that the parties may exchange discovery, but makes no provision for the PSC acting as "court" to also propound discovery. Evergreen further objects to responding to this discovery request on the basis that the PSC's requiring such response, and undertaking a role both as advocate in seeking discovery and seeking to direct the hearing by obtaining discovery, and as quasi-judicial officer, violates Evergreen's due process rights to a fair and impartial hearing. Evergreen further objects that the discovery sought seeks to shift the burden in this case away from the Applicant and onto Evergreen although it is the Applicant's burden to demonstrate that it is entitled to the applied-for PCN.

DATED this 9th day of April, 2018.

UGRIN ALEXANDER ZADICK, P.C.

By: _____


Gary M. Zadick

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Great Falls, Montana 59403

Attorneys for Montana Waste Systems, Inc. d/b/a

North Valley Refuse and Evergreen Disposal, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was duly served upon the following by mail, Federal Express, Hand-delivery or Facsimile transmission:

[XX] U.S. Mail [] Federal Express [] Hand-Delivery [] FAX transmission [XX] Email

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DATED this 9th day of April, 2018.



UGRIN ALEXANDER ZADICK, P.C.