

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

IN THE MATTER OF L&L Site Services, Inc.’s) DOCKET NO. T-18.6.PCN
Application for a Certificate of Public)
Convenience and Necessity between all points) ORDER NO. 7594
and places in Missoula County)

PROCEDURAL ORDER

PROCEDURAL HISTORY

1. On March 1, 2018, L & L Site Services, Inc. (“L&L”) filed an Application for Certificate of Public Convenience and Necessity (“Application”) with the Montana Public Service Commission (“Commission”). The Application seeks authority for a Class D License, to allow L&L to operate between all points and places within Missoula County, Montana, to a lawful disposal site.

2. On March 2, 2018, the Commission issued a notice, establishing April 2, 2018, as the deadline to protest the Application. On April 2, 2018, Allied Waste Services of North America, LLC d/b/a Republic Services of Montana (“Republic”) filed a protest. When a protest is received, the Commission shall fix a time and place for a hearing on the application.

3. The Commission has 180 days from the date of the completed filing of an application to issue its finding, order, or decision on the application. Mont. Code Ann. § 69-12-323 (2017). The 180-day statutory time limit began on March 1, 2018, establishing a statutory deadline of August 30, 2018.

4. The Commission, through delegation to staff, hereby establishes the Procedural Order (“Order”) to be followed in this proceeding. This Order is effective immediately and remains effective unless modified by the Commission or staff. Mont. Code Ann. § 69-3-103. Parties may seek reconsideration of this Order within ten (10) days of its service date. Mont. Admin. R. 38.2.4806 (2018).

SCHEDULE

5. This Application shall adhere to the following procedural schedule:

- (a) April 25, 2018: Final day for data requests to all parties.

- (b) May 9, 2018: Final day for all parties to respond to data requests. *See also* infra ¶ 10 (setting forth the “rolling discovery” rule)
- (c) May 14, 2018: Final day for parties to file stipulations and settlement agreements.
- (d) May 18, 2018: Final day for parties to file pre-hearing memorandum. *Id.*
- (e) May 21–23, 2018: Hearing commences and continues from day-to-day as necessary.

SERVICE AND FILING

6. A party must serve a copy of every filing in this proceeding on every party in the docket. Upon filing a document with the Commission, the filing party must email a copy of the document to counsel of record. In order to file a document with the Commission, a party must physically deliver or mail the original document to the Commission at 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. Service or filing by means of facsimile is prohibited. Service by mail does not extend a deadline.

DISCOVERY

7. Parties acknowledge that data requests and responses are the primary method of discovery in Commission proceedings, and should be utilized in good faith. Mont. Admin. R. 38.2.3301(2). The Commission has broad authority to collect information from motor carriers: “The commission has the power and authority and it is its duty to . . . require the filing of annual and other reports, tariffs, schedules, or *other data* by motor carriers.” Mont. Code Ann. § 69-12-201 (emphasis added). The Commission’s broad regulatory over motor carriers is to be incorporated into the Commission’s general administrative procedure:

The provisions of statutes prescribing the procedure before the commission in cases involving rates, facilities, service, or other affairs of railroads in this state, including forms of *applications*, complaints, answers, orders, and notices of hearing; the conducting of hearings; *compelling the attendance and testimony of witnesses and the production of records, data, and information*; and the preparation, recording, and serving of reports and orders of the commission, shall be followed and shall govern in all proceedings and investigations before the commission in cases arising in connection with the *performance by the commission of its duties or the exercise of its jurisdiction* under the provisions of this chapter.

Id. § 69-12-204 (emphasis added). Failure of parties to provide sufficient responses may result in the Commission providing this information itself. The Commission and its staff has the authority

to investigate and interrogate “in *any hearing* to clarify the case or present an issue.” *Id.* at § 69-2-102 (emphasis added). Additionally, “[e]vidence may be introduced by the commission on an issue that has not been adequately addressed by any party if the commission first requests counsel of record to address the issue and counsel fails to introduce sufficient or adequate evidence.” *Id.* Accordingly, the Commission will propound data requests upon parties and may examine witnesses and introduce evidence at hearing in addition to the normal discovery process and admission of evidence afforded to parties in contested case proceedings before the Commission. *See id.* § 2-4-612; Mont. Admin. R. 38.2.3301(1) (2017).

8. In addition to the rules adopted by the Commission in Mont. Admin. R. 38.2.3301(1), the following specific procedures govern discovery in this docket.

9. Parties must follow these guidelines for data requests and responses:

- (a) Assign a unique, consecutive number to each data request (e.g., L&L-001), regardless of the party to whom the request is directed (e.g., the Commission may direct PSC-001 through 008 to L&L, PSC-009 through 016 to Republic, and PSC-017 through 019 again to L&L).
- (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 requests and responses:

PSC-006 RE: Purchased Gas Contracts
Witness: Doe, JBD-4:13-15
Request or Response:

- 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. For data responses, parties must respond to each numbered data request with a separate page.

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. Objections to data requests must be filed before the deadline to respond, and must be sufficiently specific for the Commission to adequately rule on the merits of the objection. Responding parties need not object if an answer has been provided to a discovery request. 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. The Commission may schedule oral argument before ruling on an objection.

13. 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.

14. 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 data requests.

15. Parties may submit late-filed data requests or responses after the deadlines in this Procedural Order, either by agreement of the parties, or by approval of the Commission upon a showing of good cause by the filing party that addresses why the late-filed document was not timely submitted.

16. If a party fails to adequately answer a data request, the discovering party may move within fourteen (14) calendar days after service of the response for an order compelling an answer. The motion 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.

17. 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.

18. In order to promote the efficiency of the administrative process, staff attorney Zachary Rogala will act as examiner 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; 69-12-201(2); *see also* Mont. Admin. R. 38.2.306, 38.2.1501. As hearing examiner decisions as delegated by this Procedural Order are not final decisions and do not concern the facts or law necessary to resolve the final disposition of the contested case, parties are not entitled to file exceptions and present briefs and oral argument on orders issued by examiners. *See* Mont. Code Ann. § 2-4-621; *see also id.* § 2-4-623

(requirements for final orders) *N. Plains Res. Council v. Bd. of Nat. Res. & Conservation*, 181 Mont. 500, 515–8, 594 P.2d 297, 306–07 (1979) (describing final agency action for the purposes of judicial review). However, any party may apply for reconsideration of any Commission order or decision, including any hearing examiner’s written decision. Mont. Admin. R. 38.2.4806.

PRE-HEARING MOTIONS, CONFERENCES, AND MEMORANDA

19. 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.

20. Unless the parties agree to file jointly, each must file and serve a pre-hearing memorandum that includes the following: (1) contested issues; (2) uncontested issues; (3) witnesses that it intends to call; (4) exhibits and data requests and responses in intends to introduce into the evidentiary record (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

21. 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). The Commission and its staff may examine witnesses in a hearing “to clarify the case or present an issue. Evidence may be introduced by the commission on an issue that has not been adequately addressed by any party if the commission first requests counsel of record to address the issue and counsel fails to introduce sufficient or adequate evidence.” *Id.* § 69-2-102.

22. Prior to the hearing, 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.

23. Parties 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.

24. 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.

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

DONE AND DATED this 11th day of April, 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-18.6.PCN in the matter of L & L Site Services, Missoula, Montana has today been sent to all parties listed.

MAILING DATE: April 11, 2018

/s/ Sydney Kessel
FOR THE COMMISSION

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