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ATTORNEYS FOR ALLIED WASTE
SERVICES OF NORTH AMERICA, LLC,
D/B/A REPUBLIC SERVICES OF MONTANA

**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 Application for a Certificate of Public)	REGULATORY DIVISION
Convenience and Necessity between all points)	
and places in Missoula County.)	DOCKET NO. T-18.6.PCN
)	

**REPUBLIC SERVICES OF MONTANA'S RESPONSE IN OPPOSITION TO L&L'S
MOTION FOR ADMINISTRATIVE NOTICE**

Republic Services of Montana files this brief in response to L&L Site Services, Inc.'s (L&L's) motion for administrative notice of the stipulation entered in a prior proceeding before the Montana Public Service Commission (PSC).

1. INTRODUCTION

In L&L's request for administrative notice, it asks the PSC to take administrative notice of a stipulation Republic made in 2015 after L&L applied for a class D certificate of public

convenience and necessity to provide waste-hauling services in Gallatin and Madison Counties. In PSC docket T-15.23.PCN, Republic stipulated prior to the hearing to L&L's fitness to provide the proposed services in Gallatin and Madison Counties.

L&L subsequently applied for a class D certificate of public convenience and necessity to provide waste-hauling services in Missoula County, and Republic declined to stipulate to L&L's fitness to provide such services in Missoula County. At the hearing last month, L&L moved for the PSC to take administrative notice of Republic's stipulation in T-15.23.PCN. After the hearing, L&L filed a brief in support of its motion, arguing the PSC is required to take notice of the stipulation under Montana Rules of Evidence 201(d) and 202(d)(2).

L&L is asking the PSC "to take administrative notice of the stipulation entered in PSC Docket No. T-15.23.PCN." L&L's Br. in Support of Administrative Notice, p. 1. The stipulation is not a fact under Montana Rule of Evidence 201(d). Most importantly, the stipulation in the proceedings in Gallatin and Madison Counties is irrelevant to the PSC's decision regarding L&L's application in Missoula County. Administrative notice should be denied for that reason.

2. ARGUMENT

As an initial matter, L&L's motion for administrative notice under Rule 201 should be denied because L&L has failed to identify a *fact* appropriate for administrative notice. The prior stipulation of Republic is not a fact. It is a fact that on November 4, 2015, Republic stipulated to L&L's fitness to provide the proposed service in Gallatin and Madison Counties. However, L&L has not requested administrative notice of this fact. Instead, L&L seeks notice of the November 4, 2015 signed stipulation. This document is not a fact. Therefore, Rule 201 does not apply. *See* Mont.R.Evid. 201(a) ("This rule governs judicial notice of all facts.").

Subsection (e) of Rules 201 and 202 provides a party the “opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed.” Here, it would be improper to take administrative notice of the stipulation because it is wholly irrelevant to the issues currently being decided in this matter. L&L’s motion fails to meet the standard of relevancy established by the Montana Rules of Evidence and case law. Montana case law has clearly established that a court is not bound to take judicial notice (and therefore also administrative notice) without a showing of relevancy. *State v. Fish*, 2009 MT 47, ¶ 16, 349 Mont. 286, 204 P.3d 681 (stating “judicial notice is confined to matters which are relevant to the issues at hand”); *State v. French*, 166 Mont. 196, 203, 521 P.2d 373, 377 (1975) (stating the court is not required to take judicial notice “absent a showing the evidence would have been relevant”). Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Mont.R.Evid. 401.

L&L has failed to demonstrate how the prior stipulation is relevant and is seeking to introduce evidence that is beyond the scope of this case. Whether or not L&L was fit to provide services in Gallatin and Madison Counties has nothing to do with its fitness to provide services in Missoula County. L&L is based in Belgrade, Montana, and was already providing certain services to customers in Gallatin County prior to its 2015 application. L&L has no history or experience providing services in Missoula County; it has no equipment or facilities in Missoula County; it has no existing customers in Missoula County. In short, the fitness of L&L to provide services in Gallatin County in 2015 and the fitness of L&L to provide services in Missoula County in 2018 are completely unrelated. In addition, Republic’s decision to stipulate to L&L fitness in a prior proceeding has nothing to do with its decision whether to so stipulate in this

case—especially considering Republic disputes L&L’s fitness to serve Missoula County based, in part, upon its conduct in Gallatin County after the 2015 proceeding. By conflating the two proceedings, L&L improperly seeks to meet its burden to establish its fitness to provide services in Missoula County.

3. CONCLUSION

This Commission has all of the evidence that it needs before it to determine whether or not to grant L&L’s application. L&L has requested that the Commission take administrative notice of a stipulation that it alleges is both a fact and law. However, the stipulation itself is not a fact, and the fact Republic stipulated to L&L’s fitness to provide service in Gallatin and Madison Counties is irrelevant to the PSC’s evaluation of L&L’s fitness to provide service in Missoula County. Similarly, the stipulation is irrelevant to the Commission’s inquiry regarding L&L’s current application. Therefore, L&L’s request to take administrative notice of the stipulation Republic made in the prior proceeding should be denied.

Dated this 14th day of June, 2018.

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CERTIFICATE OF SERVICE

I certify that on the 14th day of June, 2018, Allied Waste Services of North America, LLC, d/b/a Republic Services of Montana's Pre-Hearing Memorandum was e-filed with the Commission and served via U.S. mail and e-mail, unless otherwise noted, to the following:

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