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

IN THE MATTER OF THE CLASS D
APPLICATION OF L&L SITE SERVICES, INC.
FOR ALL POINTS AND PLACES IN MISSOULA
COUNTY, MONTANA

Docket No. T-18.6.PCN

**L&L'S BRIEF IN SUPPORT OF
MOTION FOR
ADMINISTRATIVE NOTICE OF
REPUBLIC'S PRIOR
STIPULATION TO L&L'S
FITNESS**

Applicant L&L Site Services, Inc. ("L&L") provides the following brief in support of its motion for the Montana Public Service Commission ("PSC") to take administrative notice of the stipulation entered in PSC Docket No. T-15.23.PCN:

FACTS

In 2015, L&L applied for a class D certificate of public convenience and necessity to provide waste-hauling service in Gallatin County and Madison County. L&L Amend. Application, T-15.23.PCN (June 10, 2015). Republic Services of Montana ("Republic") and the McGree Corporation ("McGree") protested L&L's application. Republic Protest, T-15.23.PCN (July 28, 2015); McGree Protest, T-15.23.PCN (July 28, 2015). Prior to the hearing on L&L's

application in that matter, Republic and McGree drafted and filed a stipulation acknowledging L&L's fitness to provide the proposed service. Republic and McGree Stip., T-15.23.PCN (Nov. 4, 2015); See attached.

At the hearing on L&L's current application for a Class D certificate of public convenience and necessity to provide waste-hauling service in Missoula County, L&L moved that the PSC take administrative notice of Republic and McGree's stipulation in T-15.23.PCN. The PSC deferred ruling and asked L&L to submit a brief in support of its motion.

ARGUMENT

In contested cases, the PSC is bound to apply the Montana Rules of Evidence as adopted by the Montana Supreme Court. Admin. R. Mont. 38.2.4201(1). In applying the rules, all references to "court" shall be considered to refer to the PSC. Admin. R. Mont. 38.2.3301.

I. The PSC should take administrative notice of Republic's prior stipulation to L&L's fitness to provide the proposed service in T-15.23.PCN pursuant to Mont. R. Evid. 201.

The PSC shall take administrative notice of a fact if a party makes the request and supplies the necessary information. Mont. R. Evid. 201(d). The fact to be administratively noticed must be one not subject to reasonable dispute in that it is "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Mont. R. Evid. 201(b). Administrative notice can be taken at any stage of a proceeding. Mont. R. Evid. 201(f).

During the hearing on L&L's application in this matter, L&L requested that the PSC take administrative notice of Republic's prior stipulation to L&L's fitness in T-15.23.PCN. At that time, L&L provided copies of the stipulation to the PSC and Republic. While Republic contests L&L's fitness in this matter, the fact that Republic stipulated to L&L's fitness to provide its

proposed service for Gallatin County and Madison County in T-15.23.PCN cannot be disputed. Republic drafted and filed the document in T-15.23.PCN and the document is part of the PSC's administrative record in T-15.23.PCN. The PSC's own administrative record in T-15.23.PCN cannot be reasonably questioned. Pursuant to Mont. R. Evid. 201(d), the PSC is required to take administrative notice of Republic's stipulation to L&L's fitness to provide the proposed service in T-15.23.PCN.

II. The PSC should take administrative notice of Republic's prior stipulation to L&L's fitness to provide the proposed service in T-15.23.PCN pursuant to Mont. R. Evid. 202.


An additional basis for L&L's request is found in Mont. R. Evid. 202, which allows the PSC to take administrative notice of law, including records of any court of this state. The PSC shall take administrative notice of records of any court of this state if a party makes the request and supplies the necessary information. Mont. R. Evid. 202(d)(2). Administrative notice can be taken at any stage of the proceedings. Mont. R. Evid. 202(f).

At the hearing, L&L provided copies of Republic's stipulation to L&L's fitness to provide the proposed service in T-15.23.PCN and asked the PSC to take administrative notice of the same. Republic's stipulation is part of the PSC's administrative record in T-15.23.PCN. The entire administrative record in T-15.23.PCN was filed with the Montana Second Judicial District Court in cause number DV-16-155. The PSC's own administrative record and the records of cause number DV-16-155 in the Montana Second Judicial District Court are court records subject to administrative notice pursuant to Mont. R. Evid. 202. Pursuant to Mont. R. Evid. 202, the PSC is required to take administrative notice of Republic's stipulation to L&L's fitness to provide the proposed service in T-15.23.PCN.

CONCLUSION

Pursuant to Mont. R. Evid. 201 and 202, the PSC should take administrative notice of Republic's prior stipulation to L&L's fitness to provide the proposed service to Gallatin County and Madison County in T-15.23.PCN. While Republic's prior stipulation is not determinative of L&L's fitness to provide the proposed service in the instant matter, the existence of the stipulation is relevant to the proceedings based on the evidence and arguments presented by both Republic and L&L.

DATED this 1st day of June, 2018.


Alison Garab

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2018, a true and correct copy of the foregoing document was served upon the following parties in the manner set forth below:

William Mercer Hannah Tokerud Holland and Hart 401 North 31 st Street, Ste 1500 Billings, MT 59101 WWmerc@hollandhart.com hetokerud@hollandhart.com	<input checked="" type="checkbox"/> U.S. First-Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Email: <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Zachary Rogala Jeremiah Langston Montana Public Service Commission P.O. Box 202601 Helena MT 59620 zachary.rogala@mt.gov ; jlangston@mt.gov	<input checked="" type="checkbox"/> U.S. First-Class Mail, Postage Prepaid <input checked="" type="checkbox"/> Email: <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:



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PUBLIC SERVICE COMMISSION FOR THE STATE OF MONTANA

IN THE MATTER OF the Class D Application of L & L Site Services, Inc. Bozeman, Montana.	Docket No.: T-15.23.PCN STIPULATION
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In determining whether a class D permit shall be issued under Mont. Code Ann. § 69-12-323, the Public Service Commission has stated the Applicant must meet four criteria.

84. The Commission has historically applied this statute in the following manner: first, it asks whether the applicant has demonstrated that there is a public need for the proposed service. If the applicant has not demonstrated public need then the application is denied and there is no further inquiry. Second, if the applicant has demonstrated a public need for the proposed service, then the Commission asks whether existing carriers can and will meet that need. If demonstrated public need can be met as well by existing carriers as by an applicant, then, as a general rule, an application for additional authority will be

denied. Third, once it is clear that there is public need that cannot be met as well by existing carriers; the Commission asks whether a grant of additional authority will harm the operations of existing carriers contrary to the public interest. If the answer is yes, then the application for new authority will be denied. If the answer is no, then the application will be granted, assuming the Commission determines the applicant fit to provide the proposed service. See *Application of Donna S. Miller dba D&D Limousine*, Docket No. T-03.47.PCN, Order No. 6543a (2004); *Application of Billings Yellow Cab*, Docket No. T-07.32.PCN, Order No. 6874a (2007).

IN THE MATTER of L&L Site Services, Inc. Belgrade, Montana, Application for a Montana Intrastate Certificate of Public Convenience and Necessity. Docket No. T-10.36 PCN; Order No. 7147.

Responding parties / Protestants Republic Services of Montana and McGree Corporation hereby stipulate that L & L Site Services, Inc. meets the fourth part of this test (that the applicant is fit to provide the proposed service). The first three parts of this test (is there a public need, can existing carriers meet that need, and whether a grant of additional authority will harm existing carriers contrary to the public interest) remain disputed issues.

DATED this 4 day of November, 2015.

DONEY CROWLEY P.C.




Lee Bruner
Jacqueline R. Papez
Attorneys for Protestants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Stipulation* was served via electronic mail on this 4th day of November, 2015, upon the following:

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