

APPENDIX

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Service Date: October 18, 2021

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

IN THE MATTER OF PBN, LLC) REGULATORY DIVISION
)
) DOCKET NO. 2021.09.114
) ORDER NO. 7811

PROCEDURAL ORDER

PROCEDURAL HISTORY

1. On September 13, 2021, PBN, LLC, 4880 US Hwy 93 S, Kalispell, MT 59901, filed an application for Certificate of Public Convenience and Necessity, Class D – Garbage between all points and places between Flathead and Lake Counties.

2. On October 12, 2021, the Commission received protests from Allied Waste Services of North America, LLC d/b/a Republic Services of Montana; Montana Waste Systems; and North Valley Refuse, c/o Crowley Fleck PLLP, P.O. Box 2529, Billings, MT, 59103; and from Evergreen Disposal Inc., of 55 West Valley Dr., Kalispell, MT, 59901. When a protest is received, the Commission is required to fix a time and place for a hearing on the Application; the hearing must be set for not later than 60 days after the receipt of a protest or a hearing request. Mont. Code Ann. § 69-12-321(1)(b) (2019). Accordingly, the hearing will be set for **December 6, 2021**.

3. The Commission has 180 days from the date of the completed filing of PBN, LLC’s Application, unless PBN, LLC waives the deadline. Mont. Code Ann. § 69-12-323(1)(a). Accordingly, the Commission must issue a final written decision by **March 11, 2022**.

4. The Commission, through delegation to staff, hereby establishes this Procedural Order (“Order”) which 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 (2019).

SCHEDULE

- 5. This docket will adhere to the following schedule:
 - a. **November 5, 2021:** Final day for data requests to the Applicant and Protestants.



- b. **November 19, 2021:** Final day for the Applicant and Protestants to respond to data requests.
- c. **November 26, 2021:** Deadline for stipulations and settlement agreements.
- d. **December 1, 2021:** Deadline for prehearing memorandums.
- e. **December 1, 2021:** Deadline for parties to file a notice of withdrawal from the proceeding.
- f. **December 3, 2021:** Deadline to file prehearing objection memorandum identifying which data requests the parties object to and state the grounds for each objection.
- g. **December 6, 2021:** Evidentiary hearing, to be continued day-to-day as necessary.
- h. **January 14, 2022:** Deadline for concurrent post-hearing initial brief.
- i. **January 28, 2022:** Deadline for concurrent post-hearing response brief.
- j. **March 11, 2022:** Deadline for Commission decision.

SERVICE AND FILING

6. Parties must electronically file all documents in this proceeding with the Commission, and must adhere to the Commission's pleading requirements. Mont. Admin. R. 38.2.1201–1209. Parties must also serve a physical or electronic copy of each document in this proceeding on all parties. Mont. Admin. R. 38.2.1205(2). Parties must file confidential information with the Commission and other parties by electronic file transfer, by physical copies as discussed in Mont. Admin. R. 38.2.5015(1), or other secure means. Mont. Admin. R. 38.2.5015(2). Please contact the Commission at (406) 444-6199 for questions on filing public or confidential documents.

7. After filing, documents will become publicly available on the Commission's website, unless they are confidential documents. Mont. Admin. R. 38.2.303(1). Documents that do not substantially comply with Commission rules or applicable statutes may be rejected. Mont. Admin. R. 38.2.315.

INVESTIGATION AND DISCOVERY

8. Data requests and the additional issues process are the primary, though not

exclusive, methods of pre-hearing investigation in Commission proceedings and should be utilized in good faith. Mont. Admin. R. 38.2.3301(1). In addition to the rules adopted by the Commission in Mont. Admin. R. 38.2.3301, the following specific procedures govern discovery in this docket.

9. The Commission may schedule a prehearing conference at any time prior to the hearing to facilitate settlement in whole or in part, simplification of the remaining issues through admissions of fact, and any other matters that may expedite the hearing. Mont. Admin. R(s). 38.2.2701, 38.2.2703, 38.2.3001.

10. Parties must respond or object to data requests within fourteen (14) calendar days of the service date of the data request. 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.

11. If a data request seeks confidential information, the responding party must file a motion for a protective order as soon as practicable, but no later than the deadline to respond. Mont. Admin. R. 38.2.5001–38.2.5031.

12. Objections to data requests must be sufficiently specific for the Commission to adequately rule on the merits of the objection. 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 admission of the information during an evidentiary hearing.

13. If a party fails to adequately answer a data request or objects, the discovering party may file a motion to compel or to order sanctions within seven (7) calendar days. The motion must identify the relief requested. Response briefs are due within five (5) calendar days.

14. The Commission will resolve discovery disputes consistent with Mont. Admin. R. 38.2.3301(4). In response to a party's failure to meaningfully participate in discovery, the Commission may take any of the actions discussed in Mont. R. Civ. P. 37, including but not limited to compelling a response (Mont. R. Civ. P. 37(a)) or issuing sanctions (Mont. R. Civ. P. 37(b)(2)(A)(i)–(vi)). Objections to Commission data requests will be brought to the Commission for a decision. The Commission may establish a revised schedule as necessary after resolving each motion.

15. Parties must submit other prehearing motions as early as possible in the

proceeding, though no later than the prehearing memorandum deadline. Response briefs are due within seven (7) calendar days. Reply briefs are not permitted. The Commission will resolve prehearing motions consistent with applicable, statutes, regulations, and Montana Rules of Evidence.

16. Parties may request, or the Commission may schedule, oral argument before ruling on any pre-hearing motion. Mont. Admin. R. 38.2.4502. Parties may seek reconsideration of any pre-hearing Commission decision within ten days after service of the decision, excluding decisions which grant a motion for a protective order. Mont. Admin. R. 38.2.4806(7). Parties can seek immediate judicial review of any Commission decision as permitted by Mont. Code Ann. § 2-4-701.

17. The Commission may require parties to consider issues not adequately addressed in the proceeding either prior to an evidentiary hearing through the additional issues process (Mont. Admin. R. 38.2.3301(3)), during the evidentiary hearing (Mont. Code Ann. § 69-2-102; Mont. R. Evid. 614), or after an evidentiary hearing through the post-hearing exhibit process (Mont. Admin. R. 38.2.4206). Mont. Code Ann. §§ 69-2-102, 69-12-204.

18. To efficiently administer this docket, the Commission delegates authority to staff attorney Lucas Hamilton to act as examiner for the limited purpose of resolving discovery disputes (including objections to data requests and motions to compel), motions for protective orders, and objections to providing confidential information under Mont. Admin. R. 38.2.5024. Mont. Code Ann. §§ 69-2-101, 69-3-103; *see also* Mont. Admin. R. 38.2.306; 38.2.1501.

HEARING

19. The Montana Rules of Evidence govern the evidentiary hearing for this proceeding. Mont. Code Ann. § 2-4-612(2).

20. By **December 1, 2021**, unless the parties agree to file jointly, each must file a prehearing 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 it intends to introduce into the evidentiary record, and the issue to which the document relates; and (5) any special accommodations it seeks regarding witness sequence or scheduling.

21. By **December 3, 2021**, if any party objects to the admission of any document identified in the prehearing memoranda, the party must submit a prehearing objection memorandum that identifies each document they object to and states the grounds for each

objection with specificity. *See In re Mont. Pub. Serv. Comm'n Solicitation of Comments Regarding Decision Making*, Dkt. 90.7.44, Notice of Comm'n Action 2–3 (Dec. 31, 1992).

22. Parties failing to adhere to the prehearing memorandum and objection procedures will be required to establish foundation for each piece of evidence, pursuant to the Montana Rules of Evidence, unless otherwise agreed-to by the parties.

23. Parties must make each person that authored a document available for cross-examination unless otherwise excused by the Commission. 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 provide copies of the document to each party, unless it shows good cause why copies are unavailable.

25. The Commission has the discretion to introduce evidence not adequately addressed by parties (Mont. Code Ann. § 69-12-204; Mont. Code Ann. § 69-2-201), and the power to examine witnesses (Mont. Code Ann. § 69-12-206(1)–(2); Mont. R. Evid. 614; Mont. Code Ann. § 69-3-106(2)), during the evidentiary hearing.

26. The Commission will provide opportunities for public comment at the hearing.

COMMISSION DECISION

27. The Commission may order, either at the request of a party on its own accord, post-hearing briefs at the close of the hearing. Mont. Admin. R. 38.2.4502. Unless otherwise ordered, the applicant has 20 days from receipt of the hearing transcript to file an opening brief, intervenors have 20 days to file a response brief, and the applicant has 10 days to file a reply brief. Mont. Admin. R. 38.2.4503(1). The Commission may request proposed findings of fact and conclusions of law. Mont. Admin. R. 38.2.4501.

28. Parties have ten days to seek reconsideration of any Commission decision. Mont. Admin. R. 38.2.4806(1). A decision is final for purposes of judicial review after service of an Order on Reconsideration, or when a motion for reconsideration is deemed denied pursuant to Mont. Admin. R. 38.2.4806. A motion for reconsideration is required to exhaust both administrative remedies and issues under Mont. Code Ann. § 2-4-702(1)(a)–(b), except when a party applies for an injunction or stay of a Commission decision. Mont. Admin. R. 38.2.4806(8).
DONE AND DATED this 18th day of October, 2021.

BY THE MONTANA PUBLIC SERVICE COMMISSION

JAMES BROWN, Chairman
BRAD JOHNSON, Vice Chairman
TONY O'DONNELL, Commissioner
RANDALL PINOCCI, Commissioner
JENNIFER FIELDER, Commissioner

CERTIFICATE OF SERVICE

I certify that on the 18th day of October, 2021, a true and accurate copy of the foregoing document was served by email to the following:

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

IN THE MATTER OF PBN, LLC

REGULATORY DIVISION
DOCKET NO. 2021.09.114

**PROTESTANT’S MOTION
FOR RECONSIDERATION
AND BRIEF IN SUPPORT**

COMES NOW Protestant Evergreen Disposal, Inc. (“Evergreen”), by and through its undersigned counsel of record, and pursuant to Paragraph 4 of the PSC’s Procedural Order No. 7811 (“Order”) in the above-captioned docket, as well as Mont. Admin. R. 38.2.4806, submits the following Motion for Reconsideration of the Order and Brief in Support thereof.

INTRODUCTION

Evergreen moves the Commission to remove all provisions contained in Paragraphs 8, 14, 17, and 25, as well as any other references within the Order to or otherwise contemplating any investigatory power of the Commission in relation to this docket, authority to issue discovery/data requests to the parties, or power to examine witnesses and introduce evidence at hearing, as the Commission’s exercise of investigatory powers, seeking discovery/data requests,

and examination of witnesses and introduction of evidence, is inconsistent with Court precedent, statute, and due process of law.

ARGUMENT

A. The Commission should delete all references to any claimed power of the Commission to promulgate discovery on the parties or conduct or require any investigation with reference to or concurrent with this docket.

The Order contemplates (at Paragraph 8) that the Commission will use the “methods of pre-hearing investigation” found in Mont. Admin. R. 38.2.3301, and Paragraph 14 references that the Commission will resolve objections to its own data requests (“Objections to Commission data requests will be brought to the Commission for a decision.”). In a like vein, Paragraph 17 contemplates that the Commission may require parties to consider additional issues prior to, at, or after hearing, also citing to Mont. Admin. R. 38.2.3301. However, this claimed authority to issue discovery/data requests and investigate in relation to a hearing, as well as the authority to require the parties to address additional issues, is contrary to statute, court precedent, and due process of law. While the Order cites Mont. Admin. R. 38.2.3301 as the basis for the PSC’s planned actions, which provides that the PSC may submit data requests and conduct investigations, that rule is invalid in the context of contested case motor carrier proceedings, as it is in excess of statutory authority, contrary to court precedent, and contrary to constitutional due process limitations.

First, the entirety of Mont. Admin. R. 38.2.3301 is void here, as the rule provides power to the Commission in excess of that granted by statute under the Motor Carrier Act or otherwise applicable in contested case motor carrier proceedings, such as this docket. The only Motor Carrier Act statute cited as authority for Mont. Admin. R. 38.2.3301 is Mont. Code Ann. § 69-12-201. However, nothing in that statute gives the Commission the power to issue discovery or

conduct an investigation in the context of a contested case hearing. The majority of the other PSC statutes cited as authority for Mont. Admin. R. 38.2.3301 are unavailing as authority for the Commission to issue discovery and investigate in contested cases under the Motor Carrier Act, as such statutes are only applicable to utility cases. The only statute governing PSC proceedings outside of utility cases cited as authority for the rule is Mont. Code Ann. § 69-1-110, which is applicable to all Commission matters—but this statute only states that the Commission may adopt rules; the statute does not authorize the Commission to issue discovery or investigate additional issues in contested case motor carrier proceedings (or any other proceeding). “Rules adopted by administrative agencies which conflict with statutory requirements or exceed authority provided by statute, are invalid.” *Haney v. Mahoney*, 2001 MT 201, ¶ 6, 306 Mont. 288, 32 P.3d 1254. Agency rules must be “consistent and not in conflict with the statute” and must be “reasonably necessary to effectuate the purpose of the statute.” *Clark Fork Coalition v. Tubbs*, 2016 MT 229, ¶ 13, 384 Mont. 503, 380 P.3d 77. There is no statute that explicitly or implicitly gives the PSC the authority to serve discovery as if it were a party in a contested case where it is also the impartial, neutral adjudicator.

Therefore, because the PSC is without statutory authority to issue data requests or conduct investigations in the context of a contested case motor carrier proceeding, all references to such claimed authority, or the PSC’s administrative rule purporting to grant such authority, should be stricken from the Order.

Moreover, even if statutes did purport to grant the PSC authority to issue discovery in a contested case motor carrier proceeding, the PSC still could not do so here, as issuance of discovery, or conducting an “investigation,” including examining witnesses at hearing and introducing evidence, by the decision-making entity is contrary to constitutional due process

constraints. The Montana Supreme Court has held that an agency exceeds its “investigatory and adjudicatory functions” when it goes “outside the four corners” of the allegations made by the litigants. *In re Best*, 2010 MT 59, ¶ 33, 355 Mont. 365, 229 P.3d 1201. Doing so violates the parties’ due process rights. *Id.* In *State v. Wilson*, 266 Mont. 146, 879 P.2d 683 (1994), the Court held that allowing the decision maker to also be a part of the “investigatory team,” did not comport with due process requirements. 879 P.2d at 685; *see also*, *State ex rel. Townsend v. District Court*, 168 Mont. 357, 363, 543 P.2d 193, 195 (1975); *Matter of Sorini*, 220 Mont. 459, 464, 717 P.2d 7, 11 (1986) (Sheehy, J., dissenting) (the “most elemental notions of due process ought to tell us that objectivity is impossible when one party owns both the prosecutor and the judge”). In *Welsh v. City of Great Falls*, 212 Mont. 403, 690 P.2d 406 (1984), the Court noted that due process requires “a hearing before an impartial tribunal,” and thus the government’s argument that officers who were involved in “the accusatory and confrontational process” could also act as an impartial tribunal “cannot be taken seriously.” *Id.* at 410.

Multiple courts examining such due process concerns in the context of contested cases before the PSC have agreed that the PSC is without authority to issue discovery, investigate, or require consideration of additional issues in a contested case over which it presides, and that any such action would be contrary to due process of law. For example, in Montana First Judicial District Court Cause No. DDV-2018-313, Judge Reynolds equated the PSC to the role of a “court” for purposes of administering discovery in a contested case, and unambiguously concluded that “[i]n adversarial proceedings before an adjudicative body, it is inappropriate for the adjudicative body to insert itself into a dispute by submitting discovery. Parties conduct discovery; courts do not.” Order, July 9, 2018, at p. 6. Based on this, Judge Reynolds concluded

that the PSC’s decision there to act as a party in a matter it is adjudicating “violates Petitioners’ right to a hearing before an impartial body.” *Id.* at 3.

In the appeal of that case, the Montana Supreme Court held that “the PSC is not exempt from the constitutional restraints of due process requirements and must ensure that all litigants receive a fair and open hearing as guaranteed by the Fourteenth Amendment.” *North Valley Refuse v. Montana Public Service Commission*, 2019 MT 199, ¶ 17, 397 Mont. 85, 447 P.3d 463.

Additionally, in *MTSUN, LLC v. Mont. Dept. of Public Service Reg.*, the Montana Supreme Court found that, while acting in a “quasi-judicial function” the PSC’s review of the case is “limited to ‘making determinations in *controversies*.’” 2020 MT 238, ¶ 73, 401 Mont. 324, 472 P.3d 1154, *citing* Mont. Code Ann. § 2-15-102(10) (emphasis in original). Based upon this limitation, the Court held that the PSC’s review “must be narrowed to only those controversies and issues that are disputed by the parties,” and the PSC could not create additional issues to adjudicate. *Id.* Thus, based upon binding court precedent, the PSC cannot issue data requests, conduct an investigation, or require the parties to consider issues beyond those raised by the parties to this docket, and all references to the contrary should be stricken from the Order as contrary to due process of law.

Finally, in addition to lacking statutory authority and violating the parties’ due process rights, issuing data requests, conducting an “investigation,” and requiring that the parties consider additional issues in a contested case motor carrier proceeding, is contrary to PSC precedent. The instant docket is a contested Class D application docket, wherein the burden is on the applicant to demonstrate entitlement to an applied-for hauling area. *See, e.g., In re Application of Barber Transportation Company*, Dkt. T-7375, Order No. 4934a, April 8, 1985, at ¶ 4; *In re Application of Hoye*, Dkt. T-95.73.PCN, Order No. 6397a, April 30, 1996, at ¶ 35

(burden is on applicant in a contested case motor carrier proceeding to demonstrate entitlement to applied-for permit, by a preponderance of the evidence). Because proving entitlement to a permit is the applicant's burden, it is inappropriate for the Commission or its staff to insert itself into the hearing, as such insertion upends the applicant's burden of proof at hearing.

The discovery/investigatory/additional issues procedures proposed in the Order are contradicted by statute, due process of law, multiple court holdings, and would be contrary to the PSC's own precedent. Therefore, Evergreen requests that the PSC reconsider the language of Paragraphs 8 and 14 to remove any reference to the PSC conducting discovery or investigations. Likewise, the Commission should reconsider its inclusion of Paragraph 17 of the Order, and remove it in full. Finally, the PSC should remove any and all other references to any claimed power to issue discovery, investigate, or require consideration of additional issues.

B. The Commission should remove all references to examination of witnesses and introduction of evidence.

In addition to the concerns raised *supra*, the Commission should also remove Paragraph 25 of the Order as unsupported by statute or violative of due process of law. In Paragraph 25, the Commission first claims it has the discretion to introduce evidence "not adequately addressed by the parties," and further claims it has the power to examine witnesses at hearing. However, neither is true in the context of contested case motor carrier proceedings before the Commission.

First, the Commission's claimed power to introduce evidence is without statutory support. The Order cites Mont. Code Ann. § 69-12-204 as basis for the Commission's claimed authority. However, that statute states that the provisions of railroad statutes regarding procedure for hearings are applicable in motor carrier hearings; nothing in that statute states that the Commission can introduce evidence (and in fact the word is not used in the statutes). No railroad statutes give the PSC the power to introduce evidence and examine witnesses in a

contested case hearing. The remaining statutory authority cited by the PSC for its claimed authority to introduce evidence, Mont. Code Ann. § 69-2-201, says nothing about whether the Commission may introduce evidence—that statute merely states that the consumer counsel may represent the consuming public as a party at a contested case hearing.¹ Therefore, as the claimed authority for introducing evidence is unsupported by any statute applicable to contested case motor carrier proceedings, this provision should be stricken from Paragraph 25 of the Order.

Paragraph 25 also claims the Commission possesses the power to examine witnesses at hearing based upon Mont. Code Ann. 69-12-206(1)-(2), Mont. R. Evid. 614, and Mont. Code Ann. § 69-3-106(2). However, these statutes likewise do not support any power on the part of the Commission, and this portion of Paragraph 25 should also be stricken. First, Mont. Code Ann. § 69-12-206(1) merely provides that an investigation or hearing may be undertaken either before a member of the Commission, or before “any agent or examiner of the commission designated for the purpose by the commission.” Mont. Code Ann. § 69-12-206(2) provides that, if such agent or examiner is designated, they may “administer oaths, examine witnesses, and receive evidence.” No like power is given to the Commissioners, or their staff. The Order does not designate an agent or examiner before which the hearing will be held. *See* ¶ 18 (designating Lucas Hamilton as examiner “for limited purpose of resolving discovery disputes, motions for protective orders, and objections to providing confidential information.”). Thus, this statute provides no basis for the Commission or its staff to examine witnesses at hearing.

¹ To the extent the Commission claims this was a clerical error, and that the reference should have been Mont. Code Ann. § 69-2-102, that statute is likewise inapplicable here. By its wording, the statute applies “in cases involving an application for authority to increase [a regulated entity’s] rates.” Class D carriers are not rate regulated, and thus the statute is facially inapplicable in a Class D contested case. Moreover, this issue (as well as due process and statutory authority issues argued herein) has been exhaustively briefed in *In re Application of Big Foot Dumpsters & Containers LLC*, Montana First Judicial District Cause No. 2018-318. Evergreen incorporates all briefing on this topic filed in that case here.

The Order alternately cites Mont. Code Ann. § 69-3-106(2) as authority for questioning witnesses at hearing. That statute, entitled “supervision and management of public utilities,” has absolutely no bearing on a motor carrier proceeding (governed by Title 69 Chapter 12, Mont. Code Ann.), as it, like all statutes contained in Title 69 Part 3, applies only to the regulation of utilities.

Outside statutory authority, the Order cites Mont. R. Evid. 614 as basis for the Commission and staff to examine witnesses at hearing. That rule provides the tribunal may “call witnesses and **all parties are entitled to cross-examine witnesses thus called.**” Mont. R. Evid. 614(a) (emphasis added). Under Rule 614(b), a tribunal may ask limited clarifying questions. In interpreting this rule and a similar common law rule which preceded it, the Montana Supreme Court has been clear that, while a presiding judge may have the right to propound questions, such right must be exercised with great care, and never unduly extended, and the questions should not betray bias or prejudice. *State v. Richardson*, 69 Mont. 400, 222 P. 418 (1924). And, in any case, a court’s discretion to question witnesses is not arbitrary and uncontrolled—instead, due process requires that the judge must remain impartial and disinterested. *U.S. v. Alfaro*, 336 F.3d 876, 883 (9th Cir. 2003). Under this rubric, while a judge may analyze and dissect evidence, he or she may not either distort it or add to it. *Id.*, quoting *Quercia v. United States*, 289 U.S. 466, 470, 53 S. Ct. 698 (1933). Here, the Commission’s Order combining the roles of investigator, prosecutor, and decision maker to examine witnesses at hearing and thereafter make a decision based upon the evidence the Commission itself creates, is an improper expansion of Mont. R. Evid. 614.

Thus, there is no statutory support under the cited statutes for the Commission to introduce evidence, and neither statute cited by the Commission provides a basis for it to

examine witnesses at hearing. Likewise, the rule of evidence cited only allows the Commission to ask clarifying questions, and only then so long as the Commission exercises great care, never unduly extends its powers, and limits the questions so as to not betray bias or prejudice.

Accordingly, Evergreen respectfully requests that the Commission reconsider the language of Paragraph 25 of the Order and delete it in its entirety.

CONCLUSION

For the foregoing reasons, the Commission should delete the provisions in Paragraphs 8, 14, 17, and 25, as well as any other provisions of the Order purporting to allow the Commission to issue discovery/data requests, conduct an investigation in relation to this docket, require the parties to consider additional issues beyond those raised by the parties, examine witnesses, or introduce evidence at hearing.

DATED this 28th day of October, 2021.

DONEY CROWLEY P.C.

/s/ Jacqueline R. Papez

Jacqueline R. Papez
Jack G. Connors
Attorneys for Protestant Evergreen Disposal, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Protestant's Motion for Reconsideration and Brief in Support* was served via email on this 28th day of October, 2021,

upon the following:

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

IN THE MATTER OF PBN LLC)
) REGULATORY DIVISION
) DOCKET NO. 2021.09.114
)
)
) NOTICE OF WITHDRAWAL
) OF APPLICATION
)

TO: PUBLIC SERVICE COMMISSION OF THE STATE OF MONTANA

NOTICE is hereby given that, PBN, LLC, by and through its attorney, Goode Law PLLC, wishes to withdraw its application for a Certificate of Public Convenience and Necessity, docket No. 2021.09.114.

Dated this 9th day of November, 2021.

Respectfully Submitted,

GOODE LAW PLLC



Brett A. Goode
Attorney for Applicant

