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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of the Application of Rocky Mountain Power for Approval of Power Purchase Agreement Between PacifiCorp and Blue Mountain Power Partners, LLC	<b>Docket No. 13-035-115</b>  EMERGENCY REQUEST OF BLUE MOUNTAIN POWER PARTNERS, LLC TO RE-SET SCHEDULING CONFERENCE FOR AUGUST 2, 2013 AT 9 A.M.
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Blue Mountain Power Partners, LLC (“Blue Mountain”) respectfully requests that the Commission re-set the scheduling conference in this docket from August 8, 2013, to August 2, 2013 at 9 a.m. Blue Mountain requests that the scheduling conference be reset on an emergency basis for good cause, as shown below.

Both of Blue Mountain’s current counsel have scheduling conflicts on August 8. Moreover all potential participants in this docket, including Ellis-Hall Consulting LLC (“Ellis-

Hall”), represented last Friday that they were available for a scheduling conference on August 2 at 9 a.m. Latigo Wind Park, LLC (“Latigo”) was the only party who objected to an August 2 scheduling conference, because it wished to retain the original July 29 scheduling conference and because its client representative will be out of town on August 2. Blue Mountain has been advised, however, that setting the scheduling conference on August 8 will not resolve the unavailability of Latigo’s client representative and that Latigo is also requesting that its scheduling conference be re-set to August 2 at 9 a.m. Thus, no party will be prejudiced by re-setting the scheduling conference to August 2. On the other hand, postponing the scheduling conference to August 8 could prejudice Blue Mountain’s project.

Delaying or denying Commission approval of the Blue Mountain Power Purchase Agreement (“PPA”) with Rocky Mountain Power (“RMP”) appears to be the primary goal of Ellis-Hall. Ellis-Hall has no legitimate basis for opposing approval of the Blue Mountain PPA. Rather, Ellis-Hall appears to be attempting to use an alleged conflict of interest as a diversion and delay tactic, as it has in the past.<sup>1</sup>

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<sup>1</sup>Ellis-Hall has previously asserted conflict of interest claims against a bankruptcy trustee who had alleged a violation by Ellis-Hall of the bankruptcy automatic stay in connection with wind leases previously (but no longer) associated with the Blue Mountain project, and against Brian Burnett who represented the Blue Mountain project developer before this Commission last year, but who withdrew in the face of a claimed conflict of interest by Ellis-Hall. Ellis-Hall has learned to use allegations of conflict of interest as a weapon to further its goals.

Ellis-Hall is attempting to develop a wind project near the Blue Mountain project. Ellis-Hall is thus attempting to delay and thwart the Blue Mountain project<sup>2</sup> in an apparent effort to improve the chances of developing its own aspirational project.

Timely approval of its PPA is very important to Blue Mountain, which is facing daunting time constraints and commercial realities in its efforts to obtain financing and complete construction in a timely manner so as to meet PPA deadlines and claim critical tax credits. Any delay in obtaining timely Commission approval of the Blue Mountain PPA will put the Blue Mountain project at significant risk. Unfortunately, this risk is well known to Ellis-Hall – whose project has no PPA and no realistic ability to meet the tax incentive deadlines, but who apparently believes that thwarting the Blue Mountain project will increase the economics of its aspirational wind project.

Ellis-Hall's Petition to Intervene does not adequately assert a relevant interest in the subject matter of this docket.<sup>3</sup> Unexpressed "concerns" regarding the PPA or the process leading

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<sup>2</sup>Among other things, Ellis-Hall has filed irrelevant documents and claims with this Commission, opposed County permits, utilized bogus conflict of interest claims in an attempt to disqualify counsel, deliberately appeared at hearings without counsel, retained counsel with alleged scheduling conflicts, refused to accept a schedule on the substantive issues agreed to by all parties with legitimate interests, refused to identify other acceptable dates, demanded delay by insisting that the substantive issue schedule be postponed until after its unasserted and unsupported conflict of interest claim is resolved and refused to acknowledge even that withdrawal of Blue Mountain's counsel would resolve the alleged conflict, all in an effort to delay and thwart the nearby Blue Mountain project that is ahead of the aspirational Ellis-Hall project in development.

<sup>3</sup>Utah Code Section 63G-4-207(1)(c) requires a person seeking intervention to include "a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding." Ellis-Hall's Petition includes no such statement of facts. Rather, it alleges only that it "believes" its claimed interest in three wind leases allegedly "within the geographic footprint of the project commonly referred to as the Blue Mountain Wind Project" may be affected. Such a claim is insufficient to support intervention. Moreover, the three wind leases in which Ellis-Hall claims an

to the PPA are insufficient to support intervention. Despite the lack of a demonstrable interest in the merits of this docket, Ellis-Hall has now successfully delayed the schedule in this docket, and is still seeking further delay.

If Ellis-Hall wishes to assert a claimed conflict of interest,<sup>4</sup> it should be required to do so in a timely manner and in an appropriate forum. Under no circumstances, however, should the alleged conflict be allowed to delay timely resolution of the substantive issues before the Commission relating to the Blue Mountain PPA. There is no legitimate reason why a schedule for resolution of any substantive PPA issues must or should be delayed pending resolution of the conflicts claim. Indeed, even though no conflict of interest exists, counsel for Blue Mountain is willing to withdraw as counsel if necessary to avoid any delay in resolution of the substantive PPA issues. While Blue Mountain should not be forced to incur the additional expense and hassle of retaining new counsel at this late date, it is willing to do so if necessary to avoid any delay in the substantive issue schedule agreed to by every participant with a legitimate interest in this docket.

Blue Mountain respectfully submits that good cause exists for issuance of an emergency order re-setting the scheduling conference in this docket to August 2 at 9 a.m. All potential participants represented last Friday that those times would work for them and counsel for Blue

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interest are not part of the Blue Mountain PPA before the Commission for approval in this docket. Ellis-Hall thus has no legitimate basis for intervention.

<sup>4</sup> As will be demonstrated at the appropriate time and in the appropriate forum, Blue Mountain's counsel does not have a conflict of interest with Ellis-Hall. Blue Mountain's counsel has never represented Ellis-Hall nor received any confidential information of relevance to approval of the Blue Mountain PPA.

Mountain has advised each participant to keep those times available. No party will be prejudiced by re-setting the scheduling conference to August 2, while the Blue Mountain project may be materially harmed and prejudiced by any further delay.

DATED this 29<sup>th</sup> day of July, 2013.

HATCH, JAMES & DODGE

/s/ \_\_\_\_\_

Gary A. Dodge

Attorneys for Blue Mountain Power Partners, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 29<sup>th</sup> day of July, 2013, on the following:

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/s/ \_\_\_\_\_