

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of the Application of  
Rocky Mountain Power for Approval of  
The Power Purchase Agreement between Docket No. 13-035-115  
PacifiCorp and Blue Mountain Power  
Partners, LLC,

In the Matter of the Application of  
Rocky Mountain Power for Approval of  
The Power Purchase Agreement between Docket No. 13-035-116  
PacifiCorp and Latigo Wind Park, LLC.

RESCHEDULING OF CONTINUED SCHEDULING CONFERENCE

PRESIDING OFFICER JORDAN WHITE

TAKEN AT: Public Service Commission  
160 East 300 South, Rm 451  
Salt Lake City, UT

DATE: August 2, 2013

TIME: 9:00 a.m.

REPORTED BY: Kellie Peterson, RPR

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A P P E A R A N C E S

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ALSO APPEARING ON

RECORD: Paul Clements  
Tony Hall  
Andrew Fales

## 1 PROCEEDINGS

2 PRESIDING OFFICER WHITE: Good morning,  
3 everyone. My name is Jordan White. I am the Commission  
4 designated presiding officer in this matter. This is  
5 the time and the place for the continuation of the  
6 scheduling conference that was dually noticed and  
7 convened on July 23, 2013, it was continued to afford  
8 parties the opportunity to put their position on the  
9 record regarding the schedules for the matters in  
10 question, which are; one, in the matter of the  
11 application of Rocky Mountain Power for approval of the  
12 Power Purchase Agreement between PacifiCorp and Blue  
13 Mountain Power Partners, LLC, Docket No. 13-035-115; and  
14 the in the matter of the application of Rocky Mountain  
15 Power for the approval of the Power Purchase Agreement  
16 between PacifiCorp and Latigo Wind Park, LLC, Docket No.  
17 13-035-116.

18 I wanted to make parties aware -- sorry, can  
19 you hear me? Is this not on? Okay. I do want to make  
20 parties aware, also, in addition to being on the record,  
21 we are streaming live this morning.

22 So let's begin by taking appearances, if  
23 that's okay. If it all right, we will start from this  
24 side of the room, the right side, and go forward, if  
25 that is okay.

1 MR. SOLANDER: Daniel Solander, on behalf of  
2 Rocky Mountain Power and I have with me at counsel  
3 table, Paul Clements.

4 MR. JETTER: Justin Jetter for the Division  
5 of Public Utilities.

6 MR. DODGE: Gary Dodge, Counsel of record  
7 for Blue Mountain and Wasatch Wind.

8 MR. SNARR: My name is Steven Snarr, with  
9 Holland and Hart. I am entering an appearance today for  
10 Wasatch Wind on behalf of Latigo Wind Park project.

11 MR. WOOD: Stephen Wood and Mary Anne Wood,  
12 on behalf of Ellis Hall.

13 PRESIDING OFFICER WHITE: Okay, great. Now  
14 the main issue, as the Commission understands it,  
15 preventing the parties from reaching the consensus on  
16 the scheduling for these two dockets is Ellis Hall  
17 Consultants' allegation of the conflict of interest  
18 exists with respect to the Counsel for Blue Mountain  
19 Power and Latigo Wind Park.

20 I want to emphasize today that this is a  
21 continuation of the scheduling conference. At this  
22 stage, the Commission is primarily interested in matters  
23 that relate to the scheduling orders.

24 Since this is Ellis Hall's issue with  
25 respect to these matters, if it's okay with everyone

1 else, it will probably be appropriate for Ellis Hall's  
2 Counsel to kind of proceed, essentially kind of layout,  
3 you know, what the issues are with respect to why the  
4 schedule can't go forward at this point.

5 MS. WOOD: Well, Your Honor, we were never  
6 provided notice of the schedule until yesterday by Mr.  
7 Dodge. The schedule can't go forward on the basis that  
8 has been outlined; primarily, because we need to do  
9 discovery with respect to the question of whether  
10 Schedule 38 is being applied in a discriminatory manner  
11 with respect to these two proposed Power Purchase  
12 Agreements and we needed adequate time to do discovery.

13 In the course of accommodating a reasonable  
14 discovery schedule, which is not 30 days, we will  
15 promptly raise to the Commission's attention the problem  
16 that Mr. Dodge has with the conflict of interest. I  
17 don't think that needs to be addressed today. We just  
18 need a reasonable discovery schedule and we will work  
19 around that.

20 PRESIDING OFFICER WHITE: Can I ask, though,  
21 are you -- just to clarify, so are you saying that, you  
22 know, from the Commission's prospective, we can  
23 potentially put -- you know, discuss the schedule and  
24 then simultaneously deal with the conflict?

25 MS. WOOD: Sure, yes, absolutely. We want a

1 schedule that will accommodate a motion to disqualify  
2 Mr. Dodge and a schedule that will accommodate  
3 reasonable discovery. Again, we anticipate needing 90  
4 days.

5 PRESIDING OFFICER WHITE: Okay. Why don't  
6 we put the issue of -- because, ultimately, I would --  
7 you know, the Commission would be pretty pleased to hear  
8 a proposal for scheduling, but why don't we go ahead, if  
9 it is okay with you, not to take things out of turn in  
10 order but we're going to skip over -- but, perhaps, it's  
11 most appropriate to have Mr. Dodge just respond to his  
12 -- the scheduling issue and potential conflict issue, if  
13 that is --

14 MR. DODGE: Thank you, and I would be  
15 pleased to. As I have stated in the emergency request  
16 that I filed, and as I repeated to Counsel, there is no  
17 need to even address the conflict issue in setting the  
18 schedule on the substantive issues. As needed to  
19 accommodate that schedule, I have offered to withdraw.  
20 As for Wasatch wind, they are showing their sincerity on  
21 that by having Counsel here ready to step in. Blue  
22 Mountain is equally prepared to do so. They didn't have  
23 counsel that they could retain by today if needed. So  
24 the schedule shouldn't even take that issue into  
25 consideration.

1 I would like to say there is absolutely no  
2 conflict and I am prepared to defend that because I  
3 don't take lightly of people accusing me of violating my  
4 ethical responsibility. So that issue will be addressed  
5 but it doesn't need to be addressed before this  
6 Commission. And, in fact, the Commission's, in my view,  
7 ability to deal with it is limited to what the rule  
8 says, and that is that you can require an attorney to  
9 step down from representing two people before the  
10 Commission if there is a conflict. That isn't the  
11 allegation here. I don't believe it is an issue even  
12 that should come before the Commission, but even if it  
13 does, it absolutely shouldn't affect the substantive  
14 schedule.

15 As you know, both of these clients need a  
16 schedule way short of 90 days. There is absolutely no  
17 need for that kind of a schedule here. It appears to be  
18 a fishing expedition. We believe that this intervener,  
19 if it wants to intervene, needs to, first of all, state  
20 its basis for having an interest here that has been  
21 effected. They haven't done so in their petition. They  
22 have alleged some concerns they want to raise. They  
23 haven't alleged an issue -- any legal right or interest  
24 that will be substantially affected, like is required --  
25 as is required under the statute.

1           So we think they need to demonstrate they  
2           have an interest, if at all. We think that schedule  
3           should be set consistent with the schedule that was  
4           agreed to by all the other parties for comments before  
5           the end of this month, and a resolution by September.  
6           And that is needed in order to accommodate the ability  
7           of these parties to complete their development.

8           A long schedule like the one being requested  
9           would, in and of itself, likely kill these projects and  
10          we don't think that's what ought to be the Commission's  
11          role, to allow someone to kill it by delay. Now I am  
12          speaking right now for Blue Mountain. Mr. Snarr will  
13          speak as to Wasatch Wind on that issue. But we believe  
14          the schedule that was agreed to by the other parties is  
15          the one that ought to be proposed and that is adequate  
16          for these people to lay out any issues they have, as  
17          opposed to ones they want to go do discovery to try and  
18          discover. And with that, I will leave it.

19          PRESIDING OFFICER WHITE: Can I just ask a  
20          quick question here, so we have a concise understanding  
21          here? Are you indicating that you -- I am trying to  
22          just understand the potential conflict, and, again, we  
23          haven't, you know, gone too deep into that yet. Are you  
24          saying at this point that the conflict is now not at  
25          issue because of the new, I guess, counsel that has been



1 obtained by the different parties? Or I guess I am  
2 trying to understand.

3 MR. DODGE: What I am saying is that issue  
4 should not be allowed to affect the schedule on the  
5 substantive issues. It will be resolved within the time  
6 of that schedule, either by me withdrawing from either  
7 or both, or by a resolution on a parallel path. It does  
8 not need to affect the substantive schedule.

9 PRESIDING OFFICER WHITE: But for now,  
10 you're representing -- just so the Commission is clear,  
11 you are representing both Blue Mountain and Latigo?

12 MR. DODGE: Mr. Snarr is here this morning  
13 to represent Latigo. I am here to represent Blue  
14 Mountain because they could not substitute counsel  
15 yesterday.

16 PRESIDING OFFICER WHITE: The second  
17 question I ask is you are indicating the potential, I  
18 guess, questionability of the petitioner to intervene;  
19 does your party, does your client plan on proposing  
20 that, their Motion to Intervene?

21 MR. DODGE: We do, and we think that within  
22 the schedule you set this morning ought to be a  
23 requirement that if Ellis Hall believes it has a  
24 legitimate interest, as required by the Utah code, that  
25 it lay it out a list of actual facts, not just general

1 allegations. The statute requires that they lay out a  
2 set of facts that show they have a substantial interest  
3 that will be affected by the outcome of the proceeding.  
4 They have not done so, we think they should be required  
5 to do so very quickly, and we can respond very quickly  
6 if necessary.

7 PRESIDING OFFICER WHITE: Mr. Snarr?

8 MR. SNARR: Yes. My appearance today is on  
9 behalf of Wasatch Wind with respect to the Latigo  
10 project, and it is, in part, prompted by the need to  
11 have the schedule go forth quickly.

12 And by my appearance and undertaking the  
13 representation of Wasatch Wind, we expect that the  
14 allegations, perhaps a smokescreen, or whatever they may  
15 be with respect to any prior discussions that Ellis Hall  
16 may have had with Mr. Dodge, are completely removed from  
17 any concern or discussion from the Wasatch Wind project,  
18 and we are anxious for the schedule to move forth  
19 quickly. And we have a representative of Wasatch Wind  
20 who could help highlight some of the needs for the  
21 expedited schedule today, if you would entertain us to  
22 present that in a minute.

23 PRESIDING OFFICER WHITE: We might get to  
24 that. I appreciate that opportunity.

25 MR. SNARR: We, too, will be filing an

1 opposition to the intervention of Ellis Hall in the  
2 Latigo proceeding, like Mr. Dodge on behalf of the Blue  
3 Mountain client there. In the other proceeding, we also  
4 believe that the statement, supporting intervention, is  
5 facially defective. It is not sufficient to meet the  
6 standards under the Utah Code for intervention.

7 And the substantial interest that Ellis Hall  
8 may have in the Wasatch Wind proceeding is really  
9 unknown to us, and, frankly, unknown to the Commission.  
10 And to schedule this proceeding around unknown interest  
11 at this time is really going to be an improper use of  
12 the administrative process that could, potentially,  
13 deprive my client of its right to move forward  
14 expeditiously on a project that it's been working on for  
15 a long time.

16 PRESIDING OFFICER WHITE: I appreciate that.  
17 Just one moment, if it is okay, I plan on giving both  
18 the Division and Rocky Mountain Power a chance, but  
19 before we get into rebuttal, if it is okay with you, it  
20 would be helpful for the Commission to understand,  
21 understanding their may be motion practice or  
22 evidentiary hearing on this conflict issue, would it be  
23 appropriate for someone to lay out so we have an  
24 essential understanding; and also one more thing, are  
25 the conflicts issues the same in both these dockets; in

1 other words, are the essential issues the same for the  
2 both for 115 and 116 docket? And I don't know,  
3 Ms. Wood, I am happy to have you speak to that if you  
4 like.

5 MS. WOOD: Your Honor, they are not the  
6 same. They are very closely related.

7 PRESIDING OFFICER WHITE: Okay.

8 MS. WOOD: This is the first time we heard  
9 Mr. Snarr was going to make an appearance, and Mr. Tony  
10 Hall also met with Holland and Hart and we believe that  
11 Holland and Hart is disqualified, also, from this  
12 matter.

13 MR. SNARR: I would represent that on a  
14 conflict check that we have run, that was not disclosed,  
15 and I would certainly be interested in more information  
16 about that because that is not apparent to us.

17 PRESIDING OFFICER WHITE: And, again, I  
18 think it's -- at this point, I mean, you know, it sounds  
19 like we definitely have a difference of opinion and  
20 there is going to be some facts resolution on this, but,  
21 again, can you just basically lay out, without getting  
22 into too much detail, about what the essential conflict  
23 is so the Commission has at least a very preliminary  
24 understanding of why we can't go forward?

25 MS. WOOD: Yes, I didn't think this was the

1 forum to do this, but Mr. Dodge met with Mr. Hall for  
2 two hours, his coowner called and scheduled that  
3 appointment. Mr. Dodge asked for the reasons for the  
4 meeting, what would be discussed. He carried -- he led  
5 the discussion and solicited confidential information  
6 from Mr. Hall, and then told him that he could not  
7 represent him.

8 We are relying on the Utah Bar Ethics  
9 Advisory opinion letter, 05-04, 2005 Westlaw, 2234-101,  
10 which sets forth an attorney's obligation after he has  
11 met with a prospective client. And we did not want to  
12 raise this today. We think it more appropriate to do it  
13 by way of briefing.

14 PRESIDING OFFICER WHITE: That is fine. I  
15 mean, again, I think what you've said -- I mean, if  
16 you're prefer to lay this forward and then motions to  
17 bring, that is fine. Again, we -- it is difficult at  
18 this stage -- again, we are just talking about -- this  
19 is just a scheduling conference.

20 MS. WOOD: That is what I assumed.

21 PRESIDING OFFICER WHITE: And I think from  
22 the Commission's prospective, it would just be helpful  
23 to understand at least what the allegations are. The  
24 Commission is not making any comment as to the, you  
25 know, the voracity of the allegations, etc., but we

1 just --

2 MS. WOOD: It is, essentially, a violation  
3 of the Rules of Professional Conduct, 1.6 and 1.9. And  
4 let me say while we are talking about scheduling, we  
5 have seen no objection to our intervention. If there  
6 are going to be objections to the intervention, then  
7 those need to be accounted for in the scheduling  
8 conference, in the scheduling order, and an appropriate  
9 time for us to reply.

10 Nobody has objected. I don't think that it  
11 is appropriate for them to say, "Now we've got to go  
12 back and do it right." Our client did it without  
13 counsel. They have been searching for counsel,  
14 including contacting Holland and Hart. So if they have  
15 objections to the Motion to Intervene, they should make  
16 those.

17 We've also already made them in the 100  
18 matter, and we will refile those in our Motion to  
19 Intervene in the 100 matter, but if they want to fight  
20 about intervention, then, obviously, the schedule needs  
21 to accommodate that.

22 PRESIDING OFFICER WHITE: Let's just put a  
23 pan on -- again, I don't want to get far into this  
24 before we hear from both the Division and Rocky Mountain  
25 Power, but I think what I am hearing right now, and,

1 again, the Commission will not making a decision on this  
2 today. There will be an issue order on this after  
3 consideration, but it sounds like what the argument at  
4 this point is there is going to need to be a schedule to  
5 accommodate, whether this is simultaneous with the  
6 comments or implied comments, etc., as to the subject  
7 matter of this docket, which is the PPA between the  
8 counter parties. It sounds like there is going to be  
9 one at issue with respect to the potential opposition of  
10 the Motion to Intervene and, also, the issue of  
11 conflict.

12 Just putting that aside for a moment, if  
13 it's okay, does the -- Mr. Solander, do you have  
14 anything to speak as to this --

15 MR. SOLANDER: I will let Mr. Clements speak  
16 to the Company on this issue.

17 MR. CLEMENTS: Thank you. The Company's  
18 position is that, first of all, these are the Company's  
19 applications, and in these particular dockets, we are  
20 filing for Commission approval for Power Purchase  
21 Agreements between the Company and these counterparties.  
22 And so it's the Company's application for approval of a  
23 Power Purchase Agreement and I think that is pertinent  
24 for this proceeding today.

25 The Company represents that it negotiated in

1 good faith and it did so pursuant to Utah Schedule No.  
2 38, which is the tariff that governs QF pricing  
3 negotiations and power purchase negotiations. The  
4 Company represents that it followed the instructions in  
5 Schedule No. 38 and that the prices, the terms and  
6 conditions, included in the Power Purchase Agreement are  
7 pursuant to the Commission orders in docket No.  
8 03-035-14, which is the docket that governs the avoided  
9 cost methodology.

10 With these representations, the Company  
11 believes that some of these issues related to a conflict  
12 of interest with Mr. Dodge, or an alleged conflict of  
13 interest, are not necessarily pertinent or relevant to  
14 the Company's application in which we are filing a Power  
15 Purchase Agreements for approval.

16 The Company has followed Commission orders  
17 in the relevant dockets that govern Power Purchase  
18 Agreement for qualifying facilities, and the Company has  
19 followed Tariff Schedule No. 38, which governs the  
20 process through with these Power Purchase Agreements are  
21 negotiated. So there's nothing in the Company's  
22 application that the Company believes would be affected  
23 by an alleged conflict of interest, and, perhaps, this  
24 is the wrong forum to address that.

25 That being said, the Company is aware of



1 timing constraints that are very real and very impactful  
2 for Blue Mountain and Latigo, and if we were to set a  
3 schedule that had a Commission approval beyond 60 or 90  
4 days, it is the Company's understanding that these  
5 projects would not be able to be constructed as planned  
6 and currently contemplated in the Power Purchase  
7 Agreements as filed.

8 Therefore, the Company would support a  
9 schedule that is similar to the schedule that was set  
10 forth in the Long Ridge Wind One and Two dockets, which  
11 were 13-035-117 and 13-035-118. The Company would not  
12 be opposed to a schedule that follows that, or somewhat  
13 follows that timing for approval of these agreements.

14 PRESIDING OFFICER WHITE: Thank you, Mr.  
15 Clements. Mr. Jetter?

16 MR. JETTER: Thank you. I think it's  
17 important in this docket, from the Division's  
18 perspective, to recognize that we are running up against  
19 the time limit for a federal production tax credit. And  
20 we have had some ongoing dockets -- or ongoing  
21 Commission action related to Schedule 38. I don't think  
22 that, from our prospective, there has been any  
23 intentional delay on behalf of these wind companies. I  
24 think they filed these expeditiously as they can, with  
25 respect to some prior orders from the Commission on

1 Schedule 38 and whether that would stay -- the previous  
2 calculations would stay in place for this set of  
3 contracts.

4           So in relation to that, I think that it  
5 would be potentially an unjust result if we delayed the  
6 scheduling in this set of dockets so long that it would  
7 effectively kill these wind projects. So with respect  
8 to that, I think that the general schedule that we had  
9 set in the two Long Ridge projects is adequate in this  
10 case. I think that from the Division's prospective, we  
11 believe there is sufficient time within the periods  
12 between now and when we would file our comments, as well  
13 as the rebuttal comments, to do adequate research. We  
14 believe there is time to get the information necessary  
15 from the various parties through data requests to do  
16 whatever analysis is necessary to make informed  
17 comments.

18           And today is the first we have heard of a  
19 claim that Schedule 38 is being applied in a  
20 discriminatory fashion. I don't have any basis to make  
21 a judgment either way on that, but we don't have any  
22 indication of that occurring. And as I mentioned  
23 earlier, we believe that there is a reasonable period  
24 for discovery set within the schedule that we had agreed  
25 to between the other parties, the previous scheduling

1 meeting.

2 With respect to intervention of Ellis Hall,  
3 generally, the Division will take the position of erring  
4 on the side of inclusiveness, and so at this point, we  
5 don't intend to oppose the intervention.

6 PRESIDING OFFICER WHITE: Turning back to  
7 the July 23rd scheduling conference, I think at a  
8 certain point, there may have been a consensus among  
9 many, if not a majority of the parties, for no comments.  
10 Now I am talking about the schedule for the docket at  
11 issue here, 115 and 116, the initial comments, August  
12 22nd; reply comments, August 30; with an intervention  
13 deadline of August 28; and hearing on September 4th;  
14 with that context in mind, and I am -- again, we are not  
15 making a judgment on that, Ms. Wood, why don't you, if  
16 you wouldn't mind, maybe -- you mentioned earlier you  
17 may be receptive to having simultaneous paths. Help me  
18 understand how those two dates might work. In other  
19 words, the actual substantive issue of the PPA's, and, I  
20 guess, the ancillary issues of the intervention motion  
21 practice and the question of conflict of interest.

22 MS. WOOD: Well, obviously, on the schedule  
23 that was discussed on the 23rd, that did not include us,  
24 they couldn't. It couldn't on a 60 or 90 day schedule,  
25 it could.

1           But I am surprised to hear the Commission  
2 say that they have never heard -- they have seen, and  
3 Rocky Mountain Power have said they have scrupulously  
4 complied with Schedule 38 because Schedule 38 is  
5 interpreted in the Commission's most recent ruling  
6 requires an applicant to have a grid connection before  
7 they get a Power Purchase Agreement.

8           These parties do not have grid connections  
9 and our client's Power Purchase Agreement has been held  
10 up because they have been required to get a grid  
11 connection. That is discriminatory and is  
12 inappropriate, and we need to know -- there are many  
13 other areas under Schedule 38 that we think have not  
14 been complied with by Rocky Mountain Power, and we need  
15 to understand why it is that these two parties are being  
16 slipped through on a basis without being required to  
17 have a grid connection, when, previously, the Commission  
18 has taken the position that it is appropriate to require  
19 a grid connection for the interest of the public.

20           So, yes, we have substantial concerns and it  
21 is not limited solely to the grid connections, but that  
22 is an obvious discriminatory application of Schedule 38  
23 by Rocky Mountain Power. You can't have Tony Hall being  
24 required to have a grid connection and these parties  
25 not.

1 MR. SOLANDER: Mr. White, I am going to  
2 object at this point. We are going far into facts that  
3 need to be presented in a different forum.

4 MS. WOOD: You're saying that this is the  
5 first time you've heard of any discriminatory --

6 MR. SOLANDER: And I am also hearing factual  
7 allegations against Rocky Mountain Power that are not in  
8 the complaint and --

9 PRESIDING OFFICER WHITE: Why don't we do  
10 this; why don't we just stick to -- you know, it is  
11 helpful, I appreciate and it is helpful to understand  
12 some of the underlying issues. It sounds like this will  
13 need to be briefed. Help me understand, back to my  
14 original question, does Ellis Hall have a proposal for,  
15 you know, understanding that they are thinking about 90  
16 days for discovery, what would that look like in terms  
17 of, you know -- help us to understand what it would look  
18 like to deal with 90 days of discovery, comments, reply  
19 comments, hearing, and then how that would fit in the  
20 context of --

21 MS. WOOD: I am talking about an entire 90  
22 days. I mean, we could have 45 days for discovery and  
23 then comments, and then reply comments. We just can't  
24 do that in 30 days. Plus, I think it's --

25 PRESIDING OFFICER WHITE: Let me just make

1 sure, so you are saying 45 days and then with reply  
2 comments -- or, sorry, initial comments to --

3 MS. WOOD: Yes, and that would give adequate  
4 time for people to object. And, you know, we have heard  
5 three representations this morning that these projects  
6 are dead if the Commission doesn't rush that through.  
7 There is no evidence before the Commission to that and  
8 we need to explore those representations. I mean, we  
9 are setting a schedule based on factual representations  
10 of Counsel, and that's simply inappropriate; that if  
11 they can't just rush this through, those power projects  
12 are dead. And we are -- that alone is --

13 PRESIDING OFFICER WHITE: And help us just  
14 understand because we have -- we don't live and breathe  
15 this stuff everyday. We just kind of a have a higher  
16 level understanding of the pending PPC's expiring, I  
17 guess, in October of this year. Is there someone who  
18 can maybe speak to that issue so that we can --

19 MR. SNARR: We have a witness here today to  
20 provide the very kind of factual statements that  
21 Ms. Wood is saying you have not had a chance to hear  
22 yet. We want to have you hear that. We want to set a  
23 schedule consistent with those requirements.

24 PRESIDING OFFICER WHITE: Rather than taking  
25 -- again, this is a scheduling conference. We are not

1 prepared today to take sworn testimony, etc. Can  
2 someone just outline -- again, I just need to  
3 understand, if someone can give us a basic idea of what  
4 the dates we are talking about, because we are trying to  
5 weigh the balance of the interest of Ellis Hall  
6 Consultants and they have some concerns about, you know,  
7 the Schedule 38, etc., but we need to balance that  
8 because, you know, ultimately, we -- there are issues of  
9 commercial interest that are going to be potentially  
10 pinged upon, we need to understand that, too --

11 MR. SNARR: We have Andrew Fales from as  
12 Wasatch Wind to address those questions. Andrew, come  
13 forward.

14 PRESIDING OFFICER WHITE: Yes, come forward  
15 and please state your name, Andrew.

16 MR. FALES: My name is Andrew Fales, and by  
17 way of background, I have Bachelor's in Accounting from  
18 BYU, and a Master's in Taxation from BYU, as well, and I  
19 also have an MBA from the Wharton School, University of  
20 Pennsylvania. I began my career in New York City doing  
21 mergers and acquisitions with Price, Waterhouse,  
22 Coopers, and then I got involved in renewable energy  
23 finance, back in 2005, 2006, on Spanish Fork wind  
24 project, and then I joined Wasatch in 2009 as the vice  
25 president of finance, working on financing renewable

1 projects for the last four or five years.

2 PRESIDING OFFICER WHITE: Okay. I  
3 appreciate that. Can you just help us understand --  
4 again, this is not an evidentiary hearing, but, you  
5 know, Ms. Wood with Ellis Hall is, essentially -- I  
6 mean, I am just thinking of the dates in my mind, you  
7 know, if we push it back to a couple of months for -- I  
8 mean, we are looking at a hearing, I guess, in maybe  
9 November or something like that. And so we are looking  
10 at, potentially, having, you know, an order that would  
11 come out, you know, sometime before the first of year,  
12 hopefully, based upon the very skeletal sketch. Help us  
13 understand the basis of what is the potential harm to be  
14 done to the projects.

15 MR. FALES: Sure. So under the Section 45  
16 of the Internal Revenue Code, the production tax credit  
17 expires at the end of this year, unless the project has  
18 begun construction or met a safe harbor requirement, and  
19 in order to begin construction, it has to be of a  
20 significant nature, the IRS said in one of their  
21 notices. And significant nature includes building -- or  
22 clearing the roads, digging foundations, pouring  
23 foundations, those kinds of things. And so those kinds  
24 of activities haven't begun, which costs millions of  
25 dollars, then the project does not qualify for the



1 production tax credit.

2 On the other hand, if the project spends  
3 five percent of the project costs by the end of the year  
4 on turbines, or roads, or foundations, or collection  
5 lines, or whatever the case may be, then the project is,  
6 quote/unquote, safe harbored for the purpose of the  
7 production tax credit and will be considered to be under  
8 construction by the end of this year.

9 Now if you have a 60 megawatt wind project,  
10 such as Latigo, and you kind of assume of number between  
11 \$1,500 of KW and \$2,000 of KW, that's -- let's call it  
12 \$100 million. So in order to qualify the site through  
13 safe harbor mechanism where you'd have to spend five  
14 percent of the present cost, you would have to spend \$5  
15 million. Now in order to finance that \$5 million, the  
16 financing community requires an approved PPA because  
17 that is the security behind all the financing.  
18 Typically, it's highly-rated entities, from a credit  
19 prospective, and so we have worked very diligently and  
20 negotiated a PPA with PacifiCorp that is financeable,  
21 and we believe we have one, but we are being held up in  
22 order to qualify the site for the production tax credit.

23 And we've spent significant sums of money  
24 that runs into the millions of dollars before the end of  
25 the year unless this -- unless the Commission can

1 approve our PPA within a timely manner. Typically,  
2 after the PPA gets approved, it takes, roughly, 60 days  
3 to close the financing. And it can be done in short of  
4 30 days, but it's -- that is a real hard -- that is a  
5 real hard thing to do. So if the Commission issued an  
6 order at the end of this year, for example, approving  
7 the PPA's, that would not give us significant --  
8 sufficient time to arrange the financing to spend the  
9 millions of dollars that would be required.

10 In addition, we have security deposits,  
11 under the PPA, that are due before the end of the year,  
12 and we are interconnect deposit that runs, as well, that  
13 run collectively, millions of dollars that are due, as  
14 well, prior to the end of year, in order to keep our  
15 project on schedule, in order to meet the requirement  
16 under the contract we have negotiated with PacifiCorp.

17 PRESIDING OFFICER WHITE: Okay, thank you.  
18 One question for Ellis Hall, and then, potentially, we  
19 can do some kind of rebuttal type -- but just if it  
20 would be possible just to give us a basic understanding,  
21 you know, we are looking at this as an application for  
22 approval of an agreement, two counterparties, help us  
23 understand -- I understand in the petition, there was an  
24 indication that Ellis Hall has leasehold interest. Can  
25 someone speak to the interest of Ellis Hall in terms of,

1 you know, I guess these applications of the PPA, in  
2 general. I don't know if that is -- that would be an  
3 interest, I guess.

4 MR. WOOD: If I may briefly, the interests  
5 are twofold as to Blue Mountain. Blue Mountain  
6 previously filed their Power Purchase Agreement  
7 asserting rights to land that are owned by leases that  
8 are subject to Ellis Hall's project. They have since  
9 removed those leases from their project; however, their  
10 project is still based on wind data, and other data,  
11 coming from Ellis Hall's project. So, essentially,  
12 their project doesn't have the data or the building  
13 permits, or the other things that they are representing.  
14 Those are, in fact, Ellis Hall's project. So that is  
15 the interest with Blue Mountain as to the land.

16 There is also the interest in having the  
17 Schedule 38, and other provisions, and for it being  
18 applied in a discriminatory fashion. Obviously, if  
19 Ellis Hall is being required to comply with certain  
20 requirements, like obtaining a grid connection, where a  
21 party like Wasatch Wind who doesn't have any financing  
22 is allowed to streamline through without a grid  
23 connection, that is a discriminatory application of  
24 Schedule 38 and that would affect their project.

25 It also affects their project on the

1 transmission side because there has been allotted 140  
2 megawatts on this project that is being promised to  
3 three different groups. So one of those groups is not  
4 going to have a transmission capacity, and that is going  
5 to lead to complications.

6 So there are direct interests here and we  
7 are happy to set forth those in a revised intervention.  
8 Our clients filed an emergency intervention the day  
9 before this scheduling conference to give the Commission  
10 notice of their interest but we are happy to set those  
11 forth in detail.

12 PRESIDING OFFICER WHITE: Understood. So  
13 let me just -- let me see if I can pencil out where we  
14 are at now, and then maybe we can figure out how to wrap  
15 this up, because we are not going to be making a  
16 decision on the schedule, you know, from the bench here  
17 today.

18 So, you know, just to kind of summarize  
19 arguments from Ellis Hall -- and please, Ms. Wood, tell  
20 me if I'm mischaracterizing this -- that they've got  
21 some potential -- sounds like there's some history of  
22 interest in this project, and they believe there's going  
23 to need to be some additional time, up to 45 days, for  
24 discovery, etc., to kind of suss out some of these  
25 issues of discrimination, etc. And in that same

1 context, we have the need for a potential motion  
2 practice on the intervention of Ellis Hall, in addition  
3 this motion practice.

4 Is that -- am I -- is that generally  
5 correct, Ms. Wood, in terms of the timing you are  
6 thinking that Ellis Hall would need for this?

7 MS. WOOD: That is correct, Your Honor.  
8 These projects have been underway a long time. I mean,  
9 Latigo project has been underway since 2004. I think  
10 it's highly inappropriate to rush through a Power  
11 Purchase Agreement under these circumstances when they  
12 don't have financing and when they have had plenty of  
13 time to make the investments that they should have made  
14 to secure their energy credit.

15 MR. FALES: If I may, financing cannot be  
16 secured in this industry without an approved Power  
17 Purchase Agreement. So to insinuate anything other than  
18 that is just not true, given the reality of the market.

19 PRESIDING OFFICER WHITE: I appreciate that.  
20 I prefer not to get into -- I think there will be plenty  
21 of, you know, reams of paper to deal with that, those  
22 issues, but I think we understand Ellis Hall's position.  
23 Again, this is just a scheduling conference. We are  
24 just trying to get a good understanding of what makes  
25 that -- it sounds like you've given a nice description

1 of the impending issues of the production tax credits,  
2 etc., and just so I'm correct for the parties -- I think  
3 this is correct for Rocky Mountain Power Division and  
4 the producer counterparties, their belief is a schedule  
5 that -- which was similarly set for the 117 and 118  
6 docket, which would generally be having comments, you  
7 know, August 22nd, reply August 30th, and then hearing  
8 some time in September 4th, if necessary, for -- in  
9 order to take advantage of the production tax credit; is  
10 that a correct characterization?

11 MR. FALES: Yes.

12 MS. SOLANDER: Mr. White, if Rocky Mountain  
13 Power may have Mr. Clements make a few comments to make  
14 sure there is not a rebutted statement on the record at  
15 this point before the record even starts.

16 PRESIDING OFFICER WHITE: Did you have --  
17 let me, let put a pen on that and then I'll tie it with  
18 you. Did you have something to say, Mr. Snarr?

19 MR. SNARR: I agree with that proposed  
20 schedule like the other Dockets 117, 118. That is  
21 appropriate in terms of the normal schedule the  
22 Commission deals with, and we want to have that normal  
23 schedule apply, and not just because it is the normal  
24 schedule because it is a critical timeline schedule that  
25 we are facing. And Andrew Fales has expressed and

1 explained that as a part of the input for your  
2 consideration on the scheduling here.

3 We are not trying to somehow adversely  
4 effect the rights of Ellis Hall, and on behalf of  
5 Wasatch Wind, we don't think that our project, going  
6 forward, is anything more than one more project that is  
7 out there competing for possible success in the wind  
8 market. We don't have the conflict issues, we don't  
9 have the background of problems about leases, and we  
10 certainly don't want to get swept under with a bunch of  
11 broad allegations that have been presented here with  
12 respect to our project.

13 And that is, in part, why Wasatch Wind has  
14 secured separate counsel, and if there is problems with  
15 my representation, they will have other counsel that is  
16 clean to proceed forward because they are not wanting  
17 this project to be slowed down by the allegations that  
18 are being presented in this scheduling hearing. And we  
19 hope the Commission will understand that and will  
20 proceed forward with a schedule that will meet the  
21 economic needs.

22 PRESIDING OFFICER WHITE: I think I have the  
23 position pretty well understood in term of Ellis Hall  
24 and counterparties.

25 MS. WOOD: I think Mr. Hall, himself, has

1 something that he wants to say.

2 MR. HALL: I agree with what the gentleman  
3 said with regard to finance --

4 PRESIDING OFFICER WHITE: Can we have you  
5 move forward so your statement can be made on the  
6 record? Please state your name.

7 MR. HALL: My name is Tony Hall. I am part  
8 owner of Ellis Hall Consultants. I agree with what  
9 Wasatch Wind's consultant says about the financing being  
10 necessary to be closed by the 31st of December in order  
11 to get tax credits, but I don't believe it's part of the  
12 Public Service Commission to take on both, the need for  
13 financing.

14 When I find -- go into a project, I have the  
15 financing when I start. I don't need the financing to  
16 close or to finish; therefore, the scheduling of a  
17 project like this should not be a concern of today, nor  
18 should it actually change the scheduling that you  
19 actually propose in order to close that agreement. And  
20 60 days is not necessary for them to close if they have  
21 the funding, and if they can't raise the \$5 million to  
22 secure their project, they shouldn't be in the game,  
23 really.

24 PRESIDING OFFICER WHITE: I appreciate that,  
25 and, again, we may or may not -- the Commission may or



1 may not include a briefing schedule for that issue in  
2 particular. But just to go back to the request from  
3 Rocky Mountain Power to make a statement, Mr. Clements  
4 or --

5 MR. SOLANDER: Mr. Clements has a few  
6 comments regarding statements of discrimination and how  
7 this contract was negotiated.

8 MR. CLEMENTS: Yes, thank you. And I want  
9 to respond to some of the allegations regarding  
10 discrimination, the Company takes those items very  
11 seriously, and provide some additional information in  
12 support of our application because, again, I want to  
13 bring the focus back to we have submitted applications  
14 for QF power purchase agreements for approval, and that  
15 is what is before the Commission at this point in time  
16 and it is very relevant as we try to establish a docket  
17 and schedule.

18 First of all, there were some allegations  
19 that stated that the Company must require an  
20 interconnection agreement prior to executing a Power  
21 Purchase Agreement. Schedule 38 does not say that.  
22 Schedule 38 says, and I'll quote directly from Section  
23 1(b)7. It says, "The Company reserves the right to  
24 condition execution of a Power Purchase Agreement upon  
25 execution of an interconnection agreement," so it is not

1 a requirement but it's a right that we reserve. And the  
2 reason we have that is so we can make sure that these  
3 projects can meet their online date so we don't waste  
4 the Company's time and the Court's time.

5 PRESIDING OFFICER WHITE: Mr. Clements, I  
6 appreciate that. This is helpful. I want to make sure  
7 that we are not going outside of the scope of this. I  
8 appreciate -- it is critical for the Company to, you  
9 know, rebut any issue, but, hopefully, again, what we  
10 are trying to do here is just understand the issues on  
11 conflict of the schedule.

12 So, certainly, if this is going to be an  
13 issue for Ellis Hall, there is going to be an opportunity  
14 to rebut this in briefing, etc.; is there any other  
15 issue -- and I am not trying to, you know, chill any  
16 discussion on this, but I want to make sure that we  
17 don't open this up to a full hearing on the merits.  
18 That is not the Commission's intention to have a hearing  
19 on the merits of either the Schedule 38. Again, just to  
20 remind folks this is continuation of a scheduling  
21 conference. That is what we are trying to deal with.

22 Did you want to say anything else? Again, I  
23 don't want to -- if there is anything pertinent you want  
24 to add, that is fine. I just want to make sure --

25 MR. CLEMENTS: I will limit my comments,

1 then, to the support of a proposed schedule and why it  
2 is appropriate to have the schedule we've proposed that  
3 we would support.

4 PRESIDING OFFICER WHITE: I appreciate that.

5 MR. CLEMENTS: And, again, I represent that  
6 the Company had followed Schedule 38 for these projects.  
7 The Company has followed Schedule 38 for Ellis Hall  
8 Consulting, as well. Ellis Hall had raised a couple of  
9 issues that I do not believe are relevant to scheduling  
10 of this docket. If there are issues with the  
11 interconnection process, that is not relevant to  
12 approval of these Power Purchase Agreements. If there  
13 are issues with how the Company has treated Ellis Hall  
14 Consulting within Schedule 38 as it pertains to their  
15 project, then they can open a separate docket to address  
16 those issues.

17 But the Company's treatment of Ellis Hall --  
18 and I will mention for the record that the Company has  
19 never required an interconnection agreement of Ellis  
20 Hall prior to execution of a Power Purchase Agreement.  
21 If Ellis Hall Consulting has concerns with how the  
22 Company has administered Schedule 38, there are other  
23 avenues to address those concerns. Those concerns are  
24 not relevant or pertinent to the scheduling of the  
25 dockets for Blue Mountain and Latigo.

1           And, lastly, some issues were raised  
2 regarding certain leases and other information with Blue  
3 Mountain Power Purchase Agreement. I will represent in  
4 support of the Company's application for the Blue  
5 Mountain Power Purchase Agreement, that we performed  
6 considerable due diligence. We were aware of the issues  
7 that Ellis Hall has raise here. The Company performed  
8 considerable due diligence around the lease information,  
9 permitting more so than is typically done for Power  
10 Purchase Agreement because we were aware of these  
11 issues. The Company performed its due diligence and  
12 feels like the Power Purchase Agreement is in the  
13 public's interest and should be approved.

14           And for the record, I wanted to explain that  
15 additional due diligence was performed in support of  
16 that application.

17           PRESIDING OFFICER WHITE: I appreciate that.  
18 Before we end today, again just to focus on the  
19 schedule, are there any other comments that are  
20 pertinent to the schedule, Mr. Dodge?

21           MR. DODGE: I will address specifically the  
22 schedule. What has happened today, for the first time  
23 we have heard the allegations of the nature of Ellis  
24 Hall's interest. That has been useful because they  
25 didn't set it forth in their petition. They haven't

1 offered it before. As it relates to schedule, I would  
2 like to walk through each of those interests that they  
3 claim and explain why it doesn't have to affect the  
4 schedule.

5 The first one is they claim that the data  
6 that was collected on leases they claim to own. By the  
7 way, they state they own it. There is dispute even in  
8 federal court over that, so that is not resolved. But  
9 that is not an issue that this Commission will ever  
10 resolve. It doesn't have the power to resolve the issue  
11 as to whether Ellis Hall or Blue Mountain has the right  
12 to data or the right to underlying leases. That is not  
13 something relevant to this proceeding. This proceeding  
14 is on the Company's request to approve a Power Purchase  
15 Agreement. If later, Blue mountain is unable to  
16 perform, they will have posted security, they will have  
17 consequences of their inability to perform, but it has  
18 nothing to do with the approval of PPA, so that issue  
19 does not even need to come into consideration when  
20 setting the schedule.

21 The second issue they claim is  
22 discrimination under Schedule 38. Like Mr. Clements, I  
23 was interested to hear this unique interpretation of the  
24 tariff that says they have to require an  
25 interconnection. It doesn't require that. There are

1 many contracts that have been approved and will be  
2 approved that don't require that, and that is a legal  
3 issue in any event.

4 A, is it is separate; if they think they  
5 have been discriminated against, as Mr. Clements  
6 mentioned, they can bring their own action claiming  
7 discrimination and trying to get similar treatment. But  
8 even if it's true, it is a legal issue that can be  
9 briefed. It doesn't require any discovery. It can be  
10 briefed and resolved, I think, in about a week. This is  
11 not a difficult subject. It's a purely legal subject.

12 Secondly, they claimed that there's impact  
13 as to the transmission. They are claiming basically, as  
14 I understand it, that somehow these projects  
15 leapfrogged, were allowed by Rocky Mountain or by  
16 PacifiCorp Transmission, to leapfrog over their own  
17 project. If so, that is a violation of the first tariff  
18 and I'm pretty sure Pac-Trans will take it very serious.  
19 It is not before this Commission. It's a FERC issue.  
20 It's a legal issue, whether the transmission  
21 interconnection process has been complied with under  
22 Pac-Trans tariff. It has nothing to do with this case.

23 So I, one, submit that every one of the  
24 interests that they claim in this action can be  
25 demonstrated to be something that requires no more time

1 than the schedule that has already been agreed to with  
2 all parties with legitimate interest in this case; they  
3 can address it immediately and we can respond  
4 immediately, and we can accommodate a schedule like the  
5 one that was agreed to by everyone else.

6 PRESIDING OFFICER WHITE: I appreciate that.  
7 Now, again, we don't want to blow this out but I am  
8 hoping to have Ellis Hall give the last word on this, if  
9 they have any additional comments as to the specific  
10 issues with the schedule, understanding again --

11 MS. WOOD: Yes, I am fascinated that Power  
12 Company says it has done more due diligence than it has  
13 ever done and has done considerable due diligence, that  
14 just heightens the need for us to have time for us to  
15 review their so-called due diligence and see what facts  
16 they took into account in deciding to sign these Power  
17 Purchase Agreements without a grid connection.

18 And, you know, the essence of discrimination  
19 is a willy-nilly application of your Schedule 38. Yes,  
20 the Schedule 38 says that it reserves the right to  
21 require a grid connection, and then when it doesn't suit  
22 Rocky Mountain Power, it doesn't require one. On the  
23 other occasions, it does require one, and we have been  
24 required to have a grid connection. These other two  
25 very similar projects have not and as a result, they

1 have a Power Purchase Agreement. We did not.

2 We need to do discovery of why they were  
3 treated differently than we were and what reasonable  
4 basis there can be for the application of that  
5 requirement in some cases and not others. You can't sit  
6 here and say we reserve the right to do it, and then we  
7 only require it when we want to tie up one project and  
8 not another.

9 MR. SOLANDER: Mr. White, we have to respond  
10 to these. These are allegations of discrimination,  
11 again, against Rocky Mountains Power that Mr. Clements  
12 needs to respond to. And I would agree with Mr. Dodge's  
13 statement, if there are allegations of discrimination,  
14 that is a matter before FERC, not in front of this  
15 Commission.

16 PRESIDING OFFICER WHITE: Let's keep it  
17 brief in the specific allegation that you feel you need  
18 to rebut. Let's do it and move on because we need to  
19 wrap it up.

20 MR. CLEMENTS: Certainly. I reiterate the  
21 fact that the Company has not required an  
22 interconnection agreement of Ellis Hall prior to  
23 executing a Power Purchase Agreement. The Company has  
24 not discriminated against any party in its application  
25 of Schedule 38.



1           And, lastly, if there were such a claim of  
2           discrimination, it would not be appropriate to delay the  
3           schedule in these dockets to address that allegation.  
4           It would more appropriate in a separate docket.

5           PRESIDING OFFICER WHITE: I think I have  
6           heard everything today. I think we have a good  
7           understanding. I appreciate everyone's, you know,  
8           thoughts and discussion on this. I think the Commission  
9           has a good understanding at least now to go back and go  
10          on with what makes sense and what's fair to go forward  
11          in PPA's.

12          So unless anyone has anything else to say  
13          that is pertinent to the schedule and not -- you know,  
14          there will be -- you know if necessary, there will be  
15          opportunity to, you know, brief these issues, file  
16          motions, etc., but if unless any other parties have  
17          anything that's pertinent to the schedule --

18          MR. SOLANDER: Just one question on the Long  
19          Ridge One hearings, I thought I heard you say they were  
20          schedule for the 4th and I wanted to confirm they were  
21          on the 10th?

22          PRESIDING OFFICER WHITE: No, what I was  
23          saying is we set the schedules on the 23rd for those and  
24          what I was saying is that we did start to move toward  
25          the schedule, at least until we, the folks have reached

1 a consensus but I was talking more with respect to the  
2 context of the 115 and 116 Docket. So yes, I understand  
3 there is a scheduling order issued for 117, 118.

4 MR. SOLANDER: I just wanted to make sure  
5 those dates was the 10th and not the 4th.

6 MR. DODGE: The Wasatch Wind was on the 4th  
7 in the tentative schedule. The others were on the 10th,  
8 including Blue Mountain. I think all three of the  
9 others were scheduled for the 10th with a slightly  
10 different schedule. Wasatch Wind because they had the  
11 strongest need for a quick turn around and was put a  
12 week earlier.

13 PRESIDING OFFICER WHITE: I really  
14 appreciate everyone's participation today and the  
15 Commission will issue an order in due course on the  
16 matter that we discussed today. And with that, I  
17 believe, unless there is anything else, we will go ahead  
18 and wrap this up.

19 (The conference was concluded at 9:50 a.m.)  
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REPORTER'S CERTIFICATE

State of Utah     )  
                          )  
County of Salt Lake)

I hereby certify that the witness in the foregoing deposition was duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken at the time and place herein named;

That the testimony of said witness was reported by me in stenotype and thereafter transcribed into typewritten form.

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the even thereof.

IN WITNESS WHEREOF, I set my hand this 3rd day of August, 2013.

\_\_\_\_\_  
Kellie Peterson, RPR