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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>  BLUE MOUNTAIN POWER PARTNERS, LLC'S RESPONSE TO ELLIS-HALL CONSULTANTS, LLC'S PETITION FOR REVIEW OR REHEARING
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Blue Mountain Power Partners, LLC ("Blue Mountain") hereby responds to the Petition ("Petition") filed herein by Ellis-Hall Consultants, LLC ("Ellis-Hall") for Review or Rehearing of the October 3, 2013 Order of the Commission ("Order") approving a Power Purchase Agreement ("PPA") between Blue Mountain and Rocky Mountain Power ("RMP") for a wind project Qualifying Facility ("QF"). Ellis-Hall's Petition fails to comply with Commission Rules, lacks merit, contains misrepresentations of law and fact, raises no new or substantive issues, was filed for improper reasons, and should be summarily dismissed.

## **Introduction**

The Petition continues a pattern of improper and meritless filings in this docket by Ellis-Hall. Beyond the fact that Ellis Hall's Petition fails in several respects to comply with applicable Commission Rules,<sup>1</sup> the Petition is wholly lacking in merit and should be dismissed by the Commission. Blue Mountain will respond briefly and generally to the Petition but, because the Petition adds nothing of relevance to the record, Blue Mountain will not respond in detail to the oft-repeated but never-supported claims and demands of Blue Mountain that have been found to be erroneous, unsupported and irrelevant.

Since intervening in this docket<sup>2</sup> and the Latigo Wind Park, LLC ("Latigo") docket, Ellis-Hall has attempted by every inappropriate means to thwart and damage the QF projects of

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<sup>1</sup> Ellis-Hall failed to timely file the Petition in that it failed to timely serve it on Blue Mountain. The Petition's Certificate of Service confirms that Ellis-Hall failed to serve Blue Mountain "in the manner and on the date" required by Commission Rule R746-100-3D and the Commission's Scheduling Order in this docket (Scheduling Order and Notice of Hearing, August 6, 2013, at 3-4 ("Parties shall serve copies of all filings on other parties by electronic mail at or before the time an electronic copy of the document is required to be filed with the Commission. In the event a document ... cannot reasonably be transmitted by electronic mail, the party filing the document shall ... serve an electronic copy of the document on CD ... on each applicable party by hand delivery if the party being served is in the same metropolitan area as the serving party))). Ellis-Hall failed to deliver electronic or hard copies of the Petition on Blue Mountain on the day it was filed, sending it instead by regular mail. In addition, the entire Petition and all of the exhibits – including the Commission's public Order - were filed on yellow paper as confidential documents, despite the fact that most of the information is not confidential. The Petition thus violates Commission Rule R746-100-E. In addition, the documents in the three-inch stack mailed to Blue Mountain are not double-sided copies, as required by Commission Rule R746-100-3C. These violations provide sufficient grounds alone to dismiss the Petition.

<sup>2</sup> Blue Mountain respectfully submits that Ellis-Hall's intervention should be revoked at this time. Ellis-Hall did not ever allege or show a legitimate interest in these proceedings to justify intervention, as demonstrated in Blue-Mountain's objection to Ellis-Hall's intervention. The Commission nevertheless allowed the intervention, consistent with its tendency to allow nearly anyone with a professed interest to intervene in proceedings and based on the typically-valid assumption that intervenors will conduct themselves in good faith. Ellis-Hall has not conducted itself in good faith. Indeed, Ellis-Hall's Petition now seeks to use the intervention against the Commission in an effort to force it to now receive irrelevant testimony and address irrelevant issues simply because Ellis-Hall raised the irrelevant issues at a scheduling hearing (Petition at 26-27). This type of abuse should not be tolerated. Moreover, the

two competing developers. Rather than seeking relief relating to its own QF project in response to alleged wrongs of RMP - as consistently urged by RMP, Blue Mountain and the Commission - Ellis-Hall persists in improper attacks on competing projects. Ellis-Hall's failure and refusal to pursue redress for its own project and its open hostility towards innocent competitors betrays its improper motives and underscores its lack of bona fides. In any event, the Petition raises nothing new, is devoid of merit, misrepresents the record, and should be rejected.

**The Petition Continues to Misrepresent the Requirements and Purposes of Utility Regulation and Schedule 38.**

The Petition perpetuates Ellis-Hall's misunderstanding and/or misrepresentations of Utah's utility laws, including Schedule 38. The Order properly found that the Commission's "public interest" determination in this docket is focused primarily on protecting captive ratepayers by ensuring that QF rates paid by a utility (and passed on to ratepayers) are calculated in conformity with applicable Commission requirements (Order at 4, 12). Anointing itself as a superior authority on the Commission's obligations and authority, Ellis-Hall insists instead that the Commission's primary role is to protect Ellis-Hall from its own business failures. The Commission properly rejected Ellis-Hall's unsupportable interpretations of Utah law and utility tariffs and reached the appropriate public interest determination by finding that the Blue Mountain QF is consistent with all applicable requirements and is in the public interest.

The Commission noted that a secondary goal of Schedule 38 is to establish QF procedures that remove barriers and encourage QF development. (Order at 7, 8, 12). None of Ellis-Hall's offered or proffered testimony even remotely demonstrates a violation of Schedule

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Commission's Order confirms that Ellis-Hall does not in fact have any interest of relevance to this proceeding. Ellis-Hall's intervention can thus now properly be revoked.

38 or inconsistency with this secondary goal. Indeed, Ellis-Hall is attempting to misuse Schedule 38 as a sword to accomplish the exact opposite goal—thwarting QF project development for selfish anti-competitive purposes. The Commission properly rejected Ellis-Hall’s irrational and unsupportable reading of Utah laws and tariffs and its inappropriate attempt to damage competing projects.

**The Commission Properly Limited the Scope of the Hearing to Relevant Facts and Issues and Appropriately Rejected Ellis-Hall’s Efforts to Hijack the Hearing.**

The Commission properly rebuffed Ellis-Hall’s belligerent attempts to expand the hearing beyond its proper scope. Ellis-Hall’s arguments and claims rely upon patently erroneous and unsupportable interpretations of Utah laws and tariffs.<sup>3</sup> Ellis-Hall has repeatedly insisted that the Commission address issues left to the exclusive jurisdiction of other agencies and courts.<sup>4</sup> Ellis-Hall seeks disingenuously to hijack a simple PPA approval docket of two competing developers and turn it into a referendum on Ellis-Hall’s alleged mistreatment by

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<sup>3</sup> For example, Ellis-Hall’s insistence that it was treated in a discriminatory manner because RMP allegedly required it to first obtain an interconnection agreement is absurd. In the first place, RMP has represented that this claim is factually inaccurate. In addition, it rests upon the novel and unsupportable claim that a public utility is required to treat all vendors in the same manner. In any event, even had RMP required Ellis-Hall and not others to first obtain an interconnection Agreement and even if this were the proper forum to address such claims, Schedule 38 unambiguously authorizes RMP to exercise its discretion to require or not require simultaneous execution of an interconnection Agreement. (Schedule 38, § I.B.7 (“The Company reserves the right to condition execution of the power purchase agreement upon simultaneous execution of an interconnection agreement between the owner and the Company’s power delivery function...”). It is not possible to claim improper discrimination to the extent the governing tariff expressly allows it.

<sup>4</sup> Ellis-Hall demands that the Commission address extraneous legal issues such as the enforceability of the PPA and alleged violations of federal law and FERC tariffs. All such claims are within the exclusive jurisdiction of state or federal courts or federal agencies and the Commission properly declined to address them. (*E.g., Miss. Power & Light v. Miss. ex rel. Moore*, 487 U.S. 345, 375 (1988); *Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318-19 (1981)); *Fidelity Federal Sav. And Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 153-54 (1982); *Garkane Power Ass’n v. Pub. Serv. Comm’n of Utah*, 681 P.2d 1196, 1207 (Utah 1984)).

RMP.<sup>5</sup> The Commission appropriately rejected these and other efforts<sup>6</sup> and properly focused on the issue at hand - whether the Blue Mountain and Latigo PPAs are consistent with applicable Commission orders and tariffs and in the public interest.

Perhaps most revealing of Ellis-Hall's improper motives is its continued refusal to seek redress for alleged wrongdoing by RMP in an appropriate docket, persisting instead in attacking the PPAs of innocent competitors. As the Commission's Order duly noted, Ellis-Hall's claims of discriminatory treatment "are outside the scope of our consideration of the Blue Mountain and Latigo PPAs in these proceedings" and should properly be addressed through "a Schedule 38 ... Commission process to address EHC's grievances;" yet Ellis-Hall "has not availed itself of that process."<sup>7</sup>

### **Conclusion**

Ellis-Hall's factual and legal arguments as repeated in the Petition are inaccurate or irrelevant to this proceeding. Ellis-Hall has not produced any evidence whatsoever that the Blue

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<sup>5</sup> This attempt to derail the hearing and turn it into a gripe session about alleged wrongdoing by RMP in relation to the negotiation of Ellis-Hall's PPA is particularly galling given that Ellis-Hall refused to produce even a single document requested by Blue Mountain in discovery regarding its claims or its PPA, insisting that it's PPA was not relevant to these proceedings. Ellis-Hall then duplicitously demanded at hearing that the Commission and the parties endure hours of baseless and irrelevant testimony about Ellis-Hall's proposed PPA and alleged mistreatment by RMP in connection with that PPA.

<sup>6</sup> For example, Ellis-Hall improperly demanded that the Commission require a PacifiCorp Transmission employee to appear at the hearing, despite its failure to utilize available discovery methods prior to the hearing to obtain such testimony. Ellis-Hall also continues to assert unsupported and unsupportable claims of conflict of interest. These extraneous and irrelevant claims were properly ignored by the Commission.

<sup>7</sup> The Petition makes the bizarre claim that the grievance process referenced in the Commission's Order "is not available on Rocky Mountain Power's website" and that Schedule 38 as reflected on the website does "not contain a complaint process." To the contrary, Section III of the May 2013 Schedule 38 tariff clearly states: "The Commission has an informal and formal dispute resolution processes which can be reviewed on the Commission website at the following address: <http://www.psc.utah.gov/complaints/index.html>." (Rocky Mountain Power Electric Service Schedule No. 38, Section III, Sheet No. 38.7).

Mountain PPA violates any applicable requirement of Schedule 38, Commission orders or Utah law. Nor has it raised any relevant public interest issue relating to the Blue Mountain PPA. Ellis-Hall's intervention should be revoked and its Petition should be denied.

DATED this 15<sup>th</sup> day of November, 2013.

HATCH, JAMES & DODGE

/s/ \_\_\_\_\_  
Gary A. Dodge  
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 15<sup>th</sup> day of November, 2013, on the following:

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