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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of Power Purchase Agreement Between PacifiCorp and Blue Mountain Power Partners, LLC)	Docket No. 13-035-115
)	and
)	Docket No. 13-035-116
In the Matter of the Application of Rocky Mountain Power for Approval of Power Purchase Agreement between PacifiCorp and Latigo Wind Park, LLC)	Response of Rocky Mountain Power to Requests for Review or Rehearing of Ellis-Hall Consulting
)	

Comes now, PacifiCorp dba Rocky Mountain Power (the “Company”), and files its Response to the Petitions for Review or Rehearing (the “Petitions”) filed by Ellis-Hall Consultants, LLC (“Ellis-Hall”) of the Public Service Commission of Utah’s (the “Commission”) Order Approving Applications and Denying Intervention of Mrs. Corinne Roring (the “Order”), which approved the Power Purchase Agreements (“PPAs”) between Rocky Mountain Power and Blue Mountain Power Partners, LLC (“Blue Mountain”) and Latigo Wind Park LLC (“Latigo Wind”). As discussed below, the Commission should dismiss Ellis-Hall’s Petitions because they fail to show that the PPAs are not in the public interest, and raise no new issues of fact or law that have not already been decided by the Commission.

BACKGROUND

Ellis Hall filed two Petitions for Review or Rehearing, one in Docket No. 13-035-115 and one in Docket No. 13-035-116. Because the petitions are substantively identical, Rocky Mountain Power's response will address both collectively.

The Petitions request that the Commission: (1) hold that PacifiCorp failed to consistently apply Schedule 38's requirements to Blue Mountain and Latigo Wind as required by Utah law; (2) deny Blue Mountain's and Latigo Wind's PPAs; (3) compel Blue Mountain, Latigo Wind, and Rocky Mountain to fully comply with Ellis-Hall's discovery requests; (4) allow Ellis-Hall to pursue its claim of disparate treatment and permit Ellis-Hall to present the evidence it was not permitted to present at the hearing; (5) order Tom Fishback to appear as a witness; and (6) disqualify Mr. Dodge from participating in this matter as counsel for Blue Mountain.

ARGUMENT

Ellis Hall's arguments regarding PacifiCorp's alleged preferential treatment of Blue Mountain and Latigo Wind under Schedule 38 continue to demonstrate a fundamental lack of understanding of the application of Schedule 38 by PacifiCorp. As noted by the Commission in its Order, Schedule 38 was designed to act as a limit on the due diligence PacifiCorp may perform, not to outline what PacifiCorp must perform.¹ This is to ensure that the Company does not delay or obstruct qualifying facility ("QF")

¹ Order at 12. "As previously noted, one of Schedule 38's purposes is to define the process by which QFs can identify the rate it will likely be paid for its power and the steps required to obtain a PPA with the utility. As such, Schedule 38 does not prescribe the due diligence that PacifiCorp *must* perform but rather acts as a check on the due diligence PacifiCorp *may* perform. Our review of Applications requesting approval of executed PPAs helps us assure Schedule 38 is being properly administered to provide QFs an appropriate process for obtaining indicative pricing and PPAs at avoided cost pricing. Based on the testimony and the evidence presented by PacifiCorp, Latigo, Blue Mountain, the Division and Office, we find the PPAs at issue in these dockets were negotiated and executed consistent with the requirements of Schedule 38."

development by performing excessive due diligence or erecting barriers that would be impractical or impossible for a developer to meet. Ellis Hall's tortured reading of the tariff and its argument ignore the plain language of Schedule 38, and should be dismissed by the Commission.

Likewise, the Commission correctly points out that allegations of discriminatory actions against Ellis Hall by PacifiCorp are not properly before the Commission in these Dockets, and should be pursued pursuant to the complaint process provided in Schedule 38. Ellis Hall has not provided any evidence that PacifiCorp has acted in a discriminatory manner, and the Commission properly found that the current proceedings are not the forum to address allegations regarding PacifiCorp's conduct toward Ellis Hall in the PPA and interconnection agreement negotiation processes.² Accordingly, Ellis Hall's Petitions should be dismissed.

Ellis Hall next argues that the Commission should reverse its approval of the PPAs because the rules governing the PPAs were applied inconsistently and because the PPA is unenforceable as a matter of law. None of Ellis Hall's allegations, even if true, constitute preferential treatment of Blue Mountain or Latigo Wind by PacifiCorp. The Commission properly ruled that none of Ellis Hall's proffered evidence had any bearing on the PPAs between PacifiCorp and Blue Mountain and PacifiCorp and Latigo Wind, and that the PPAs' prices, terms and conditions of both PPAs are consistent with applicable state laws, relevant Commission orders, and Schedule 38. Ellis Hall's arguments to the contrary in its Petitions should be dismissed.

Ellis Hall's additional arguments regarding discovery responses from Rocky Mountain Power and the requested appearance of Mr. Fishback at the hearing were all

² Order at 13.

fully briefed and presented to the Commission at the hearing on these matters, and Ellis Hall presents no new evidence that would cause the Commission to revisit its decision. The Commission's decision regarding Ellis Hall's Motion to Compel and the appearance of Mr. Fishback should stand and the Petition should be dismissed.

CONCLUSION

Ellis-Hall's Petitions for Review or Rehearing raise no new issues of fact or law, and should be dismissed. For the reasons stated in its Order, the Commission should confirm that the PPAs entered into between PacifiCorp and Blue Mountain and PacifiCorp and Latigo Wind are just and reasonable and in the public interest

DATED this 19th day of November, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November 2013, a true and correct copy of the forgoing was served on the following by electronic mail:

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