

Gary G. Sackett, USB 2841
JONES WALDO HOLBROOK & McDONOUGH, P.C.
170 South Main, Suite 1500
Salt Lake City, Utah 84101
Telephone: 801-534-7336
Facsimile: 801-328-0537
gsackett@joneswaldo.com
Attorney for Latigo Wind Park, LLC

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 Latigo Wind Park, LLC

)
)
)
)
)
)
)
)

Docket No. 13-035-116

MOTION OF LATIGO WIND PARK TO
RESTRICT THE APPLICATION OF THE NON-
DISCLOSURE AGREEMENT OF ANTHONY
HALL AND KIMBERLY CERUTI

Pursuant to Rule 110-3.A.1.a, Latigo Wind Park, LLC (“Latigo”) moves the Utah Public Service Commission for an order limiting the application of the Non-Disclosure Agreement signed by Anthony Hall and Kimberly Ceruti of Ellis-Hall Consultants, LLC (“Ellis-Hall”) and filed with the Commission on August 15, 2013. Latigo requests that Mr. Hall and Ms. Ceruti be restricted from receiving, reviewing or otherwise being given access to sensitive, confidential or proprietary information involving the development of Latigo’s wind-powered electric generation project in San Juan County, Utah.

In support of its Motion, Latigo represents:

1. Rule R746-100-16.A.1.d of the Commission’s Practice and Procedure Governing Formal hearings provides that:

Other than these [listed] state agencies, all Confidential Information made available pursuant to this rule [R746-100-16] shall be given solely to counsel for the participants, . . . [and] access to any specific Confidential Information may be authorized by counsel, solely for the purpose of the proceeding, to those persons indicated by the participants as being their experts in the matter (including such experts' administrative assistants and clerical staff, and persons employed by the participants, to the extent reasonably necessary for performance of work on the matter). Persons designated as experts *shall not include persons employed by the participants who could use the information in their normal job functions to the competitive disadvantage of the person providing the Confidential Information.*

Emphasis added.

2. Anthony Hall and Kimberly Ceruti have submitted Non-Disclosure Agreements under Commission Rule R746-100-16 in this proceeding concerning the treatment of certain sensitive, proprietary and confidential information that may be involved in the proceedings.¹

3. On information and belief, Mr. Hall and Ms. Ceruti are principals or key employees of Ellis-Hall.

4. Neither Mr. Hall nor Ms. Ceruti serve as counsel to Ellis-Hall.

5. Ellis-Hall has not established through its Motion to Intervene or any other pleading that either Mr. Hall or Ms. Ceruti are or could be qualified in the matter before the Commission as an "expert," as that term is used in Rule R746-100-16.

6. Latigo has submitted certain sensitive, proprietary and confidential information to PacifiCorp in connection with a request for Commission approval of a purchase power agreement for Latigo's wind-powered electric generation project in San Juan County, Utah.

7. Latigo is informed that some or all of the sensitive, proprietary and confidential information it has submitted to PacifiCorp has been provided by PacifiCorp to Ellis-

¹Latigo only seeks relief as to Mr. Hall and Ms. Ceruti and not as to Ellis-Hall's counsel.

Hall in response to an Ellis-Hall discovery request.

8. At least one of the business activities of Ellis-Hall is the development of wind projects in Utah, which are similar to the business activities of Latigo.

9. As principals or key employees of Ellis-Hall, Mr. Hall and Ms. Ceruti “could use [Latigo’s] information in their normal job functions to the competitive disadvantage of” Latigo.

ARGUMENT

Rule R746-100-16.A.1.d is expressly written to protect a participant in a Commission proceeding from the prying eyes of a competitor. In particular, the rule balances the need of a party such as Ellis-Hall to learn of the basic elements of a proceeding through the eyes and ears of counsel, while protecting the proprietary information of a party such as Latigo by precluding employees and principals of a competing enterprise, other than bona fide outside experts, from obtaining information that could be used in their normal job functions to the competitive disadvantage of that party.

Latigo is just such a party that the rule is designed to protect, and Ellis-Hall is the poster company for a party that must be restricted in its access to information possibly detrimental to the competitive position of Latigo.

It is worthy of note that Ellis-Hall’s Petition to Intervene in this proceeding did not articulate any specific substantive interest in the approval of the Latigo-PacifiCorp purchase power agreement (“PPA”) other than that it has unspecified “concerns” relating to the Latigo wind project and that “its interest will be substantially affected by the current adjudicative proceeding.”

Ellis-Hall may, indeed, have “concerns” about the Latigo project, but that doesn’t provide a license for it to use this proceeding as an open-pit mine to obtain proprietary or confidential information of a competitive nature from Latigo.

It is also notable that the Commission’s standard grant of intervention, including that issued for Ellis-Hall in this docket on August 12, 2013, provides the means for the protection Latigo seeks by its Motion: “The Commission may condition intervenor participation in these proceedings based upon such factors as whether intervenor is directly and adversely impacted by issues raised in the proceedings . . . and how intervenor’s participation will affect the just, orderly and prompt conduct of the proceedings.” Here, Ellis-Hall has made no case that it would be *directly* impacted by the issue of the approval of the Latigo-PacifiCorp PPA. In addition, Ellis-Hall’s participation in the proceeding with full access through Mr. Hall and Ms. Ceruti would not be in the interests of the just conduct of the proceedings. It would be decidedly unjust to open the door of Latigo’s sensitive, proprietary or confidential communication with PacifiCorp or other individuals and entities related to the development of Latigo’s wind project.

WHEREFORE, Latigo Wind Park respectfully requests that the Commission issue an order restricting Anthony Hall and Kimberly Ceruti from receiving, reviewing or otherwise being given access to sensitive, confidential or proprietary information involving the development of Latigo’s wind-powered electric generation project in San Juan County, Utah.

JONES WALDO HOLBROOK & McDONOUGH, P.C.

/s/ Gary G. Sackett

Gary G. Sackett

Attorney for Latigo Wind Park, LLC

Dated: August 20, 2013

CERTIFICATE OF SERVICE

I certify that a true and correct copy of MOTION OF LATIGO WIND PARK TO RESTRICT THE APPLICATION OF THE NON-DISCLOSURE AGREEMENT OF ANTHONY HALL AND KIMBERLY CERUTI was served by e-mail this 20th day of August 2013 on the following:

ELLIS-HALL CONSULTANTS, LLC:

Mary Anne Q. Wood mawood@woodbalmforth.com
Stephen Q. Wood swood@woodbalmforth.com

ROCKY MOUNTAIN POWER:

Mark Moench mark.moench@pacificorp.com
Yvonne Hogle yvonne.hogle@pacificorp.com
Daniel. E. Solander daniel.solander@pacificorp.com
David L. Taylor dave.taylor@pacificorp.com

DIVISION OF PUBLIC UTILITIES:

Patricia Schmid pschmid@utah.gov
Justin Jetter jjetter@utah.gov
Chris Parker chrisparker@utah.gov
William Powell wpowell@utah.gov

OFFICE OF CONSUMER SERVICES:

Brian Farr bfarr@utah.gov
Michele Beck mbeck@utah.gov
Cheryl Murray cmurray@utah.gov

/s/ Joan Pearson