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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 LATIGO WIND PARK, LLC	Docket No. 13-035-116 ***STATEMENT OF DISCOVERY ISSUES AND MOTION AND MEMORANDUM TO COMPEL LATIGO***

The Utah Supreme Court has definitively stated that the general purpose of discovery is "to remove elements of surprise or trickery so the parties and the court can determine the facts and resolve the issues as directly, fairly and expeditiously as possible." *Rahofy v. Steadman*, 2010 UT App 350, ¶ 7, 245 P.3d 201, 204 (citations omitted). Where a party, such as Latigo Wind Park LLC ("Latigo") fails to adequately respond to discovery requests, the Rules provide that a party may move for an order compelling an answer. *Rahofy*, 2010 UT App 350 at ¶ 8 ("The Utah Rules of Civil Procedure allow a trial court to grant a motion to compel discovery . . . if a party has not adequately responded to a discovery request made in the form of interrogatories . . . or a request for production of documents.").

Pursuant to Rule 4-502 of the Utah Rules of Judicial Administration, Ellis-Hall hereby submits this Statement of Discovery Issues to compel Latigo's discovery compliance.

(2)(B)(i): Ellis-Hall seeks to compel Latigo to provide the following documents:

1. LGI application checklists and supporting documentation;
2. LGI system impact checklists and supporting documentation;
3. Facilities study checklists and supporting documentation;
4. Documents and communications referring to transmission services, including but not limited to Latigo's queue position during 2012 and 2013;
5. QF Applications and supporting documentation;
6. LGIA Application and supporting documentation.

(2)(B)(ii): The basis or reason for the relief sought is that Latigo failed to provide documents responsive to Ellis-Hall's discovery request, pursuant to Utah R. Civ. P. 34(a)(1).[1] Ellis-Hall's request states:

> **REQUEST NO. 2.** Please produce all documents referring or relating to Your Power Purchase Agreement ("PPA").

In response, Latigo stated:

> Latigo objects to the request as overbroad and seeking information that is sensitive, proprietary and confidential . . . Latigo believe that Ellis-Hall submitted a substantially similar blanket request of this type to PacifiCorp. [I]t serves no useful purpose for Latigo to produce the same documents. . . . Further, the availability from PacifiCorp relieves Latigo of providing duplicative responses under Utah Rule of Civil Procedure 26(b)(2)(E).

Latigo's response is nothing more than an improper boilerplate objection. It is well-held that such objections are improper. [2] Indeed, courts have widely held that discovery objections

[1] Because Utah R. Civ. P. 34(1) and Fed. R. Civ. P. 34(a) are "substantially similar, reliance on cases interpreting the [Fed. R. Civil P.] is appropriate." *Tucker v. State Farm Mut. Auto. Ins. Co.*, 2002 UT 54,¶ 7 n.2.

must be "sufficiently specific to allow the court to ascertain the claimed objectionable character." *Burns v. Imagine Films Entm't, Inc.*, 164 F.R.D. 589, 593 (W.D.N.Y. 1996).[3] Latigo fails to provide any specificity in order to sustain their objection regarding over breadth.

Latigo's objection also fails on their face. First, whether responsive information is confidential is immaterial. Latigo must produce responsive documents and redact as necessary. Second, under the proportionality standard, it is not sufficient for Latigo to object on the basis of documents it "believes" Ellis-Hall will obtain from other parties. These documents have not been received. Thus, Ellis-Hall's request cannot be considered "unreasonably cumulative or duplicative."

(2)(B)(iii): Ellis-Hall's request is proportional under Utah R. Civ. P. 26(b)(2). Indeed, the production of the documents will impose only a nominal burden on Latigo because the documents should be readily available in Latigo's files. Furthermore, these documents are necessary to show that PacifiCorp's approval of the Latigo project was improper and in violation of the law. Thus, any burden accruing to Latigo is outweighed by the benefits of the proposed discovery.

In addition, Ellis-Hall's discovery is reasonable given the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving

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[2] *See U.S. ex rel. O'Connell v. Chapman Univ.*, 245 F.R.D. 646, 649-50 (C.D. Cal. 2007) (finding that objections stating overbroad, unduly burdensome, unduly redundant, oppressive, calls for narrative "***are general or boilerplate objections, which are not proper objections***."); *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) (objections that requests were overly broad, burdensome, oppressive, and irrelevant were insufficient to meet party's burden to explain why discovery requests were objectionable); *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1559 (11th Cir.1985) (conclusory recitations of expense and burdensomeness are not sufficiently specific to demonstrate why discovery is objectionable).

[3] *See also, Burns v. Imagine Films Entm't, Inc.*, 164 F.R.D. 589, 592-93 (W.D.N.Y. 1996) (objecting that discovery request was overbroad, vague and unduly burdensome was not sufficiently specific to allow court to ascertain objectionable character of discovery request); *Chubb Integrated Sys. Ltd. v. Nat'l Bank of Washington*, 103 F.R.D. 52, 58 (D.D.C. 1984) ("General objections are not useful to the court ruling on a discovery motion.").

the issues. Ellis-Hall's objection to the approval of Latigo's PPA addresses complex documents and multiple submissions to PacifiCorp to establish that the PPA is unenforceable and constitutes disparate treatment. Furthermore, the discovery is also consistent with the overall case management and will further the just, speedy and inexpensive determination of the case. As stated above, the discovery is not unreasonably cumulative or duplicative because Ellis-Hall has not yet received any of the requested documents. Furthermore, the information cannot be obtained from another more convenient, less burdensome, or less expensive source because it appears that all requested parties have equal access to these documents. And, Ellis-Hall has not otherwise had sufficient opportunity to obtain the information. *See* Utah R. Civ. P. 26(b)(2).

(2)(B)(iv): Not applicable.

(2)(B)(v): Counsel for Ellis-Hall hereby certifies that on August 26, 2013, the parties met and conferred regarding the issues and attempted in good faith to resolve or narrow the issues without the Commission's involvement.

A proposed form of Order is attached hereto as Ex. 1.

DATED this 26th day of August, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2013, a true and correct copy of the forgoing ***STATEMENT OF DISCOVERY ISSUES AND MOTION AND MEMORANDUM TO COMPEL LATIGO*** was served via e-mail to the following:

PacifiCorp:

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