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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Formal Complaint of Ellis-Hall Consultants Against Rocky Mountain Power	Docket No. 14-035-24 ROCKY MOUNTAIN POWER'S RESPONSE TO THE FORMAL COMPLAINT OF ELLIS-HALL CONSULTANTS
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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or the “Company”), pursuant to Utah Code Ann. §§ 63G-4-204(1) and Utah Admin. Code R746-100-3 and -4, hereby files its Response to the Formal Complaint filed by Ellis-Hall Consultants with the Public Service Commission of Utah (“Commission”) on March 3, 2014 (the “Complaint”). In its Complaint, Ellis-Hall seeks interpretation of the Commission’s August 16, 2013, Order (the “Phase II Order”) in Docket No. 12-35-100 regarding the discontinuance of indicative pricing for wind qualifying facilities (“QFs”) under Schedule 38 and that all “future request for indicative pricing for wind QFs will be calculated using the Proxy/PDDRR method.” Ellis-Hall maintains that the application of the Phase II Order does not apply to Ellis-Hall and that it should

be given pricing under the prior indicative pricing model. For the reasons stated herein, Rocky Mountain Power respectfully disagrees.

BACKGROUND

On May 22, 2013, Ellis-Hall was provided indicative pricing by PacifiCorp pursuant to Schedule 38. No power purchase agreement was entered into between Ellis-Hall and PacifiCorp.

On August 16, 2013, the Commission issued its Order in Phase II of Docket No. 12-035-100, that discontinued the previous indicative pricing model and ordered instead that all “future requests” would be subject to the new model.

On August 27, 2013, PacifiCorp notified Ellis-Hall that if it intended to pursue entering into a power purchase agreement, that the previous indicative price was no longer valid, in accordance with the Phase II Order and with Utah Schedule 38.

Ellis Hall is not entitled to market proxy pricing because it did not execute a PPA with the Company prior to the date the Phase II Order was issued. In addition, Ellis-Hall’s argument has already been explicitly rejected by the Commission in the Order on Motion to Stay Agency Action issued December 20, 2012 (the “Phase I Order”), and in the Commission’s Order Denying Energy of Utah LLC’s Petition for Review, Rehearing and Clarification issued September 23, 2013.

ARGUMENT

Although Ellis-Hall has styled its pleading in this proceeding as a formal complaint, it appears to be, in fact, an untimely Petition for Review of the Commission’s Phase II Order. Utah Admin. Code § R746-100-11, Utah Code Ann. §§ 54-7-15, 63G-4-302(b) and 63G-4-401(3), require the filing of a petition for judicial review of an order constituting final agency action within 30 days of issuance. There is no issue of fact or law in Ellis-Hall’s “Formal Complaint”

that could not have been raised at the conclusion of Phase II of the proceeding in Docket No. 12-035-100. Accordingly, Ellis-Hall's Complaint should be dismissed.

If the Commission determines that Ellis-Hall's Complaint is not untimely, the Commission should reject the Complaint because Ellis Hall is not entitled to the earlier indicative price, as explained in previous Commission orders. Rocky Mountain Power denies the conclusory claims regarding disparate treatment that are also alleged in the Complaint, but pursuant to the agreement reached by the parties at the scheduling conference on March 13, 2014, Rocky Mountain Power will limit its discussion in this Response as to why Ellis-Hall is not entitled to the prior indicative pricing model.¹

In the Phase I Order, dated December 20, 2012, approximately six months prior to the date Ellis-Hall made its indicative pricing request, the Commission indicated that it would issue a new order on large wind qualifying facility ("QF") project avoided cost methodology by mid-summer 2013.² The Commission shared the Company's concerns with the market proxy method stating "[W]e find RMP's concerns regarding the continuing suitability of the Market Proxy method warrant a reexamination of avoided cost calculations for large wind QFs, given RMP's latest resource plan and the absence of renewable RFPs since 2009."³

Further, the Commission directed the Company to "monitor carefully the avoided cost calculations and other terms of its QF transactions in order to maintain the ratepayer indifference standard."⁴ While the Commission did not stay the application of the market proxy method for indicative pricing purposes at that time, the Commission took comfort in the flexibility allowed

¹ See March 13, 2014, Scheduling Conference Transcript, p. 17, ll 7-11 and p. 19, ll 12-16, Docket No. 14-035-24.

² *In the Matter of the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for Qualifying Facilities Projects Larger than Three Megawatts*, Docket No. 12-035-100, Order on Motion to Stay Agency Action, p.17 (December 20, 2012).

³ *Id.*, at 14.

⁴ *Id.*

by the Company's tariff to update its pricing, noting that "Schedule No. 38 is clear; RMP will update its pricing proposals at appropriate intervals to accommodate any changes to avoided cost calculations"⁵

In the Phase I Order, the Commission also stated "[W]e have already placed market participants on notice of the schedule for this examination leading to hearings in June, 2013."⁶ Ellis-Hall had actual notice based on the fact they were granted intervenor status in the 12-035-100 proceeding on January 3, 2013. Most relevant here is the Commission's acknowledgement in the Phase I Order that the threshold for receiving the previous pricing was to have a signed power purchase agreement. The Commission stated;

"the possibility the outcome of the Phase II hearings and the interests of ratepayers may require application of new avoided cost calculations for all large wind QF projects not in possession of executed power purchase agreements when the Phase II order is issued."

In the Phase II Order, the Commission found, among other things, that the market proxy pricing methodology was no longer in the public interest and would no longer be applicable for QF projects. As a result, the Commission replaced the market proxy pricing methodology with the PDDRR pricing methodology.

The Commission's intent in issuing its Phase II Order is for all future PPA's priced, negotiated and executed under Schedule 38 to be subject to the PDDRR pricing methodology. Because Ellis-Hall failed to execute a PPA prior to August 16, 2013, and given the Commission's findings (1) in the Phase I Order that QF projects without an executed PPA when the Phase II Order was issued would be subject to new avoided costs pricing and that the

⁵ *Id.*

⁶ *Id.*

Company will, pursuant to Schedule 38, update its pricing proposals at appropriate intervals to accommodate any changes to avoided cost calculations; and (2) in the Phase II Order that the market proxy pricing methodology is no longer in the public interest, Ellis-Hall is not entitled to the market proxy indicative price.

In addition, Ellis-Hall's argument appears to be identical to that presented to the Commission in Energy of Utah's Petition for Review, Rehearing and Clarification, filed on September 5, 2013, in Docket No. 12-035-00. In Energy of Utah's Petition, it argued that the decision to terminate its PPA using market proxy pricing was not PacifiCorp's to make, and that, based on its interpretation of "future requests," it should be entitled to the earlier indicative price. The Commission denied Energy of Utah's Petition on September 23, 2013.

CONCLUSION

Based on the foregoing, the Commission must reject Ellis-Hall's Complaint.

DATED this 28th day of March 2014.

RESPECTFULLY SUBMITTED,

ROCKY MOUNTAIN POWER

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