Mary Anne Q. Wood (3539)
Stephen Q. Wood (12403)
WOOD BALMFORTH LLC
60 E. South Temple, Suite 500
Salt Lake City, UT 84111
Telephone: (801) 366-6060
Facsimile: (801) 366-6061
E-mail: mawood@woodbalmforth.com
swood@woodbalmforth.com

Attorneys for Ellis-Hall Consultants, LLC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE FORMAL COMPLAINT OF ELLIS-HALL CONSULTANTS AGAINST PACIFICORP/ROCKY MOUNTAIN POWER	Docket No. 14-035-24 ***ELLIS-HALL CONSULTANTS' REPLY COMMENTS***

INTRODUCTION

In their Comments, Rocky Mountain Power ("PacifiCorp"), the Office of Consumer Services ("OCS"), and the Division of Public Utilities ("Division") (collectively the "PacifiCorp Parties") all concede that the Public Service Commission's ("Commission") August 16, 2013 Order is binding. The OCS and Division note that under Utah law "[r]ules of law established by adjudication apply to the future conduct of all persons subject to the jurisdiction of an administrative agency, ***unless and until expressly altered by statute, rule, or agency decision***." *Salt Lake Citizens Cong. v. Mountain States Tel. & Tel. Co.*, 846 P.2d 1245, 1253 (1992) (emphasis added).

PacifiCorp, the OCS, and the Division do not and cannot dispute that under Utah law, all parts of the Commission's August 16, 2013 Order are considered relevant and meaningful, and it is presumed that the Commission used each term carefully and advisedly and according to its ordinary meaning.[1]

Notwithstanding these fundamental legal principles, the PacifiCorp Parties do not believe that the actual language the Commission used in its August 16, 2013 Order is relevant or meaningful. Nor do the PacifiCorp Parties believe that the Commission used each term in its Order advisedly and according to its ordinary meaning. Rather, the PacifiCorp Parties believe that the Commission's Order needs to be amended and edited by them so it is understood in what they believe is the appropriate "context."[2] For example, according to the PacifiCorp Parties, when the Commission's August 16, 2013 Order states that it applies to "future requests for indicative pricing" what the Commission really meant to say was "QF projects without an executed PPA when the Phase II Order was issued would be subject to new avoided costs pricing." *See e.g.*, PacifiCorp Comments, at 4.

The PacifiCorp Parties similarly believe that they can add additional language and expand the Commission's September 23, 2013 Order Denying Energy of Utah LLC's Petition for Review, Rehearing and Clarification. According to the PacifiCorp Parties, while the Commission's September 23, 2013 Order stated no basis for its decision or any findings of fact

---

1 *See State v. Maestas*, 2002 UT 123,¶ 52, 63 P.3d 621; *see also State v. Rincon*, 293 P.3d 1142, 1145 (Utah App. 2012) (citing *Amax Magnesium Corp. v. Utah State Tax Comm'n*, 796 P.2d 1256, 1258 (Utah 1990) (recognizing that it should be assumed that "the words and phrases used [] were chosen carefully and advisedly.")).

2 *See* Division Comments, at 5-6 (stating "[t]he Phase II Order language in complete isolation is somewhat difficult to apply to QF projects. When read in context, understanding of the nature of indicative pricing and the Stay Order, the Phase II Order intent and application become clear. The Phase II Order intended to update all existing QF pricing not contained in an executed PPA.").

or conclusions of law, what the Commission really meant to say was that it agreed with the PacifiCorp Parties' arguments and determined that indicative pricing estimates provided prior to the Phase II Order but not memorialized in an executed PPA were no longer valid.

In addition to changing the language of the Commission's Orders to proof-text their own arguments, the PacifiCorp Parties misrepresented Ellis-Hall's positions and arguments asserting that Ellis-Hall's Formal Complaint is an untimely petition for review, clarification, or rehearing of the Commission's August 16, 2013 Order. The PacifiCorp Parties are mistaken. Ellis-Hall's Formal Complaint requests "***that the Commission enforce the plain language of its August 16, 2013 Order.***"

The Commission's August 16, 2013 Order states that "[w]e therefore discontinue use of the Market Proxy method ***for determining indicative prices for Schedule 38 wind QFs going forward . . . . Therefore, future requests for indicative pricing for wind QFs under Schedule 38 will be calculated using the Proxy/ PDDRR method***."

Contrary to the PacifiCorp Parties' assertions, under Utah law the language of the Commission's Orders is not open to their editorial discretion. The Commission's August 16, 2013 Order must be interpreted and enforced under its plain language.

Ellis-Hall respectfully requests that the Commission enforce the plain and unambiguous language of its Order and require PacifiCorp to execute a PPA with Ellis-Hall based on the indicative pricing provided to Ellis-Hall on May 22, 2013.

ARGUMENT

I. THE PLAIN LANGUAGE OF "FUTURE REQUESTS OF INDICATIVE PRICING" DOES NOT MEAN THAT THE COMMISSION'S ORDER APPLIES TO ALL QF PROJECTS WITHOUT AN EXECUTED PPA.

As noted in Ellis-Hall's Comments, Utah law uniformly holds that language contained in orders and regulations is interpreted by its plain meaning. All parts of the given order or regulation are considered relevant and meaningful, and it is presumed that the drafter used each term carefully and advisedly and according to its ordinary meaning.

The Commission's August 16, 2013 Order states that "[w]e therefore discontinue use of the Market Proxy method ***for determining indicative prices for Schedule 38 wind QFs going forward . . . . Therefore, future requests for indicative pricing for wind QFs under Schedule 38 will be calculated using the Proxy/ PDDRR method***."

Under Utah law this language must be interpreted under its plain meaning, and the Commission's Order is binding on PacifiCorp "unless and until expressly altered by statute, rule, or agency decision." *Salt Lake Citizens Cong. v. Mountain States Tel. & Tel. Co.*, 846 P.2d 1245, 1253 (1992) (emphasis added).

In their Comments, the PacifiCorp Parties only address the language of the Commission's August 16, 2013 Order in passing, asserting without any support, that the Commission didn't really mean to apply its Order to "future requests for indicative pricing" under the plain meaning of this language. Instead, the PacifiCorp Parties claim that the Commission meant "QF projects without an executed PPA when the Phase II Order was issued would be subject to new avoided costs pricing." *See e.g.*, PacifiCorp Comments, at 4.

The PacifiCorp Parties' interpretation of the Commission's Order turns Utah law regarding interpreting orders, regulations and statutes on its head. Simply put, if the Commission intended for its Order to apply to all "QF projects without an executed PPA when the Phase II Order was issued" the Commission would have said so. The Commission did not.

The Commission's December 20, 2012 Order demonstrates that the Commission understands the difference between limiting its order to "future request for indicative pricing," or alternatively, expanding its order to all "QF projects without an executed PPA." The PacifiCorp Parties have no basis to suggest that the Commission's August 16, 2013 Order does not mean what it says. Similarly, the PacifiCorp Parties have no basis to suggest that the Commission failed to choose its language carefully and advisedly when it stated that its order applied to "future requests for indicative pricing." The PacifiCorp Parties' attempt to substitute their own language for the language used by the Commission is unsupportable in fact and Utah law.

Because the PacifiCorp Parties' interpretation of the Commission's Order is incompatible with Utah law, these parties dedicate the majority of their Comments to misrepresent Ellis-Hall's position and the Commission's September 23, 2013 Order to try and defeat Ellis-Hall's Formal Complaint on procedural grounds. As noted below, the PacifiCorp Parties' arguments are specious.

II. ELLIS-HALL'S FORMAL COMPLAINT DOES NOT REQUEST A REVIEW, REHEARING AND CLARIFICATION OF THE COMMISSION'S PRIOR ORDERS.

The PacifiCorp Parties attempt to defeat Ellis-Hall's claims by mischaracterizing Ellis-Hall's Formal Complaint as an untimely petition for review, clarification, or rehearing of the

Commission's August 16, 2013 Order. *See e.g.*, PacifiCorp Comments, at 2; OCS Comments, at 1-2; Division Comments, at footnote 8.

In support of their argument, the PacifiCorp Parties misrepresent Ellis-Hall's position and statements before the Commission. For example, the OCS claims that Ellis-Hall "repeatedly stated ***the relief requested*** in the Complaint ***is an interpretation or clarification of the Commission's language*** contained in the August 16, 2013, Order" and that "Ellis-Hall reiterated that the current Complaint is not related to Schedule 38, or any other approved tariff."[3] OCS Comments, at 1-2. The OCS's representations are false.

The relief requested in Ellis-Hall's Formal Complaint is not an interpretation, clarification, review or rehearing of the Commission's August 16, 2013 Order. The relief requested in Ellis-Hall's Formal Complaint is:

> Ellis-Hall respectfully requests ***that the Commission enforce the plain language of its August 16, 2013 Order and require PacifiCorp to execute a PPA with Ellis-Hall based on the indicative pricing provided to Ellis-Hall on May 22, 2013***.[4]

This identical relief is requested, word for word, in Ellis-Hall's Comments. Similarly, the assertion that Ellis-Hall changed its Formal Complaint to a request for review, clarification,

---

[3] The OCS's assertion that "Ellis-Hall reiterated that the current Complaint is not related to Schedule 38, or any other approved tariff" is a specious mischaracterization of the March 13, 2014 hearing transcript. Ellis-Hall never said that its current Complaint was "not related to Schedule 38, or any other approved tariff." Ellis-Hall said that its claims of disparate treatment under Schedule 38, which are before the Utah Supreme Court, were not at issue in its current Complaint.

> MR. WOOD: . . .the question of the disparate treatment is before the Utah Supreme Court and whether or not that should have been addressed in the other matter. So we don't think it would be appropriate for us to be tracking an issue that's before the supreme court. . . .
> THE HEARING OFFICER: So just to be clear, there's going to be no issue of any complaints regarding the Schedule 38 with respect to PacifiCorp?
> MR. WOOD: No. Not in this complaint, no.

March 13, 2014 Hearing Transcript, Docket No. 14-035-24, at 14:16-15:4.

[4] Formal Complaint, Docket No. 14-035-24, at 2.

or rehearing at the March 13, 2014 status conference is entirely false. At the March 13, 2014 status conference, the Hearing Officer stated the question presented by Ellis-Hall's Formal Complaint as follows:

> THE HEARING OFFICER: So returning to the motion for expedited hearing, ***Ellis-Hall states the question is simply the correct application of the Commission's August 16, 2013 order and docket 12-035-100***, which states in part future requests for indicative pricing for one QF. QFs under Schedule 38 will be calculated using the proxy PDR method.
>
> Based upon the Ellis-Hall's reading of the order, they assert that because they had indicative pricing before that order was issued, they are entitled to that indicative pricing. Is that the correct characterization of the questions presented in the complaint, Mr. Wood?
>
> MR. WOOD: Yes.[5]

Throughout this process, Ellis-Hall has maintained a consistent position that PacifiCorp misapplied and violated the plain language of the Commission's August 16, 2013 Order when it refused to execute a PPA based on Ellis-Hall's May 22, 2013 indicative pricing, claiming that the Commission's Order required PacifiCorp to issue new avoided cost pricing to all QF projects without an executed PPA. Ellis-Hall's Formal Complaint, therefore, is a quintessential complaint under Utah Code Ann. § 54-7-9 claiming a violation of an "order of the commission" by "any public utility."

The fact that Ellis-Hall and PacifiCorp disagree regarding the correct *application* of the Commission's August 16, 2013 Order and that Ellis-Hall has asked the Commission to resolve the dispute by enforcing the plain language of its order, does not mean that Ellis-Hall's Formal Complaint is a request for clarification, review or rehearing under Utah Code Ann. § 54-7-15.

---

[5] March 13, 2014, Docket No. 14-035-24, Transcript, at 7:15-8:4.

The PacifiCorp Parties' argument that Ellis-Hall's Formal Complaint is an untimely petition for review, clarification, or rehearing of the Commission's August 16, 2013 Order is meritless.

III. THE COMMISSION'S SEPTEMBER 23, 2013 ORDER REGARDING ENERGY OF UTAH'S PETITION FOR REVIEW, REHEARING AND CLARIFICATION DID NOT ADDRESS OR DECIDE THE ISSUE RAISED IN ELLIS-HALL'S FORMAL COMPLAINT.

The PacifiCorp Parties also attempt to defeat Ellis-Hall's Formal Complaint by incorrectly alleging the identical issue was heard and decided by the Commission in Energy of Utah's Petition for Rehearing and Clarification. *See e.g.*, PacifiCorp Comments, at 5; OCS Comments, at 3-4; Division Comments, at 4-5. The Division claims, for example, that:

> The Commission denied EOU's Petition with the brief conclusion that '[b]ased on a review of the Petition and responses filed by PacifiCorp and the Office, the Petition is denied.' ***Both the Company's and the Office of Consumer Services' filings explained why, taken in context of the history of Schedule 38 and prior Stay Order in the Docket, the Market Proxy pricing method was no longer valid.[6] The Commission agreed and denied EOU's Petition.***

Division Comments, at 5.

Similarly, the OCS claims: "[a]ccordingly, the Commission has previously ruled on the very issue presented in the Complaint; i.e. the effect of the Phase II Order on indicative pricing estimates provided prior to the Phase II Order but not memorialized in an executed PPA." OCS Comments, at 4.

The Division's and the OCS's arguments are "erroneous and little more than a proof-text" of the Commission's September 23, 2013 Order. *Marty v. Mortgage Elec. Registration*

---

[6] *See* Docket No. 12-035-100 (Rocky Mountain Power's Response to EOU's Petition for Review, Rehearing and Clarification; September 18, 2013 and OCS's Response to EOU's Petition for Review, Rehearing and Clarification; September 18, 2013).

Sys., 1:10-CV-00033-CW, 2010 WL 4117196 (D. Utah Oct. 19, 2010). The issues raised by EOU are not the same as those raised by Ellis-Hall, and the Commission did not agree with the PacifiCorp Parties or determine that the Phase II Order applied to indicative prices not memorialized in an executed PPA.

As preliminary matter, EOU sought a review, rehearing or a clarification of the Commission's Order. In addition, EOU's incoherent petition did not seek any concrete relief or remedy, but instead merely requested that:

> We respectfully ask the Commission to consider the completion of contracts negotiations and the committed funds in our effort to complete the development of South Mountain. We believe that our significant commitment and the satisfaction of our obligations in the PPA negotiation warrant consideration.

By contrast, Ellis-Hall filed a Formal Complaint requesting that the "***Commission enforce the plain language of its August 16, 2013 Order***." Consequently, the question presented in EOU's Petition for Review, Rehearing and Clarification was not the same issue presented in Ellis-Hall's Formal Complaint.

Furthermore, EOU obtained indicative pricing on August 12, 2013,[7] just before the Commission issued its August 16, 2013 Order. Thus, EOU had not invested substantial amounts of time and money in reliance on the indicative prices given to them. Additionally, because EOU did not even initiate their Interconnection application until December of 2012,[8] it does not appear that EOU was one of the five projects considered in the Commission's December 20, 2012 Order where the Commission stated that PacifiCorp's position "ignores the practical realities of bringing a large wind QF project from inception to conclusion, in assuming all five

---

[7] *EOU's Petition for Review, Rehearing and Clarification*, Docket No. 12-035-100, September 3, 2013, at 2.

[8] *Id.*

projects in the queue would be able to negotiate power purchase agreements before our order in Phase Two."[9]

Simply put, Ellis-Hall and EOU are not similarly situated. Moreover, while the Division now demands that Ellis-Hall receive PDDRR pricing, it previously took the position that PDDRR pricing should only apply to "***wind QFs 'not in the queue' i.e., those that have not requested indicative pricing prior to the filing of RMP's Motion***. As to the five projects in the queue, if they are "similarly situated" to Blue Mountain Energy LLC ("Blue Mountain"), the Division recommends they receive Market Proxy method pricing."[10] Ellis-Hall's project is indisputably similarly situated to Blue Mountain's Project. The projects border each other and Blue Mountain's point of interconnection is on Ellis-Hall's land; the leases and wind data that Blue Mountain submitted to the PacifiCorp and the Commission come from Ellis-Hall's land; and Ellis-Hall project has a higher queue position. The Division's flip-flop as to the appropriate pricing methodology for projects in the queue is just another example of the Division fundamentally changing its position to carry PacifiCorp's water.

Moreover, in their Reply Comments, the PacifiCorp Parties misrepresent Ellis-Hall's claims and the Commission's Scheduling Order by accusing Ellis-Hall of "including additional facts." For example, the Division claims that Ellis-Hall's statement that PacifiCorp refused to execute a PPA based on May 22, 2013 indicative pricing is an "additional fact" that is barred by the Scheduling Order. Division Reply Comments, at 1-2; OSC Comments, at 1-2. The

---

[9] *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*, Dec. 20, 2012 Order, Docket No. 12-035-100, 2012 WL 6770997 (Utah P.S.C.), at 9.

[10] *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*, Dec. 20, 2012 Order, Docket No. 12-035-100, 2012 WL 6770997 (Utah P.S.C.), at 4.

Division's assertion is ridiculous. Ellis-Hall entire formal complaint is premised on the allegation that PacifiCorp refused to execute a PPA based on the May 22, 2013 indicative pricing. Moreover, the PacifiCorp Parties are hardly in a position to argue about the inclusion of additional facts when they dedicated a significant portion of their comments and reply comments to arguing over claims asserted by Energy of Utah in its Petition for Rehearing and Clarification, an entirely different matter.

In addition to misstating Ellis-Hall's claims and changing their positions on a whim, the PacifiCorp Parties simply invent language that does not exist in the Commission's September 23, 2013 Order. Contrary to the Parties' representations, the Commission did not agree with or adopt any of the arguments submitted by PacifiCorp or the OCS. In fact, the Commission stated no reasoning for its decision and made no findings of fact or conclusions of law. The Commission's Order reads in its entirety:

> On September 5, 2013, Energy of Utah LLC ("EOU") filed a petition for review, rehearing and clarification ("Petition") of the Commission's Report and Order issued in this docket on August 16, 2013. On September 18, 2013, PacifiCorp, dba Rocky Mountain Power ("PacifiCorp") and the Utah Office of Consumer Services ("Office") filed responses to EOU's Petition.
>
> Based on a review of the Petition and the responses filed by PacifiCorp and the Office, the Petition is denied. Review of this order is governed by Utah Admin. Code § R746-100-11, Utah Code Ann. §§ 54-7-15, 63G-4-302(b) and 63G-4-401(3), which requires the filing of a petition for judicial review of an order constituting final agency action within 30 days of Issuance.

The Commission's Order does not disclose the "steps taken" in reaching its decision. *Adams v. Bd. of Review of Indus. Comm'n*, 821 P.2d 1, 7-8 (Utah App. 1991); *see Strate v. Labor Comm'n*, 2006 UT App. 179, ¶ 21, 136 P.3d 1273. In fact, the Commission's Order does not even state the reason why EOU's petition was denied. Consequently, the PacifiCorp Parties have

no grounds to speculate on the legal or factual basis underpinning the Commission's Order or to assert that the Commission agreed with or adopted their arguments.[11]

Furthermore, because the Commission did not state a reason or any legal or factual basis for its Order, there is no binding legal principle under the doctrine of *stare decisis*. As the Division's own cited case law notes "[t]he adjudication of every case requires the application of one or more rules of law. . . . [which] necessarily governs all subsequent cases properly falling within the scope of the rule."[12] In its September 23, 2013 Order, the Commission does not state any rule of law by which subsequent cases will be decided. As a result, there is no "precedent" that the PacifiCorp Parties can rely on. As a result, the PacifiCorp Parties' argument that the Commission's September 23, 2013 Order bars Ellis-Hall's Formal Complaint under the doctrine of *stare decisis* is erroneous.

While the Commission's September 23, 2013 Order does not state any reason for its decision or support its decision with findings of fact or conclusions of law entitling it to precedential value under the doctrine of *stare decisis*, the Commission's August 16, 2013 Order

---

[11] *See e.g., Hoover Co v. Sesquicentenial Exhibition Ass'n*, 26 F.2d 821, 823 (E.D. Pa. 1928) ("No litigant can be permitted to indulge in any such misrepresentations of a court ruling, and no litigant who has any sense would do so."); *Herzfeld & Stern v. Blair*, 769 F.2d 645, 647 (10th Cir. 1985)(stating "[t]he many instances in which counsel's references to the record are contrary to what is found indicate that he has been either cavalier in regard to his approach to this case or bent upon misleading the court. In either event, his lack of good faith is manifest."); *Lail v. Apfel*, 173 F.3d 863 (10th Cir. 1999) ("counsel's representation that all the issues raised on appeal were raised and preserved in the district court is not simply disingenuous, but a blatant mischaracterization of the record."); *Siderpali, S.P.A. v. Judal Indus., Inc.*, 833 F. Supp. 1023, 1036 (S.D.N.Y. 1993) ("Netumar and its counsel clearly misrepresented the Court's September Order, in which the Court found plaintiffs liable for converting the proceeds of the Standby Letter. In fact, contrary to Netumar's assertion, the Court has never found that Judal was not entitled to the cargo.").

[12] Division Comments, at 4, citing *In the Matter of the Division's Annual Review and Evaluation of the Electric Lifeline Program, HELP In the Matter of: HELP, Electric Lifeline Program Evaluation*, Docket Nos. 03-035-01, 04-035-21(Order on Various Procedural Motions and Petitions; August 1, 2005) citing to *Salt Lake Citizens Congress v. Mountain States Telephone and Telegraph Co.*, 846 P.2d 1245, 1252 (Utah 1992).

does. In its August 16, 2013 Order, the Commission directed that "for determining indicative prices for Schedule 38 wind QFs going forward" PacifiCorp should discontinue use of the market proxy pricing method and to provide indicative avoided cost pricing to wind and solar qualifying facility projects based on PDDRR pricing method.

The Commission's Order specifically stated that this directive applies to "***future requests for indicative pricing"*** for wind QFs under Schedule 38.[13] The Commission's repeated statement that it was limiting the scope of its Order "***for determining indicative prices for Schedule 38 wind QFs going forward*** " and "***future requests for indicative pricing"*** were a substantive and unambiguous terms that must be interpreted and applied under their plain meaning.

The plain language of Commission's Order is binding on PacifiCorp "*unless and until expressly altered by statute, rule, or agency decision.*" *Salt Lake Citizens Cong. v. Mountain States Tel. & Tel. Co.*, 846 P.2d 1245, 1253 (1992) (emphasis added). The Commission's September 23, 2013 Order did not expressly alter the Commission's August 16, 2013 Order. Consequently, under the plain language of the Commission's Order, Ellis-Hall does not qualify as a "future request for indicative pricing."

IV. SCHEDULE 38 DOES NOT PROHIBIT THE RELIEF REQUESTED BY ELLIS-HALL.

Lastly, the PacifiCorp Parties contend that "Schedule 38 prohibits the relief requested by Ellis-Hall." OCS Comments, at 5; *see also* Division Comments, at 7. In support of this incorrect

[13] *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*, August 16, 2013 Order, Docket No. 12-035-100307 P.U.R.4th 246,2013 WL 4508053 (Utah P.S.C.), at Synopsis, 10, 23.

assertion the OCS argues that "Schedule 38 definitively states no less than four separate times that indicative pricing quotes are neither final nor binding" and that "prices and other terms and conditions in the ***power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties and approved by the Commission***." OCS Comments, at 6.

Similarly, the Division argues that "Schedule 38 states twice in different parts that pricing and terms are 'only final and binding to the extent contained in ***a power purchase agreement executed by both parties and approved by the Commission***"[14] The Division's and the OCS's arguments are misplaced.

As noted in Ellis-Hall's Comments, while the Commission recognized that indicative pricing is not a final guaranteed price, and that under Schedule No. 38 PacifiCorp may "update its pricing proposals at appropriate intervals to accommodate any changes to its avoided cost calculations, among other reasons[,]"[15] Schedule 38 does not permit PacifiCorp to unilaterally impose a different pricing methodology that is inconsistent with the limitations imposed by the Commission's Order.

This issue was raised in the Commission's December 20, 2012 Order, when PacifiCorp attempted to retroactively apply the PDDRR pricing to Wasatch Wind as well as other QF applicants. Wasatch Wind correctly argued that "***nothing in Schedule No. 38 or Commission orders suggests the approved avoided cost methodology may be abruptly withdrawn or***

---

[14] Division Comments, at 7; citing Schedule No. 38(I)(B)(3), (I)(B)(7).

[15] *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*, Dec. 20, 2012 Order, Docket No. 12-035-1002012 WL 6770997 (Utah P.S.C.), at 9.

retracted retroactively."[16] The Commission agreed and denied PacifiCorp's request. The Commission's December 20, 2012 Order makes clear that Schedule 38 does not permit PacifiCorp to unilaterally change pricing methodology because the Commission denied PacifiCorp's request to do exactly that.

Furthermore, the Division and the OCS fail to recognize that their Schedule 38 arguments misapply the language of Schedule 38 and would result in an inconsistent application of Schedule 38.

As noted above, the PacifiCorp Parties rely on Schedule 38's language "that prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties and approved by the Commission." The PacifiCorp Parties fail to note that under Schedule 38, the trigger for finalizing pricing is not merely executing a PPA, but rather, having the PPA "***approved by the Commission.***"

This is consistent with the position PacifiCorp took on March 2, 2012, before the United States Bankruptcy Court in the REDCO Bankruptcy. The REDCO Bankruptcy addressed the very land on which Ellis-Hall's and Blue Mountain's projects are based. In that proceeding, PacifiCorp argued that a PPA not approved by the Commission is merely a "***proposed Power***

[16] *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*, Dec. 20, 2012 Order, Docket No. 12-035-100, 2012 WL 6770997 (Utah P.S.C.), at 5, 6.

Purchase Agreement" and "***as a matter of law, the Proposed [Power Purchase] Agreement, pursuant to its own terms, never became a valid and enforceable contract.***"[17]

The actual language used by Schedule 38 and the PacifiCorp Parties' prior positions demonstrate that the PacifiCorp Parties seek an inconsistent application of Schedule 38 and the Commission's prior orders.

The Commission's December 20, 2012 Order noted five parties in the queue including, Ellis-Hall, Wasatch Wind ("Latigo") and Blue Mountain Power Partners. While Latigo and Blue Mountain executed PPAs before the Commission's August 16, 2013 Order, those PPAs were not approved by the Commission until October 3, 2013.

Consequently, under Schedule 38 the prices given to Latigo and Blue Mountain were not final because they had not been "approved by the Commission." Accordingly, if Schedule 38 mandates that PacifiCorp update indicative pricing until the pricing is finalized as the Division and the OCS now claim, PacifiCorp should have updated Latigo's and Blue Mountain's pricing under the PDDRR method, purportedly "the sole method for determining avoided costs" after August 16, 2013. Division Comments, at 8; OCS Comments, at 5-10. PacifiCorp did not do so.

As noted above, Ellis-Hall was one of the five projects "in the queue" mentioned in the Commission's Order.[18] The Division previously "expresses general support for a stay of the Market Proxy method for ***wind QFs 'not in the queue' i.e., those that have not requested indicative pricing prior to the filing of RMP's Motion***." Neither the Division nor the OCS

---

[17] *PacifiCorp Energy's Limited Objection To Trustee's Motion For Order Extending Time For Trustee To Assume Or Reject Executory Contracts And Unexpired Leases Connected With Blue Mountain Wind Project*, Case No. 11-38145 WTT, Docket No. 53, at 3.

[18] Ellis-Hall entered the Queue on March 26, 2012. *See* PacifiCorp Generation Interconnection Queue, http://www.oasis.oati.com/PPW/PPWdocs/pacificorplgiaq.htm, at Queue #420.

made any claim that the failure to update Latigo or Blue Mountain pricing violated Schedule 38. However, they now take this position as to Ellis-Hall, even though Ellis-Hall was in the queue and similarly situated to Blue Mountain.

The Division and OCS have the duty to promote equal protection and public interest. Their positions should be consistent and their interpretations of requirements of the law should not change depending on the party seeking agency review. [19]

Permitting PacifiCorp to unilaterally change pricing methodology after Ellis-Hall expended significant amounts of time and money complying with the Interconnection Study and LGIA processes in reliance on the indicative pricing it received from PacifiCorp is inconsistent with the plain language of the Commission's Orders, Schedule 38, and is contrary to the public interest. Ellis-Hall respectfully requests that the Commission enforce the plain language of its August 16, 2013 Order and require PacifiCorp to execute a PPA with Ellis-Hall based on the indicative pricing provided to Ellis-Hall on May 22, 2013.

DATED this 11th day of April, 2014.

WOOD BALMFORTH LLC

/s/ Stephen Q. Wood

Mary Anne Q. Wood
Stephen Q. Wood
60 E. South Temple, Suite 500
Salt Lake City, UT 84111
Telephone: (801) 366-6060
Facsimile: (801) 366-6061
E-mail: mawood@woodbalmforth.com
swood@woodbalmforth.com
Attorneys for Ellis-Hall Consultants, LLC

[19] March 13, 2014 Transcript, Docket No. 14-035-24, at 17:4-18:14.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2014 a true and correct copy of the forgoing was served upon the following as indicated below:

Via electronic mail:

PacifiCorp/Rocky Mountain Power	
Dave Taylor	dave.taylor@pacificorp.com
Daniel E. Solander	daniel.solander@pacificorp.com
Eric Holje	eric.holje@pacificorp.com
Division of Public Utilities	
Patricia Schmid	pschmid@utah.gov
Justin Jetter	jjetter@utah.gov
Office of Consumer Services	
Brent L. Coleman	brentcoleman@utah.gov
Utah Division of Public Utilities	
Chris Parker	chrisparker@utah.gov

/s/ Stephen Q. Wood