

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of Rocky Mountain Power for Approval of a Renewable Energy Services Contract between Rocky Mountain Power and Facebook, Inc. Pursuant to Tariff Electric Service Schedule 34

DOCKET NO. 16-035-27  
ORDER DENYING INTERVENTION  
PETITION OF ELLIS-HALL  
CONSULTANTS, LLC

ISSUED: August 2, 2016

**BACKGROUND**

On July 15, 2016, Ellis-Hall Consultants, LLC (“Ellis-Hall”) filed a petition for intervention (“Petition”) in this docket. On July 21, 2016, Rocky Mountain Power (“RMP”) filed an opposition to petition to intervene (“Opposition”). On August 1, 2016, Ellis-Hall filed a reply to RMP’s Opposition (“Reply”), and the Division of Public Utilities (“Division”) filed an objection to Ellis-Hall’s Petition (“Objection”). In its Petition, Ellis-Hall asserts that it “develops renewable energy projects in [Utah] from which [RMP] could acquire renewable energy for customers with aggregated electric loads of at least 5,000 kW under proposed Service Schedule No. 34.”<sup>1</sup> Ellis-Hall further asserts its “legal rights and interests may be substantially affected by this proceeding,” that its intervention “will not unduly broaden the issues, delay the proceeding, or materially impair the orderly conduct” of this docket, and that its interests “are not and cannot be adequately represented by any other party.”<sup>2</sup> In its Reply, Ellis-Hall argues that its potential future status as a renewable energy supplier to Facebook, Inc. gives Ellis-Hall an interest in a transparent process “and to ensure that RMP is acting in a fair, nondiscriminatory manner in

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<sup>1</sup> Petition at 1.

<sup>2</sup> *Id.* at 1-2.

obtaining those resources.”<sup>3</sup> Ellis-Hall also commits not to seek to delay the proceedings and notes the Commission’s ability to adjudicate discovery disputes.<sup>4</sup>

In its Opposition, RMP asserts that while “Ellis-Hall could conceivably become a supplier of renewable energy to Facebook, Inc.,” any such contract would be a commercial transaction not subject to Commission approval and unaffected by this docket.<sup>5</sup> RMP additionally asserts that Ellis-Hall’s interests as a customer are being represented by the Office of Consumer Services or by the Division,<sup>6</sup> that Ellis-Hall could delay the proceeding, and that Ellis-Hall could use its status as an intervenor to “gain commercial advantage over other developers that are also eligible to negotiate third-party contracts with [RMP].”<sup>7</sup>

In its Objection, the Division argues that Ellis-Hall lacks standing under Utah appellate precedent, that Ellis-Hall’s interests as a renewable energy developer are not sufficiently tied to the issues in this docket and are not unique to Ellis-Hall, that Ellis-Hall did not satisfy the requirements for intervention by failing to provide a statement of relief that Ellis-Hall is seeking, and that Ellis-Hall’s legal interest is “only the hope that its project will be chosen – if an appropriate project is even proposed.”<sup>8</sup>

### **FINDINGS AND CONCLUSIONS**

The Utah Administrative Procedures Act (“UAPA”) provides a two-part test for intervention in formal proceedings like this one, requiring intervention if (1) “the petitioner’s

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<sup>3</sup> Reply at 1-2.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> Opposition at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 3.

<sup>8</sup> Objection at 1-3.

legal interests may be substantially affected by the formal adjudicative proceeding” and (2) “the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.”<sup>9</sup> In defining the “legal interests” necessary to meet the first prong of this statutory test, Utah’s appellate courts have evaluated the harm a proceeding may cause to a potential intervenor, requiring “a ‘sufficiently particularized injury’ to ‘livelihood, health, and property values.’”<sup>10</sup>

We find that Ellis-Hall’s interests in this docket are, at best, anticipatory. They rest on Ellis-Hall’s speculative future status as a potential supplier of power to Facebook, Inc., in the event we approve the contract between Facebook, Inc. and RMP that is the subject of this docket. Ellis-Hall has no current legal interest that could be harmed or impaired by the outcome of this docket. While this docket might result in an opportunity for Ellis-Hall to bid or negotiate for a contract in the future, no such opportunity currently exists.

Moreover, we conclude that to treat the general interest Ellis-Hall describes as adequate to support intervention would create a legal interest sufficient for intervention by any future potential power supplier. In other words, every renewable energy developer in Utah would be entitled to intervene in any proceeding seeking Schedule 34 approval of a renewable energy services contract between the utility and its customer. By extension, any docket seeking our approval to construct a generating facility, transmission line, emissions control equipment, or

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<sup>9</sup> Utah Code Ann. § 63G-4-207(2)(a)-(b).

<sup>10</sup> *Sevier Citizens for Clean Air & Water, Inc. v. Dep’t of Env’tl. Quality*, 2014 UT App 257, ¶ 10 (quoting *Utah Chapter of the Sierra Club v. Utah Air Quality Bd.*, 2006 UT 74, ¶¶ 26-27).

other utility plant would vest an intervention right with every contractor who might want to bid on some portion of the potential future project.

We conclude that the kind of anticipatory future interest articulated by Ellis-Hall does not satisfy the first prong of Utah Code Ann. § 63G-4-207(2). We also conclude that to interpret that prong otherwise would violate good public policy, turning a docket like this one, evaluating whether we should approve an energy services contract between an electric utility and its customer, into something else entirely: a search for proprietary information that would confer a competitive advantage on a potential future supplier of renewable energy to the customer if and when bidding or negotiations take place for such services. In sum, we agree with RMP that granting intervention in this instance risks granting competitive advantage to one developer, an outcome inconsistent with good public policy. Were we to grant Ellis-Hall's Petition, we risk turning every contract or project approval docket into a component of the utility's procurement processes.

Because we conclude the first prong is not satisfied, we need not examine the issue further.

**ORDER**

We deny Ellis-Hall's Petition for Intervention.

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DATED at Salt Lake City, Utah, August 2, 2016.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW#287423

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on August 2, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

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Administrative Assistant