

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Formal Complaint of  
Blue Mountain Power Partners, LLC against  
PacifiCorp d/b/a Rocky Mountain Power

DOCKET NO. 16-035-47  
ORDER ON MOTION TO DISMISS

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ISSUED: January 30, 2017

**I. Procedural History and Parties' Positions.**

1. On November 23, 2016, Blue Mountain Power Partners, LLC (Blue Mountain) filed with the Public Service Commission of Utah (PSC) a formal complaint against PacifiCorp d/b/a Rocky Mountain Power (Rocky Mountain Power).
2. The complaint was signed by Joseph Ciachurski (Mr. Ciachurski), who indicated on the signature page that he was the chief executive officer of Greenbriar Capital Corp. (Greenbriar). The signature page also indicated that Blue Mountain Power Partners, LLC was a d/b/a of Greenbriar.
3. On December 23, 2016, Rocky Mountain Power filed a motion to dismiss the complaint, arguing it lacks sufficient facts to establish that it was brought by Blue Mountain or by another entity with standing. Rocky Mountain Power identified the flaws in the complaint as follows:
  - a. It does not set forth facts to connect Blue Mountain with Greenbriar.
  - b. It does not set forth facts to establish Mr. Ciachurski's position with either company.

Specifically, Rocky Mountain Power stated: "[The complaint] does not allege that Greenbriar Capital is an owner or member of Blue Mountain[.]"

4. On January 11, 2017, Mr. Ciachurski filed a response to the motion to dismiss. In the response and an accompanying declaration, Mr. Ciachurski explained Blue Mountain's vertical corporate structure as follows:
  - a. Blue Mountain is wholly owned by a company called Blue Mountain Wind Holdings, LLC.
  - b. Blue Mountain Wind Holdings, LLC is the sole manager of Blue Mountain.
  - c. Greenbriar is a member of Blue Mountain Wind Holdings, LLC, holding 50% of the membership interests and having the right to appoint one of two managers.
  - d. Greenbriar Capital Corp. has appointed Mr. Ciachurski as a manager of Blue Mountain Wind Holdings, LLC.
  
5. On January 23, 2017, Rocky Mountain Power filed its reply, making the following assertions:
  - a. Even if Blue Mountain is a d/b/a of Greenbriar, the complaint is still brought by Greenbriar, which does not have standing because it has never been in privity with Rocky Mountain Power.
  - b. In deciding a motion to dismiss, adjudicatory bodies may not look beyond the facts alleged in the complaint itself. Therefore, the PSC may not consider the new facts alleged by Mr. Ciachurski in his response to the motion to dismiss and his accompanying declaration.

- c. Even if the new facts are considered, they still fail to establish that Greenbriar itself is a member of Blue Mountain. Rather, they establish that Greenbriar is a member of the entity that wholly owns Blue Mountain.
- d. Similarly, the new facts fail to establish that Mr. Ciachurski is an owner or manager of Blue Mountain. Rather, they establish that he is a manager of the entity that wholly owns Blue Mountain.

## **II. Discussion.**

Rocky Mountain Power does not allege that Blue Mountain lacks standing to bring this complaint. Rather, Rocky Mountain Power argues that the complaint, as initially filed, does not explain how Mr. Ciachurski and Greenbriar operate in relation to Blue Mountain. While Rocky Mountain Power might be correct that a court would evaluate the motion to dismiss solely upon the facts set forth in the complaint, we see nothing in the record to establish that the same restriction applies to an administrative body. Further, were we to dismiss this complaint for technical deficiencies, our dismissal would be without prejudice, and Blue Mountain would have leave to refile its complaint. We see no value, in this docket, in requiring the parties to navigate bureaucratic loops. Therefore, we view Mr. Ciachurski's response to the motion to dismiss as a supplement to the complaint and address the issue of standing on consideration of all facts in the record.

Utah Administrative Code § R746-100-6(B) states, in relevant part, "Individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests

in the proceeding." Therefore, the question before us is whether the facts of record demonstrate that Mr. Ciachurski is an officer or employee of Blue Mountain.

Blue Mountain Wind Holdings, LLC is the owner and sole manager of Blue Mountain. We note that, in its motion to dismiss, Rocky Mountain Power acknowledged that an owner or member of Blue Mountain would have standing to bring this complaint. Therefore, there is no argument that Blue Mountain Wind Holdings, LLC has standing.

Mr. Ciachurski is a manager, and therefore an officer, of Blue Mountain Wind Holdings, LLC. Therefore, he is authorized under our rules to represent the interests of Blue Mountain Wind Holdings, LLC, including its wholly-owned subsidiaries.

Given the foregoing, we conclude that the complaint should have been styled to state that it was brought by Blue Mountain Wind Holdings, LLC, owner and sole manager of Blue Mountain Power Partners, LLC, with Blue Mountain Wind Holdings, LLC being represented by Mr. Ciachurski, manager. We further conclude that the technical flaws in the complaint have been corrected in a manner that is appropriate to the administrative forum, such that dismissal is not required.

**ORDER**

Rocky Mountain Power's motion to dismiss is DENIED. Within 30 days of the date of this order, Rocky Mountain Power shall answer the complaint, which is considered to have been supplemented by Blue Mountain's response to Rocky Mountain Power's motion to dismiss.

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DATED at Salt Lake City, Utah, January 30, 2017.

/s/ Jennie T. Jonsson  
Administrative Law Judge

Approved and confirmed January 30, 2017 as the Order of the Public Service  
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW#291415

CERTIFICATE OF SERVICE

I CERTIFY that on January 30, 2017, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

Data Request Response Center ([datarequest@pacificorp.com](mailto:datarequest@pacificorp.com))  
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Administrative Assistant