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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: Blue Mountain Power Partners, LLC’s Request that the Public Service Commission of Utah Require PacifiCorp to Provide the Approved Price for Wind Power for the Blue Mountain Project

Docket No. 12-2557-01
Ellis-Hall Consultants, LLC’s Petition for Review or Rehearing

On April 8, 2015, Ellis-Hall Consultants, LLC (“Ellis-Hall”) filed a Petition to Intervene (the “Petition”) in Blue Mountain Power Partners, LLC (“BMPP’s”) request for approved pricing, as set forth in BMPP’s request for agency action. On May 5, 2015, and without objection, the Commission summarily denied Ellis-Hall’s Petition on the erroneous basis that “this docket does not currently stand to affect any [of Ellis-Hall’s] legal interests.” May 5, 2015 Order.

Pursuant to R746-100-11, Utah Code Ann. § 54-7-15, and § 63G-4-301, Ellis-Hall respectfully requests that the Commission review or rehear its Petition and grant the Petition, or, in the alternative, clarify its order by specifically identifying the factual and legal bases for denying Ellis-Hall’s Petition in light of the following:

First, the Commission’s order completely ignores Ellis-Hall’s stated interests, without comment. Indeed, the Petition states that,

2. Ellis-Hall owns the developmental rights to the properties listed in the Blue Mountain 1 PPA, Exhibits 3.2.4, 3.2.7, and 6.1.

3. This docket relies on the Blue Mountain 1 PPA and, therefore, affects Ellis-Hall's rights in these properties.

4. As such, Ellis-Hall has a direct interest in these proceedings that will not be adequately represented by any other party.

5. Ellis-Hall has not yet fully determined the specific positions it will take or the relief that it will seek.

6. Nevertheless, Ellis-Hall seeks to intervene for purposes of protecting its interests as they arise.

Ellis-Hall thereby specifically notes that its interests are at stake because BMPP's pricing arguments hinge on Ellis-Hall's property rights. Indeed, without Ellis-Hall's property rights, BMPP would not have been able to assert its stated claim. Consequently, BMPP usurped Ellis-Hall's property rights to claim a right that it did not own. The Commission's order, however, simply ignores Ellis-Hall's stated interests. In the event that the Commission does not reconsider its decision, Ellis-Hall respectfully requests that the Commission provide a more adequately detailed rationale for the denial to intervene where BMPP is misappropriating Ellis-Hall's rights.

Second, Ellis-Hall's Petition is much more developed than many other petitions to intervene that the Commission has granted.¹ If the Commission's order is to stand, the

¹ On March 19, 2015 in Docket No. 15-035-03, the Utah Association of Energy Users petitioned the Commission to intervene in that docket on the basis that "[t]he legal rights and interests of Petitioner and its members may be substantially affected by this proceeding," and that because the "Petitioner has not fully determined the specific positions it will take or the relief it will seek" that it "seeks to intervene for purposes of protecting its interests and the interests of its members as they may appear . . ." Thus, that the petitioner only summarily concluded that its interest will be substantially affected. Nevertheless, on April 13, 2015, the Commission granted intervention stating that it "may condition intervenor's participation in these proceedings based upon such factors as whether intervenor is directly and adversely impacted by issues raised in the proceedings; whether intervenor's interests are adequately represented by another party; the number of persons seeking intervention or already intervened; and how intervenor's participation will affect the just, orderly and prompt conduct of the proceedings." The Commission provided no such consideration to Ellis-Hall.

Similarly, on April 2, 2015 in Docket No. 15-035-04, the Utah Association of Energy Users moved to intervene using the exact language, again summarily concluding that its interest will be affected without stating why or how. Once again, on April 27, 2015, the Commission granted intervention on the same reasons stated above.

Ellis-Hall is not suggesting that the Utah Association of Energy Users does not have interests in the cited dockets. Rather, Ellis-Hall is simply using these petitions as examples of the Commission's normal course of permitting parties to intervene that, contrary to Ellis-Hall, provide no "statement" of their interests.

Commission should explain why it is applying its rules for intervention more harshly against Ellis-Hall where it permits others to intervene on much weaker bases.

Third, R746-100-4 and Utah Code Ann. § 63G-4-201 required that BMPP “mail a copy to each person known to have a direct interest in the requested agency action.” BMPP never gave Ellis-Hall such notice. This is particularly inexcusable where (1) Mr. Burnett’s firm, Callister, Nebeker & McCullough knew of Ellis-Hall’s interest because the firm, since 2008, has represented Mr. Roring, one of the landowners set forth in the PPA Exs. 3.2.4, 3.2.7, 6.1 and reviewed Ellis-Hall’s notice of purchase of Mr. Roring’s and his family’s lands months prior to BMPP’s opening this docket; and (2) Mr. Burnett was aware from reviewing the purchase documents between the REDCO estate and BMPP that the Asset Purchase Agreement approved by court order specifically excluded the lands that BMPP claims—Ellis-Hall’s lands. *See* REDCO BMPP Sale Ex. A, 3 (attached hereto as Ex. 1).

If BMPP had properly noticed Ellis-Hall in this matter, Ellis-Hall would have intervened early in the proceeding to protect its rights. BMPP’s error is now compounded by the Commission’s denial barring Ellis-Hall’s ability to protect its rights and make a record in this docket of BMPP’s fraud, as explained below.

Fourth, BMPP made the demonstrably fraudulent representation to the Commission that BMPP “purchased the bankruptcy estate of REDCO which includes the Blue Mountain project.” BMPP Req. Agency Action 5. This false representation affects Ellis-Hall, the integrity of the Commission process, and the public at large. Consequently, it should be independently investigated pursuant to 18 C.F.R. § 1c.2(a). Indeed, Ellis-Hall can conclusively prove:

(1) BMPP’s arguments in its Request for Agency Action rely on Ellis-Hall’s land rights.

On January 30, 2012, the bankruptcy court approved the sale of “substantially all of the Debtor’s assets,” including the Blue Mountain Wind 1, LLC lease agreements and developmental land rights to Sustainable Power Group, LLC (“SPG”). Order Approving SPG Sale (attached hereto as Ex. 3). These lands constitute the footprint necessary for the generating facility in the Blue Mountain 1 Wind, LLC PPA. On February 23, 2012, SPG then sold these lease agreements and developmental land rights to Ellis-Hall.

On May 25, 2012, BMPP (or its parent/predecessor Cedar City Wind Holding, LLC) purchased only a *residual* interest in the REDCO estate, “as-is, where-is, if-is.” See Trustee Mot. REDCO BMPP Sale 5 (attached hereto as Ex. 1); *see also*, Order Approving BMPP Sale (attached hereto as Ex. 2). Indeed, Ellis-Hall’s land rights were explicitly excluded from the REDCO estate sale to BMPP. Trustee Mot. REDCO BMPP Sale Ex. A 3 (“‘Excluded Assets’ means any and all assets of the Debtor which were sold to [SPG] pursuant to the Bankruptcy Court’s Order dated January 30, 2012.”). Ellis-Hall’s ownership has never been disputed.

It is important, therefore, to understand that the Commission’s September 20, 2012 order is not substantively incorrect, but misapplied for the benefit of BMPP instead of Ellis-Hall.

(2) The Asset Purchase Agreement Exhibit B “Assumed Contracts,” between the REDCO estate and BMPP does not include Ellis-Hall’s land rights. See REDCO BMPP Sale Ex. A 2.

(3) BMPP has no legal interest in Blue Mountain Wind 1, LLC or its land rights, and has always known that this is so given the fact that its own documentation submitted to PacifiCorp on or about June 29, 2012, refers to its wind project as “Blue Mountain II.” See BMPP II IR Deemed Complete (attached hereto as Ex. 4). This is BMPP’s only wind project.

BMPP thereby continues to not only confuse the Commission by conflating numerous distinct “Blue Mountain” references, but misappropriate benefits belonging to a project it does not own.

BMPP has defrauded the Commission by making unsubstantiated claims. Investigating this fraud certainly will “promote[] the public interest.”²

WHEREFORE, for the reasons set forth above, Ellis-Hall again requests that the Public Service Commission of Utah grant it leave to intervene in this proceeding to protect its interests or, in the alternative, clarify its decision.

DATED this 27th day of May 2015.

Respectfully submitted,

/s/ Tony Hall

Tony Hall

Ellis-Hall Consultants, LLC – Member

² <http://www.publicutilities.utah.gov/about.html>

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2015, an original and one (1) true and correct copy of the foregoing **Ellis-Hall Consultants, LLC's Petition for Review or Rehearing** were hand-delivered to:

Gary L. Widerburg
Commission Secretary
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and true and correct copies were electronically mailed to the addresses below:

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