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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Rocky Mountain Power for Approval of Power Purchase Agreement Between PacifiCorp and Blue Mountain Power Partners, LLC	Docket No. 13-035-115 BLUE MOUNTAIN POWER PARTNERS, LLC'S OBJECTION TO PETITION FOR INTERVENTION OF ELLIS-HALL CONSULTANTS, LLC
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Blue Mountain Power Partners, LLC (“Blue Mountain”) hereby objects to the Petition for Intervention (“Petition”) filed by Ellis-Hall Consultants, LLC (“Ellis-Hall”) in this docket. Ellis-Hall has no legitimate legal right or interest in any of the issues before the Commission relating to the Power Purchase Agreement (“PPA”) filed by Rocky Mountain Power for approval, and its Petition fails to allege or demonstrate any such interest. Moreover, even considering the alleged “interests” of Ellis-Hall as identified by its counsel at the scheduling hearing in this docket, none of the identified interests provides a legitimate basis for intervention in this docket. Furthermore, even if any of the claimed interests did provide a basis for intervention, it would support

intervention on only very limited issues, and would not justify an extension of the schedule agreed to by all other parties. Finally, because Ellis-Hall's actions to date demonstrate that the interests of justice and the orderly and prompt conduct of these proceedings will be materially impaired if Ellis-Hallis allowed to intervene, intervention should be denied or specifically limited to narrow issues and conditioned upon its acceptance of the schedule acceptable to all other parties.

The Petition Does Not Satisfy the Standards for Intervention

Under Commission Rule R746-100-7 and Utah Code Annotated § 63G-4-207(1)(c), a petition for intervention before this Commission must include “a statement of facts *demonstrating that the petitioner's legal rights or interests are substantially affected*” by the proceeding. Ellis-Hall's Petition provides nothing even close to the required factual demonstration, alleging only:

EHC requests leave to intervene to give the PSC notice of its ownership of certain leases that are within the geographic footprint of the project commonly referred to as the Blue Mountain Wind Project (“Project”) and its concerns relating to the Project and the manner in which the Power Purchase Agreement (“PPA”) was approved and submitted under this docket. EHC believes that its interest in these leases and the subject land will be substantially affected by the current proceeding. EHC is also concerned about a conflict of interest with Blue Mountain Power Partner's current counsel.

Neither a purported desire to give “notice” of alleged ownership of “certain leases” nor an unsupported *belief* that its interests will be affected by this proceeding satisfies the legal requirement for a *statement of facts demonstrating* that the petitioner's legal rights or interests *are substantially affected* by the proceeding. Similarly, a purported desire to share unspecified “concerns” about the PPA or the manner in which it was “approved and submitted” fails to satisfy

the requirement for such a factual demonstration. Finally, a vague and unsupported suggestion that Ellis-Hall is “concerned” about a supposed conflict of interest offers nothing towards the required factual demonstration of a legal right or interest that will be substantially affected. Because the Petition provides no grounds for a Commission finding that Ellis-Hall’s “legal interests may be substantially affected” by this proceeding as required by Rule R746-100-7 and Utah Code Annotated § 63G-4-207(2)(a), the Petition is facially deficient and should be denied.

Ellis-Hall’s Recently Claimed Interests Do Not Warrant Intervention

Although Ellis-Hall’s Petition fails to identify any legal rights or interests that may be substantially affected, counsel for Ellis-Hall was given the opportunity at the scheduling hearing in this matter on August 2, 2013, to identify the nature of Ellis-Hall’s claimed rights or interests in this PPA approval docket. Counsel for Ellis-Hall identified three claimed rights or interests (“Claimed Interest(s)”) in an attempt to support its intervention. As discussed in more detail below, none of the Claimed Interests provides a basis for intervention in this PPA approval docket. Moreover, even if they did, they would support intervention on only very narrow legal or factual claims, the resolution of which can easily be accomplished within the schedule agreed to by all other parties to this docket.¹

¹ At the July 23 scheduling conference in this matter, and again at the August 2 scheduling hearing, representatives of Rocky Mountain Power, the Division of Public Utilities, the Office of Consumer Services and Blue Mountain all agreed to a schedule by which comments or prefiled direct testimony will be due on August 22, 2013, reply comments or prefiled testimony will be due on September 5, 2013, and a hearing will be held on September 10, 2013. Blue Mountain has requested that this agreed-upon schedule be adopted by the Commission.

The first Claimed Interest involves an alleged ownership dispute between Blue Mountain and Ellis-Hall regarding certain wind site lease rights. At the scheduling hearing, counsel for Ellis-Hall finally admitted that the Blue Mountain project as encompassed in the PPA does not cover any of the disputed wind lease sites. However, counsel alleged that some disputes remain over Blue Mountain's right to use or rely upon certain wind data, applications or permits. This type of dispute cannot be resolved by the Commission and is irrelevant to this proceeding. Even if these alleged disputes are real, they must be resolved by a federal bankruptcy court or by a state court of general jurisdiction. The Commission has no jurisdiction to resolve contractual or ownership disputes between private parties. Moreover, this Claimed Interest has nothing to do with the limited issues before the Commission in this docket -- whether RMP's PPA with Blue Mountain contains terms and prices consistent with Commission Orders and applicable Utah tariffs.

The second Claimed Interest is based on alleged discriminatory application of Schedule 38 to Ellis-Hall. Specifically, Ellis-Hall claimed that (1) Schedule 38 and/or applicable Commission orders require a "grid connection" – presumably meaning an interconnection agreement with Pacific Transmission – before a PPA can be signed by RMP or approved by the Commission, and (2) that this alleged requirement was imposed on Ellis-Hall but not on Blue Mountain. Beyond the fact that these two arguments are legally and factually inaccurate,² they

²The clear and unambiguous language of Schedule 38 gives RMP discretion whether to require the simultaneous execution of an interconnection agreement and a PPA. See *Rocky Mountain Power Electric Service Schedule No. 38, Section 1.B.7*. At the scheduling hearing, Paul Clements of RMP represented on the record that prior or simultaneous execution of an

do not support intervention in this docket. If Ellis-Hall believes that it was treated in a discriminatory manner, it can file a complaint with the Commission seeking to hold RMP accountable or to compel RMP to treat Ellis-Hall in a non-discriminatory manner. The proper response to discriminatory treatment is to open a proceeding to deal with the allegations, not to play the role of a spoiler in Blue Mountain's PPA approval docket.

In any event, even if Ellis-Hall's allegation of discriminatory application of Schedule 38 were sufficient to identify a legal right or interest to warrant intervention in this Blue Mountain PPA approval docket, it would only support intervention on the very narrow and specific claim(s) made by Ellis-Hall that are considered by the Commission to be relevant to this docket. Those limited allegations do not require or warrant extensive discovery or an extension of the schedule. For example, the claim that an interconnection agreement is a prerequisite to a PPA raises a purely legal issue that can be resolved summarily. Similarly, the claim that RMP discriminatorily required a prior or simultaneous interconnection agreement for Ellis-Hall but not for Blue Mountain is a narrow factual issue that can be resolved quickly, easily within the agreed-upon time frame. The Blue Mountain interconnection requirements are specified in the PPA before the Commission for approval. If Ellis-Hall contends that the interconnection requirements imposed on its project are materially different or discriminatory, it can promptly come forward with its evidence.

Blue Mountain respectfully submits that Ellis-Hall's allegation of discriminatory application of Schedule 38, even if sincere, is a claim that should be addressed in a separate

interconnection agreement had not been and was not being required for Ellis-Hall's project.

docket and does not provide sufficient grounds for intervention in this Blue Mountain PPA approval proceeding. Even if the Commission concludes otherwise, however, Blue Mountain respectfully requests that any permitted intervention by Ellis-Hall be strictly conditioned and limited to any specific claim or issue determined by the Commission to be relevant, if any.

The Commission's intervention orders routinely specify that the Commission may "condition intervenor participation ... 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; ... and how intervenor's participation will affect the just, orderly and prompt conduct of the proceedings." Blue Mountain respectfully submits that, if Ellis-Hall is permitted to intervene in the Blue Mountain PPA approval docket, its participation should be narrowly limited to the specific relevant legal or factual claims it has raised, if any. No intervenor should be permitted to hijack a PPA approval proceeding for extraneous reasons. Moreover, as discussed in more detail below, Blue Mountain submits that any permitted intervention of Ellis-Hall should expressly be conditioned on it not adversely affecting the just, orderly and prompt conduct of these proceedings by accepting the schedule requested by Blue Mountain and agreed to by all other parties to this docket.

Ellis-Hall's third Claimed Interest stems from its allegation of limited transmission capacity and its suggestion that PacifiCorp favored Blue Mountain over Ellis-Hall in allocating limited transmission rights. This serious allegation – apparently a claim that PacifiCorp has violated its FERC tariff – clearly cannot be resolved by this Commission. Allocation of limited transmission rights is purely a matter of federal law that can be addressed or resolved only by

FERC. Even if Ellis-Hall were somehow alleging a violation by RMP of its Utah tariff, any such claimed tariff violation (i) is not relevant to this Blue Mountain PPA approval docket and (ii) could be resolved quickly and within the time frame of the agreed-upon schedule. There is no legitimate need for extensive discovery. This type of serious allegation should be made only if Ellis-Hall possesses relevant factual support. If it has supporting factual information, it can easily provide it within the agreed-upon time frame. If it does not have such information, it should not be allowed to disrupt these proceedings based on unsupported allegations.

Intervention Would Impair the Orderly and Prompt Conduct of these Proceedings

In considering a petition for intervention, Commission Rule R746-100-7 and Utah Code Annotated § 63G-4-207(2)(b) require the Commission to find that “the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired” by allowing the intervention. Blue Mountain respectfully submits that Ellis-Hall’s conduct to date in this docket demonstrates that this finding should not be made. Ellis-Hall has already delayed entry of a scheduling order in this docket by nearly two weeks, and refuses to accept the schedule agreed to by all other participants. It continues to demand significant delay based on unspecified discovery needs, continues to assert irrelevant and unsupportable conflict of interest claims, and refuses to acknowledge that even withdrawal of counsel would facilitate the agreed-upon schedule.³ If Ellis-Hall is allowed to intervene, its intervention should specifically be conditioned upon its willingness to abide by the schedule required by Blue Mountain and agreed to by all other parties.

³Counsel for Blue Mountain has offered to withdraw as counsel for Blue Mountain, if necessary, to avoid any delay in the agreed-upon schedule for approval of the PPA.

Summary

Blue Mountain respectfully submits that Ellis-Hall has demonstrated that its intervention would materially impair the interests of justice and the orderly and prompt conduct of these proceedings. Timely review and approval of Blue Mountain’s PPA is critical to completion of the Blue Mountain project. Ellis-Hall should not be allowed to disrupt the orderly and prompt approval of the Blue Mountain PPA. It has not made any allegations of relevance to the terms and conditions of the Blue Mountain PPA before the Commission for approval.

Because there is no factual basis for Commission findings on either of the two intervention prerequisites specified in Commission Rule R746-100-7 and Utah Code Annotated §§ 63G-4-207(2)(a) and (b), Blue Mountain respectfully submits that Ellis-Hall’s Petition for Intervention should be denied. In the event intervention is granted however, Blue Mountain respectfully requests that Ellis-Hall’s intervention be conditioned upon and strictly limited to the narrow legal and factual claims that it has asserted that the Commission deems relevant, if any, and upon a willingness to abide by the agreed-upon schedule.

DATED this 5th day of August, 2013.

HATCH, JAMES & DODGE

/s/ _____
Gary A. Dodge
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CERTIFICATE OF SERVICE

LI hereby certify that a true and correct copy of the foregoing was served by email this 5th day of August, 2013, on the following:

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