

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 APPLICATION OF
ROCKY MOUNTAIN POWER FOR
APPROVAL OF POWER PURCHASE
AGREEMENT BETWEEN PACIFICORP AND
BLUE MOUNTAIN POWER PARTNERS,
LLC

Docket No. 13-035-115

***STATEMENT OF DISCOVERY ISSUES
AND MOTION AND MEMORANDUM
TO COMPEL ROCKY MOUNTAIN
POWER***

The Utah Supreme Court has definitively stated that the general purpose of discovery is “to remove elements of surprise or trickery so the parties and the court can determine the facts and resolve the issues as directly, fairly and expeditiously as possible.” *Rahofy v. Steadman*, 2010 UT App 350, ¶ 7, 245 P.3d 201, 204 (citations omitted). Where a party, such as Rocky Mountain Power (“PacifiCorp”) fails to adequately respond to discovery requests, the Rules provide that a party may move for an order compelling an answer. *Rahofy*, 2010 UT App 350 at ¶ 8 (“The Utah Rules of Civil Procedure allow a trial court to grant a motion to compel discovery . . . if a party has not adequately responded to a discovery request made in the form of interrogatories . . . or a request for production of documents.”).

Pursuant to Rule 4-502 of the Utah Rules of Judicial Administration, Ellis-Hall hereby submits this Statement of Discovery Issues to compel PacifiCorp's discovery compliance.

(2)(B)(i): Ellis-Hall seeks to compel PacifiCorp to provide the following documents:

1. LGI application checklists and supporting documentation;
2. LGI system impact checklists and supporting documentation;
3. Facilities study checklists and supporting documentation;
4. Documents and communications referring to transmission services, including but not limited to Blue Mountain's and Latigo's queue positions during 2012 and 2013;
5. QF Applications and supporting documentation;
6. LGIA Applications and supporting documentation;
7. Documents and communications between PacifiCorp transmission services (large generation interconnection and transmission service) involving PacifiCorp merchants in the Blue Mountain and Latigo projects, and between PacifiCorp transmission services and PacifiCorp merchants.

(2)(B)(ii): The basis or reason for the relief sought is because PacifiCorp has failed to provide documents responsive to Ellis-Hall's discovery request, pursuant to Utah R. Civ. P.

34(a)(1).¹ Ellis-Hall's request states:

REQUEST NO. 2. Please produce all documents and communications referring or relating to Blue Mountain's wind project, or any due diligence You conducted regarding Blue Mountain's wind project.

In response, PacifiCorp stated:

¹ Because Utah R. Civ. P. 34(1) and Fed. R. Civ. P. 34(a) are "substantially similar, reliance on cases interpreting the [Fed. R. Civil P.] is appropriate." *Tucker v. State Farm Mut. Auto. Ins. Co.*, 2002 UT 54, ¶ 7 n.2.

The Company objects to this date request on the grounds that the request is overly broad and unduly burdensome, and may request documents that are subject to the attorney-client privilege. . . .

PacifiCorp’s response is nothing more than an improper boilerplate objection. It is well-held that such objections are improper.² Indeed, courts have widely held that discovery objections must be “sufficiently specific to allow the court to ascertain the claimed objectionable character.” *Burns v. Imagine Films Entm’t, Inc.*, 164 F.R.D. 589, 593 (W.D.N.Y. 1996).³ PacifiCorp fails to provide any specificity in order to sustain their objection.

PacifiCorp’s objections also fail on their face. As explained, *infra*, the appropriate standard under Utah law is whether a request is “proportional.” This standard is met.

(2)(B)(iii): Ellis-Hall’s request is proportional under Utah R. Civ. P. 26(b)(2). Indeed, the production of the documents will impose only a nominal burden on PacifiCorp because the documents should be readily available in PacifiCorp’s files. Furthermore, these documents are necessary to show that PacifiCorp’s approval of the Blue Mountain project was improper and in violation of the law. Thus, any burden accruing to PacifiCorp is heavily outweighed by the benefits of the proposed discovery.

In addition, Ellis-Hall’s discovery is reasonable given the complexity of the matter, the parties’ resources, the importance of the issues, and the importance of the discovery in resolving

² See *U.S. ex rel. O’Connell v. Chapman Univ.*, 245 F.R.D. 646, 649-50 (C.D. Cal. 2007) (finding that objections stating overbroad, unduly burdensome, unduly redundant, oppressive, calls for narrative “**are general or boilerplate objections, which are not proper objections.**”); *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) (objections that requests were overly broad, burdensome, oppressive, and irrelevant were insufficient to meet party’s burden to explain why discovery requests were objectionable); *Panola Land Buyers Ass’n v. Shuman*, 762 F.2d 1550, 1559 (11th Cir.1985) (conclusory recitations of expense and burdensomeness are not sufficiently specific to demonstrate why discovery is objectionable).

³ See also, *Burns v. Imagine Films Entm’t, Inc.*, 164 F.R.D. 589, 592-93 (W.D.N.Y. 1996) (objecting that discovery request was overbroad, vague and unduly burdensome was not sufficiently specific to allow court to ascertain objectionable character of discovery request); *Chubb Integrated Sys. Ltd. v. Nat’l Bank of Washington*, 103 F.R.D. 52, 58 (D.D.C. 1984) (“General objections are not useful to the court ruling on a discovery motion.”).

the issues Ellis-Hall's objection to the approval of Blue Mountain's PPA addresses complex documents and multiple submissions to PacifiCorp to establish that the PPA is unenforceable and constitutes disparate treatment. Furthermore, the discovery is also consistent with the overall case management and will further the just, speedy, and inexpensive determination of the case. The discovery is not unreasonably cumulative or duplicative. The information cannot be obtained from another more convenient, less burdensome, or less expensive source. And, Ellis-Hall has not otherwise had sufficient opportunity to obtain the information. *See Utah R. Civ. P. 26(b)(2).*

(2)(B)(iv): Not applicable.

(2)(B)(v): Counsel for Ellis-Hall hereby certifies that on August 26, 2013, the parties met and conferred regarding the issues and attempted in good faith to resolve or narrow the issues without the Commission's involvement.

A proposed form of Order is attached hereto as Ex. 1.

DATED this 26th day of August, 2013.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2013, a true and correct copy of the forgoing ***STATEMENT OF DISCOVERY ISSUES AND MOTION AND MEMORANDUM TO COMPEL ROCKY MOUNTAIN POWER*** was served via e-mail to the following:

PacifiCorp:

Data Request Response Center datarequest@pacificorp.com

Rocky Mountain Power:

Mark Moench mark.moench@pacificorp.com
Yvonne Hogle yvonne.hogle@pacificorp.com
Daniel. E. Solander daniel.solander@pacificorp.com
David L. Taylor dave.taylor@pacificorp.com

Division of Public Utilities:

Patricia Schmid pschmid@utah.gov
Justin Jetter jjetter@utah.gov
Chris Parker chrisparker@utah.gov
William Powell wpowell@utah.gov

Office of Consumer Services:

Brain Farr bfarr@utah.gov
Michele Beck mbeck@utah.gov
Cheryl Murray cmurray@utah.gov

Blue Mountain Power Partners, LLC:

Gary A. Dodge gdodge@hjdllaw.com
Michael D. Cutbirth mcutbirth@champlinwind.com

/s/ Stephen Q. Wood