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*Attorneys for Ellis-Hall Consultants, LLC*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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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 BLUE MOUNTAIN***

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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 Blue Mountain 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 Blue Mountain's discovery compliance.

**(2)(B)(i):** Ellis-Hall seeks to compel Blue Mountain Power Partners ("Blue Mountain") 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 queue position during 2012 and 2013;
5. QF Applications and supporting documentation;
6. LGIA Applications and supporting documentation.

**(2)(B)(ii):** The basis or reason for the relief sought is because Blue Mountain has failed to provide documents responsive to Ellis-Hall's discovery request, pursuant to Utah R. Civ. P. 34(a)(1).<sup>1</sup> Ellis-Hall's request states:

**REQUEST NO. 2.** Please produce all documents referring or relating to Your Power Purchase Agreement ("PPA").

In response, Blue Mountain stated:

Blue Mountain objects to this request on the grounds that it seeks information that is neither relevant to this proceeding nor narrowly tailored to lead to the discovery of such evidence. The request for "all documents and communications" is overly broad and burdensome.

Blue Mountain's response is nothing more than an improper boilerplate objection. It is well-held that such objections are improper.<sup>2</sup> Indeed, courts have widely held that discovery

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<sup>1</sup> 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.

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).<sup>3</sup> Blue Mountain fails to provide any specificity in order to sustain their objection.

Blue Mountain’s objections also fail on their face. First, Ellis-Hall’s requests are relevant. Indeed, Ellis-Hall’s requests seek discovery that will demonstrate that PacifiCorp inappropriately and illegally approved Blue Mountain’s application. Second, Blue Mountain’s other objections that Ellis-Hall’s requests are not narrowly-tailored and are overly broad and burdensome are not contemplated by the Rules. 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 Blue Mountain because the documents should be readily available in Blue Mountain’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 Blue Mountain 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

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<sup>2</sup> 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).

<sup>3</sup> 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 20, 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 26<sup>th</sup> day of August, 2013.

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**CERTIFICATE OF SERVICE**

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

PacifiCorp:

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

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/s/ Stephen Q. Wood

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