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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 RESPONSE TO ELLIS-HALL CONSULTANTS, LLC'S OBJECTION TO APPROVAL OF BLUE MOUNTAIN POWER PURCHASE AGREEMENT

Blue Mountain Power Partners, LLC ("Blue Mountain") hereby responds to the objection ("Objection") of third-party intervener Ellis-Hall Consultants, LLC ("Ellis-Hall") to approval of Blue Mountain's Power Purchase Agreement ("PPA") with Rocky Mountain Power ("RMP"). Ellis-Hall's Objection lacks merit, was filed for inappropriate reasons, fails to raise a single issue of relevance to this docket, and should be disregarded.

Introduction

Since requesting intervention in this docket, Ellis-Hall has attempted in every way possible to prevent or delay the Commission's approval of the Blue Mountain PPA, a contract negotiated and executed in good faith by a competing developer. Although Ellis-Hall's specific motives are not disclosed or acknowledged, its desperate hostility towards a competing project suggests an improper economic and competitive motivation, and raises serious questions about the bona fides of the Objection. Regardless of the motivation, however, the Objection is devoid of merit and should be ignored.

Ellis-Hall's Objection attempts to sew together a stunning fabric of factual and legal misrepresentations and misstatements, underscoring a lack of understanding of or respect for Utah's public utility regulatory scheme or this Commission's role in approving QF agreements. Pugnacious arguments notwithstanding, the Objection fails to raise, identify or support a single issue of relevance to the Petition ("Petition") filed by RMP for approval of its PPA with Blue Mountain.

Ellis-Hall's Objection is a house of cards that collapses under the weight of its false cornerstone premises: (1) that RMP is required by Utah law to treat every potential future power supplier in an identical manner; (2) that Schedule 38 was not followed in the negotiation or execution of the Blue Mountain PPA; (3) that Ellis-Hall's proposed project was treated in a discriminatory manner; and (4) that the appropriate remedy, even if inappropriate discriminatory conduct were demonstrated, is rejection of an innocent party's PPA rather than similar treatment for Ellis-Hall's project. These four flawed premises fatally undercut each and every argument raised in the Objection.

Future Potential Power Suppliers are Not Assured Equal Treatment in All Respects

Ellis-Hall's first flawed premise - that RMP must treat all potential power suppliers identically in all respects - is not supported by Utah law. As a public utility with an exclusive right to serve customers within certificated areas, RMP is subject to Commission regulation as to rates, services and actions vis-à-vis its captive customers. Nothing in the Utah laws designed to protect captive utility customers extends similar protections to future potential wholesale power suppliers.

Federal and state laws provide certain protections to a power supplier that is a "qualifying facility" ("QF") under federal and state laws, including the right to require RMP to purchase QF output at RMP's "avoided costs" as determined by the Commission. To implement and ensure this right, the Commission has adopted certain procedures and requirements, including RMP's Schedule 38. The Commission is required to approve a QF PPA in order to protect captive ratepayers – by ensuring that pricing terms and methodologies are consistent with applicable Commission policies and orders. At the same time and in the same manner, the Commission's procedures also protect QF developers by ensuring that PPAs are consistent with applicable Commission requirements. Nothing in Utah law supports Ellis-Hall's novel attempt to extend the rights of potential power suppliers by arguing that RMP must otherwise provide identical treatment or offer identical terms to all power suppliers.

RMP is not required to treat Ellis-Hall in every respect in the same manner as every other supplier. Utah law offers no such protection. To the contrary, within the constraints of applicable tariffs and Commission requirements, RMP is free – indeed, required, given its

obligations to captive customers - to negotiate the most favorable terms reasonably possible with power suppliers, including QF suppliers. Under Ellis-Hall's reading of Utah law, every "person," including every supplier – QF or otherwise – would have a legally imposed "most favored nations" clause that would require RMP to offer it the most favorable terms negotiated by any other supplier.

Ellis-Hall quotes Utah statutes[1] out of context in support of its flawed claim that all "persons" must be treated equally by RMP. Viewed in context, Utah's statutory protections are clearly designed for the benefit of customers.[2] Similarly, Utah court and Commission orders do

[1] Ellis-Hall's Objection also cites and purports to rely upon various alleged federal laws and protections (E.g., Objection at 1, note 6; 5-6; 12; 16-17). The federal law-based claims are without merit, and are irrelevant in this docket. The Commission lacks jurisdiction to address or resolve claims or disputes purportedly arising under federal laws, including transmission and interconnection disputes. *E.g*., *Miss. Power & Light v. Miss. ex rel. Moore*, 487 U.S 345, 375 (1988) ("There 'can be no divided authority over interstate commerce,... the acts of Congress on that subject are supreme and exclusive.' *Missouri Pacific R. Co. v. Stroud*, 267 U.S. 404, 408 … (1925). Consequently, a state agency's 'efforts to regulate commerce must fall when they conflict with or interfere with federal authority over the same activity.' *Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318-19 … (1981)"); *Fidelity Federal Sav. And Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153-54 (1982) ("Federal regulations have no less pre-emptive effect than federal statutes" (citing *United States v. Shimer*, 367 U.S. 374, 381-382 (1961)). Blue Mountain will not address the federal claims in great detail here because the Commission cannot resolve them and they are not relevant to any issue properly before the Commission in this docket.

[2] The Objection cites selective sections of the Utah Code out of context in support of its claim that RMP cannot discriminate in any manner among suppliers. The proper context demonstrates otherwise: Utah Code Ann. § 54-3-1 ("All charges made, demanded or received by any public utility … for any product or commodity … shall be just and reasonable …"); Utah Code Ann. § 54-3-3 ("N]o change shall be made … in any rate, fare, toll [etc. except] after notice to the commission …"); Utah Code Ann. § 54-3-7 ("[N]o public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished … than … as specified in its schedules…"); Utah Code Ann.§ 54-3-8 ("[A] public utility may not … as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage ….") None of the quoted statutes extends the specified protections to suppliers.

not support Ellis-Hall's flawed premise; the cases cited in the Objection confirm that the referenced protections are intended for utility customers.[3]

In summary, Utah laws do not prevent public utilities from negotiating different terms with different power suppliers, other than as to specific requirements imposed by applicable tariffs or Commission orders. Ellis-Hall cannot complain that RMP allegedly negotiated in a different manner with or requested different terms from another supplier, so long as RMP has complied with applicable tariffs and Commission orders.

The Blue Mountain PPA Complies With All Applicable Requirements.

The second flawed premise undercutting Ellis-Hall's Objection is the unsupported suggestion that the Blue Mountain PPA is somehow not compliant with Schedule 38. Ellis-Hall's futile claim is premised upon its erroneous contention that Schedule 38 prevents RMP from executing a PPA until after an interconnection agreement has been executed with PacifiCorp Transmission ("PacTrans"). It does not.[4]

[3] The Objection cites three cases, none of which supports Ellis-Hall's claim: *Bradshaw v. Wilkinson Water Co.*, 94 P.3d 242 (2004) was a dispute between a regulated water utility and its captive customer regarding extension costs; Arbitration Order, *Re AT&T of the Mountain States, Inc*, UPSC Dockets 96-087-03, 96-095-01, April 28, 1998, 1998 WL 855420, was a telecommunications arbitration proceeding between a regulated telecom utility and its captive telecom wholesale customers over interconnection agreements under the federal Telecommunications Act of 1966; and Report and Order, *In Re Matter of Questar*, UPSC Docket 07-057-06, January 29, 2008, 2008 WL 4361095, was a jurisdictional dispute between a regulated utility and its captive customer over utility services. None of the cases holds or suggests that a utility must treat all suppliers the same.

[4] The Objection cites a letter from Bruce Griswold of PacifiCorp Energy to Artie Powell of the Division in connection with an informal complaint filed by Ros Vrba, which was attached as Exhibit E to the Objection. Mr. Vrba had filed a complaint seeking, among other things, to *force* RMP to waive prior execution of an interconnection agreement. Because Schedule 38 gives RMP discretion whether to waive or impose that requirement, and because RMP apparently believed at that time and in that context that it should postpone execution of the subject PPA until an interconnection agreement had been signed, RMP opposed Mr. Vrba's complaint. The argument of RMP (and the Division) in that context was that RMP should not be forced to exercise its discretion in the manner requested by Mr. Vrba (i.e., RMP should not be forced to waive prior execution of an interconnection agreement). That argument hardly supports Ellis-

Even a casual reading of Schedule 38 refutes Ellis-Hall's argument.[5] As has been repeatedly pointed out to Ellis-Hall, but consistently ignored, Schedule 38 gives RMP clear and unambiguous discretion whether or not to require simultaneous execution of a PacTrans interconnection agreement and any particular PPA. Blue Mountain's PPA is fully compliant with Schedule 38 and Ellis-Hall's unsupported and disingenuous claim to the contrary should be disregarded.

Ellis-Hall was Not Treated Discriminatorily.

The third faulty premise underlying Ellis-Hall's improper Complaint is the unfounded claim that it was treated by RMP in a discriminatory manner. In the first place, as demonstrated above, with limited exceptions Utah laws do not prohibit such discrimination and RMP is given discretion under Schedule 38 to decide whether to require a QF developer to execute an interconnection agreement with PacTrans prior to execution of a PPA. Thus, even had RMP exercised its discretion to require Ellis-Hall, but not Blue Mountain, to execute an interconnection agreement prior to signing a PPA, as erroneously claimed by Ellis-Hall, it would not prove a violation of Schedule 38 absent a demonstration that RMP abused its discretion in applying different requirements. No such showing has been made.

In any event, Ellis-Hall was not treated in a different manner than was Blue Mountain. Exhibits attached to the Objection (Exhibits D and F) show that both Blue Mountain and Ellis-Hall received virtually identical letters from RMP, informing them, among other things, that they

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Hall's claim here that RMP should be forced to exercise its discretion in the opposite manner (i.e. RMP should be forced to require prior execution of an interconnection agreement).

[5] Schedule 38, § I.B.7 provides: "The Company reserves the right to condition execution of the power purchase agreement upon simultaneous execution of an interconnection agreement between the owner and the Company's power delivery function…."

must comply with interconnection requirements as specified in Schedule 38, but otherwise not imposing any timing or sequencing requirement.[6] Early draft PPAs sent to Blue Mountain and other developers (presumably including Ellis-Hall) may have contemplated prior execution of an interconnection agreement, but any such provisions were amended in subsequent negotiations, for sound reasons and fully consistent with RMP's discretion under Schedule 38. RMP has represented that it was and remains willing to amend that provision in an Ellis-Hall PPA as well. Thus, there is no evidence that RMP treated Ellis-Hall in any different manner.[7] Rather, the

[6] The Objection disingenuously claims (at 4) that Schedule 38 and the letters attached as Exhibits D and F to the Objection confirm that an executed interconnection agreement is a pre-condition to execution of a PPA. To the contrary, the referenced letters accurately quote Section II of Schedule 38 to the effect that a consummated interconnection agreement is a pre-condition only to RMP's "obligation to make purchases from a QF," *but not to its execution of a PPA*. Schedule 38 imposes no timing or sequencing requirement related to execution of a PPA vis-à-vis an interconnection agreement.

[7] Moreover, even if any such evidence of discrimination did exist, Ellis-Hall should not be allowed to introduce it at the hearing. Blue Mountain sent data requests to Ellis-Hall seeking, among other things, correspondence and draft PPAs exchanged between Ellis-Hall and RMP so that Blue Mountain could confirm that Ellis-Hall was not subjected to disparate treatment. In an objection that displays contempt for these proceedings and Commission requirements, Ellis-Hall refused to produce *even a single document* to Blue Mountain – even refusing to produce documents that purportedly support Ellis-Hall's own claims! Ellis-Hall's refusal to produce any documents to Blue Mountain, knowing inadequate time remained for Blue Mountain to compel discovery, prevents Blue Mountain from demonstrating the lack of disparate treatment. Because Ellis-Hall failed to provide any affirmative evidence of disparate treatment and because it refuses to produce relevant documents that might permit Blue Mountain to prove a lack of discrimination, the Commission should find that Ellis-Hall was not subjected to disparate treatment of any kind and cannot attempt to introduce any oral or written evidence on that issue at hearing. *See* Rule 37(h), *Utah Rules of Civil Procedure*, Failure to Disclose: "If a party fails to disclose a witness, document or other material … that party shall not be permitted to use the witness, document or other material at any hearing unless the failure to disclose is harmless or the party shows good cause for the failure to disclose. In addition to or in lieu of this sanction, the court on motion may take any action authorized by paragraph (e)(2)" (e.g., deem the matter or facts established; prohibit a party from supporting or opposing claims or defenses or introducing matters into evidence; strike pleadings, instruct regarding adverse inference). *See W. W. & W. B. Gardner, Inc. v. Park West Village, Inc.*, 568 P.2d 734, 737-738 (Utah 1977): "A party to an action has a right to have the benefits of discovery procedure promptly, not only in order that he may have ample time to prepare his case, but also in order to bring to light facts which may entitle him to summary judgment or induce settlement prior to trial. The rules were designed to secure "the just, speedy and inexpensive determination of every action" (quoting Rule 1, *Utah*

evidence demonstrates Ellis-Hall's failure to negotiate a PPA, which Ellis-Hall now inappropriately seeks to remedy in this docket.

It is Blue Mountain's belief that Ellis-Hall failed to respond to RMP's draft PPA, to request changes to the interconnection provisions, or otherwise to negotiate different contractual terms.[8] This complete lack of diligence by Ellis-Hall – and not bogus claims of discrimination – explains why Ellis-Hall still lacks a signed PPA. Blue Mountain is not responsible for Ellis-Hall's negotiating failures. Nor is Ellis-Hall entitled to benefit from Blue Mountain's negotiating skills. Because the Blue Mountain PPA was negotiated and executed consistent with the requirements of Schedule 38, Ellis-Hall's disingenuous Objection should be disregarded.

Ellis-Hall Seeks an Improper Remedy

The fourth faulty premise undercutting Ellis-Hall's Objection is evidenced by its demand that the Blue Mountain PPA be rejected. Even if discriminatory treatment were prohibited by Schedule 38 and even if discriminatory treatment of Ellis-Hall were demonstrated, the proper good-faith request for a remedy would not be disapproval of a competing PPA negotiated by another developer in good faith, but rather a demand for similar treatment. Ellis-Hall's refusal to demand similar treatment, and its demand that the Blue Mountain PPA not be approved, betrays the lack of a bona fide motivation underlying Ellis-Hall's Objection.

The Blue Mountain PPA was negotiated in good faith and in full compliance with Schedule 38 and all applicable Commission Orders. It should thus be approved whether or not

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Rules of Civil Procedure).

[8] Again, because Ellis-Hall has refused to produce any requested documents relating to negotiation of the Ellis-Hall PPA that might allow Blue Mountain to demonstrate that it was Ellis-Hall's inability or failure to negotiate that led to its complaint, and not disparate treatment by RMP, the Commission can and should find that Ellis-Hall was not treated in a disparate manner.

RMP negotiated with Ellis-Hall in a discriminatory manner or in a manner that is inconsistent with the tariff. There is no legitimate basis for Ellis-Hall's demand that an innocent developer should be punished for the alleged (albeit unproven) "sins" of RMP.

False and Irrelevant Legal and Factual Claims

Given the demonstrated irrelevance to this docket of every claim asserted in Ellis-Hall's Objection, a detailed response by Blue Mountain to refute each factual and legal misrepresentation and misstatement in the Objection, although possible, is not necessary. Given the dramatic overreach of Ellis-Hall's disingenuous claims, however, Blue Mountain will respond to certain claims.

Expediting/Delaying PPAs. Ellis-Hall claims, for example, that RMP improperly "expedited" the Blue Mountain PPA and granted Blue Mountain "variances," while allegedly delaying execution of an Ellis-Hall PPA (Objection at 4-5). Ellis-Hall has provided no proof whatsoever of any such delay, or of any improper expedition of the Blue Mountain PPA. The actions that Ellis-Hall seeks to denounce reflect nothing more than good faith, arms-length contractual negotiations. Because Ellis-Hall has not demonstrated any inappropriate conduct or conduct inconsistent with Schedule 38, and because it has refused to produce any documents that might prove or refute its claims, the Commission should not permit Ellis-Hall to introduce any evidence in relation to that claim and should find that RMP and Blue Mountain have not engaged in any inappropriate conduct in negotiating the PPA.

PacTrans Discussions. In an attempt to manufacture allegedly inappropriate behavior, Ellis-Hall points to discussions among Blue Mountain, RMP and PacTrans (Objection at 5) as allegedly "improper" under FERC regulations. Of course, any alleged violation of PacifiCorp's

FERC tariffs, FERC regulations or federal law are irrelevant to this docket and cannot be resolved by the Commission.[9] In any event, the Objection disingenuously fails to mention that Blue Mountain gave express written consent for RMP to talk with PacTrans about the Blue Mountain project, and that RMP refused to discuss the project with PacTrans absent such written consent. No support has been offered, and none exists, for the absurd proposition that RMP and PacTrans cannot properly discuss interconnection issues relating to a project even with the express written consent of the developer.

Unenforceable Agreement. Perhaps the most bizarre aspects of the Objection, beginning on page 6 and continuing through page 19, are inaccurate and irrelevant arguments that the Blue Mountain PPA is an "unenforceable agreement" or an "agreement to agree." These claims are irrelevant in this proceeding, as they are beyond the jurisdiction of the Commission to resolve. Resolution of contractual issues or disputes involving a utility and a supplier lie within the jurisdiction of a court of competent jurisdiction.[10] Because the Commission cannot resolve these purported claims or disputes, Blue Mountain will not provide detailed legal or factual responses here. However, Ellis-Halls' claims are erroneous and fictitious.

[9] *E.g.*, *Miss. Power & Light v. Miss. ex rel. Moore*, 487 U.S 345, 375 (1988); *Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318-19 (1981)); *Fidelity Federal Sav. And Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153-54 (1982).

[10] *E.g.*, *Garkane Power Ass'n v. Pub. Serv. Comm'n of Utah*, 681 P.2d 1196, 1207 (Utah 1984) ("[N]ot every contract entered into by a public utility is subject to the jurisdiction of the PSC. Many contracts for the purchase of supplies and equipment, and other contracts dealing with the ordinary conduct of a business, are contracts that could be litigated only in a district court and not before the PSC").

In any event, the PPA is accurate and complete in all material respects, and includes all terms necessary for RMP to administer and enforce the contract.[11] More importantly to these proceedings, the PPA includes all terms necessary for the Commission to evaluate whether the PPA is consistent with applicable tariffs and Commission orders. Indeed, both the Division of Public Utilities and the Office of Consumer Services – two state agencies who certainly understand QF contracts and methodologies and Commission orders, jurisdiction and tariffs – were able to determine, based on a review of the PPA and other requested information, that the PPA is consistent with Schedule 38 and applicable Commission orders. The irrationality of Ellis-Hall's claim to the contrary is self-evident.

Required Information. Section I.B.2. of Schedule 38 requires an applicant to provide certain information to RMP "reasonably required for the development of indicative pricing," including the items specified in the top portion of page 7 of the Objection. Blue Mountain provided all required information, as definitively demonstrated by the fact that RMP was able to calculate and provide Blue Mountain with indicative pricing. The Objection then blatantly misrepresents another portion of Schedule 38 by claiming that an applicant also "must provide" the specific project information listed in Section I.B.4., and falsely alleges that Blue Mountain failed to provide required information.

[11] Utah law requires only "a meeting of the minds of the parties which must be spelled out, either expressly or impliedly, with sufficient definiteness to be enforced." *Harmon v. Greenwood*, 596 P.2d 636, 639 (Utah 1979) (citing *Valcarce v. Bitters*, 12 Utah 2d 61, 362 P.2d 427, 428 (1961)). In any event, "[a]n agreement to agree, by reason of its character, is not, per se unenforceable. *See Chu v. Ronstadt*, 17 Ariz.App. 486, 498 P.2d 560, 563–64 (1972); *Harmon v. Greenwood*, 596 P.2d 636, 639 (Utah 1979); *Johnson v. Star Iron & Steel Co.*, 9 Wash. App. 202, 511 P.2d 1370, 1373–74 (1973). To the extent an agreement to agree contains provisions otherwise capable of enforcement, the fact that the parties contemplate incorporating those provisions into a subsequent agreement does not necessarily render the agreement to agree unenforceable." *Brown's Shoe Fit Co. v. Olch*, 955 P.2d 357, 363 (Utah Ct. App. 1998).

In fact, the referenced portion of Schedule 38 requires only that an applicant who wants RMP to provide it with a draft PPA must provide RMP "with any additional project information *that the Company reasonably determines to be necessary* for the preparation of a draft power purchase agreement, *which may include*, but shall not be limited to: [the items listed on the bottom portion of page 7 of the Objection, dealing with site control, governmental permits, interconnection studies, etc.]." (emphasis added). RMP is not required by this section of Schedule 38 to demand any particular information, and an applicant is not required to supply any information other than as requested by RMP. Blue Mountain fully complied with the requirement of Section I.B.4. of Schedule 38 by providing RMP with all requested information, as definitively evidenced by the fact that RMP provided it with a draft PPA and negotiated terms for and executed a final PPA. All requirements of Schedule 38 were followed in connection with Blue Mountain's PPA.

Required Due Diligence. Schedule 38 does not, as claimed by Ellis-Hall, *require* RMP to "conduct rigorous due diligence." (Objection at 6). Rather, it imposes obligations *on QF applicants* to supply all information reasonably requested by RMP so that RMP can conduct the due diligence that it considers necessary to discharge its obligation to act prudently in planning resources and negotiating contracts. RMP did, in fact, conduct rigorous due diligence, sufficient to satisfy RMP's needs regarding the Project, and sufficient to satisfy the needs of the Division and the Office with respect to all issues properly before the Commission in this proceeding. Whether or not the level of due diligence is satisfactory to Ellis-Hall is irrelevant.

The Commission's focus in reviewing RMP's petition for approval of the Blue Mountain PPA is not to evaluate or approve RMP's due diligence, negotiations or contractual terms, as

suggested by Ellis-Hall, but rather to determine that RMP has complied with all applicable tariffs and orders. Failure of RMP to conduct adequate due diligence prior to executing a PPA would not constitute a violation of Schedule 38, although it might provide a basis for cost disallowances in future rate proceedings. Ellis-Hall's "due diligence" claims are both false and irrelevant.

Contract Terms. The Objection drones on for pages, without support, about alleged deficiencies in the Blue Mountain PPA. (Objection at 10 – 19). Its claims and objections are irrelevant and erroneous. For example, Ellis-Hall claims that, absent an unalterable designation of a specific turbine type, "none of the calculations and numbers in the PPA can be relied on as accurate." (Objection at 12). To the contrary, the pricing specified in the PPA is accurate and appropriate regardless of the specific turbine type ultimately selected by Blue Mountain under the terms of the PPA.[12] The actual dollars to be paid by RMP under the PPA will vary based on the output of the project, which may vary somewhat based on turbine type, but the on- and off-peak monthly pricing as specified in the PPA will not change. The Objection also falsely claims that the PPA can be "renegotiated at a later date without subsequent PSC approval." (Objection at 14). To the contrary, RMP certainly understands, and Blue Mountain fully accepts, that renegotiation of the Agreement would require an amendment to the PPA and prior Commission approval.

[12] It is common for wind PPAs to permit developers to identify specific turbine types near the time of construction. The availability, timing and pricing of wind turbines can vary greatly over even relatively short periods of time. It is unreasonable to force a premature and inefficient choice long before it is necessary. Perhaps different practices are followed in the United Kingdom where Mr. Hall claims to have wind experience, but the ability to later designate a specific turbine type is common in the United States, is consistent with reasonable utility practice, and is fully consistent with Schedule 38 and applicable Commission orders.

Site Control/Interconnection. Ellis-Hall claims that Blue Mountain lacks site control or a "route for interconnection." (Objection at 16-18). Beyond being blatantly false,[13] these claims are irrelevant. The Commission is not required or equipped to resolve disputes over site control or interconnection access. Nothing in Utah law contemplates or requires that the Commission should evaluate or resolve any such claims prior to approving a PPA. If Ellis-Hall had any legitimate claims, it could assert them in a proper forum. Attempting to raise them here is disingenuous.

RMP is obviously interested in exploring site control and interconnection access issues, as part of its due diligence, so that it can assess the likelihood of project completion and timelines prior to committing significant time and resources negotiating contracts or relying upon the availability of a planned resource. RMP has satisfied itself as to Blue Mountain's site control and interconnection access. Bogus alleged site control disputes are simply not relevant.[14]

Required Permits. Ellis-Hall claims, without providing any support, that there are "thirteen required permits prior to executing [a] PPA." (Objection at 18). These claims are both false and irrelevant.[15] Perhaps more than anything else in the Objection, this false claim may illustrate why Ellis-Hall still lacks an executed PPA. Nothing in Schedule 38, Commission orders or Utah law imposes any "sequencing" requirement as to the timing of the so-called

[13] Blue Mountain has, and has demonstrated to RMP, site control and access to an interconnection point approved by PacTrans.

[14] If a developer in fact lacked adequate site control or interconnection access, the project may never be completed and RMP could pursue security posted under the PPA or other damages, and rate case parties could evaluate prudence. The situation is similar to any other potential supplier default, and is not relevant in a PPA approval docket.

[15] Many of the so-called "required permits" are not required, and most are not permits. None is required to be in place before execution of a PPA.

"permits" in relation to PPA execution. All required permits and authorizations for the Blue Mountain project have been obtained or will timely be obtained. Ellis-Hall's unsupported claim to the contrary is false and irrelevant and should be disregarded.[16]

Conclusion

Not one of the factual or legal arguments in Ellis-Hall's Objection is accurate or relevant to this proceeding. Ellis-Hall improperly seeks to rely upon statutory customer protections to insulate itself from its own project development shortcomings. Ellis-Hall has not provided a shred of evidence that the Blue Mountain PPA violates any applicable requirement of Schedule 38, Commission orders or Utah law. Ellis-Hall has not demonstrated that it was treated in a discriminatory or improper manner. Indeed, the evidence demonstrates the opposite. Even had Ellis-Hall been subjected to improper discriminatory treatment, the proper remedy would be a demand for similar treatment for Ellis-Hall. Under no circumstances is denial of an innocent developer's PPA appropriate. Blue Mountain respectfully submits that Ellis-Hall's Objection should be disregarded and Blue Mountain's PPA should be promptly approved.

DATED this 9th day of September, 2013.

HATCH, JAMES & DODGE

/s/ _____
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[16] In violation of Commission Rule R746-100-10 F.2.c., Ellis-Hall's Exhibit S failed to identify any sources for the alleged requirement for or status of the 13 so-called "permits." Blue Mountain's data request for documents identifying such sources was rejected. Thus, Exhibit S should not be received into evidence and no other evidence should be received from Ellis-Hall relating to its inaccurate and unsupported allegations as to any claimed "required permits."

CERTIFICATE OF SERVICE

LI hereby certify that a true and correct copy of the foregoing was served by email this 9th day of September, 2013, on the following:

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