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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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	)	<b>Docket No. 13-035-116</b>
In the Matter of the Application of	)	
Rocky Mountain Power for Approval of	)	LATIGO WIND PARK'S RESPONSE
Power Purchase Agreement Between	)	TO ELLIS-HALL CONSULTANTS'
PacifiCorp and Latigo Wind Park, LLC	)	MOTION TO COMPEL
	)	
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Pursuant to the provisions of the Commission's August 6, 2013, procedural order in this proceeding, Latigo Wind Park, LLC ("Latigo"), submits its response to Ellis-Hall Consultants, LLC's ("Ellis-Hall's") "Motion and Memorandum to Compel Latigo."

**Background**

On August 13, 2013, Ellis-Hall served Latigo with data requests seeking a variety of information and documents, including its Request No. 2: "Please produce all documents referring to or relating to your Purchase Power Agreement ('PPA')."

On August 20, 2013, Latigo served Ellis-Hall with its response to its Request No. 2: "This request seeks a subset of the documents sought in Request No. 1. Latigo's response is, therefore, the same as its response to Request No. 1." Latigo's response to Ellis-Hall's Request No. 1 was:

Latigo objects to the request as overbroad and seeking information that is sensitive, proprietary and confidential. In particular, a substantial portion of the documents that might be responsive to this request would provide Ellis-Hall with information that could give Ellis-Hall a competitive advantage over Latigo in the marketplace of the development of wind projects for the generation of electricity.

Latigo believes that Ellis-Hall has submitted a substantially similar blanket request of this type to PacifiCorp. Ellis-Hall will obtain documents that may be responsive and non-proprietary from that source, and it serves no useful purpose for Latigo to produce the same documents—particularly to a potential competitor in the wind-project field. Further, the availability of documents from PacifiCorp relieves Latigo of providing duplicative responses under Utah Rule of Civil Procedure 26(b)(2)(E).

On August 26, 2013, Ellis-Hall filed its Motion and Memorandum to Compel Latigo to produce certain documents related to the large generator interconnection agreement (“LGIA”).<sup>1</sup>

## **Discussion**

Latigo reasserts its previous objections. Perhaps more importantly, Latigo followed a proper, lengthy and time-consuming process in order to obtain an LGIA from PacifiCorp. Assertions to the contrary (or that Latigo received preferential treatment) are outside the scope of this docket. Latigo, as a qualifying facility (“QF”), has never requested transmission service as its LGIA designates Latigo as a network resource (i.e., Latigo’s delivers energy to PacifiCorp under the LGIA, and PacifiCorp manages the energy as part of its overall energy portfolio of network resources).

Indeed, Ellis-Hall’s arguments to compel production of certain Latigo documents in this case skirt the real issue: Ellis-Hall has no cognizable interest in the matter before the Commission in this case and is using it in a naked effort to obtain information that is

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<sup>1</sup>Ellis-Hall served Rocky Mountain Power with a similar motion to compel seeking essentially the same information. Even if the Commission were to require the production of documents pursuant to Ellis-Hall’s requests, no useful purpose would be served by requiring two parties to produce the same documents.

designed to enhance or further its abilities to compete in the wind-project marketplace at the expense of potential competitors such as Latigo<sup>2</sup>

Latigo's application to Rocky Mountain Power to enter into a PPA and Rocky Mountain Power's application to the Commission for approval of the resulting PPA do not implicate Ellis-Hall's interests. The application for PPA approval rises or falls on its own merits, independent of Ellis-Hall's professed interest in how the parties complied with Commission orders and Rocky Mountain Power's applicable tariff provisions.

It is significant that two principal business constituents of Ellis-Hall—namely Anthony Hall and Kimberly Ceruti—have signed a nondisclosure agreement with respect to confidential and proprietary information in this case, yet they do not satisfy the strict requirements of for being entitled to examine such information. Rule R746-100-16.A.1.d of the Commission's Practice and Procedure Governing Formal Hearings provides that persons entitled to confidential information "shall not include persons employed by the participants who could use the information in their normal job functions to the competitive disadvantage of the person providing the Confidential Information."<sup>3</sup>

Mr. Hall and Ms. Ceruti have *not* been qualified as experts in Latigo's case—nor could they be, because as individuals they are directly in the business of developing potentially competing wind projects to Latigo's and "could use the information in their normal job functions to the competitive disadvantage" of Latigo. Their signing the non-disclosure form, coupled with Ellis-Hall's requests for a boatload of project-specific information from Latigo and Rocky Mountain Power, evidences their interest in obtaining

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<sup>2</sup>Ellis-Hall's participation in *In re: Blue Mountain Power Partner, LLC*, P.S.C.U. Dkt. No 13-035-115, is of similar character.

<sup>3</sup>Currently pending with the Commission is Latigo's Motion to Restrict the Application of the Non-Disclosure Agreement of Anthony Hall and Kimberly Ceruti.

the procedural and technical blueprints for the pursuit of their own projects. In effect, now that Latigo has done the heavy lifting of dotting all the i's and crossing all the t's required of it under Rocky Mountain Power's Schedule 38, Ellis-Hall wants a copy of all that information to make for smoother sailing for their own, *unrelated* project. This is an abuse of the discovery procedures that the Commission has put in place for the precise purpose of protecting commercial projects that may have competitive aspects.

From a related perspective, requiring Latigo or Rocky Mountain Power to disgorge documents to a party that has no direct interest in the outcome of the PPA issues in this case does not contribute to the ability of the Commission to make a timely decision on the merits of Latigo's PPA with Rocky Mountain Power—i.e., whether the PPA comports with applicable statute, Commission orders and Commission-approved tariff provisions.

Finally, to the extent that Ellis-Hall would argue that it is merely gathering information so it can decide if Rocky Mountain Power has faithfully complied with appropriate Commission-approved procedures in negotiating and executing PPAs and LGIAs, Latigo observes that Ellis-Hall does not fit the mold of a public-interest entity, such as the Division of Public Utilities and Office of Consumer Services, that might have standing to raise such issues.<sup>4</sup>

WHEREFORE, Latigo Wind Park, LLC, respectfully requests that the Commission deny Ellis-Hall's motion to compel Latigo to produce certain documents related to its LGIA negotiated with Rocky Mountain Power.

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<sup>4</sup>Notably, the Division and Office have not staked out such a position.



## **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of LATIGO WIND PARK'S RESPONSE TO ELLIS-HALL CONSULTANTS' MOTION TO COMPEL was served by e-mail this 5th day of September 2013 on the following:

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