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September 9, 2013

***VIA ELECTRONIC FILING  
AND HAND DELIVERY***

Public Service Commission of Utah  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84114

Attention: Gary Widerburg  
Commission Secretary

RE: In the Matter of the Application of Rocky Mountain Power for Approval of Power Purchase Agreement Between PacifiCorp and Latigo Wind Park, LLC – Docket No. 13-035-116

In accordance with the Scheduling Order issued by the Public Service Commission of Utah (the “Commission”) on August 6, 2013, Rocky Mountain Power submits the following reply comments in response to the comments filed by the Utah Division of Public Utilities (“DPU”), the Utah Office of Consumer Services (“Office”), Utah Clean Energy, and Ellis-Hall Consultants, LLC (“Ellis-Hall”).

**GENERAL REPLY COMMENTS TO ALL PARTIES**

The Commission’s review and approval of Qualifying Facility (“QF”) power purchase agreements (“PPAs”) is governed by Utah Code Ann § 54-12-2. In accordance with that section, the Commission established the methodology for calculating avoided cost rates for large wind qualifying facilities in 2005, in Docket No. 03-035-14<sup>1</sup> in its Report and Order dated October 31, 2005, which was then confirmed by the Commission in a December 20, 2012 Order on Motion to Stay Agency Action in Docket No. 12-035-100.<sup>2</sup>

The pricing and terms and conditions included in the PPA between Latigo Wind Park, LLC (“Latigo”) and PacifiCorp are consistent with the Commission orders in Docket No. 03-035-14 and Docket No. 12-035-100.

The Commission issued an Order on Phase II Issues in Docket No. 12-035-100 on August 16, 2013. The PPA between Latigo and PacifiCorp was executed on July 3, 2013, prior to issuance of the order in Phase II of Docket No. 12-035-100. Therefore, the rates and other terms and

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<sup>1</sup> *In the Matter of the Application of PacifiCorp for Approval of an IRP-based Avoided Cost Methodology for QF Projects Larger than One Megawatt*

<sup>2</sup> *In the Matter of the Application of Rocky Mountain Power for Approval of Changes to Renewable Avoided Cost Methodology for Qualifying Facilities Projects Larger than Three Megawatts*

conditions contained in the PPA between PacifiCorp and Latigo are consistent with those established by the Commission, applicable at the time of execution.

Rocky Mountain Power Electric Service Schedule No. 38 (“Schedule 38”) governs the procedures the Company and the QF use when processing the QF’s request for indicative avoided cost pricing specific to its proposed project and when the parties are negotiating the PPAs through to execution. The Company and Latigo followed all of the applicable procedures contained in Schedule 38 when negotiating the PPA between PacifiCorp and Latigo that is now before the Commission for approval.

In summary, the Company has complied with all relevant Commission orders and applicable schedules in negotiation and execution of the Latigo PPA. The DPU, the Office, and Utah Clean Energy agree with this material statement of fact. The DPU stated: “The PPA appears to comply with Commission Orders.”<sup>3</sup> The Office stated that it “does not dispute that the Company has followed the Commission ordered method...”<sup>4</sup>

### **REPLY COMMENTS SPECIFIC TO ELLIS-HALL**

The Company does not believe the Commission should give any weight to the comments of Ellis-Hall. The Ellis-Hall objection to the approval of the Latigo PPA is based on arguments that are not supported by the facts or evidence presented in this docket. The Company has attested and all other interveners in this docket have agreed that the Company has complied with all relevant Commission orders and tariffs in executing the Latigo PPA. Instead of providing evidence proving otherwise, Ellis-Hall has submitted comments that contain a multitude of inaccurate facts, misleading or false statements, misrepresentations of material events, and general accusations that are not supported by evidence or actual events.

Furthermore, many of the issues raised by Ellis-Hall are not relevant to the Commission’s approval of the Latigo PPA but instead are focused on Ellis-Hall’s own request for indicative avoided cost prices and the current QF PPA negotiations between the Company and Ellis-Hall. If Ellis-Hall has issues related to their own PPA negotiations, Ellis-Hall can seek resolution to those issues through the appropriate process set forth in Schedule 38. Since this Latigo PPA approval docket is not the appropriate forum to address issues related to Ellis-Hall’s PPA negotiations, the Company will not respond in detail to those issues at this time other than to state that it has followed Schedule 38 when negotiating with Ellis-Hall.

Ellis-Hall has not provided any material evidence to support its objection to the approval of the Latigo PPA or to support its statements and accusations. In fact, the Company requested in the discovery phase of this docket that Ellis-Hall provide the exact documents and the specific references from the Latigo PPA upon which Ellis-Hall relied in determining its facts and making its statements and accusations. Ellis-Hall objected to the requests and did not provide responsive answers.

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<sup>3</sup> Utah Division of Public Utilities Confidential Report Memorandum dated August 26, 2013 in Docket No. 13-035-116, page 6.

<sup>4</sup> Office of Consumer Services Comments dated August 26, 2013 in Docket No. 13-035-116, page 4.

## 1. ELLIS-HALL'S CLAIM OF PREFERENTIAL TREATMENT FOR LATIGO BY PACIFICORP

Ellis-Hall claims PacifiCorp engaged in “preferential treatment” by executing the Latigo PPA without requiring Latigo to first obtain an interconnection agreement<sup>5</sup> and by expediting approval of Latigo’s PPA.<sup>6</sup> These claims are not supported by the facts and evidence in this docket.

Schedule 38 governs the QF procedures and sets forth the requirements of the QF and the Company throughout the PPA negotiation process. PacifiCorp attests that Latigo was treated consistent with the requirements of Schedule 38 and consistent with its treatment of other QFs who request indicative pricing and request to negotiate a PPA under Schedule 38.

Ellis-Hall claims that the Company did not comply with Schedule 38 because it did not require Latigo to execute a generation interconnection agreement prior to executing the PPA. A review of the language included in Schedule 38 proves this assertion is incorrect.

Schedule 38 states: “The Company reserves the right to condition execution of the power purchase agreement upon simultaneous execution of an interconnection agreement...”<sup>7</sup> Because of the functional separation requirement mandated by the Federal Energy Regulatory Commission, interconnection agreements and power purchase agreements are handled by different functions within the Company. Interconnection agreements are handled by the Company’s power delivery function, PacifiCorp Transmission. The interconnection agreement sets forth the terms and conditions and the schedule related to the QF interconnecting to the transmission grid and being able to sell energy to an off-taker under a PPA. If the QF is not interconnected, it cannot perform under the PPA. The interconnection process includes initiating a request for interconnection, completing various study phases to determine the design, cost, and schedules for constructing any necessary interconnection facilities, and executing an interconnection agreement to address construction of the facilities and to establish a schedule.

The primary reason the Company reserves the right to require an interconnection agreement to be executed at the same time as the PPA is to ensure the QF can meet the online date set forth in the PPA. Since the interconnection process can take several years, completion of the interconnection facilities is often a critical path item for a QF project. And the QF cannot sell energy to the Company and meet its obligations under the PPA until the QF is synchronized to the grid, which is typically the last step in the interconnection process. The Company does not want to execute a PPA with a QF who is unable to meet its online date in the PPA because the date is not consistent with the timing established in the interconnection process.

Pursuant to Schedule 38, the Company performs a review of the status of the QF’s interconnection application prior to executing the PPA. This due diligence may lead to PacifiCorp exercising its right under Schedule 38 to require an executed interconnection

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<sup>5</sup> Ellis-Hall Consultants, LLC Objection to Approval of Latigo Power Purchase Agreement, Docket No. 13-035-116, page 2.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> Rocky Mountain Power Electric Service Schedule No. 38, Section I.B.7 (Original Sheet No. 38.5)

agreement prior to executing a PPA. Since the interconnection agreement is the document that establishes the final interconnection schedule, it is the most reliable method by which to verify the PPA online date is achievable. However, during the negotiation period described in Section I.B.6 of Schedule 38, QFs often request that the Company evaluate other methods of reasonably assuring the online date can be met besides an executed interconnection agreement. Historically, the Company has been willing to work with the QFs to establish other project specific assurances such as final interconnection study completion, turbine procurement agreements, EPC contracts, etc., provided such assurances are adequate to evaluate the validity of the proposed online date and provided no additional risk is placed upon the Company's customers.

In the case of the Latigo PPA, Latigo requested in the course of negotiations under Schedule 38 that PacifiCorp consider alternative assurances to validate that the interconnection process will be completed on-time to meet the proposed project online date in the PPA. In response to this request, PacifiCorp reviewed the status of the Latigo project in the interconnection process. Latigo had completed all required studies and was finalizing negotiation of the interconnection agreement. The status information of any interconnection request is public and is readily available on the PacifiCorp OASIS website. Once the interconnection agreement is executed, the last step in the interconnection process is construction of the actual interconnection facilities. This step can take between six and 18 months.<sup>8</sup>

The Latigo PPA sets forth a scheduled online date of May 1, 2015, which is approximately 22 months from the date the PPA was executed on July 3, 2013. At the time of execution of the PPA, it was determined from the Company's due diligence that Latigo could finalize the interconnection agreement and complete construction of the interconnection facilities prior to the online date.

In order to provide further assurance regarding the PPA online date, the Company included a milestone in the PPA that requires an executed interconnection agreement be submitted to the Company on or before 90 days following the effective date of the PPA. Failure to do so is an event of default under the PPA.

Ellis-Hall further contends that PacifiCorp expedited Latigo's PPA application and looked for ways to avoid its normal processes,<sup>9</sup> but then provides no details or documentation of which PacifiCorp processes were avoided or what specific actions were taken by PacifiCorp to avoid these processes. These claims are baseless. PacifiCorp followed Schedule 38 procedures as well as all internal due diligence, approval processes and governance policies in negotiating the Latigo PPA.

In summary, Ellis-Hall's claims of preferential treatment for Latigo are baseless and are not supported by the facts and evidence in this docket.

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<sup>8</sup> <http://www.pacificorp.com/tran/ts/gip.html>; "Construction Timelines"

<sup>9</sup> Ellis-Hall Consultants, LLC Objection to Approval of Latigo Power Purchase Agreement, Docket No. 13-035-116, page 4.

## 2. ELLIS-HALL'S CLAIM THAT THE LATIGO PPA IS AN UNENFORCEABLE CONTRACT DESIGNED TO ALTER MATERIAL TERMS AFTER THE FACT

Ellis-Hall claims the Latigo PPA is “full of non-binding and conditional terms held open for future negotiations, alterations and agreements.”<sup>10</sup> This is not accurate and can easily be refuted by reading the executed PPA that was filed for approval in this docket. There are no terms or conditions that are to be negotiated at a future date. The obligations of both parties are clearly established in the agreement.

Section 2.8 of the PPA does allow Latigo to switch the wind turbine to be used in the project up to 90 days after approval of the PPA by the Commission. Turbine manufacturers often do not provide developers with their “best price” and enter into serious negotiations for a turbine supply agreement until the developer can produce an executed PPA demonstrating the project has an off-taker (and thus is highly likely to be built.) Therefore, the developer needs an executed PPA in order to evaluate the most economic and optimal turbine type for the project. This was a term requested by Latigo during the negotiation process and is a condition that the Company has previously allowed with other wind projects whether they are QFs or not.

The ability to switch turbine types does not in any way alter or lessen Latigo's performance obligations under the PPA, nor does it create a contract term that is to be negotiated or agreed upon at a later date. Latigo is still required to build a certain size project and to meet a contractual online date, among other material obligations. The change in turbine type, if it occurs, does not materially alter the PPA. And the final turbine selection must occur 90 days after Commission approval of the PPA, which likely will be approximately 18-20 months prior to the scheduled online date. This provides PacifiCorp adequate time to plan for any minor changes in project size or expected output as a result of the change in turbine type. PacifiCorp believes these contract terms provide a fair opportunity for the QF to optimize the turbines to be used in the project without imposing any additional cost or risk on the Company's customers.

Ellis-Hall's general and unsupported assertion that the Latigo PPA is an agreement to agree at a later date and is therefore “unenforceable as a matter of law”<sup>11</sup> is incorrect. There are no PPA terms that require future negotiation or agreement.

Ellis-Hall further asserts that the PPA is incomplete because certain permits and other documents were not obtained by Latigo prior to execution of the PPA.<sup>12</sup> Certain permits and other documents are not required at the time of execution of the PPA but are required prior to the project being deemed by the Company as achieving commercial operation and selling the output of the project to the Company. These documents are commonly referred to as required facility documents, are a condition of being deemed commercial by the Company, and are further explained in Section 3.2 of the Latigo PPA. As a requirement of reaching commercial operation, Latigo must provide a certificate from an authorized officer of Latigo stating that Latigo has obtained or entered into all required facility documents. Therefore, the Company has no obligation to pay the firm contract price for the output until all required permits and documents

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<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.* at 20.

are obtained. And if they are not obtained, the project will not reach commercial operation, which is an event of default under the PPA. This contract term eliminates any risk to the Company's customers if those permits or documents are not obtained, and this contract term is consistent with what the Company includes in all of its QF PPAs. In addition to the protection provided by this requirement in the PPA, it is reasonable to assume that the entity that is financing the project will perform extensive due diligence on the ability of the project to obtain required permits and other documents prior to investing the hundreds of millions of dollars required for the project. Ellis-Hall's assertion that the PPA is incomplete is not accurate.

**SUMMARY**

The Company has complied with all relevant Commission orders and applicable tariffs in negotiation and execution of the Latigo PPA. The DPU, the Office, and Utah Clean Energy all agree that the Company has been compliant. Ellis-Hall's objection to approval of the Latigo PPA should be rejected and its claims and assertions ignored because its position is not supported by the evidence before the Commission in this docket or by the facts and actual events that occurred during negotiation of the Latigo PPA.

Very Truly Yours,

Jeffrey K. Larsen  
Vice President, Regulation & Government Affairs  
Rocky Mountain Power

## CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of September 2013, a true and correct copy of the forgoing was served on the following by electronic mail:

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