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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 Latigo Wind Park, LLC

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Docket No. 13-035-116
RESPONSE OF LATIGO WIND PARK, LLC
TO EMERGENCY MOTION TO INTERVENE
OF CORRINE RORING

On September 27, 2013, eight days after the close of the proceedings in the caption case, Corrine Roring¹ filed a 172-page document styled as an “Emergency Motion” and “Objection to Approval of Power Purchase Agreement.”

For the reasons set forth below, Latigo Wind Park, LLC (“Latigo”) requests that the Commission summarily deny Petitioner’s request to intervene and proceed to approve the Power Purchase Agreement between PacifiCorp and Latigo (“Latigo PPA”)

¹As Trustee of the John Edward Roring and Corinne Nielsen Roring Revocable Living Trust date December 28, 1992.

without any delay caused by this Petition.²

For all of Petitioner's 172 pages of argument and exhibits, nothing in it establishes that Petitioner satisfies the requirements for intervention under Utah Code Ann. § 63G-4-207, much less to establish that the Commission should consider the situation an "emergency" that justifies the delay or other interruption of its consideration of the approval of a PPA application that is at or near its conclusion. Furthermore, the basic factual premise on which the Petition is based is demonstrably false—namely, Latigo's final transmission routing from its collector substation to Rocky Mountain Power's Pinto Substation does not cross Mrs. Roring's land.

PETITIONER DOES NOT SATISFY UTAH CODE ANN. § 64G-4-207

Section 64G-4-207 of the Administrative Procedures Act provides a clear, two-prong test for granting intervention:

(2) The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.³

Petitioner can satisfy neither prong of § 64G-4-207(2). Most importantly, Petitioner's request eight days after the close of all procedural matters and the evidentiary hearing in this docket, and the Commission's having taken the matter under advisement for a decision is completely out of time. In the very words of the statute, "the interests of justice and the orderly

²This pleading constitutes Latigo's response to the Petition to Intervene. It does not address in detail all of the extensive substantive claims made throughout the 16 pages of Petitioner's arguments. Latigo reserves the right to respond further to those claims in the event that the Commission does not deny the Petition's request.

³Utah Code Ann. § 64G-4-207(2) (2013).

and prompt conduct of the adjudicative proceedings will [] be materially impaired by allowing the intervention.”

The seminal case on intervention in a state agency proceeding is *Ball v. Public Service Commission*,⁴ in which intervention petitioners waited until extensive evidentiary proceedings and hearings before the Commission had concluded before filing motions to intervene. The Commission firmly denied the requests to intervene, and the Utah Supreme Court affirmed the denial, quoting language from the Commission’s order: “We will not give them reprieve from the consequences of their own choices,” and that allowing the late intervention would “set[] precedent for seeking intervention after the normal conclusion of the administrative process.”⁵

The Court further quoted favorably from the Commission’s denial of intervention: “[I]t is not appropriate for [petitioners] to be granted such a tardy intervention and eviscerate the work already done and subject all parties, the regulatory process, the State’s and customers’ interests, to the vagaries of the odyssey foreshadowed in [their] intervention.”⁶ Although *Ball*, which centered on Questar Gas Company rate matters, involved arguably weightier issues, both that proceeding and the current Latigo proceeding exhibit the same characteristics: tardy intervention; possible “evisceration” of work already done by the parties (the Division of Public Utilities, the Office of Consumer Services, Rocky Mountain Power, Utah Clean Energy, Latigo, as well as the Commission itself); distortion of an orderly regulatory process; and ultimate potential for negative effect on electric customers if the Latigo Project is unduly delayed.

The words of § 64G-4-201(2)(b) apply directly to Petitioner’s request: “[T]he interests

⁴2007 UT 79, 175 P.3d 545.

⁵*Id.* at 551.

⁶*Id.*

of justice and the orderly and prompt conduct of the adjudicative proceedings” will indeed “be materially impaired by allowing the intervention.”

Thus, as in *Ball*, Petitioner’s intervention request must be denied as not satisfying Utah Code Ann. § 64G-4-201(2)(b).

Further, the approval of the Latigo PPA in this proceeding will have absolutely no effect on this Petitioner. Petitioner fails in all regards to establish the first prong of the intervention statute: Her legal interests *are not* substantially affected by this formal adjudicative proceeding. In point of fact, Petitioner’s entire collection of arguments and alleged facts are wholly irrelevant to the issue before the Commission in this docket: Has the PPA been negotiated and executed by Latigo and Rocky Mountain Power in accordance with the provision of Rocky Mountain Power’s Electric Rate Schedule No. 38, and is it in the public interest that Rocky Mountain Power procure from Latigo the quantity of electricity specified in the Latigo PPA?

However, all of Petitioner’s concerns are based on the *transmission* of electric energy produced by Latigo for purchase by Rocky Mountain Power to the transmission function of Rocky Mountain Power—not on the sale of energy to Rocky Mountain Power under the PPA. Such interstate transmission considerations are not within the scope of the Commission’s consideration in this case.

Even if every factual allegation in Petitioner’s pleading were true (some are not), Petitioner fails to establish any legal interest that will be affected by the Commission’s approval of the Latigo PPA. The only interest Petitioner has articulated in the Latigo Project is her mistaken perception that the project will include a transmission line that

crosses her property and that Latigo does not currently have the legal right to do so.⁷

Aside from the fact that the final alignment of Latigo's transmission does *not* cross Petitioner's property, any issue of the physical and legal details of Latigo's plans to transmit energy from the point of sale to Rocky Mountain Power at the Latigo collection substation to the interstate transmission facility operated by the transmission function of PacifiCorp is not within the scope of the Commission's consideration of the Latigo PPA for approval.

LATIGO'S TRANSMISSION LINE WILL *NOT* CROSS PETITIONER'S PROPERTY

Beyond the jurisdictional constraints that preclude the Commission from considering Petitioner's perceived grievance, the foundational assumption that drives Mrs. Roring's Petition is simply not true. The whole of Petitioner's perceived grievance is based on her belief that Latigo intends to transmit the electric energy that it will generate and sell to Rocky Mountain Power under the Latigo PPA across her land. The Latigo Project's transmission line will not cross the Roring property, and, although her assertions that she has not entered any agreement to allow Latigo access to the property is correct, it is entirely irrelevant.

As set forth in the Declaration of Christine Watson Mikell (Exhibit A), Manager of the Latigo Project, the final alignment of Latigo's transmission facility does not cross nor lie along the border of Petitioner's property. (Exhibit A-1, ¶¶ 6-8.)

Although Mrs. Roring may be correct that she (or any agent of hers) has not been

⁷Various of Petitioner's allegations are based on information that had been designated by the parties as confidential and subject to protection under Utah Admin. Code § R746-100-16. Access to such information is available only to qualified individuals who have signed a nondisclosure agreement pursuant to that statute. Mrs. Roring belatedly filed a nondisclosure agreement on September 30, although it is unclear who made the initial disclosures to her before her filing.

contacted by a representative of Latigo to obtain certain property rights on her land, the point is moot, as the final Latigo transmission alignment will not involve her property in any way.

**THE PETITION TO INTERVENE AND THE ACCOMPANYING OBJECTION
SHOULD BE SUMMARILY DISMISSED WITHOUT DELAY**

As Latigo has indicated in its Comments, Reply Comments and the testimony of Ms. Mikell at the September 19, 2013, evidentiary hearing in this matter, timely approval of the Latigo PPA is of the essence for financial viability. Petitioner's tardy, factually misplaced "emergency" attempt to waylay the Commission in its normal course of considering and approving a PPA that satisfies the statutory and utility tariff requirements under Rocky Mountain Power's Electric Service Schedule No. 38 should not be countenanced.

In that regard and because Petitioner has not established an entitlement to intervenor status under Utah Code Ann. § 63G-4-207, Latigo moves the Commission to vacate the schedule for any further responses and replies to the Petition as provided in Utah Administrative Code § R746-100-4.D, summarily deny Petitioner's request for intervenor status and dismiss the accompanying objection.⁸

⁸Latigo is authorized to represent that the Division of Public Utilities, the Office of Consumer Services and Utah Clean Energy do not intend to file any response to the Petition and that Rocky Mountain Power will also file today. For obvious reasons, Ellis-Hall Consultants have not provided a similar commitment.

WHEREFORE, Latigo Wind Park, LLC, respectfully requests that the Commission deny the Petition and Objection of Corrine Roring and proceed in its normal course of consideration to approve the Latigo PPA on a timely basis.

JONES WALDO HOLBROOK & MCDONOUGH, P.C.

 /s/ Gary G. Sackett
Gary G. Sackett
Attorneys for Latigo Wind Park, LLC

October 2, 2013

CERTIFICATE OF SERVICE

I certify that a true and correct copy of LATIGO WIND PARK'S RESPONSE TO EMERGENCY MOTION TO INTERVENE OF CORRINE RORING was served by hand-delivery this 2nd day of October, 2013 on the following:

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