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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	Docket No. 13-035-116 RESPONSE OF ROCKY MOUNTAIN POWER TO EMERGENCY PETITION TO INTERVENE OF MRS. CORINNE RORING, <i>ET AL.</i> AND OBJECTION TO APPROVAL OF POWER PURCHASE AGREEMENT BETWEEN PACIFICORP AND LATIGO WIND PARK, LLC
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Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “Company”), pursuant to Utah Code Ann. § 63G-4-204 and Utah Admin. Code R. 746-100-3.K., hereby responds to the Emergency Petition to Intervene of Mrs. Corinne Roring, *et al.* and Objection to Approval of Power Purchase Agreement between PacifiCorp and Latigo Wind Park, LLC (“Latigo”) filed with the Public Service Commission of Utah (“Commission”) September 27, 2013 (“Emergency Petition and Objection”). The Company objects to the Emergency Petition and Objection because it was filed well beyond the intervention deadline, i.e., August 26, 2013, set forth in the Scheduling Order dated August 6, 2013, (“Scheduling Order”) without good cause to do so, showing complete disregard for the process set out by the Commission.

Pursuant to the Commission's authority to ensure a just, expeditious, and orderly hearing procedure,¹ the Commission should deny the Emergency Petition and Objection because it was untimely filed, contrary to the Scheduling Order, contrary to the Utah Rules of Civil Procedure and contrary to the Utah Administrative Procedures Act. Specifically, the Emergency Petition and Objection was filed over one month after the intervention deadline set forth in the Scheduling Order and several days after the close of the proceedings in this case, without good cause. Mrs. Roring indicates that the cover letter, the maps and the LGIA Application, were not made public until August 26, 2013, and relies on this to explain why she did not intervene in this case in a timely manner. She alleges that the maps show a transmission line that crosses her real property and that she could not have known this until after the information became public. Assuming she is correct that the information was not made public until August 26, 2013, Mrs. Roring still does not explain why she, or the attorney assisting her in this proceeding, did not intervene soon thereafter.

Rule 24(a) of the Utah Rules of Civil Procedure requires that a motion to intervene be "timely." "Timeliness" is determined under the facts and circumstances of each particular case, and in the sound discretion of the court.² The timeliness requirement is designed to minimize interference with the "rights of existing parties and the orderly processes of the court."³ Mrs. Roring petitioned to intervene in this case on September 27, 2013, even though she had notice and the opportunity to intervene, at the latest, by August 26, 2013 or shortly thereafter. She provides no reason or gives no explanation for waiting until a few days ago to intervene. Given the foregoing facts, Mrs. Roring fails to satisfy

¹ See Utah Admin. Code R. 746-100-10.E.3.

² *Jenner v. Real Estate Servs.* 659 P. 2d 1072, 1073-74 (Utah 1983).

³ *Supernova Media, Inc. v. Pia Anderson Dorius Reynard & Moss, LLC* 297 P.3d 599 (2013) (quoting *Shannon's Rainbow Id.*, at 1074)

the “timeliness” requirement referenced above and her Emergency Petition and Objection must be denied.

Mrs. Roring’s failure to move to intervene in a timely manner also fails to satisfy the test set forth in the Administrative Procedures Act (“Act”). Under Section 64G-4-207(2) of the Act, the following must be shown to grant a petition to intervene:

- (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.⁴

Granting Mrs. Roring’s Emergency Petition and Objection will cause “the interests of justice and the orderly and prompt conduct of the adjudicative proceedings” to be materially impaired, contrary Utah Code Ann. § 64G-4-207(2)(b) above. The Company submits that Mrs. Roring has also waived her right to intervene by substantially and unjustifiably delaying her motion to intervene.⁵ In *Ball v. Public Service Commission*, this Commission properly denied the subject petitions to intervene in that case, a decision that was later upheld by the Utah Supreme Court. In that case, the Court noted that the “failure to intervene earlier was not for lack of knowledge or notice of the proceedings.”⁶ In this case, the Commission properly notified the public of the proceeding, as it does in all of its cases. The Company submits that Mrs. Roring had notice of this proceeding and an opportunity to intervene well in advance of the date she filed the Emergency Petition and Objection. She has not provided any reason why she failed to intervene on August 26, 2013 or shortly thereafter, the date the information on which she relies to support her Emergency Petition and Objection, allegedly became public.

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

⁵ See *Republic Ins. Grp. V. Doman*, 774 P.2d 1130, 1131 (Utah 1989) (affirming the denial of intervention because the intervenor had “notice and opportunity to intervene at an earlier stage of the proceeding” but waited to do so ...”).

⁶ *Ball v. Public Service Commission*, 2007 UT 79, 175 P.3d 545 (Utah 2007).

Based on the foregoing, the Commission must deny the Emergency Petition and Objection. By denying it, the Commission will confine this proceeding to those issues appropriately raised before it in accordance with the Scheduling Order. There is no reason or excuse for Mrs. Roring to file the Emergency Petition and Objection over one month after the intervention deadline and several days after the close of the proceedings in this case, and in any event by at least August 26, 2013 or shortly thereafter.

RESPECTFULLY SUBMITTED: October 2, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October 2013, a true and correct copy of the forgoing was served on the following by electronic mail:

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