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Before the Public Service Commission of Utah

In the Matter of the Review of Electric Service Schedule No. 38, Qualifying Facilities Procedures, and Other Related Procedural Issues	Docket No. 14-035-140 The Office of Consumer Services’ Response to Motion to Stay by Ellis-Hall Consultants, LLC.
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The Office of Consumer Services hereby requests that the Public Service Commission of Utah (“Commission”) deny the requested Motion to Stay by Ellis-Hall Consultants, LLC (“Ellis-Hall”) based upon the following: (a) the Motion is not timely, (b) the ratepayers will be prejudiced by the imposition of the proposed stay, (c) the issue of jurisdiction over the PacifiCorp OATT is not at issue in Schedule 38, (d) Ellis-Hall has not shown that it will be prejudiced absent the Stay, (e) Ellis-Hall has not demonstrated any factual or legal basis to support the allegation that the outcome of the Sage Grouse FERC hearing will materially impact the operation of the Schedule 38 Tariff.

PROCEDURAL HISTORY

On August 22, 2014, in Docket No. 14-035-40, PacifiCorp, dba Rocky Mountain Power, (“PacifiCorp or Company”) submitted its Quarterly Compliance Filing for avoided cost input changes for the second quarter of 2014, which included updates to the

models used in the Proxy and Partial Displacement Differential Revenue Requirement avoided cost methodologies. On September 22, 2014, the Division of Public Utilities (“Division”), the Office of Consumer Services (“Office”), Utah Clean Energy, and SunEdison LLC filed initial comments on the Quarterly Compliance Filing addressing numerous issues related to Schedule 38, including queue management and power purchase agreement milestones.

October 6, 2014, in Docket No. 12-035-100, this Commission convened a scheduling conference, wherein PacifiCorp indicated it would soon be filing its capacity contribution study for wind and solar resources. PacifiCorp filed its study, on October 9, 2014. On October 14, 2014, the Division filed a Memorandum recommending opening a new docket combining review of the Capacity Contribution Study in Docket No. 12-035-100 with the issues raised by the parties regarding the Quarterly Compliance Filing in Docket No. 14-035-40. On October 27, 2014, this Commission issued a Notice of Status and Scheduling Conference opening this instant Docket No. 14-035-140, to review the issues identified by the parties in Dockets Nos. 14-035-40 and 12-035-100. On December 2, 2014, a technical conference was held in Docket 14-035-140, entitled “Pricing, Queue Management and PPA Milestones.” Mr. Ron Weathers representing Ellis-Hall attended the technical conference. However, Ellis-Hall did not move to intervene until April 8, 2015.

On January 9, 2015, PacifiCorp filed a Motion for Expedited Approval of its capacity contribution study arguing, in part, that allowing the interim capacity values to remain in place during the pendency of this docket prejudices the Company and ratepayers. This Motion was resolved by all parties agreeing to an expedited schedule to consider the study and address the other issues in Docket 14-035-140. On February 9, 2015, Sage Grouse Energy Project LLC, (“Sage Grouse”) filed an action with the FERC seeking, among other things, clarification of PacifiCorp’s OATT site control provisions.

On May 5, 2015, after significant negotiations, PacifiCorp filed a Settlement Agreement, Stipulation and Proposed Revised Schedule 38 Tariff, in which all record parties agreed upon all issues in this docket, with the exception of issues relating to PacifiCorp’s capacity contribution study. Ellis-Hall’s Motion to intervene was granted on May 19, 2015. Despite its intervenor status, Ellis-Hall never objected to the

proposed Settlement Agreement. A hearing was held on the Settlement Agreement on May 26, 2015. Ellis-Hall did not participate in the hearing. On June 9, 2015, this Commission issued an Order Approving the Settlement Agreement, Stipulation and Revised Schedule 38 Tariff, with minor alterations.

Also on June 9, 2015, Ellis-Hall filed the instant Motion seeking a stay in this docket alleging:

This stay is necessary because the Commission, Ellis-Hall, and other parties in this docket cannot effectively weigh the impact of the changes included in the Draft, and effectively respond to those changes, until the Commission rules on the reach of its jurisdictional authority over PacifiCorp's OATT, as adopted by Schedule 38, per the Commission's standing 2003 order.

In addition, the Commission, Ellis-Hall, and other parties cannot effectively weigh possible changes to the Commission's administration of PacifiCorp's OATT Site Control requirements, as adopted by Schedule 38, until FERC issues a dispositive ruling on the matter.

On June 16, 2015, pursuant to request from the parties, this Commission cancelled hearing on the capacity study and took under consideration all the written submission. At present, the sole remaining issue in Docket Nos. 12-035-100, 14-035-40 and 14-035-140, the capacity contribution study, is presently before this Commission awaiting decision.

ARGUMENT

A. The Ellis-Hall Motion Is Not Timely.

Ellis-Hall had ample opportunity to raise its nebulous concerns about this Commission's jurisdiction over PacifiCorp's OATT at any time during the normal progress of this docket but waited until June 9, 2015, the date of this Commission's Order Approving the Settlement Stipulation, which resolves all issues in this docket with the exception of PacifiCorp's capacity contribution study. In fact, as of December 2, 2014, Ellis-Hall had actual notice of the nature of these proceedings and of the expectation that all issues involving queue management and PPA milestones, including

any concerns regarding application of PacifiCorp's OATT, would likely be addressed. This is evidenced by the fact that on December 2, 2014, Mr. Ron Weathers, on behalf of Ellis-Hall, attended a scheduled technical conference entitled "Pricing Queue Management and PPA Milestones." Nevertheless, Ellis-Hall did nothing to bring its enigmatic issue forward until the day the Commission approved the new Tariff, almost one full month after PacifiCorp filed a proposed stipulation regarding queue management and PPA milestones.

Moreover, Ellis-Hall alleges that a February 9, 2015, FERC filing by Sage Grouse in some way impacts this docket. Even assuming that to be true, Ellis-Hall could have intervened after the Sage Grouse FERC filing and raised this issue at any of the six subsequent negotiation meetings over a period of nearly three months held among the Company, the Division, the Office and intervenors. Inexplicably, Ellis-Hall chose not to even seek intervention until April 8, 2015. Once being granted intervenor status on May 19, 2015, Ellis-Hall did not object to the proposed stipulation nor did it participate in the May 26, 2015, hearing on the proposed settlement. Rather, Ellis-Hall simply waited until the matter was settled and then brought this Motion in an attempt to indefinitely delay the implementation of this Commission's Order.

A denial of a stay on the grounds that it is untimely is in the discretion of the tribunal. *Lewis v. Moultrie*, 627 P.2d 94, 96 (Utah 1981). In an analogous case, under remarkably similar facts, the Court of Appeals upheld the denial for intervention in a Public Service Commission proceeding on the grounds that the petition was untimely. The court reasoned that granting the intervention would be disruptive to the proceedings because, as in this case, the petition to intervene was filed months after the docket was opened, the intervenors were aware of the proceedings and the parties had reached a stipulation. *In re Questar Gas Co.*, 2007 UT 79, ¶ 37, 175 P.3d 545.

Ultimately, [the] intervention contemplates undoing all of the Commission proceedings. . . . Clearly, at this late stage, such action would materially impair the proceedings because it would require all the parties to duplicate expenditures of time and money to accommodate a party who was well aware of the proceedings and yet decided to postpone intervention. *id.* at, 555

This reasoning is applicable to the Motion to stay because in both instances a proceeding is derailed near its ultimate conclusion in an attempt to relitigate issues that

could have been addressed if the moving party had acted diligently. Here, as in *Questar*, Ellis-Hall's dilatory conduct coupled with its last hour request seeking to frustrate the proceedings, are sufficient grounds, in and of themselves, to deny the pending Motion.

B. Delay in Implementation of the Schedule 38 Tariff Will Necessarily Cause Harm To Ratepayers.

Ellis-Hall's Motion seeks a stay of all proceedings under this docket. This would deprive rate payers the benefit of the more streamlined and efficient QF approval process provided for in the stipulation and resulting order approved by the Commission. These changes are designed, in part, to enhance the likelihood that viable QFs will be brought on line and that unsuitable or uneconomic projects will not unduly delay their implementation.

Moreover, a stay would result in indefinitely delaying implementation of capacity contribution values based on the Commission approved method for wind and solar QFs. Even the testimony most favorable to the QFs on the capacity contribution issue acknowledges that the interim rates are well above the actual capacity contribution values. *Dragoon Direct Testimony, at ln. 259-264 and ln. 395-412; Dragoon Surrebuttal, ln. 286-294*. Thus, regardless of how the capacity contribution issue is ultimately resolved, maintaining these interim capacity values indefinitely will necessarily lead to unjustifiable rates to the ratepayers.

C. The issue of Commission Jurisdiction Over OATT Matters is Not Relevant To Adoption Of The Schedule 38 Tariff.

The revised Schedule 38 Tariff, incorporated into this Commission's June 9, 2015 Order, deals specifically with the availability of Commission review of issues regarding the application of PacifiCorp's OATT. The Tariff is written under the understanding that this Commission has jurisdiction over large QF (more than 20 MW) interconnection agreements, so long as all of the QF output is sold exclusively to the Company, and incorporates into Schedule 38 PacifiCorp's established FERC OATT

interconnection rights and requirements.¹ Jurisdiction over the OATT is retained by FERC. By approving the settlement that incorporates the interconnection provisions of the PacifiCorp OATT into the Schedule 38 Tariff the Commission simply ensures consistency between the OATT and Schedule 38. Therefore, there is no need to stay the instant proceeding because of some “confusion” regarding this Commission’s jurisdiction over PacifiCorp’s OATT. *June 9, 2015, Ellis-Hall Consultants, LLC Motion for Stay, at pg. 3.*

Moreover, the revised Tariff specifically provides that nothing “in this Schedule will affect the jurisdiction of the Commission or FERC, and all parties will retain any and all rights they may have under any applicable state or federal statutes or regulations.” *Revised Tariff at III.* Therefore, there is no need to “weigh possible changes to the Commission’s administration of PacifiCorp’s OATT Site Control requirements, as adopted by Schedule 38, until FERC issues a dispositive ruling on the matter.” *June 9, 2015, Ellis-Hall Consultants, LLC Motion for Stay, at pg. 3.* The revised provisions of Schedule 38 make clear that no party will be precluded by Tariff language from asserting any jurisdictional claim before the Commission. The new language is meant to clarify the law, not change the law. Any eventual ruling by the FERC will either be clearly consistent with the revised Tariff or the Tariff will be read to conform to the FERC decision. Thus, there is no need to stay the entire action until the FERC make its decision.

D. Ellis-Hall Has Not Demonstrated That It Will Be Prejudiced Absent The Stay.

Ellis-Hall’s Motion provides no information to suggest that it will, in some way, be prejudiced if the June 9, 2015 Order continues in effect. Rather, there is merely the simple assertion that “parties cannot effectively weigh possible changes” in the Schedule 38 Tariff until questions regarding Commission jurisdiction over PacifiCorp’s OATT are settled. Ellis-Hall is completely silent as to how or why this particular issue among the many matters addressed by the Schedule 38 Tariff is critical to the proper

¹ *Revised Schedule 38 Tariff at II and III; May 22, 2015, Comments of SunEdison, LLC in Support of Settlement Agreement, at pg. 4-9.*

management of the queue or PPA milestones and therefore merits suspension of the new process. Further, there is no information to suggest that if the outcome of the Sage Grouse matter requires a modification of the Schedule 38 Tariff that such modification cannot be appropriately handled through the normal Commission processes.

E. Ellis-Hall Has Not Demonstrated Any Factual or Legal Basis To Support The Allegation That The Outcome Of The Sage Grouse FERC Decision Will Materially Impact The Operation Of The Schedule 38 Tariff Approved In This Docket.

Ellis-Hall attempts to piggy-back an alleged harm to Sage Grouse LLC as a reason for staying the operation of the new Schedule 38 Tariff. Ellis-Hall fails completely to demonstrate how an alleged failure by the Commission to consider “site control” issues in two Power Purchase Agreements (“PPA”) approved in 2013 will or should cause a disruption to the ongoing operation of Schedule 38. As set forth above, any valid concern raised in the “Sage Grouse” filing can be adequately dealt with in the normal operation of the tariff.

CONCLUSION

Each of these five grounds is sufficient, in and of itself, to justify denying Ellis-Hall’s Motion for a Stay. Together, they present an overwhelming argument against granting Ellis-Hall’s dubious position. Accordingly, this Commission must exercise its discretion, deny the instant Motion and proceed to rule on the last remaining issue in this Docket finally resolving these proceedings.

Dated: June 24, 2015

/s/_____

Rex Olsen

Assistant Attorney General

The Utah Office of Consumer Services