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Attorneys for Respondent

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of:

BLUE MOUNTAIN POWER  
PARTNERS, LLC,  
  
Complainant,

v.

PACIFICORP d/b/a ROCKY MOUNTAIN  
POWER,  
  
Respondent.

Docket No. 16-035-47

**RESPONDENT'S MOTION TO DISMISS  
BLUE MOUNTAIN'S FORMAL  
COMPLAINT**

## **I. RELIEF SOUGHT**

Pursuant to Rules R746-100-3 and 63G-4-204 of the Utah Administrative Code and Rule 12(b) of the Utah Rules of Civil Procedure,<sup>1</sup> PacifiCorp d/b/a Rocky Mountain Power (“Rocky Mountain Power”) hereby moves the Public Service Commission of Utah (“Commission” or “PSC”) to dismiss the Formal Complaint and Request for Declaratory and Injunctive Relief and Request for Agency Action (the “Complaint”), purportedly filed on behalf of Complainant Blue Mountain Power Partners, LLC (“Blue Mountain”). The Complaint should be dismissed on the grounds that it has not been properly brought on behalf of Blue Mountain and has not been filed by anyone with established legal authority to represent Blue Mountain in this proceeding.

## **II. INTRODUCTION**

This Complaint should be dismissed as procedurally improper. The Complaint does not establish that it has actually been brought by Blue Mountain. Both the caption and the signatory page indicate that the Complaint is brought by Greenbriar Capital Corporation (“Greenbriar Capital”). The Complaint does not make any allegations connecting the separate legal entities of Greenbriar Capital Corporation and Blue Mountain Power Partners LLC. Nor does it establish that Jeff Ciachurski is authorized to bring an action on behalf of Blue Mountain. Without proper facts connecting the two entities, the Complaint has not been properly brought on behalf of Blue Mountain.

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<sup>1</sup> The Utah Rules of Civil Procedure shall govern in situations for which there is no provision in the Rules of the Public Service Commission. Utah Admin. Code r. R746-101-1.

### **III. FACTUAL BACKGROUND**

Unless otherwise noted, the following background facts are taken from the Complaint. For purposes solely of this motion, the Commission may accept the following facts as true.

1. The Complaint states that it is brought by “Greenbriar Capital Corp. d/b/a Blue Mountain Power Partners, LLC.” Compl. at 1.
2. The Complaint is signed by Jeff Ciachurski, Chief Executive Officer for “Greenbriar Capital Corp. d/b/a Blue Mountain Power Partners, LLC. Compl. at 38.
3. The Complaint does not plead the legal relationship, if any, between Greenbriar Capital Corporation and Blue Mountain, a LLC.

### **IV. ARGUMENT**

#### **A. Greenbriar Capital Has Not Alleged Proper Facts to Bring the Complaint on Behalf of Blue Mountain.**

Although the Complaint seeks relief for Blue Mountain, it does not state that it is brought by Blue Mountain directly. Instead, it states that it is brought by Greenbriar Capital and claims that this is a d/b/a of Blue Mountain. The use of the abbreviation d/b/a typically signals that a business may be licensed or incorporated under a different name. *See D/B/A.*, Black’s Law Dictionary (10th ed. 2014). Yet that does not appear to be the case here. According to the Complaint, Greenbriar Capital is a Corporation and Blue Mountain is an LLC, meaning they are two different legal entities and not just a different business name of the same legal entity.

Despite the fact that Greenbriar Capital and Blue Mountain appear to be two separate legal entities, the Complaint does not state any facts to explain the relationship between the two. It does not allege that Greenbriar Capital is an owner or member of Blue Mountain, nor does it

allege any other explanatory facts. As such, Greenbriar Capital has not established that it is authorized to bring this complaint on behalf of Blue Mountain. Even assuming that Greenbriar Capital is an investor in Blue Mountain, it does not establish that Greenbriar Capital is the managing member. Significantly, the complaint is signed by Mr. Ciachurski in his capacity as CEO of Greenbriar Capital, not as managing member (or any other type of representative) of Blue Mountain. As such, Greenbriar Capital lacks standing to bring the complaint as framed.

Even assuming that Greenbriar Capital had stated facts to establish that it was a member of Blue Mountain LLC, it failed to follow the procedural requirements necessary to bring a lawsuit on Blue Mountain's behalf. Under Rule 23A of the Utah Rules of Civil Procedure, a complaint brought by a shareholder or member to enforce a right of a corporation or an unincorporated association "shall be verified" and must also make the following five specific allegations.

- (1) the right that the corporation or association could have enforced and did not;
- (2) that the plaintiff was a shareholder or member at the time of the transaction complained of or that the plaintiff's share or membership thereafter devolved to the plaintiff by operation of law;
- (3) that the action is not a collusive one to confer jurisdiction on the court that it would not otherwise have;
- (4) with particularity, the plaintiff's efforts, if any, to obtain the desired action; and
- (5) the reasons for the failure to obtain the action or for not making the effort.

Utah R. Civ. P. 23A.

The Complaint does not make any of these allegations. Nor is the Complaint verified. Without following these requirements, Greenbriar Capital has not established that it has standing to bring the Complaint on behalf of Blue Mountain. The Complaint should therefore be dismissed.

**B. Jeff Ciachurski Has Not Established That He Is Authorized to Represent Blue Mountain as a Non-Attorney**

Blue Mountain's Complaint was signed by Jeff Ciachurski. It states that Mr. Ciachurski is the Chief Executive Officer of Greenbriar Capital Corporation. It does not state that he is an attorney. The general rule in Utah is that while natural persons may represent themselves even if not a licensed attorney, corporations and other artificial entities created by law (including LLCs) cannot be represented in court by an officer who is not an attorney. *See, e.g., Tracy-Burke Assocs. v. Dep't of Employment Sec.*, 699 P.2d 687, 688 (Utah 1985).

Utah law allows agencies to create an exception to this rule for proceedings before administrative tribunals. *See* Utah R. Jud. Admin. 14-802. The Commission has used this exception to allow "officers or employees of parties" to "represent their principals' interests in the proceeding." Utah Admin. Code r. R746-100-6. In order for Mr. Ciachurski to fall under this exception, he must establish that he is an "officer or employee" of Blue Mountain. The Complaint only alleges that he is an officer of Greenbriar Capital; it does not establish that he is an officer of Blue Mountain. As such, Mr. Ciachurski has not established that he is authorized to represent Blue Mountain in this proceeding. The Complaint should be dismissed on this ground as well.

**V. CONCLUSION**

The Complaint does not establish that Greenbriar Capital or Jeff Ciachurski are permitted to bring an action on behalf of Blue Mountain. For these reasons, set forth more fully above, Rocky Mountain Power respectfully requests that the Commission dismiss Blue Mountain's Complaint in its entirety.

DATED December 23, 2016.

RESPECTFULLY SUBMITTED,

/s/ D. Matthew Moscon

R. Jeff Richards

Yvonne R. Hogle

Sam Meziani

Rocky Mountain Power

D. Matthew Moscon

Michael R. Menssen

Stoel Rives LLP

*Attorneys for Respondent  
PacifiCorp*

## CERTIFICATE OF SERVICE

This is to certify that on December 23, 2016 a true and exact copy of the foregoing

### **RESPONDENT'S MOTION TO DISMISS BLUE MOUNTAIN'S FORMAL**

**COMPLAINT** was emailed to the following:

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/s/ Rachel D. Tolbert

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