

R. Jeff Richards (7294)  
Yvonne R. Hogle (7550)  
Sam Meziani (9821)  
PACIFICORP  
1407 West North Temple, Suite 320  
Salt Lake City, Utah 84116  
Telephone: 801.220.4050  
Facsimile: 801.220.3299  
E-mail: [Robert.Richards@pacificorp.com](mailto:Robert.Richards@pacificorp.com)  
E-mail: [Yvonne.Hogle@pacificorp.com](mailto:Yvonne.Hogle@pacificorp.com)  
E-mail: [Sam.Meziani@pacificorp.com](mailto:Sam.Meziani@pacificorp.com)

D. Matthew Moscon (6947)  
Michael R. Menssen (15424)  
STOEL RIVES LLP  
201 S Main Street, Suite 1100  
Salt Lake City, UT 84111  
Telephone: 801.328.3131  
E-mail: [matt.moscon@stoel.com](mailto:matt.moscon@stoel.com)  
E-mail: [michael.menssen@stoel.com](mailto:michael.menssen@stoel.com)

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

**REPLY IN SUPPORT OF  
RESPONDENT'S MOTION TO STRIKE  
PARAGRAPHS 89-93 IN BLUE  
MOUNTAIN'S FORMAL COMPLAINT**

PacifiCorp d/b/a Rocky Mountain Power (“Rocky Mountain Power”) respectfully submits this reply memorandum in support of its Motion to Strike paragraphs 89–93 in Blue Mountain Power Partners, LLC’s (“Blue Mountain”) Formal Complaint.

**I. CONFIDENTIAL SETTLEMENT AND MEDIATION COMMUNICATIONS SHOULD BE STRICKEN FROM THE COMPLAINT**

Rocky Mountain Power’s Motion to Strike seeks to strike paragraphs 89 through 93 of Blue Mountain’s Complaint because those paragraphs contain confidential settlement and mediation communications. There is no dispute that parties’ settlement negotiations and alleged statements by the mediator are included in Blue Mountain’s pleading. Such statements are improper. That information is protected both by the power purchase agreement (“PPA”) and the Utah Uniform Mediation Act. Blue Mountain’s main argument in its Opposition is that these paragraphs do not contain any confidential settlement or mediation information. That argument is incorrect, as it relies on an overly narrow view of what information is “confidential.”

Under the terms of the PPA, “*all* negotiations” made under the negotiations clause of the PPA are confidential. (*See* PPA, Ex. A to Blue Mountain Complaint at ¶ 24.2.1(e) (emphasis added).) Thus, the PPA does not limit the confidentiality clause to only the “assertions or positions taken by PacifiCorp,” as Blue Mountain argues. Rather, the confidentiality clause applies to *all* negotiations. Blue Mountain does not get to pick and choose which settlement and mediation communications it can include in its Complaint.

The Utah Uniform Mediation Act has a similarly broad definition of protected information. It defines “mediation communication” as “conduct or a statement, whether oral, in

a record, verbal, or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.” Utah Code Ann. § 78B-10-102. This definition is much broader than that described by Blue Mountain. It includes all statements (going so far as to even include non-verbal statements) made in connection with the mediation. It does not limit the protection to statements made by certain parties, as it includes all statement made by any party, including statements made by the mediator.

Blue Mountain’s argument is especially misguided considering that the subject paragraphs in the Complaint also disclose confidential information from the mediator. Statements from a mediator have the potential to be highly prejudicial and are intended to remain completely confidential. The alleged communications from the mediator in the Complaint necessarily “occur during a mediation,” and thus fall within both the PPA and the Utah Uniform Mediation Act. This information must be stricken from the Complaint.

Moreover, the Utah Uniform Mediation Act makes clear that information from a mediator is included within the Act, as it explicitly prohibits a mediator from disclosing any “report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation.” Utah Code Ann. § 78B-10-107.

Blue Mountain also argues that the Utah Uniform Mediation Act does not apply because the PPA addresses the confidentiality of mediation. Blue Mountain attempts to rely on the provision of the Act that states that it does not apply if the parties agree “that all or part of a mediation is not privileged.” (Reply at 5.) That Rocky Mountain Power is bringing this motion

should evidence that there is no such agreement. The parties did not agree that the mediation would not be privileged, so that provision does not apply. To the contrary, the provision of the PPA cited by Blue Mountain emphasizes that the parties *did* want the mediation to remain confidential. The PPA states that all communications made in connection with mediation would be exempt from discovery and would not be admissible in evidence in any litigation or other proceeding. (See PPA, Ex. A to Blue Mountain Complaint at ¶ 24.2.1(e).) This provision reinforces the confidential nature of the mediation and cannot be read as an agreement between the parties that the mediation is not privileged. As such, Blue Mountain is wrong, and the Utah Uniform Mediation Act does apply.

Blue Mountain's attempt to narrow the confidentiality provisions of the PPA and the Utah Uniform Mediation Act has no support. The information contained in paragraphs 89 through 93 of the Complaint is confidential settlement and mediation information, and Rocky Mountain Power's Motion to Strike should be granted.

DATED January 23, 2017.

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*

*Rocky Mountain Power*

**CERTIFICATE OF SERVICE**

This is to certify that on January 23, 2017 a true and exact copy of the foregoing **REPLY**  
**IN SUPPORT OF RESPONDENT’S MOTION TO STRIKE PARAGRAPHS 89–93 IN**  
**BLUE MOUNTAIN’S FORMAL COMPLAINT** was emailed to the following:

GREENBRIAR CAPITAL CORP.  
d/b/a BLUE MOUNTAIN POWER PARTNERS, LLC  
9 Landport  
Newport Beach, CA 92660  
[westernwind@shaw.ca](mailto:westernwind@shaw.ca)  
[jciachurski@greenbriarcapitalcorp.com](mailto:jciachurski@greenbriarcapitalcorp.com)

UTAH DIVISION OF PUBLIC UTILITIES  
Patricia E. Schmid  
Justin Jetter  
Assistant Attorney General  
160 East 300 South, 5th Floor  
Salt Lake City, Utah 84111  
[pschmid@utah.gov](mailto:pschmid@utah.gov)  
[jjetter@utah.gov](mailto:jjetter@utah.gov)

UTAH OFFICE OF CONSUMER SERVICES:  
Robert Moore  
Assistant Attorney General  
160 East 300 South, 5th Floor  
Salt Lake City, Utah 84111  
[rmoore@utah.gov](mailto:rmoore@utah.gov)

/s/ Rachel D. Tolbert