

JUSTIN C. JETTER (#13257)
PATRICIA E. SCHMID (#4908)
Assistant Attorney Generals
Counsel for the DIVISION OF PUBLIC UTILITIES
SEAN D. REYES (#7969)
Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0335
jjetter@agutah.gov
pschmid@agutah.gov
Attorneys for the Utah Division of Public Utilities

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| <p>APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF POWER PURCHASE AGREEMENT BETWEEN PACIFICORP AND MONTICELLO WIND FARM, LLC</p> | <p>Docket No. 17-035-68</p> <p>DIVISION RESPONSE TO JOINT PETITION FOR CONFIDENTIAL TREATMENT OF DATA REQUEST RESPONSES</p> |
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Pursuant to Utah Admin. Code r.746-100, the Division of Public Utilities (“Division”) files this Response to the Joint Petition for Confidential Treatment of Data Request Responses. Monticello Wind Farm, LLC and Ellis-Hall Consultants, LLC (together the “Movants”) petitioned this Commission for a protective order deeming all data request responses relating to Monticello Wind Farm’s PPA as confidential and additionally requiring written permission prior to public disclosure of that information. The Commission should deny the petition to the extent that it is inconsistent with the applicable laws and rules.

The Movants have petitioned this Commission for a protective order seeking two protective measures of confidentiality. The first is that all data request responses relating to

Monticello Wind Farm's PPA be treated as confidential under the standard designation procedure. The second is to require the Division and other parties to obtain written permission from the Movants prior to public disclosure of the confidential documents.

The Movants assert a claim as a third party to the data requests made by the Division to Rocky Mountain Power ("Company"). The Division recognizes a valid concern that the Movants appear to be attempting to mitigate. The Movants are the party who may be at risk of harm that might result from disclosure of trade secret or other information if sensitive documents are not designated as confidential by the Company. However, the Movants are not the party providing the information to the Division. As such the Movants are not in a position to make confidentiality claims as to the information provided by the Company to the Division.

The Division is sympathetic to this concern. The Division generally opposes blanket designation of confidentiality. Blanket confidentiality is inconsistent with Utah Code Ann. § 54-3-21 that states in relevant part that the default status is public,

all records of all hearings or proceedings or orders, rules or investigations by the commission or any commissioner shall be at all times open to the public; provided, that any information furnished the commission by a public utility or by any officer, agent or employee of any public utility may be withheld from the public whenever and during such time as the commission may determine that it is for the best interests of the public to withhold such information.

In the instant case the request is painting with a broad brush and will likely include documents that should not be designated as confidential. However, the request is also limited to an extent reasonably practical in that it applies to the discovery of information related to the PPA. This request to designate this information confidential pursuant to Utah Admin Code r746-1-601 is reasonable given the lack of opportunity to review and more precisely designate

confidential sections. For this reason, the Division does not oppose initial designation of the material as requested by the Movants as confidential so long as that status remains subject to challenge in the event that it may be overly broad.

The Division does oppose the further request that the Commission order the Division to seek written permission from the Movants to publicly disclose the confidential information. Such a request is redundant given r746-1-603. Parties who receive confidential information “may not use or disclose the information except... for the purpose of the Commission proceeding in which it was obtained, provided that the use... maintains confidentiality...” or outside of the proceeding “as required by law.” When required by law outside of the proceeding there are requirements in r746-603(2) that provide notice and opportunity for action by the Movants.

The requirement of written permission before public disclosure would be superfluous for use within the proceeding and inconsistent with both rule and statute for use outside of the proceeding if required by law. The Division is already prohibited from public disclosure unless required by law. It is axiomatic that an administrative agency cannot prohibit or condition disclosure on permission of the Movants if otherwise required by law. If the Division is required to disclose material designated confidential by law a conflicting order would not stop the disclosure.

Similarly, the blanket requirement for permission is contrary to r746-1-604 that allows the Division to challenge confidentiality designation. The Division and other parties must retain the power to challenge the confidentiality designation of documents. The result of an imprecise designation as requested will likely result in over designation of some material. If the Commission provides the Movants flexibility in designating all request responses that are related

to the PPA it necessitates an ability challenge the designation after the fact. This is reversal of the typical designation process cannot function without that opportunity. Therefore, the Commission should not modify or restrict the opportunity to challenge confidentiality if necessary.

The Division does not oppose the designation of materials provided through data requests by the Company specifically related to the PPA that are commercially sensitive. The Commission should not and cannot order the Division or other parties to obtain written permission from the Movants before disclosure if required by law. The Commission should not restrict the parties' right to challenge designation under r746-1-604.

Submitted this 14th day of February 2018.

/s/ Justin C. Jetter

Justin C. Jetter
Assistant Attorney General
Utah Division of Public Utilities