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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	)	Docket No. 17-035-68
Agreement between PacifiCorp and Monticello	)	
Wind Farm, L.L.C.	)	Response to Joint Petition for
	)	Confidential Treatment of Data
	)	Requests Responses

Pursuant to Utah Code § 54-10a-301 and Utah Admin. Code r. 746-1, the Office of Consumers Services (“Office”) files this Response to Monticello Wind Farm, LLC and Ellis-Hall Consultants’ (“Movants”) Joint Petition for Confidential Treatment of Data Request Responses (“Petition”), wherein Movants seek a blanket confidentiality order to cover all information contained in every response to any data requests relating to the PPA at issue in this docket “unless the Movants’ permission is sought and obtained in writing.” (Petition at pg. 2.) The Movants’ Petition must be denied because it seeks relief that is violative of Utah Code § 54-3-21(4), does not fulfill the procedural requirements for additional protective measure for highly confidential matters set out in Utah Admin. Code r. 746-1-601(2)(b)(i), (iii), and is not needed to protect the Movants’ confidential information.

Section 54-3-21(4) establishes that it is the public policy of Utah that the “[h]earings or proceedings of the commission . . . shall be open to the public, and all records of all hearings or proceedings or orders, rules or investigations by the commission . . . shall be at all times open to the public.” This section contains a proviso that allows withholding information when “the

commission determines it is in the *best interest of the public* . . . .” Section 54-3-21(4) (emphasis added.) Here, if all evidence, both confidential and non-confidential, obtained through discovery requests is perfunctorily designated confidential, it would not be possible to hold a substantially public hearing, in violation of the policy underlying section 54-3-21(4). *See* Utah Admin. Code r. 746-1-605(2) (introduction of information designated confidential into evidence through in camera hearing.) Moreover, the Movants’ assertion that they be given the unilateral authority to decide what information can be publicly disclosed based on their own interests is in direct contravention of section 54-3-21(4)’s directive that Utah Public Service Commission (“Commission”) is the only entity that can withhold evidence from the public. Moreover, the Commission may only do so if it determines that withholding information is in the best interest of the public—not the Movants. Therefore, Movants’ request is contrary to both the policies and directives of section 54-3-21(4).

In addition, Movants’ Petition fails to adequately fulfill the procedural requirements for obtaining additional protective procedures for evidence claimed to be highly confidential under Utah Admin. Code r. 746-1-601(2)(b). Movants are seeking protective measures for information that may, or may not, be confidential—measures additional to and more severe than the express protections provided for under the relevant rules. *See* Utah Admin. Code r. 746-1-601, 746-1-602. Although the Petition is somewhat ambiguous regarding what precise rule Movants are invoking, the only avenue available to seek permission from the Commission for additional protective measure is contained in rule 746-1-601(2)(b), regarding information claimed to be highly confidential. Rule 746-1-601(2)(b)(i) requires that a petition for additional protective measures provide “the particular basis for the claim” and rule 746-1-601(2)(b)(iii) requires a

demonstration of “the reasonableness of the requested, additional protections.” Movants’ Petition fails to adequately meet either of these requirements.

The “particular basis” for Movants’ claim for additional protective measures “is that Movants do not know and cannot be certain whether the exchanged data will include confidential or propriety information, contain trade secrets, or other privileged information, or if information is, in fact, relevant to the adjudication of the matter until after it is transmitted and possibly disclosed.” (Petition at pg. 1-2.) However, this is not a “particular basis” that justifies the imposition of a blanket confidentiality order. Movants are in the same position as any intervenor who is a party to a contract with a utility in a proceeding involving the contract. A blanket confidentiality agreement, covering both confidential and non-confidential material, based only on the fact that an intervenor is a party to a contract with a utility would plainly violate the purposes and directives of section 54-3-12(4). Accordingly, Movants fail to demonstrate a “particular basis” for the impositions of additional protective measures under rule 746-1-601(2)(b)(i).

Movants requested additional measures also fail the “reasonableness” requirement of 746-1-601(2)(b)(iii) because these measures are not needed to protect Movants confidential information. With respect to any data that might be required in response to data requests directed to the Movants, the Movants are the only parties that will be able to determine the confidential nature of any data to be included in responses they might prepare and submit. In the event such data requests call for confidential information, the Movants will be able to identify such confidential data and seek whatever protections might be appropriate through the normal processes of discovery.

Regarding any confidential information that may be in the hands of PacifiCorp, the PPA between PacifiCorp and the Movants contains extensive confidentiality provisions requiring the PacifiCorp to maintain confidentiality of sensitive material from the date the material is received. (December 13, 2017 Power Purchase Agreement between Monticello Wind Farm, LLC and PacifiCorp at pg. 56-57, attached as exhibit “A” to PacifiCorp’s Application.) These provisions provide protections for “Confidential Business Information” defined, in part, as “the Parties’ proposals and negotiations concerning this Agreement . . . .” The contract also states that any party harmed by a violation of the confidentiality provisions “may seek any and all remedies available to it at law or in equity, including injunctive relief.” *Id.* These provisions are sufficient to ensure that PacifiCorp will treat any of Movants’ sensitive information it may possess in compliance with the Commission’s rules on handling proprietary material. *See* rules 746-1-601, 746-1-602. In fact, PacifiCorp has already done so by designating significant portions of the PPA filed with the application as confidential and a considerable portion of PacifiCorp’s February 5, 2018 response to discovery sets DPU 1 and OCS 1 as confidential.

With respect to any data that might be required in response to data requests promulgated to parties other than Movants or Rocky Mountain, it is highly unlikely that any data sensitive or confidential to Movants even exists. Moreover, Movants cannot claim confidentiality of material in the hands of third parties in these proceedings if they have not taken measures to ensure that the third parties treat the information as confidential.

To the extent that Movants are seeking that their proprietary information be treated confidential under rules 746-1-601, 746-1-602—this has been accomplished without a blanket confidentiality order. Accordingly, Movants’ proposed additional measures for treating its

sensitive material are not needed and therefore additional cumbersome measures, measures that violate section 54-3-12(4), are not reasonable under rule 746-1-601(2)(b)(iii).

### **CONCLUSION**

Movants' Petition must be denied. The additional requested protective measures are not needed to protect Movants' confidential information, are not authorized by rule 746-1-601(2)(b) and violate section 54-3-12(4).

DATED February 14, 2018.

/s/ Robert J. Moore  
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