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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| In the Matter of the Application of Rocky Mountain Power for Approval of Power Purchase Agreement between PacifiCorp and Monticello Wind Farm, L.L.C. |) | Docket No. 17-035-68 |
| |) | Reply Memorandum in Support of Joint Motion for Order to Show Cause |
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Pursuant to Utah Admin. Code r.746-1 and Utah Code §§ 54-4a-1 and 54-10a-301 the Utah Division of Public Utilities (“Division”) and the Utah Office of Consumer Services (“Office”) submit this Joint Reply Memorandum for an Order to Show Cause Why Monticello Wind Farm, LLC’s Memorandums in Opposition to the Division and Office’s Motion for Summary Judgment Should not be Stricken. On March 26, 2018, Monticello Wind Farm, LLC and Ellis-Hall Consultants, LLC (collectively “Monticello”) filed two Joint Memorandums in Opposition to Motions for Summary Judgment filed by the Division and the Office. The titles on

these Memorandums contained information identifying a Utah licensed attorney, Mr. Aaron Pacini, presumably as the attorney filing the Memorandums. *See* Utah Admin. Code r. 746-1-202. However, the Memorandums were signed by a principal of Monticello, Ms. Kimberly Ceruti. This created a substantial ambiguity as to whether Monticello is represented by an attorney in this matter or is proceeding pro se.

Because of ethical concerns regarding an attorney's communications with a represented party, the Division and Office filed a Joint Motion for an Order to Show Cause why Monticello's Memorandums Should not be Stricken for failure to comply with the pleading requirements of Utah Admin. Code r. 746-1-202. ("Joint Motion"). The Joint Motion sought "clarification from [Monticello] regarding whether the inclusion of Mr. Pacini's information on the header of the Memorandums was made in error and should be stricken from the document, whether [Monticello] is represented by counsel other than Mr. Pacini, or whether [Monticello] is in fact represented by Mr. Pacini and an appearance of counsel is necessary." Joint Motion at 2.

On March 29, 2018, Monticello filed Errata to its Opposition Memorandums replacing Mr. Pacini's identifying information with information identifying the person filing the Opposition Memorandums as Ms. Ceruti. On April 4, 2018, Monticello filed an Opposition to Joint Motion to Show Cause asserting that the inclusion of Mr. Pacini's identifying information was the result of an "inadvertent mistake—in a header." Opposition to Joint Motion to Show Cause at 1. Typos happen, and the purpose of the Motion was not intended to penalize an inadvertent mistake. The concern arises in part because Mr. Pacini was General Counsel for Western Investment Alliance, LLC, a business that lists Ms. Kimberly Ceruti as a registered principal in filings with the Utah Department of Commerce. Specifically, Mr. Pacini's public LinkedIn account states that:

As General Counsel at Western Investment, I organize inside and outside legal work for the company and its affiliates. I manage outside counsel and appear for the company in litigation actions in both state and federal court. I regularly author dispositive motions and briefs. I draft and edit a variety of commercial agreements, ranging from simple nondisclosure agreements to a \$100 million qualified facility power purchase agreement. I advise management on energy, employment, environmental, governance, tax, tort, real estate, contract, and bankruptcy law.

While the Errata and Opposition Memorandum to the Joint Motion to Show Cause make clear that the Opposition Memorandums were filed by Ms. Ceruti, some ambiguity still exists as to whether Monticello is nevertheless represented by an attorney or is proceeding pro se. Indeed, in the Memorandum Opposing the Joint Motion to Show Cause, Ms. Ceruti did not address the questions regarding whether Monticello is represented by an attorney, and if so who. While it offers criticism of the Division and Office's requests for clarification implying that no clarification is necessary, it does not provide a clear explanation of the current state of representation. Opposition to Joint Motion to Show Cause at 2.

Monticello characterizes the inclusion of Mr. Pacini's information as a mere "technicality" that does not "prejudice any party." Opposition to Joint Motion to Show Cause at 3. This is incorrect. As noted above, the inclusion of Mr. Pacini's information created a substantial ambiguity as to whether Ms. Ceruti is a represented party in this matter. The Utah Rules of Professional Conduct place significant restriction on the allowable communications between a lawyer and represented party. *Compare* Utah R. Prof'l Conduct 4.2 (Communication with Persons Represented by Counsel) *with* Utah R. Prof'l Conduct 4.3 (Communication with Unrepresented Person). Specifically, Rule 4.2 provides "a lawyer shall not communicate about the subject of the representation with a person the lawyer *knows* to be represented by another lawyer."

While this rule is not implicated by the facts of this case because neither counsel for the Division nor the Office “know” whether Monticello is represented, the facts are uncertain enough to place counsel in an ethical quandary about how to communicate with Monticello. Therefore, the Division and the Office reassert their request that the Utah Public Service Commission order Monticello to state on the record:

1. Whether Monticello is represented by an attorney in this matter;
2. If so, who is the attorney and what is the attorney’s contact information;
3. That any change in representation status will be accompanied by the appropriate immediate notice of appearance or withdrawal of counsel.

While Monticello characterizes the Joint Motion as “extreme,” it is not extreme to seek to clarification as to whether a party is represented. In fact, it is in all parties’ interest to authoritatively resolve this question so that counsel for the Division and the Office can freely communicate with Monticello’s counsel or, alternatively, communicate with Ms. Ceruti within the confines of Rule 4.3, Utah R. Prof’l Conduct. This will allow the case to proceed in an orderly manner and prevent the case from devolving into satellite litigation over whether counsels’ communications with Monticello comply with the appropriate rule of the Utah Rules of Professional Conduct.

Respectfully submitted, April 9, 2018.

/s/ Justin C. Jetter

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/s/ Robert J. Moore

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