

Ellis-Hall Consultants, LLC
835 East 4800 South, Suite 210
Murray, Utah 84017
(801) 281-1414

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: Review of Electric Service Schedule No. 38, Qualifying Facilities Procedures, and Other Related Procedural Issues

Docket No. 14-035-140
Ellis-Hall Consultants, LLC's Petition for Review and Rehearing and Reply in Support of its Motion to Stay

INTRODUCTION

On June 9, 2015, Ellis-Hall Consultants, LLC ("Ellis-Hall") moved the Public Service Commission of Utah (the "Commission") to stay the above-captioned proceeding pending resolution of the *Sage Grouse Energy Project, LLC's Request for Agency Action in the Matter of the Utah Public Service Commission Exercising Jurisdiction Over Schedule 38 and, as Adopted, PacifiCorp's OATT Part IV* (Dkt. No. 15-2582-01) (the "Sage Grouse Matter") and the *Sage Grouse Energy Project, LLC's FERC Complaint* (the "Sage Grouse FERC Complaint") currently pending before the Federal Energy Regulatory Commission ("FERC"). Later that day, the Commission issued an order approving the Settlement Agreement adopting revisions to Schedule 38. On June 24, 2015, PacifiCorp, on behalf of itself and representing Sun Edison, LLC and Utah Clean Energy, the Division of Public Utilities, and the Office of Consumer Services filed responses to Ellis-Hall's motion (the "Responding Parties").

The Commission issued an order after Ellis-Hall's motion. Consequently, Ellis-Hall hereby files this combined Petition for Review and Rehearing of the Commission's June 9, 2015 Order and Reply in Support of Ellis-Hall's Motion to Stay.

The basis for Ellis-Hall's argument is that PacifiCorp's Schedule 38 revisions add words, and one in particular, that create uncertainty for developers regarding the reach of the Commission's jurisdictional oversight of the interconnection requirements in PacifiCorp's OATT, insofar as the Commission orders them to be a component of Schedule 38. This addition was not clear in PacifiCorp's redline additions. Consequently, the Commission should stay its decision or otherwise reject any revision to Schedule 38 that touches on the question of the Commission's jurisdiction until after the Sage Grouse Matter and the Sage Grouse FERC Complaint are resolved.

DISCUSSION

Although curious, Ellis-Hall appreciates the Attorney General of Utah's unique personal appearance in a Public Service Commission matter. Ellis-Hall further acknowledges the Responding Parties' comments in this matter. The Responding Parties have, to a large degree, misconstrued Ellis-Hall's motion for something that it is not.

Ellis-Hall's motion was not filed for the purpose of delaying these proceedings.¹ It was not filed to harm the rate-payer. And it was not filed to re-litigate past issues. Rather, Ellis-Hall filed its motion to stay because the full *future* impact of PacifiCorp's changes to Schedule 38, in light of Sage Grouse's jurisdictional question is unknown. In fact, PacifiCorp has routinely made changes to Schedule 38 that dilute the Commission's oversight of PacifiCorp's

¹ Many of PacifiCorp's proposed changes to Schedule 38 reflect recent issues and concerns raised in other dockets regarding PacifiCorp's administration of Schedule 38. Ellis-Hall supports streamlined clarification of these procedures.

administration of the Schedule 38 process. This directly affects Ellis-Hall's interest, as a QF, that Schedule 38 is clear, predictable, and consistently enforced. And, Ellis-Hall has every interest to ensure that PacifiCorp does not lessen the Commission's regulation. As explained below, this is precisely what has occurred.

I. THE RESPONDING PARTIES' BRIEFS DEMONSTRATE THAT CONFUSION EXISTS REGARDING THE COMMISSION'S JURISDICTION.

The purpose of Ellis-Hall's motion is not to litigate the Sage Grouse Matter. Rather, Ellis-Hall simply asks the Commission to refrain from adopting new Schedule 38 language that will impact a matter of unsettled confusion. PacifiCorp contends that there is no confusion regarding the Commission's jurisdiction. This confusion, however, is evident from PacifiCorp's own filing.

PacifiCorp improperly represents Sun Edison, LLC and Utah Clean Energy's joinder in support of PacifiCorp's misplaced objection that implies that the Commission has no jurisdiction over PacifiCorp's OATT, even as adopted as part of Schedule 38.² This is a rather curious position given that Sun Edison, LLC previously argued:

As part of discussions leading to the Settlement, SunEdison researched the issue of which regulatory body has jurisdiction over large QF interconnection agreements. That research has confirmed ***PacifiCorp's*** apparent understanding that it is ***this Commission, and not FERC, that has primary jurisdiction over interconnection agreements for Utah QFs*** when the entire output of the QF facility is sold to PacifiCorp, regardless of the size of the QF facility and regardless of whether the facility will interconnect with PacifiCorp's transmission system.

SunEdison May 22, 2015 Comments 9 (Dkt. No. 14-035-140) (emphasis added).

² In this instance, joinder is accomplished by filing a motion signed by the party or its counsel joining in the brief and reasons of another party. Instead, Ms. Hogle is doing nothing less than acting as Sun Edison, LLC's and Utah Clean Energy's attorney by representing their desires and interests in this matter. Apart from creating an ethical conundrum, it will certainly create serious conflicts for Ms. Hogle to represent PacifiCorp in future matters.

Thus, on one hand, Sun Edison, LLC contends that even *PacifiCorp* understands that the Commission “has primary jurisdiction over” large QF interconnection agreements. *See id.* Indeed, these requirements are set forth in PacifiCorp’s OATT and are explicitly adopted by the Commission in Schedule 38. In contrast, Sun Edison, LLC’s “joinder” adopting PacifiCorp’s ill-conceived arguments now contends that the Commission does not have such jurisdiction, ne’er giving a peep of explanation.

Clearly, Sun Edison, LLC is confused.

The Commission should definitively resolve confusion over whether or not a QF can depend on the Commission to require PacifiCorp’s adherence to Schedule 38’s QF interconnection requirements, to the extent that Schedule 38 adopts PacifiCorp’s OATT. This should occur before additional changes to Schedule 38 are approved.

II. THIS IS NOT THE DOCKET TO DECIDE THE MERITS OF THE SAGE GROUSE MATTER.

PacifiCorp’s objection contends that the Settlement Agreement simply asked the Commission “to adopt the same procedures and requirements as contained in the OATT for Schedule 38.” PacifiCorp Response 5. PacifiCorp is correct that Schedule 38 explicitly adopts PacifiCorp’s OATT. PacifiCorp then goes on at some length, improperly arguing the merits of the Sage Grouse Matter in this, the wrong docket. PacifiCorp’s Sage Grouse Matter arguments are irrelevant and misplaced, here.

First, the proper place to resolve the jurisdictional question is where it was raised—in the Sage Grouse Matter docket (Dkt. No. 15-2582-01). The Commission directed that such a docket be opened.

Second, the Commission should reject PacifiCorp’s brief reasoning on the Sage Grouse Matter merits. PacifiCorp is aware of Sun Edison, LLC’s research on the subject but does

nothing to rebut those arguments. It is not left for PacifiCorp to argue a normative legal position that ignores contravening law.³

Third, PacifiCorp's argument simply does not make sense. Generally speaking, FERC has jurisdiction over the OATT and the Commission has jurisdiction over Schedule 38. PacifiCorp has never disputed this point. But, insofar as the Commission adopts any provision of the OATT, by word or citation, as a provision of Schedule 38, that provision becomes an independent requirement of Schedule 38. Such provisions, by necessity, then fall within the Commission's authority. Indeed, as is the case with the American adaptation of English contract, tort, and property law, the origination of a law is irrelevant to a tribunal's jurisdictional authority once it is adopted as part of that jurisdiction's legal framework. In any event, the Commission should clarify this important question.

Fourth, if the Commission declines to exercise jurisdiction over all of the terms of Schedule 38, regardless of their origins, the Commission should explain why it is requiring processes that it (and clearly PacifiCorp) does not intend to enforce.

The fact of the matter is that if Sun Edison, LLC's (original) argument is correct, it may very well be that the Commission's jurisdiction over interconnection processes is even broader than that asserted by Ellis-Hall. This is an important question that should be resolved before adopting language, as explained below, that will implicate such jurisdiction.

Ellis-Hall's concerns are colorable, meritorious, and should be litigated in the correct docket—the Sage Grouse Matter docket.

³ “Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities.” Utah Rules of Professional Conduct 3.3 n.4.

III. PACIFICORP'S REDLINE INACCURATELY REFLECTED THAT PACIFICORP INTENDS TO ONLY "GENERALLY" FOLLOWS ITS OATT.

The Responding Parties contend that Ellis-Hall's motion is untimely; however, Ellis-Hall only recently discovered that PacifiCorp inserted a word into the proposed Schedule 38 that was not highlighted as a redline addition.⁴ If accepted, this addition will compound the confusion that exists regarding the Commission's authority to require PacifiCorp to follow its OATT, as adopted by Schedule 38. Consequently, any untimeliness should not disqualify Ellis-Hall's motion.

PacifiCorp's redlined version of Schedule 38, as adopted on September 1, 2014 (the "Current Schedule 38") states:

For interconnections impacting the Company's Transmission System, the Company will process the interconnection application through PacifiCorp Transmission Services *following* the procedures for studying the generation interconnection described in the Company's Open Access Transmission Tariff
....

Current Schedule 38 (attached hereto as Ex. 1).

In contrast, PacifiCorp's redlined Schedule 38 in this matter (the "Proposed Schedule 38") reads:

For interconnections greater than twenty (20) megawatts, the Company will process the interconnection application through PacifiCorp Transmission Services *generally following* the procedures for studying the generation interconnection described in the Company's Open Access Transmission Tariff

Proposed Schedule 38 (attached hereto as Ex. 2) (emphasis added).

⁴ The Microsoft Word function of track changes shows that PacifiCorp deleted the original language from its Original Sheet No. 38.7 and retyped it into the new Original Sheet No. 38.10. The program does not show that that PacifiCorp copied and pasted the original paragraph to the new 38.10. Consequently, PacifiCorp's change to add the word "generally" was, in effect, hid from review because there was no differentiation between additions and a copy/paste. This is not to suggest that PacifiCorp's redlining was with malice. Rather, it was just a function of the editing process that incidentally failed to flag an addition that changes PacifiCorp's obligations under Schedule 38.

IV. PACIFICORP'S CHANGE THAT IT NEED ONLY "GENERALLY" FOLLOW ITS OATT DILUTES THAT COMMISSION'S ABILITY TO ENFORCE SCHEDULE 38's INTERCONNECTION REQUIREMENTS.

Timeliness aside, the Commission should grant Ellis-Hall's motion to stay, as it has done in the past, so that the matter can be fully litigated.⁵ PacifiCorp's addition of the word "generally" follows a weakening trend of PacifiCorp's obligations to consistently apply Schedule 38. In fact, over the years, PacifiCorp has added caveats such as "reasonably,"⁶ "generally,"⁷ and "typically"⁸ to PacifiCorp's obligations and treatment of Interconnection Customers/QF Owners. The sharp increase of these words between the Current Schedule 38 and Proposed Schedule 38 dilutes PacifiCorp's obligation to strictly comply with to its OATT, as adopted by Schedule 38, other provisions of Schedule 38, and grants PacifiCorp extended flexibility in how to administer these provisions.⁹ More importantly, this language also minimizes the Commission's jurisdictional reach to enforce PacifiCorp's compliance with interconnection procedures. Indeed, there is no explanation of what "generally" means. Is 'close-enough' compliance to be left to the discretion of PacifiCorp? Is it in the public interest to approve amorphous language that PacifiCorp could use to justify disparate treatment? Does this change in anyway help the rate-payer? Clearly, the answer is no. Allowing PacifiCorp more discretion in how it treats competing energy generators is not in the best interest of rate-payers.

⁵ The Commission has previously suspended a revision of Schedule 38 due to comments not received prior to adoption of the revision. *Compare* Commission November 4, 2002 Tariff Approval Letter *with* Commission November 12, 2002 Order in Docket No. 02-035-T11.

⁶ *See* Proposed Schedule 38 Original Sheets 38.1, 38.4, 38.5, 38.6, 38.7, 38.8.

⁷ *See* Proposed Schedule 38 Original Sheets 38.4, 38.10.

⁸ *See* Proposed Schedule 38 Original Sheets 38.3.

⁹ PacifiCorp's proposed language is particularly odd given its current position that the Commission does not have jurisdiction over Schedule 38's adoption of its OATT. Indeed, if the Commission does not have jurisdiction to enforce Schedule 38's adoption of OATT provisions, why the change at all? The only reason for this change is if PacifiCorp believes that the Commission will exercise jurisdiction over interconnection requirements for the reasons stated by Sun Edison, LLC and others.

CONCLUSION

Whether, and to what extent, the Commission exercises jurisdiction over Schedule 38's OATT provisions is the topic of the Sage Grouse Matter. And whether the additions in *this* matter will have any real impact cannot be known until the Sage Grouse Matter and Sage Grouse FERC Complaint are decided. If the Commission holds that it should exercise jurisdiction over Schedule 38 language adopting PacifiCorp's OATT, the "generally" addition leaves an amorphous requirement without any useful direction, meaning, or mechanism for enforcement. It opens the door to abuse, and leaves a grieved developer and competitor to seek federal review for a Schedule 38 violation. This is not in the best interest of the State of Utah or its rate-payers.

Accordingly, Ellis-Hall requests that the Commission stay its order or excise the proposed language discussed herein until the jurisdictional question can be resolved in the Sage Grouse Matter.

DATED this 2nd day of July 2015.

Respectfully submitted,

/s/ Tony Hall

Tony Hall

Ellis-Hall Consultants, LLC – Member

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of July, 2015, an original and ten (10) true and correct copies of the foregoing **Ellis-Hall Consultants, LLC's Petition for Review and Rehearing and Reply in Support of its Motion to Stay** were hand-delivered to:

Gary L. Widerburg
Commission Secretary
Public Service Commission of Utah
Heber M. Wells Building, Fourth Floor
160 East 300 South
Salt Lake City, UT 84111

and true and correct copies were electronically mailed to the addresses below:

Utah Public Service Commission:	psc@utah.gov
Rocky Mountain Power:	
Jeff Richards	jeff.richards@pacificorp.com
Yvonne Hogle	yvonne.hogle@pacificorp.com
Bob Lively	bob.lively@pacificorp.com
Daniel Solander	daniel.solander@pacificorp.com
Paul Clements	paul.clements@pacificorp.com
Division of Public Utilities:	
Patricia Schmid	pschmid@utah.gov
Justin Jetter	jjetter@utah.gov
Chris Parker	chrisparker@utah.gov
William Powell	wpowell@utah.gov
Dennis Miller	dennismiller@utah.gov
Charles Peterson	chpeterson@utah.gov
Office of Consumer Services:	
Rex Olsen	rolsen@utah.gov
Michele Beck	mbeck@utah.gov
Cheryl Murray	cmurray@utah.gov
Bela Vastag	bvastag@utah.gov
Energy of Utah	
Ros Rocco Vrba	rosvrba@energyofutah.onmicrosoft.com
SunEdison	
Gary Dodge	gdodge@hjdllaw.com
Daniel Patry	dpatry@sunedison.com
Scatec Solar	
Jerold Oldroyd	oldroydj@ballardspahr.com
Sharon Bertelsen	bertelsens@ballardspahr.com
Luigi Resta	luigi.resta@scatecsolar.us

Utah Office of Energy Development
Jeffrey Barrett

jhbarrett@utah.gov

Utah Clean Energy
Sophie Hayes
Kate Brown

sophie@utahcleanenergy.org
kate@utahcleanenergy.org

Wind Song
J. Craig Smith
Adam Long

jsmith@smithlawonline.com
along@smithlawonline.com

Ecoplexus, Inc.
John Gorman
Erik Stuebe
Dr. Don Reading

john@Ecoplexus, Inc.com
eriks@Ecoplexus, Inc.com
dreading@mindspring.com

Respectfully submitted,

/s/ Tony Hall

Tony Hall

Ellis-Hall Consultants, LLC – Member