

Sage Grouse Energy Project, LLC
 4733 Hiddenwoods Lane, Suite 200
 Murray, Utah 84107
sage.grouse@hotmail.com
 801-712-6789

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of: The Utah Public)	Docket No. 15-_____
Service Commission Exercising)	
Jurisdiction Over Schedule 38 and, as)	Sage Grouse Energy Project, LLC’s
Adopted, PacifiCorp’s OATT Part IV.)	Request for Agency Action
)	
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INTRODUCTION

On July 9, 2013, PacifiCorp requested that the Public Service Commission of Utah (the “Commission”) approve Power Purchase Agreements (“PPAs”) with Blue Mountain Power Partners, LLC (“BMPP”) and Latigo Wind Park, LLC (“Latigo”).¹ On September 19, 2013, during a hearing on these matters, the Commission stated: “The LGIA [interconnection agreement] is part of the pro form Open Access Transmission Tariff [the “OATT”] that is governed by the Federal Energy Regulatory Commission. We do not have jurisdiction in the state of Utah over the terms and conditions of that.” 9.19.13 Tr. 253:18-22 (attached hereto as Ex. 1). The Commission further reasoned that “whether or not [BMPP and Latigo] [had] proper Site Control and whether or not PacifiCorp did its due diligence” is not pertinent to their PPAs. 9.19.13 Tr. 268:16-21. On that basis, the Commission refused to review whether or not BMPP or Latigo had the required Site Control to “enter into written power purchase and interconnection

¹ See PSC Dkt. Nos. 13-035-115, 13-035-116.

agreements with the Company” in order to “make sales to the company.” Schedule 38 (attached hereto as Ex. 2).

Pursuant to Utah Code Ann. § 63G-4-201 and R746-100-3, Sage Grouse hereby seeks the Commission for clarification on the jurisdictional question and to issue an order recognizing:

- (1) As of July 9, 2013, P.S.C.U. No. 44 Electric Service Schedule No. 38 was, and continues to be, the only Commission ordered version of Schedule 38;
- (2) The Commission has jurisdiction over PacifiCorp’s OATT Part IV - Large Generation Interconnection Service (“OATT Part IV”) because Schedule 38 explicitly adopts this provision by reference;
- (3) PacifiCorp did not require BMPP and Latigo to reasonably demonstrate Site Control as required by Schedule 38, and, therefore, OATT Part IV;
- (4) PacifiCorp, BMPP, and Latigo have fraudulently misappropriated land rights belonging to other Interconnection Customers and Qualified Facility (“QF”) owners to obtain the Commission’s approval of their respective PPAs.

In addition, Sage Grouse requests that Mr. Jordan White, Esq. disclose his past, current, and any anticipated future affiliations with PacifiCorp in order for parties to determine whether or not his participation in various proceedings, including the above referenced dockets, constitutes a conflict under Utah Code Ann. §§ 54-1-11 or 54-4a-5.

I. PACIFICORP MUST FOLLOW P.S.C.U. NO. 44 ELECTRIC SERVICE SCHEDULE NO. 38.

PacifiCorp must follow P.S.C.U. No. 44 Electric Service Schedule No. 38 because it was authorized by Commission order, which order has never been expressly altered.

The Supreme Court of Utah has held:

Rules of law developed in the context of agency adjudication are as binding as those promulgated by agency rule making. Thus, rule of law established by adjudication apply to the future conduct of all persons subject to the jurisdiction of an administrative agency, ***unless and until expressly altered by statute, rule, or agency decision.***

Salt Lake Citizens Cong. v. Mountain States Tel. & Tel. Co., 846 P.2d 1245, 1253 (Utah 1992) (emphasis added).

On February 24, 2003, the Utah Public Service Commission (the “Commission”) approved P.S.C.U. No. 44 Electric Service Schedule No. 38 as modified in PacifiCorp’s December 13, 2002 reply comments. *See* February 24, 2003 Order 3². Although PacifiCorp has published various revisions to Schedule 38, the Commission has never “expressly” altered its February 24, 2003 to formally implement these changes. Rather, the Commission Secretary has only ‘acknowledged’ or ‘approved’ these submissions. This does not constitute an “expressly altered [] statute, rule, or agency decision.” *Id.*

Even if the Commission meant for these ‘acknowledgements’ or ‘approvals’ to constitute express alterations, the Commission Secretary does not have the authority to effectuate such an order. The Commission Secretary has authority to “to keep full and true record” and otherwise act as “custodian of the records of the commission.” Utah Code Ann. § 54-1-7. The Commission Secretary, however, does not have authority to issue orders in place of the Commission. *See* Utah Code Ann. § 54-1-3. This is particularly the case where the Commission Secretary’s action would abrogate actions of a full panel of Commissioners. *See* Commission February 24, 2003 Order.³ Consequently, the P.S.C.U. No. 44 Electric Service Schedule No. 38 (“Schedule 38”) is the only valid and efficacious version of Schedule 38.⁴

² <http://www.psc.state.ut.us/utilities/electric/00%20thru%2010/02docs/02035T11/32882Order.pdf>

³ <http://www.psc.state.ut.us/utilities/electric/00%20thru%2010/02docs/02035T11/32882Order.pdf>

⁴ Even if the Secretary’s acknowledgement and approvals are valid, these changes to Schedule 38 still include the OATT interconnection request requirements discussed in the following section.

II. AS ADOPTED BY SCHEDULE 38, THE COMMISSION MUST REQUIRE PACIFICORP TO FOLLOW OATT PART IV, WHICH INCLUDES SITE CONTROL REQUIREMENTS.

A. The Commission Has Jurisdiction Over PacifiCorp's Compliance with its OATT Part IV Insofar as Schedule 38 Adopts OATT Part IV.

Under the Commission's February 24, 2003 Order, "Schedule 38 establishes procedures for purchases of power by PacifiCorp from Qualifying Facilities (QF) with a design capacity greater than 1,000 kW" and that these "procedures list the information that is required of a QF in order for it to obtain an indicative power price." February 24, 2003 Order 1. These requirements state that QF owners "will be required to enter into written power purchase and interconnection agreements with the Company pursuant to the procedures set forth [in Schedule 38]." Schedule 38. Furthermore, Schedule 38 states:

The Company *will* follow the procedures for generation interconnection described in Part IV of the Company's Open Access Transmission Tariff (Tariff) on file with the Federal Regulatory Commission. A copy of the Tariff is available online at <http://www.oasis.pacificorp.com>.

Schedule 38 Part II(B) (emphasis added).

Thus, although interpretation of Part IV of PacifiCorp's OATT is generally a matter for the Federal Energy Regulatory Commission ("FERC"), this Commission explicitly adopted PacifiCorp's OATT Part IV as an independent requirement of Schedule 38. Indeed, this is sensible. If a QF owner cannot interconnect to PacifiCorp's transmission system then it cannot transmit the Generating Facility's output and meet production obligations under a PPA. Thus, the Commission must exercise jurisdiction over PacifiCorp's compliance with OATT Part IV because it is required by Schedule 38.

For example, PacifiCorp's OATT Part IV states that "[t]o initiate an Interconnection Request, Interconnection Customer *must* submit all of the following: (i) a \$10,000 deposit, (ii) a

completed application, and (iii) *demonstration of Site Control* or a posting of an additional deposit of \$10,000.” OATT § 38.3.1 (emphasis added). Furthermore, the OATT Part IV requires that the “Interconnection Customer shall execute the Interconnection System Impact Study Agreement and deliver the executed Interconnection System Impact Study Agreement to Transmission Provider no later than thirty (30) Calendar Days after its receipt *along with demonstration of Site Control*, and a \$50,000 deposit.” OATT § 42.2 (emphasis added).

Site Control is further defined as “documentation reasonably demonstrating” various legal interests in a site for the Generating Facility. OATT § 36 (def. Site Control). FERC has furthered ordered that this demonstration must be “reasonable.” FERC Order 2003, ¶ 101. Consequently, PacifiCorp has an inherent duty to examine the documentation and ensure that an Interconnection Customer (and QF owner) “reasonably demonstrates” its claimed interest in the sited land. It is the duty of this Commission to exercise jurisdiction over PacifiCorp’s OATT Part IV to ensure full compliance with Schedule 38.

As explained below, PacifiCorp violated Schedule 38 by not requiring BMPP or Latigo to meet the Site Control requirements under Schedule 38’s OATT Part IV requirements.

B. PacifiCorp Did Not Require BMPP to Reasonably Demonstrate Site Control.

As explained above, PacifiCorp’s OATT Part IV unambiguously requires a reasonable demonstration of Site Control documentation for a potential QF to obtain an interconnection queue position number and to undertake a system impact study. BMPP’s Site Control, however, was not reasonable for three reasons.

As background, BMPP’s Interconnection Request relied on parcels of land owned by twelve landowners. Sage Grouse does not dispute BMPP’s claim to five of these properties.

BMPP claims, however, that it bought the other seven from the REDCO bankruptcy estate. This is demonstrably false.

First, BMPP claims that it bought a Renewable Energy Option Lease Agreement between REDCO and Stephen and Bonnie Meyer. This is not disputed. The Meyers' contract, however, was never executed by both parties. Meyers' Agreement (attached hereto as Ex. 3). Thus, there was neither an enforceable contract between the Meyers and REDCO or the Meyers and BMPP, and BMPP never independently secured rights to the Meyers' land through a new contract. In response to BMPP's claims, the Meyers repeatedly notified PacifiCorp and BMPP that BMPP did not have rights to their lands. *See* Meyers' Objections (attached hereto as Ex. 4). Nevertheless, everyone ignored the Meyers' claims and accepted BMPP's fraudulent claim to the Meyers' land.

Second, BMPP's other six agreements between REDCO and various landowners from the REDCO estate had already expired before REDCO filed bankruptcy. Due to the landowners' objections in the bankruptcy action, the court ordered that BMPP could only buy the options "where-is, as-is, if-is," and explicitly did not quiet title to the contracts:

[P]ursuant to the purchase agreement between CCW [BMPP's co-affiliate] and the trustee, the trustee's only selling whatever interest the debtor has in the Blue Mountain assets. Interesting phrase the trustee uses, "*as-is*", "*where-is*", "*if-is*."

...

Section 1.3 of the first amended asset purchase agreement, as an additional section to the purchase agreement, and states in relevant part, as Exhibit J stated, the parties acknowledge that, A, in regard to the conduct of the [objecting landowners], the seller is selling his interest in the assets as-is, where-is and if-is, and the seller makes no representation of warranty, as such portion of the assets constitute a property of REDCO's bankruptcy

Thus, it is not incumbent upon the Court to make detailed findings that the trustee has absolute clear and unequivocal title to the Blue Mountain assets

Accordingly, *the Court is not quieting title to the lease options*, but simply authorizing the trustee to sell *whatever interest the estate has* to – of the estate in the Blue Mountain assets.

I want that clear here because some – it might be interpreted that by the Court’s ruling, I’m – I am quieting title and guaranteeing title. *I’m not. I’m only authorizing the trustee to sell whatever he’s got as-is, where-is, if-is.*

REDCO Bankr. Tr. 24:4-25:22 (attached hereto as Ex. 5) (emphasis added).

Consequently, BMPP could not claim that it received an interest to these option agreements because they were already expired and the court made no finding that such rights even existed.

Third, Champlin [BMPP’s parent’s] internal documents, which Champlin filed in the federal court in Oregon, concedes that they knew that the REDCO option agreements “may not be in good standing.” *See* BMPP Internal Doc. 3 (attached hereto as Ex. 6).

Consequently, BMPP knowingly submitted, and PacifiCorp knowingly accepted, fraudulent Site Control claims to land rights it did not possess.

C. PacifiCorp Did Not Require Latigo to Reasonably Demonstrate Site Control.

PacifiCorp did not require Latigo to reasonably demonstrate Site Control before executing an LGIA or PPA with Latigo, as required by Schedule 38’s OATT Part IV requirement.

On March 25, 2011, Latigo submitted its Interconnection Request to PacifiCorp. *See* Latigo Cover Letter (attached hereto as Ex. 7). Latigo’s request, on its face, omitted any reference to Site Control. *Id.* On March 30, 2011, PacifiCorp Transmission Services received Latigo’s Interconnection Request. *See* OASIS Queue No. 384. PacifiCorp initially notified Latigo that it failed to provide any Site Control. In response, on April 25, 2011, Latigo

submitted a *Wind Energy Evaluation Agreement* dated April 23, 2011 (attached hereto as Ex. 8).⁵ In other words, Latigo submitted an agreement to erect only a *met tower* as Site Control for its Generating Facility. A mere met tower agreement, however, does not evidence any right for the “purpose of constructing the Generating Facility.” OATT Part IV § 36 (def. Site Control). Nevertheless, PacifiCorp accepted this nonsensical documentation and deemed complete Latigo’s Interconnection Request. *See* PacifiCorp IR Letter Latigo (attached hereto as Ex. 9). This is a violation of the OATT Part IV and, therefore, Schedule 38.

If there is any question of whether or not Latigo had Site Control, the Commission need go no further than Latigo’s own statements before the San Juan County Commissioners, on June 29, 2012, where it admitted that it *still* did not have its claimed Site Control. Mikell Admission 3 (attached hereto as Ex. 10) (“Note: At the time of submittal of the CUP application, Redd Enterprises representing 1,080 acres, has *not* signed the lease agreement to *allow turbines to be placed on its land.*”) (emphasis added). This statement was made over a *year after* it submitted its Interconnection Request to PacifiCorp, received an indicative pricing proposal from PacifiCorp,⁶ entered into negotiations with PacifiCorp for a PPA, and came several months *after* executing its Interconnection System Impact Study Agreement (as required by OATT Part IV § 42.2) and completing its final Interconnection Facilities Study.⁷

⁵ By way of note, this *Wind Energy Evaluation Agreement* contains a negotiation exclusivity provision that permits Latigo to “negotiate . . . for an easement or lease agreement for wind energy development.” There was, however, no right providing “for the purpose of constructing the Generating Facility.” *Compare* OATT § 36 (def. Site Control). Indeed, this exclusivity provision would do nothing for Latigo in the event that the landowner did not want any energy generation devices on his or her land. Nevertheless, PacifiCorp inexplicably accepted this “demonstration” as reasonable and deemed Latigo’s Interconnection Request complete.

⁶ *See* Schedule 38 Part I(B)(2)(d), (f) (requiring “proposed site location and electrical interconnection point” and “demonstration of ability to obtain QF status”).

⁷ The Latigo System Impact Study Report and Dynamic Stability Study Report were published on September 21, 2011. Thus, Latigo could not have met the Site Control requirements under OATT § 42.2 when Latigo admitted that it did not have Site Control *nine months later*.

Consequently, Latigo knowingly submitted, and PacifiCorp knowingly accepted, fraudulent Site Control claims.

III. THE COMMISSION SHOULD DISCLOSE MR. JORDAN WHITE'S AFFILIATIONS WITH PACIFICORP.

Under Utah law, persons employed by the Public Service Commission and Division of Public Utilities are prohibited from certain interests, relationships, and actions with utility companies. *See* Utah Code Ann. §§ 51-1-11, 54-4a-5. This is important to maintain the integrity of the Commission process and decision-making. Sage Grouse has recently discovered that Mr. Jordan White was not only previously employed with PacifiCorp but also has an ongoing relation with PacifiCorp personnel. Sage Grouse, therefore, respectfully requests that the Commission disclose Mr. White's past, current, and anticipated affiliations with PacifiCorp and any of its affiliates, and state whether or not PacifiCorp recommended Mr. White for any position within the Commission. Sage Grouse further requests that the Commission disclose any attempted or actual ex parte communications PacifiCorp has had with Commission employees and personnel, including but not limited to Mr. White.

CONCLUSION

Schedule 38 specifically requires PacifiCorp to comply with Part IV of its OATT as a requirement for it to enter into a PPA with a QF customer. Consequently, this Commission should exercise full jurisdiction over Schedule 38, including PacifiCorp's OATT requirements. The Commission should also issue a declaratory order stating that PacifiCorp failed to require BMPP and Latigo to demonstrate Site Control as required by its OATT, and that PacifiCorp permitted BMPP and Latigo to submit fraudulent documentation to obtain a PPA. Sage Grouse also requests that the PSC disclose certain information regarding its affiliations with PacifiCorp to ensure the integrity of the PSC process.

Respectfully Submitted,

/s/ Michelle McDaniels

Michelle McDaniels

Manager of Sage Grouse Energy Project, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of May, 2015, an original and one (1) true and correct copy of the foregoing **Sage Grouse Energy Project, LLC's Request for Agency Action** was 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

Blue Mountain Power Partners, LLC
 Michael Cutbirth mcutbirth@champlinwind.com

Ellis-Hall Consultants, LLC
 Tony Hall tonyhall2004@hotmail.com

Latigo Wind Park, LLC
 Christine Mikell christine@wasatchwind.com

and a true and correct copy was mailed via United States Postal Service to:

Stephen & Bonnie Meyer, Trustee
381 South 300 East
Blanding, Utah 84511

/s/ Michelle McDaniels

Michelle McDaniels
Manager of Sage Grouse Energy Project, LLC