

EXHIBIT E

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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| Sage Grouse Energy Project, LLC Complainant |) | |
| |) | |
| v. |) | Docket No. EL 15-44-000 |
| |) | |
| PacifiCorp, Respondent |) | |
| |) | |

**SAGE GROUSE ENERGY PROJECT LLC’S
ANSWER TO PACIFICORP’S ANSWER OF PACIFICORP**

Sage Grouse, appearing *pro se*, respectfully moves the Commission for leave to file a responsive answer to PacifiCorp’s *Answer of PacifiCorp*.¹ Sage Grouse has recently discovered additional information that will support its Complaint and that will help explain why PacifiCorp is failing to address many of Sage Grouse’s concerns. Accordingly, Sage Grouse respectfully asks the Commission to grant Sage Grouse leave to file this brief. Sage Grouse further prays that the Commission investigate and sanction PacifiCorp because PacifiCorp has repeatedly and willfully violated its OATT to advance some Interconnection Customers, namely Blue Mountain Power Partners, LLC (“BMPP”) and Latigo Wind Park, LLC (“Latigo”) at the expense of others, such as Sage Grouse and Ellis-Hall. PacifiCorp has done this at least in part out of racial animus against Sage Grouse’s principal, Ms. Kimberly Ceruti. This matter is now ripe for decision. Sage Grouse respectfully asks that the Commission issue a decision in this matter.

¹ To avoid confusion, Sage Grouse will refer to documents as follows: PacifiCorp’s *Answer to Complaint of PacifiCorp and Request for Waiver* (“PacifiCorp’s First Answer;”) PacifiCorp’s *Answer of PacifiCorp* as (“PacifiCorp’s Second Answer;”) to *Sage Grouse Energy Project LLC’s Answer to PacifiCorp’s Answer to Complaint of PacifiCorp and Request for Waiver* as (“Sage Grouse’s First Answer;”) and to this *Sage Grouse Energy Project LLC’s Answer to PacifiCorp’s Answer of PacifiCorp* as (“Sage Grouse’s Second Answer.”)

DISCUSSION

If you're weak on the facts and strong on the law, pound the law. If you're weak on the law and strong on the facts, pound the facts. If you're weak on both, pound the table.

Attrib. Oliver Wendell Holmes.

Sage Grouse is admittedly rapt by PacifiCorp's fierce use of adjectives in pounding the table with misconstrued laws,² facts, and positions.³ Nevertheless, the Commission should take careful note that while PacifiCorp initially mocked and chided Sage Grouse for its "salacious" arguments of "schemes" and "conspiracies," PacifiCorp's silence to multiple serious questions is deafening, as detailed below. PacifiCorp was required to "[a]dmit or deny, *specifically and in detail*, each material allegation of the pleading answered" Rule 213(c)(2)(i) (emphasis added). PacifiCorp's failure to do so with many of Sage Grouse's facts constitutes an admission of those facts. On that basis alone, the Commission should decide for Sage Grouse.

The reason for PacifiCorp's silence is quite simple: PacifiCorp is (1) pushing favored generation projects that PacifiCorp will eventually own and/or control;⁴ and (2) is discriminating against an African-American woman seeking access to PacifiCorp's transmission system as a

² PacifiCorp argues that Sage Grouse "misse[d] the point" when it noted that PacifiCorp's cited case law does not state what PacifiCorp said it stated PacifiCorp's New Answer 12. Sage Grouse did not miss the point. Rather, PacifiCorp is being outright dishonest. PacifiCorp argued that "the Commission has *recognized* that Site Control need not be exclusive . . ." PacifiCorp's First Answer 14 n.39 (emphasis added). As noted in Sage Grouse's First Answer, the Commission did *not* make such a recognition or otherwise say anything of the sort. PacifiCorp is blatantly misrepresenting law. See Sage Grouse's First Answer 6 n.5.

³ PacifiCorp erroneously contends that Sage Grouse took inconsistent positions by arguing that BMPP did not change its footprint and still relies on Sage Grouse controlled land, and then argues that such a change constituted a material modification. PacifiCorp's First Answer 16. PacifiCorp should read Sage Grouse's First Answer without wresting its contents. Before arguing material modification, Sage Grouse actually stated that "[a]ssuming that both BMPP and Latigo have changed their footprints as stated by PacifiCorp, these changes constitute Material Modifications." Sage Grouse First Answer 22. It was, therefore, a rather obvious alternative argument based on PacifiCorp's own incorrect position that BMPP ever modified its footprint.

⁴ Sage Grouse previously explained that PacifiCorp is pushing its favored QF projects Latigo and BMPP while delaying others, such as Ellis-Hall and Sage Grouse. Indeed, the Latigo (60 MW) and BMPP (80 MW) projects only together have the sufficient generation to entirely displace Ellis-Hall from PacifiCorp's various queues.

small generator. Sage Grouse has recently received new information that further supports both of these conclusions.

I. PACIFICORP HAS TREATED BMPP AND LATIGO FAVORABLY.

PacifiCorp has treated BMPP and Latigo as favored projects because it always intended to take them over, evidenced by the generous takeover and buyout provisions in their respective PPAs to facilitate PacifiCorp's eventual ownership and/or control of those projects. Sage Grouse also believes that PacifiCorp views Ellis-Hall.⁵ And, PacifiCorp does not want to do business with a QF owned by an African American woman. In light of these factors, PacifiCorp has escalated its favorable treatment of BMPP and Latigo at the expense of Sage Grouse and Ellis-Hall.

A. BMPP's Principal, Mr. Michael Cutbirth, Testified that PacifiCorp Promised Favorable Treatment to BMPP.

Sage Grouse has recently discovered documents where BMPP *testified* in federal court that PacifiCorp would treat it favorably.

In unrelated litigation, Mr. Cutbirth testified that PacifiCorp was willing to work on "project components such as interconnection where they have the flexibility" because they "definitely have an affinity for the project." Cutbirth Decl. 5 (attached hereto as Ex. 1). And, as part of Champlin (BMPP's parent's) analysis, it noted that BMPP "spoke to a professional contact in Pacificorp's renewable procurement department who told him that Pacificorp would like to see Blue Mountain constructed [and] indicated that *aside from increasing the PPA rate*, Pacificorp would be *willing to take action to support the project.*" BMPP's Internal Doc 4 (attached hereto as Ex. 2) (emphasis added).

⁵ As previously explained, this directly impacts Sage Grouse. PacifiCorp is attempting to kill two birds with one stone. Indeed, PacifiCorp kills Ellis-Hall it also kills Sage Grouse because Sage Grouse's point of interconnection is Ellis-Hall's substation.

In addition, on April 25, 2013, Mr. Cutbirth thanked PacifiCorp's Mr. Clements for "expediting [BMPP] thru credit." *See* Cutbirth Clements email (attached hereto as Ex. 3). This is particularly troubling given the fact that PacifiCorp's form credit language only requires security "issued by a financial institution reasonably acceptable to Transmission Provider."⁶ Considering that PacifiCorp personnel have already told Ellis-Hall that PacifiCorp affiliates are deemed creditworthy, this is yet another tool PacifiCorp can use to expedite favored projects over unfavored projects. Sage Grouse believes this is what has occurred with BMPP.

Sage Grouse emphasizes that these are BMPP's *own* admissions. And this is exactly what PacifiCorp has done. As explained below, PacifiCorp *has* ensured BMPP favorable pricing by manipulating the Utah Public Service Commission ("Utah PSC") process. And, even in the face of Ellis-Hall's objections to BMPP's fraudulent Site Control representations, the Utah PSC ignored Ellis-Hall's concerns and told Ellis-Hall that Site Control is a FERC issue. This conduct is reprehensible.

B. PacifiCorp "Pushed" Latigo Through the PPA Process.

On May 17, 2013, Latigo's Christine Mikell sent an e-mail of appreciation to PacifiCorp's Paul Clements thanking him for "pushing" Latigo's PPA through. *See* PacifiCorp Pushing Latigo email (attached hereto as Ex. 4). This is important because PacifiCorp was already before the Utah PSC to change the indicative pricing market proxy methodology to the less favorable PDDDR methodology and wanted to lock in the more favorable rate for projects PacifiCorp intended to takeover before the Utah PSC's August 2013 order making that change took effect.

⁶http://www.pacificorp.com/content/dam/pacificorp/doc/Transmission/Transmission_Services/Generation_Interconnection/QF-LGI/QFLGIA%2012.26.13.pdf

What is also interesting about this email is the fact that Latigo *still* couldn't decide on a turbine to make their pricing work due to the altitude and precipitation constraints of the location. In fact, Latigo's LGIA **currently** relies on a Clipper Liberty Series Turbine that was no longer being manufactured at the time of LGIA execution. In addition, Latigo's PPA relies on a Siemens turbine. In contrast, Latigo is now planning on using a GE turbine—PacifiCorp's "turbine of choice" according to PacifiCorp's Messrs. Fishback and Mr. Wang, a PacifiCorp engineer. This turbine that was never studied by PacifiCorp for Latigo. PacifiCorp "pushed" their PPA and LGIA forward despite these significant problems because PacifiCorp could afford resolving them at a later time. The only imperative was that PacifiCorp reserve capacity before Ellis-Hall and Sage Grouse could do so.

Sage Grouse also notes that any such change to Latigo's Wind Turbines had to be done within 90 days of the approval of the PPA. Latigo PPA § 2.8. Sage Grouse believes that this did not happen. In addition, such a change needs to be restudied. Sage Grouse asks that PacifiCorp explicitly confirm or deny whether this change occurred within 90 days and whether PacifiCorp performed the restudies. In the event that PacifiCorp did restudy, PacifiCorp then needs to explain why these result have not been published and posted on OASIS.

C. PacifiCorp Provided Favorable Treatment to Latigo By Allowing Latigo to Use PacifiCorp's Own Transmission Easements.

Sage Grouse has also recently learned that PacifiCorp has provided Latigo unprecedented help by pushing its project on extraordinarily favorable terms.⁷ Sage Grouse previously argued

⁷ Sage Grouse previously stated that Wasatch Wind #219 A and #219 B are the same project as Latigo #384. Additional investigation reveals that Latigo has been mixing and matching various components from two different

that PacifiCorp ignored the fact that Latigo does not have the rights for all of its Generating Facility. PacifiCorp contends that the lands at issue relate to Latigo's "Transmission Line," which it purports does not require a demonstration of Site Control. *See* PacifiCorp Second Answer 20.⁸ Although Sage Grouse maintains that PacifiCorp is incorrect, it does not matter. Latigo requires at least 13 third-party easements to interconnect by Latigo's own admission. *See* Latigo Interconnection Facilities Study Agreement Attachment B App'x 4 (attached hereto as Ex. 5). PacifiCorp never disputes that Latigo has no rights to cross those lands owned by the Rorings, the Johnsons, and the Tracys—as needed for the connection and operation of the Latigo project. Why is PacifiCorp not concerned? Sage Grouse has recently discovered why.

On February 17, 2015, PacifiCorp (dba Rocky Mountain Power) sent a letter to Ms. Johnson and other landowners stating that it was going to begin maintaining a transmission line

geographical areas of these projects. This allows Latigo to argue out of both sides of its mouth. For example, Latigo has relied on three possible interconnection transmission routes with three different impacts for #384.

First, back in 2008, the Latigo #219 A and #219 B footprints relied on wind data from the current Latigo #384 project. Latigo #219 A and #219 B, however, included a footprint using Ellis-Hall (Blue Mountain Wind 1) and Sage Grouse (Blue Mountain Wind 2) lands. This is further evident due to the #219 A and #219 B One Line Diagram in the August 15, 2008 Wasatch Wind Feasibility Study Report System showing a new 8 mile 138 kV interconnection transmission radial line. This runs the same route as PacifiCorp's 138 kV transmission line which will serve as Ellis-Hall's point of interconnection.

Second, the Latigo #384 project is approximately 10 miles south and west of #219 A and #219 B. And, the One Line Diagram for the #384 System Impact Study now shows a 4.5 mile 138 kV interconnection transmission radial line that requires PacifiCorp's easements because, as PacifiCorp has failed to dispute, Latigo has no rights to the Johnson, Tracy, and other lands that Latigo would otherwise need in order to run interconnection transmission lines if it were not for PacifiCorp's easements. What makes this even more problematic is that PacifiCorp used the #219 A and #219 B Feasibility Study Report results to complete the #384 System Impact Study.

Third, after Ms. Johnson sent a letter to PacifiCorp notifying them that their easement is specific to PacifiCorp's sole use of her land, in or about May 2013, and just prior to executing the Latigo and BMPP PPAs, PacifiCorp advised Latigo to secure a new route. Latigo did so and secured a 4.9 mile easement. We know this because these easements are recorded. The problem is that this occurred 2 ½ years after Latigo's interconnection request was deemed complete. PacifiCorp, however, has never studied the impacts of this 4.9 mile easement on its transmission system. If PacifiCorp disputes that it has not completed these studies, then PacifiCorp needs to explain why PacifiCorp has not published the dynamic stability study results for the 4.9 mile line on OASIS.

The reason PacifiCorp has not published these results, if the studies occurred, is because PacifiCorp does not care. At the end of the day, PacifiCorp will still rely on its own easements when it takes over the project. Thus, the only study PacifiCorp requires, as a practical matter, are the study results of the 4.5 mile route. Although Latigo cannot use this route, PacifiCorp can. And that is all that matters.

⁸ Assuming that PacifiCorp is correct, which it is not, no good policy is served by not requiring Site Control to connect a Generating Facility to a PacifiCorp substation. In such an event, the Commission should make this change.

easement over her property pursuant to an easement obtained in 1955. *See* Johnson Letter (attached hereto as Ex. 6). PacifiCorp's interest in this easement coincidentally comes only *eight days* after Sage Grouse filed its original complaint with the Commission and coincides with Latigo's (and PacifiCorp's) desperation to get the Latigo project up by the end of the year and to meet Latigo's dates. In fact, PacifiCorp routinely performed maintenance of the Johnson's easement without notification but now that Latigo's project was slotted to move forward and PacifiCorp needed access to put up additional cables to support the interconnection, PacifiCorp had to submit such notice to landowners. Thus, it is quite clear that PacifiCorp has intended to allow Latigo the use of its easements because, in the end, it will become PacifiCorp's project. In addition, PacifiCorp has been able to hide behind these easements because they are too old to discover on the San Juan County Recorder's system and need to be manually searched for in hand-written title abstracts from 1955 using legal land descriptions because there are no corresponding parcel numbers. *See* Easements (attached hereto as Ex. 7) (showing all of discoverable PacifiCorp's easements in the Latigo project area). This is not consistent with PURPA's nondiscrimination rules protecting the public from PacifiCorp's monopolistic and unfettered vertical integration.⁹

Sage Grouse also notes that Latigo has missed numerous interconnection and PPA deadlines without consequence. For example, Latigo was supposed to interconnect with PacifiCorp's transmission system and be transporting transmission capacity to the transmission customer, PacifiCorp, by May 1, 2015. This has not happened, obvious from the fact that the

⁹ Sage Grouse has located the easements necessary for Latigo to connect to PacifiCorp's Pinto Substation and they are all owned by Rocky Mountain Power (successor to Utah Power and Light). Furthermore, many of the landowners have told Sage Grouse that they have not, and will not, contract with Latigo for the use of their lands. These are very recent developments, but Sage Grouse will happily provide FERC with the landowners contact information so that FERC can independently investigate and verify these claims.

Latigo generating facility has not been built—there are currently no turbines or substation on the corresponding Latigo footprint. Furthermore, the project remains in an unconfirmed, “RECEIVED,” status on the transmission queue. *See* PacifiCorp Transmission Queue (Excerpt) (attached hereto as Ex. 14).¹⁰ Indeed, PacifiCorp has stated that it would remain “in ‘RECEIVED’ status until such time as facilities are in service [transporting the transmission capacity to the transmission customer].” *See* 7.17.13 Latigo Designation (attached hereto as Ex. 13). Thus, Latigo has missed its May 1, 2015 date.

In addition, Latigo has missed its facility completion date of June 1, 2015, as required by its LGIA. *See* Latigo Milestones (attached hereto as Ex. 8). Sage Grouse also believes that PacifiCorp has failed to collect the interconnection financial security, Latigo has paid no penalties for missed deadlines, and that PacifiCorp has not deemed withdrawn Latigo from the Interconnection Queue. This directly affects all the lower-queued Interconnection Customers who are waiting for that capacity.

This is how PacifiCorp controls access to its transmission system: PacifiCorp locks-up capacity for favored projects using extensions, waivers, and its own discretion, and then forces unfavored projects to absorb multi-million dollar system network upgrades to interconnect or transport the transmission capacity. Practically, this kills these unfavored projects.

What is also very troubling about this is PacifiCorp’s ability to hide these dates, any waivers of the dates, and the reasons for the waivers under the pretext of confidentiality. Sage Grouse has already noted that PacifiCorp has grossly failed to update its OASIS regarding Latigo. Thus, under the current system, it is very, very difficult for anyone to know whether PacifiCorp is following its OATT or otherwise treating customers in a nondiscriminatory

¹⁰ http://www.oasis.oati.com/PPW/PPWdocs/TSR_Queue.xls

manner. In this respect, Sage Grouse is unique but has surely yet to discover many other discriminatory practices. The Commission should seriously consider revising confidentiality requirements so that PacifiCorp cannot hide its malfeasance.

D. PacifiCorp Permitted Latigo to Squat on the Interconnection Queue for 1 ½ Years to Reserve Interconnection Capacity that Should Have Gone to Ellis-Hall and Sage Grouse.

On Friday, March 16, 2012, PacifiCorp published Latigo's **Final** Interconnection Facilities Study Report. This occurred after the parties agreed to the Interconnection Facilities Study results. PacifiCorp, therefore, had 30 days to tender a draft LGIA to Latigo. *See* OATT § 46.1. On the morning of March 19, 2012, Ellis-Hall spoke to Tom Fishback, PacifiCorp's Large Generator Interconnection Manager, and confirmed that Ellis-Hall was overnighting its own Interconnection Request application to PacifiCorp. PacifiCorp acknowledged receipt of Ellis-Hall's LGIA application on March 20, 2012. *See* OASIS #420. With this notice, PacifiCorp then expedited the LGIA process for Latigo. Indeed, on Monday, March 19, 2012 – the *next* business day – PacifiCorp sent a letter requiring Latigo to provide comments on the draft LGIA within 30 days as required by OATT § 46. *See* PacifiCorp Draft LGIA Latigo Letter (attached hereto as Ex. 9).¹¹ On August 12, 2013, only **ten** days *after* Ellis-Hall called out PacifiCorp in front of the Utah PSC for permitting Latigo's queue squatting, Latigo finally executed an Interconnection Agreement. *See* PSC 8.2.13 Tr. 20:8-19 (attached hereto as Ex. 10).¹²

PacifiCorp thereby allowed Latigo to remain in process on the Interconnection Queue for approximately 1 ½ years *after* Latigo completed its Interconnection Study Process instead of

¹¹ Ellis-Hall's Interconnection Request included its assignment and assumption agreement for its six leases; and, therefore, PacifiCorp knew that BMPP's Site Control for # 418 was fraudulent. Nevertheless, PacifiCorp completely ignored its OATT requirements to push forward its favored Interconnection Customers ahead of Ellis-Hall on the Interconnection Queue.

¹² <http://www.oasis.oati.com/PPW/PPWdocs/pacificorplgiaq.htm>

The Utah PSC refused to exercise jurisdiction over any OATT matter and referred it to FERC, despite the fact that its own approved tariff Schedule 38 explicitly adopts the OATT as a requirement of approving a PPA.

either executing an LGIA with Latigo or filing an unexecuted LGIA with FERC within the time permitted by OATT § 46.2. Indeed, PacifiCorp's OASIS makes no reference to any schedule deviation to justify this delay.¹³ PacifiCorp thereby gave Latigo an extra 1 ½ years to squat in process on the Interconnection Queue so that Latigo could avoid having to suspend its project and begin the three-year suspension clock while it continued to attempt to obtain the Site Control that it indisputably did not have prior to filing an Interconnection Request.¹⁴

If PacifiCorp had followed its OATT, PacifiCorp would have had to deem withdrawn Latigo in 2015 due to lack of progress and all lower queued positions, including Ellis-Hall and Sage Grouse, would have moved up the Interconnection Queue. Thus, PacifiCorp avoided deeming withdrawn Latigo's Queue position as it should have done per OATT §§ 46.1-46.3.

This is all in gross contrast to PacifiCorp's disparate unwillingness to timely negotiate an LGIA with Ellis-Hall, which had and continues to have Site Control. Indeed, Ellis-Hall desperately tried to get PacifiCorp to execute an LGIA but PacifiCorp delayed and refused to do so until after PacifiCorp had expedited signed PPAs with both Latigo and BMPP and "pushed" them through the Utah PSC approval process.

¹³ There is absolutely no record in OASIS evidencing PacifiCorp's scheduled deviation for (1) a dispute regarding the published Final Interconnection Facilities Study, (2) a dispute over the "provisions of the appendices to the draft LGIA," (3) initiation of Dispute Resolution procedures, (4) or any other dispute that would permit Latigo to remain on the Interconnection Queue beyond the 60 days "after tender of the final Interconnection Facilities Study Report." See OATT § 46. Indeed, PacifiCorp has published no information on OASIS justifying why PacifiCorp did not deem "to have withdrawn [Latigo's] Interconnection Request." OATT § 46.2

¹⁴ The reason that PacifiCorp did not require Latigo to follow the OATT is simple: PacifiCorp knew that Latigo did not have "reasonable evidence that [*sic*] continued Site Control," was not going to charge their favored project the \$250,000 non-refundable additional security, and was not going to deem Latigo withdrawn from the Interconnection Queue. OATT § 46.3. This completely undermines the Commission's use of the \$250,000 as a deterrent against "speculation" as identified by the Commission in Order 2003 ¶¶ 100-101.

E. PacifiCorp Prematurely Allocated Transmission Capacity for Favored Projects to Block Unfavored Projects.

On June 18, 2013, PacifiCorp's Commercial & Trading's Director of Short-Term Origination, Bruce Griswold, requested from PacifiCorp's Account Manager of Transmission Services, Veronica Stofiel, who approved, BMPP's designation as a network resource. *See* PacifiCorp Network Resource Mod. 2 (attached hereto as Ex. 11). On this same day, PacifiCorp did the same for Latigo. *See* Latigo Designation 2 (attached hereto as Ex. 12); *see also*, 7.17.13 Latigo Designation (attached hereto as Ex. 13). PacifiCorp thereby prematurely reserved the remaining transmission capacity out of the Pinto substation for Latigo and BMPP – skipping Ellis-Hall, which was ahead of BMPP on the Interconnection Queue – because neither BMPP nor Latigo had the required executed and approved PPA with PacifiCorp at that time. As stated previously, PacifiCorp could only kill Ellis-Hall's project with the combined resources of Latigo (60 MW) and BMPP (80 MW).

By way of note, this reservation occurred prior to the Commission's order in *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215, which required PacifiCorp to pay for a QF's transmission costs once the QF is interconnected. In any event, this order does not prevent PacifiCorp from maintaining this reservation and jamming up non-QF projects. This also shows PacifiCorp's history of improper favorable treatment.

F. PacifiCorp Continues to Reserve the Final Remaining Transmission Capacity on its 138 kV Transmission Line Despite the Latigo Project Failing to Meet Its Start Date.

Pursuant to PacifiCorp's own OASIS, the Latigo project should have been transmitting electricity by May 1, 2015. *See* OASIS Transmission Queue (Excerpt) (attached hereto as Ex. 14). It has not. This is obvious for two reasons. First, Sage Grouse will proffer that it has traveled to San Juan County and seen that Latigo has not

erected any wind turbines. Second, PacifiCorp's same OASIS document notes that the Latigo project is merely "Received" and not "Confirmed." *Id.* Given Latigo's favorable terms, PacifiCorp is not required to do anything about this failure. Deadlines that do not mean anything but that are exercised at PacifiCorp's discretion are not in the public interest.

The Commission should not permit PacifiCorp to enter into bunk and fraudulent agreements so that it can lock-up and otherwise manipulate its capacity.

II. PACIFICORP CONTINUES DISCRIMINATING AGAINST MS. KIMBERLY CERUTI BECAUSE SHE IS AN AFRICAN AMERICAN WOMAN.

In Sage Grouse's complaint, Sage Grouse noted that PacifiCorp personnel used racial and gender-directed epithets to refer to Ms. Ceruti. Sage Grouse is aware that this practice continues.

In an effort to address this conduct, PacifiCorp dug deep to appoint one of their few (white, because they have no black) female attorneys to act as Sage Grouse's point of contact—Rocky Mountain Power's Yvonne Hogle. Ms. Hogle's communications to Sage Grouse are particularly telling.

First, Ms. Hogle now admits precisely what Sage Grouse has repeatedly alleged but that PacifiCorp has denied—that PacifiCorp rebuffed Sage Grouse's attempt to negotiate a PPA with PacifiCorp before having an executed LGIA. Indeed, in one of her classic nonresponsive responses, Ms. Hogle asked, "[a]re you [Sage Grouse] attempting to negotiate *another* PPA with us . . . ?" *See* Hogle Email Chain – June 5, 2015 (attached hereto as Ex. 15). PacifiCorp similarly refused to negotiate a PPA with Ellis-Hall before having an executed LGIA. As Sage Grouse previously explained, this is in stark contrast

to PacifiCorp's favorable and expedited execution of PPAs with BMPP and Latigo long before either had executed LGIAs.

Second, Sage Grouse has made multiple requests for information relating to its project, including PacifiCorp's legal basis for deeming Sage Grouse "adverse" and for refusing to answer its questions. *See id.* – June 4, 2015. Each time, Ms. Hogle provided nonresponsive answers. Ms. Hogle has further refused to answer Sage Grouse's questions unless Sage Grouse withdraws this complaint. *See Hogle Email Chain – June 9, 2015* (refusing to answer any questions by stating "[t]he filing you made is essentially a complaint. Do you want to withdraw it?"). This is not proper.

Third, it has now been almost a week and Ms. Hogle has failed to respond to Sage Grouse's last email reiterating its questions. *Id.*

In addition to Sage Grouse's other examples of PacifiCorp's disparate treatment, as explained in Sage Grouse's Complaint and First Answer, Sage Grouse firmly believes that PacifiCorp's conduct is racially charged. Indeed, as far as Sage Grouse is aware, PacifiCorp has never deemed another project "adverse" or refused to allow other projects to move forward despite pending complaints. Sage Grouse is similarly unaware that PacifiCorp refers to other project developers as offensive names. Sage Grouse asks the Commission to investigate PacifiCorp's disparate treatment of Sage Grouse, and its principal, Ms. Ceruti on the basis of her race.¹⁵

¹⁵ Sage Grouse quickly notes that PacifiCorp conducted its Feasibility Study on the incorrect basis that Sage Grouse is not a QF to quash the project with tens of millions of dollars of upgrade charges. Because the results are completely erroneous, Sage Grouse asked PacifiCorp to correct the Feasibility Study before continuing through the LGI study process. PacifiCorp curtly instructed Sage Grouse to "go file a FERC complaint."

III. PACIFICORP FAILS TO ADDRESS MULTIPLE IMPORTANT QUESTIONS RAISED BY SAGE GROUSE.

PacifiCorp has granted BMPP and Latigo preferred treatment and has racially discriminated against Ms. Ceruti. This is precisely why PacifiCorp cannot answer many of the questions previously raised by Sage Grouse:

- Why did PacifiCorp, in the Vrba case before the Utah PSC convincingly argue that a QF must have a fully executed LGIA before PacifiCorp would fully execute a PPA; but then, only after PacifiCorp received Ellis-Hall's request for an indicative pricing proposal on April 15, 2013, PacifiCorp, on April 17, 2013, quickly moved to dismiss the Vrba proceeding¹⁶ to avoid a Utah PSC ruling? PacifiCorp did this so that, only a few months later, PacifiCorp could completely contradict its own position by fully executing PPAs with BMPP and Latigo without first requiring fully executed LGIAs.¹⁷ See Sage Grouse First Answer 8 n.9. If PacifiCorp had not dismissed the Vrba complaint, the Utah PSC would have likely issued an order preventing PacifiCorp from executing PPAs with BMPP and Latigo before Ellis-Hall. Any settlement with Mr. Vrba avoided this result. See Utah R746-100-10(f)(5)(a) ("Cases . . . resolved by a settlement . . . are not binding precedent in future cases involving similar issues.").

Sage Grouse also notes that, apart from constituting disparate treatment, PacifiCorp violated Schedule 38, which PacifiCorp ostensibly believes permitted it "the right to condition execution of the power purchase agreement upon *simultaneous* execution of an interconnection agreement between the owner and the Company's power delivery function" See P.S.C.U. No. 49 Schedule 38 (B)(7) (attached hereto as Ex. 16).¹⁸ PacifiCorp did not even follow this

¹⁶ The proceeding was dismissed on April 22, 2013.

¹⁷ See Sage Grouse's First Answer 9 n.10 (citing <http://www.psc.utah.gov/utilities/electric/elecindx/2013/1303522indx.html>).

¹⁸ Sage Grouse notes that it has recently filed a Request for Agency Action with the Utah PSC asking it to rescind its previous statement that it does not exercise jurisdiction over PacifiCorp's OATT,

requirement. Indeed, BMPP and Latigo did *not* even execute simultaneous LGIAs and PPAs.¹⁹ This is in stark contrast to PacifiCorp requiring disfavored Interconnection Customer and QF, Ellis-Hall, to execute an LGIA before even negotiating to enter into a PPA. This is not disputed.

Sage Grouse also notes that Latigo and PacifiCorp had previously discussed the LGIA and PPA processes to assist one project over another. In fact, just prior to the REDCO bankruptcy and Ellis-Hall's purchase of the valid REDCO leases, Latigo's Christine Mikell specifically addressed this question to PacifiCorp's Mr. Clements. *See* Mikell Priority Email (attached hereto as Ex. 17) ("Does interconnection queue get priority or does the one who signed the PPA first get priority?"). Latigo, therefore, was targeting Ellis-Hall's project from the get-go; and, PacifiCorp was complicit in this scheme as evidenced by its actions in the Vrba docket.

- Why, on March 22, 2012, did PacifiCorp deem complete BMPP's Interconnection Request despite using as Site Control five leases that were indisputably owned by Ellis-Hall and that were also specifically *excluded* from BMPP's "as-is, where-is, if-is" purchase from the REDCO estate? *See* REDCO Mot. Ex. A 3 ("Excluded Assets' means any and all assets of the Debtor which were [already] sold to Sustainable Power Group, LLC [seller to Ellis-Hall] pursuant to the Bankruptcy Court's Order dated January 30, 2012") (attached hereto as Ex. 18); *see also*, BMPP Sale Order (attached hereto as Ex. 19). Indeed, BMPP provided *no* documents evidencing any rights to land used in its Interconnection Request for #418. Furthermore, how,

despite adopting PacifiCorp's OATT as a requirement in its tariff, Schedule 38. Although immaterial to this argument, Sage Grouse is also challenging the adoption of new versions of Schedule 38 as being improper. *See* <http://www.psc.state.ut.us/utilities/electric/elecindx/2015/15258201indx.html>.

¹⁹ Both BMPP's and Latigo's PPAs were both executed on July 3, 2013. *Compare* <http://psc.utah.gov/utilities/electric/13docs/13035115/245439Redacted%20Application%20of%20RMP%207-9-2013.docx> with <http://www.psc.state.ut.us/utilities/electric/13docs/13035116/245445Redacted%20Application%20of%20RMP%207-9-2013.docx>

Latigo and BMPP did not obtain fully executed LGIAs until August 12, 2013 and May 5, 2014, respectively.

on March 22, 2012, could PacifiCorp deem complete BMPP’s Interconnection Request for Queue #418 where the bankruptcy court did not approve the estate’s bunk “as-is, where-is, if-is” sale of the remaining REDCO expired option lease agreements to BMPP until March 22, 2012 at 4:11 p.m. MST *and* where the parties never closed on the sale? *See id.* Indeed, it makes no sense that PacifiCorp received, reviewed, and deemed complete BMPP’s Interconnection Request #418 in a few hours unless PacifiCorp was already holding the application in anticipation of the bankruptcy court’s order for the purpose of beating Ellis-Hall onto the Interconnection Queue. And why did PacifiCorp expedite this approval when it took all the allotted days to review Ellis-Hall’s Interconnection Request? Furthermore, on what basis did PacifiCorp withdraw BMPP’s Interconnection Request for #418 for “lack of progress?”²⁰ If PacifiCorp wasn’t aware there was a dispute over the validity of some of the option lease agreements because it wasn’t paying attention to the REDCO bankruptcy, as PacifiCorp contends in its briefs, then how did PacifiCorp know that the first sale did not actually close despite the court’s approval of the sale?²¹ *See* PacifiCorp Second Answer 15 (stating, “even if PacifiCorp had been aware at this time that there was a dispute over the validity of the lease options (which it was not) . . .”).

- Why is PacifiCorp permitted to claim that it did not know that BMPP’s and Latigo’s and Interconnection Requests relied on disputed parcels, *see* PacifiCorp Second Answer 15, where (1) PacifiCorp *appeared* as part of the REDCO bankruptcy proceeding and received both Summit Wind (Sage Grouse’s predecessor) and the landowners’ objections; *compare* Sage Grouse Compl. Ex. 56 (Mr. Prince appearing for PacifiCorp Energy) *with* Meyers Objections

²⁰ OASIS does not state that #418 was a voluntary withdrawal.

²¹ On May 25, 2012, the REDCO Trustee moved the court a second time to approve a second sale of the expired option lease agreements to BMPP. Then, after BMPP was already behind Ellis-Hall on the Interconnection Queue, BMPP submitted a second Interconnection Request for Queue #426, on June 26, 2012.

(attached hereto as Ex. 20) (containing objections docketed with the bankruptcy court); (2) Beginning on April 5, 2012, multiple landowners directly contacted PacifiCorp stating that the only entity authorized to use their land was Summit Wind; *see e.g. id.*; (3) PacifiCorp was a party to multiple dockets before the Utah PSC, where these same objections were filed, *see* Utah PSC Dkt. Nos. 13-035-115, 13-035-116; and (4) Ms. Ceruti sent Sage Grouse’s Interconnection Request to PacifiCorp’s Mr. Fishback in November 2012, which included these objections, to which PacifiCorp’s Mr. Fishback responded that he was doing her a “favor” by not processing her request because he would just reject it causing Sage Grouse to lose its deposit (which, incidentally, is why everything beyond the cover letter of Sage Grouse’s 2014 Interconnection Requests is dated 2012)?²²

- Why, even setting the OATT aside, is PacifiCorp allowed to knowingly accept fraudulent demonstrations of Site Control, regardless of whether BMPP and/or Latigo have since been able to acquire other land rights or otherwise modify their Generating Facility footprints while PacifiCorp’s Mr. Fishback explicitly told Sage Grouse that he would not permit Sage Grouse access to the Interconnection Queue?

- Why, if PacifiCorp truly only later discovered that BMPP’s and Latigo’s Interconnection Requests fraudulently relied on land that they had no right to claim, did PacifiCorp do nothing to report this fraud?

The Commission should require PacifiCorp to directly answer these questions.

²² PacifiCorp contends that there is nothing to support Sage Grouse’s argument regarding Mr. Fishback. PacifiCorp, therefore, seems to be operating under the chimera that all communications are transcribed. They are not. And that is because of a newly-invented gadget called the “telephone.” Ms. Ceruti estimates that she spent approximately 100 hours speaking on the “telephone” with PacifiCorp representatives over the past 3 ½ years. Through these conversations, PacifiCorp misguided and lied to Ms. Ceruti. And to satisfy PacifiCorp bombastic denials, Ms. Ceruti would happily welcome a subpoena to her phone company evidencing those records. But simply because there is not a transcript for every communication does not mean that those communications did not occur.

IV. THE COMMISSION SHOULD INVESTIGATE ADDITIONAL AREAS OF PACIFICORP'S MISCONDUCT.

Because PacifiCorp is enamored with Sage Grouse's "unsubstantiated" and "sensational" proffers, Sage Grouse has a few more for the Commission's consideration that corroborate this narrative. Sage Grouse has spoken to multiple persons in recent weeks in San Juan County, Utah, as well as others. Through them, Sage Grouse has learned that:

- PacifiCorp has halted its planned capacity upgrade to its interconnection system until Ellis-Hall and Sage Grouse are gone. In fact, Sage Grouse has learned that PacifiCorp has sat on tens of millions of dollars of purchased but uninstalled equipment despite collecting funds through rate-increases to effectuate these upgrades;

- After the Commission issued its December 14, 2013 Order in *Pioneer Wind Park I, LLC v. PacifiCorp*, requiring PacifiCorp to pay for network transmission costs for QFs once they interconnect to PacifiCorp's transmission system, PacifiCorp shifted these costs back to QFs by re-characterizing them as interconnection maintenance and upgrade fees;

- Now that PacifiCorp has been caught with its hand in the proverbial cookie jar, PacifiCorp, on March 6, 2015 – less than a month after Sage Grouse filed its complaint – posted a job search position for a Senior Transmission Attorney to advise regarding FERC and "transmission and interconnection tariff issues." See PacifiCorp Job Listing (attached hereto as Ex. 22). This is an implicit admission that PacifiCorp has seriously deviated from its OATT and the law.

Sage Grouse admits that it cannot substantiate these first two revelations beyond stating that many of them were discovered through conversations with San Juan County residents. This is due to the fact that PacifiCorp hides behind the curtain of confidentiality and its own assurances that PacifiCorp adequately polices its own conduct. This is not the first time

PacifiCorp has attempted to hide its misconduct.²³ In any event, Sage Grouse prays that the Commission investigate PacifiCorp's conduct in these matters.

Respectfully submitted,

/s/ Kimberly Ceruti

Kimberly Ceruti
Member and Manager of Sage Grouse
Energy Project, LLC

²³ In October 2014, PacifiCorp moved the United States District Court for the District of Utah to enjoin the United States Department of the Interior from releasing bird death data on the basis that it was “confidential.” See http://www.abajournal.com/news/article/wind_farm_sues_feds_to_stop_release_of_bird_death_data_to_associated_press. On December 18, 2014, PacifiCorp moved to dismiss the action—the day before PacifiCorp pleading guilty to killing protected birds. http://www.nytimes.com/aponline/2014/12/19/us/ap-us-wind-energy-eagle-deaths.html?_r=0; see also *PacifiCorp v. US Dept of Interior*, No. 2:14-cv-00761 docket (attached hereto as Ex. 22).