

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Blue Mountain Power Partners, LLC) DOCKET NO. 13-035-115
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In the Matter of the Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Latigo Wind Park, LLC) DOCKET NO. 13-035-116
) ORDER GRANTING MOTIONS TO FILE
) OVER-LENGTH PETITIONS AND
) DENYING PETITIONS FOR REVIEW OR
) REHEARING
)
)

ISSUED: November 25, 2013

SYNOPSIS

The Commission approves Ellis-Hall Consultants, LLC's ("EHC") motions to file over-length petitions and denies EHC's petitions for review or rehearing.

By The Commission:

INTRODUCTION AND BACKGROUND

These matters are before the Public Service Commission of Utah ("Commission") on the applications of PacifiCorp, doing business as Rocky Mountain Power ("PacifiCorp"), for approval of: (1) a power purchase agreement between PacifiCorp and Blue Mountain Power Partners, LLC ("Blue Mountain"), in Docket No. 13-035-115 ("Blue Mountain Application"); and (2) a power purchase agreement between PacifiCorp and Latigo Wind Park, LLC ("Latigo"), in Docket No. 13-035-116 ("Latigo Application"). The Blue Mountain and Latigo Applications are collectively referred to hereafter as the "Applications" and the Blue Mountain power

purchase agreement and Latigo power purchase agreement are collectively referred to hereafter as the “PPAs.”

On October 3, 2013, the Commission issued its order approving the Applications and denying the intervention of Mrs. Corinne Roring in Docket No. 13-035-116 (“Order”).¹ On November 4, 2013, EHC filed petitions for review or rehearing in Docket Nos. 13-035-115 (“Blue Mountain Petition”) and 13-035-116 (“Latigo Petition”). The Blue Mountain Petition and Latigo Petition are collectively referred to hereafter as the “Petitions.” EHC also filed motions for leave to file over-length petitions in both dockets on November 4, 2013. Those motions are granted.

Blue Mountain filed a response to the Petitions on November 15, 2013.

PacifiCorp and Latigo filed responses to EHC’s Petitions on November 19, 2013.

DISCUSSION, FINDINGS AND CONCLUSIONS

I. Regulatory Framework

The Order describes the statutes, regulations and PacifiCorp tariff that provide the context for our consideration of the Applications. Both federal and state laws encourage the development of qualifying facilities (“QFs”) by mandating regulatory processes that require electric utilities (in this instance PacifiCorp) to purchase electricity from QFs, while preserving ratepayer neutrality through avoided cost pricing. PacifiCorp’s tariff, Schedule 38, establishes the process, timeframes and requirements by which QFs may obtain pricing information and negotiate power purchase agreements. The Commission reviews power purchase agreements to

¹ The Order provides a more detailed procedural history of these proceedings at pp. 2-4.

assure PacifiCorp has properly administered Schedule 38 in its dealings with a counterparty and, in particular, that PacifiCorp has properly determined avoided cost pricing.

In this case, EHC, a wind generation developer, attempts to use the Schedule 38 process to thwart the power purchase agreements of competing wind generation projects. EHC misconstrues Schedule 38 in ways that would impose greater burdens on QFs (for example by inventing due diligence requirements for PacifiCorp), to bolster its arguments that the PPAs are unenforceable and result from PacifiCorp's discriminatory treatment. This approach may serve EHC's interests, but it is not consistent with the public's interest in QF development.² It would not serve the public interest expressed in the federal and state statutes to reject power purchase agreements that QFs have negotiated in good faith and in conformance with Schedule 38. If PacifiCorp's conduct toward EHC has been unduly discriminatory, Schedule 38 identifies a complaint process by which EHC can present its grievances to the Commission and seek redress, as the Commission has noted repeatedly.

II. Due Diligence/Contract Enforceability

A. Due Diligence

EHC makes a two-pronged argument that: (1) PacifiCorp failed to perform adequate due diligence as required by Schedule 38, resulting in PPAs that lack specificity in material terms; and (2) the Commission erred in approving the PPAs because, due to the lack of specificity, the PPAs are unenforceable. In support of its due diligence argument, EHC points to page 7 of the Order where we quote the following language from our 2003 decision initially approving Schedule 38:

² See UCA § 54-12-1(2).

The introduction of this schedule addresses an impediment to non-utility generation identified in an informal investigation undertaken by the Commission at the request of the Utah Legislative Energy Policy Task Force. In that investigation, potential developers cited the lack of a clear process for discovering both the rate a QF is likely to be paid and the steps required to obtain a timely purchase power contract.³

EHC argues the Order applied an inconsistent standard from the one outlined in the 2003 decision when we held: “[a]s such, Schedule 38 does not prescribe the due diligence that PacifiCorp *must* perform but rather acts as a check on the due diligence PacifiCorp *may* perform.”⁴ EHC reasons: “[i]f Schedule 38 outlines the “steps *required* to obtain a [power purchase agreement] with the utility” it does not follow that the “steps required” by Schedule 38 can be left to PacifiCorp’s discretion.”⁵ On the contrary, the term “steps required” in our 2003 order refers to the specification of actions a QF can take to have greater certainty of receiving indicative pricing and, ultimately, a power purchase agreement. The language of Schedule 38 is consistent with this meaning and intent, as the following table demonstrates:

Requirement/Discretionary Due Diligence	Schedule 38 Language
PacifiCorp Requirement	“The <u>Company</u> ⁶ <u>will respond</u> to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the <u>Company shall indicate</u> what additional information is required. Thereafter, the <u>Company will respond</u> in a timely manner following receipt of all required information.” ⁷

³Petitions at 2, *citing*, *In the Matter of Proposed PACIFICORP Tariff P.S.C.U. No. 44, for Schedule 38 Qualifying Facility Procedures*, Docket No. 02-035-T11 (Order; February 24, 2003 at p.1) (emphasis added).

⁴ Petitions at p. 2, *citing* Order at p.12.

⁵ Petitions at p.2.

⁶ The term “Company” as used in Schedule 38 refers to PacifiCorp.

⁷ Schedule 38, Sheet 38.1 (emphasis added).

Requirement/Discretionary Due Diligence	Schedule 38 Language
PacifiCorp Requirement	“. . . if the owner is unable to obtain it [PacifiCorp’s proposed generic power purchase agreement] from [PacifiCorp’s] website, the <u>Company will send</u> a copy within seven days of a written request.” ⁸
QF Requirement and PacifiCorp Discretionary Due Diligence	“To obtain an indicative pricing proposal with respect to a proposed project, the <u>owner must provide</u> in writing to the Company, general project information <i>reasonably required</i> [by PacifiCorp] for the development of indicative pricing, including but not limited to: . . .” ⁹
PacifiCorp Requirement and Discretionary Due Diligence	“Within 30 days following receipt of all information required [from the QF], the <u>Company will provide</u> the owner with an indicative pricing proposal, which <i>may include</i> other indicative terms and conditions, tailored to the individual characteristics of the proposed project. . . . The Company <u>will provide</u> with the indicative prices a description of the methodology used to develop the prices.” ¹⁰
QF Requirement and PacifiCorp Discretionary Due Diligence	“If the owner desires to proceed forward with the project after reviewing the Company’s indicative proposal, it may request in writing that the Company prepare a draft power purchase agreement to serve as the basis for negotiations between the parties. In connection with such request, the <u>owner must provide</u> the Company with any additional project information that the Company <i>reasonably determines to be necessary</i> for the preparation of a draft power purchase agreement, which may include, but shall not be limited to: . . .” ¹¹
PacifiCorp Requirement	“Within 30 days following receipt of all information required pursuant to paragraph 4, the <u>Company shall provide</u> the owner with a draft power purchase agreement containing a comprehensive set of proposed terms and conditions, including a specific pricing proposal for purchases from the project.” ¹²
PacifiCorp Requirement and Discretionary Due Diligence	“. . . In connection with [draft power purchase agreement] negotiations, the Company: a) <u>will not</u> unreasonably delay negotiations and <u>will respond</u> in good faith to any additions, deletions or modifications to the draft power purchase agreement that are proposed by the owner b) <i>may request</i> to visit the site of the proposed project . . . c) <u>will update</u> its pricing proposals at appropriate intervals to accommodate any changes to the Company’s avoided-cost calculations, the proposed project or the proposed terms of the draft

⁸ Schedule 38, Sheet 38.2 (emphasis added).

⁹ Schedule 38, Sheet 38.2 (emphasis added).

¹⁰ Schedule 38, Sheet 38.2-38.3 (emphasis added).

¹¹ Schedule 38, Sheet 38.3 (emphasis added).

¹² Schedule 38, Sheet 38.4 (emphasis added).

Requirement/Discretionary Due Diligence	Schedule 38 Language
	power purchase agreement d) <i>may request</i> any additional information from the owner necessary to finalize the terms of the power purchase agreement and satisfy the Company’s due diligence with respect to the Project.” ¹³
PacifiCorp Requirement and Discretionary Due Diligence	“When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the <u>Company will prepare</u> and forward to the owner a final, executable version of the agreement. The <i>Company reserves the right</i> 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. . . .” ¹⁴
QF Requirement	“In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company <u>are also required to enter into an interconnection agreement</u> that governs the physical interconnection of the project to the Company’s transmission or distribution system.” ¹⁵
PacifiCorp Requirement	“Based on the project size and other characteristics, the <u>Company will direct</u> the QF owner to the appropriate individual within the Company’s power delivery function that will be responsible for negotiating the interconnection agreement with the QF owner.” ¹⁶
PacifiCorp Requirement	“For interconnections impacting the Company’s Transmission System, the <u>Company will process</u> the interconnection application through PacifiCorp Transmission Services following the procedures for studying the generation interconnection described in the Company’s Open Access Transmission Tariff, PacifiCorp FERC Electric Tariff, Fifth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff (OATT) on file with the Federal [Energy] Regulatory Commission.” ¹⁷
PacifiCorp Requirement	“For interconnections impacting the Company’s Distribution System only, the <u>Company will process</u> the interconnection application through the Manager of QF Contracts at the address shown in Section II.A. Applications for interconnection at the distribution level will be processed in accordance with Utah Admin. Code R746-312.” ¹⁸

The foregoing quotations demonstrate that Schedule 38’s requirements establish timeframes for PacifiCorp’s actions and limits on PacifiCorp’s discretion to define what

¹³ Schedule 38, Sheet 38.4-38.5 (emphasis added).

¹⁴ Schedule 38, Sheet 38.5 (emphasis added).

¹⁵ Schedule 38, Sheet 38.5 (emphasis added).

¹⁶ Schedule 38, Sheet 38.6 (emphasis added).

¹⁷ Schedule 38, Sheet 38.7 (emphasis added).

¹⁸ Schedule 38, Sheet 38.7 (emphasis added).

information it needs from a QF to determine indicative pricing and to prepare the draft power purchase agreement. In general, Schedule 38 limits this discretion to seeking information that is reasonably necessary for the described purposes. Schedule 38 also affords PacifiCorp a measure of flexibility to tailor various indicative terms and conditions to a project's individual characteristics and to request information it deems necessary to satisfy its due diligence.

As an electric utility, PacifiCorp is subject to the obligations under the Public Utility Regulatory Act of 1978 ("PURPA") to purchase QF energy and capacity. To that end, the requirements for PacifiCorp under Schedule 38 outlined above are designed to facilitate the execution of QF power purchase agreements. For example, as noted above, Schedule 38 requires PacifiCorp to promptly and reasonably process requests for indicative pricing and power purchase agreement terms and conditions. Along with its obligations under PURPA, PacifiCorp must balance its responsibility to its retail customers to operate its system in a safe, reliable and cost-effective manner. As such, Schedule 38 requires prospective QFs to provide PacifiCorp with certain information and to be subject to conditions PacifiCorp determines, on a case-by-case basis, to be reasonably necessary to evaluate and process requests for power purchase agreements. Schedule 38 recognizes that what PacifiCorp considers to be reasonable in a given situation may appear unreasonable to a QF. Thus, Schedule 38 identifies the dispute resolution process by which the Commission may determine the reasonableness of PacifiCorp's requirements as applied to the particular circumstances of a QF seeking a power purchase agreement.

In short, contrary to EHC's assertions, Schedule 38 does not prescribe the due diligence that PacifiCorp *must* perform but rather acts as a check on the timing and scope of

PacifiCorp's due diligence actions in the context of its responsibility to its retail customers to operate its electric system in a safe, reliable and cost-effective manner.

B. Unenforceable Contracts

As detailed above, EHC argues the Commission erred in approving the Applications because PacifiCorp failed to meet its obligation under Schedule 38 to conduct due diligence necessary to prepare enforceable power purchase agreements. Related to that argument, EHC contends the Commission erred in approving allegedly unenforceable power purchase agreements. Specifically, EHC claims the PPAs are unenforceable because they: (a) allow Blue Mountain and Latigo to designate different wind turbine types after execution of the PPAs; (b) do not require Blue Mountain or Latigo to establish site control or a route for transmission interconnection as required by PacifiCorp's Open Access Transmission Tariff ("OATT"); (c) permit execution of the PPAs prior to execution of interconnection agreements; and (d) contain misstatements regarding land use permits required under the PPAs.

In reviewing the PPAs in light of EHC's claims, we consider whether approving the PPAs, with the allegedly unenforceable contract provisions described above, would be contrary to the public interest. In making the determination that the PPAs are in the public interest, we rely, in part, on the fact that the Division of Public Utilities ("Division"), the Office of Consumer Services ("Office") and Utah Clean Energy ("UCE") all reviewed the PPAs and took no issue with the enforceability of the PPAs.¹⁹ In fact, the Division specifically stated the

¹⁹ As noted in the Order, the Division states the Commission can approve both PPAs because they comply with the approved QF rate methodology in effect at the time of their execution and because the PPAs were negotiated in good faith relying on applicable Commission orders. The Office reaches a similar conclusion but withholds any recommendation because it disagrees with the Commission-approved QF rate methodology in effect at the time the PPAs were executed.

PPAs “appear[] to be comprehensive and generic in [their] other terms and conditions” and “appear to have [been] negotiated in good faith relying on the prior Commission orders.”²⁰

We are also persuaded by the testimony of PacifiCorp’s witness Mr. Paul Clements who testified at hearing that although certain terms in the PPAs are unspecified or unverified at the time of execution, they are contractually required to be designated or verified by the QF prior to the commercial operation of the project.²¹ As explained by Mr. Clements, PacifiCorp performs two levels of due diligence. The first level is performed prior to the execution of a power purchase agreement to ensure that the project is able to meet obligations under the power purchase agreement. The second level of due diligence occurs prior to deeming the project as having reached commercial operation. Until such time as a QF is deemed to reach commercial operation, PacifiCorp has no obligation to pay the QF.²²

Under PURPA, PacifiCorp’s customers will only pay for energy that is actually delivered. Moreover, the price of power is not a function of the QF’s costs but is the cost the

²⁰ See Report Memorandum of the Division, dated August 26, 2013, Docket Nos. 13-035-115 and 13-035-116.

²¹ See September 19, 2013 Tr. 18-25; 34:1-14; 35:3-6. See also Reply Comments of PacifiCorp, dated September 9, 2013, in Docket Nos. 13-035-115 and 13-035-116 at pp. 5-6.

²² See September 19, 2013 Tr. 33:18-25; 34:1-14. At hearing, EHC specifically asked PacifiCorp’s witness Mr. Paul Clements “why it’s in the public interest for the Commission to approve a PPA in which so many things will change pursuant to unilateral decisions made by the developer?” In response, Mr. Clements stated: “It’s in the public interest because this Commission really has to strike a balance between implementing PURPA and providing protection to the Utility’s customers. That’s really the balance in a QF contract. The Company’s customers need to remain indifferent or unharmed as a result of the QF contract; yet, the QF needs to have the ability to develop a project and sell to the Utility, consistent with PURPA. And that’s really the balancing act that this Commission has to perform in these QF PPAs. It’s actually a bit ironic as I sit here today because I’m normally sitting here on this stand, in every instance I’ve been here before, arguing that we need stricter terms, stricter terms, and it’s a QF arguing that we need less stringent terms, less stringent terms. And this is the first instance where I’m having to argue, saying that our terms are stringent enough. And it’s striking that balance that creates the public interest. It’s in the public interest for this Commission to fulfill its obligation under PURPA. It’s in the public interest to have adequate protections in the contract so that customers don’t pay more or less than avoided cost. I think that’s the key principle that’s not being discussed here. No payment is made to this QF until it comes on-line, generates power, and delivers that power to the Utility. At that point in time, we have an obligation to pay, not before then.” September 19, 2013 Tr. 63: 5-8, 16-25; 64: 1-16 (emphasis added); See also Tr. 181: 22-25; 182:1-24; 183: 1-25; 184:1-2.

utility avoids as determined by a method the Commission established through a regulatory proceeding. The fact that the PPAs require designation or verification of certain items by a date certain as a condition precedent to PacifiCorp's requirement to pay for energy and capacity does not contravene the public interest. Based upon the record in these proceedings, we find the PPAs strike an appropriate balance between specificity and the flexibility QFs require during project development, given pricing is determined by utility avoided cost. In our view, the structure of these PPAs does not adversely affect the public interest or increase ratepayer risk. Rather, the investment of each QF is at risk if it does not make the proper designations or verifications to reach commercial operation, and ultimately sell energy and capacity to PacifiCorp.

We are further persuaded that ratepayers are protected from potential harm based on provisions contained within the PPAs that, among other things: require the QFs to pay liquidated damages if they do not meet certain performance guarantees²³; require the QFs to post security to cover the potential for output shortfalls²⁴; and require QFs to pay delay damages if the project on-line date is not met.²⁵

Based on our review of the PPAs and the evidence on the record in these proceedings, we are satisfied that approval of the PPAs is in the public interest. It is undisputed that the pricing reflected in the PPAs is consistent with the approved method for calculating avoided cost rates in effect at the time of PPA execution. Moreover, the PPAs contain terms and conditions that adequately protect ratepayers from performance risks.

²³ See PPAs at Section 6.12; *See also* September 19, 2013 Tr. 68:6-24.

²⁴ See PPAs at Sections 6.12 and 8.2; *See also* September 19, 2013 Tr. 38:1-5.

²⁵ See PPAs at Section 2.3; *See also* September 19, 2013 Tr. 60:1-9.

III. Discriminatory Treatment

EHC also argues the Commission should deny the Applications because PacifiCorp purportedly treated Latigo and Blue Mountain differently in negotiating their PPAs than its treatment of EHC during separate PPA negotiations. EHC contends PacifiCorp is guilty of discrimination in violation of Utah Code Ann. §§ 54-3-7 and 54-3-8. As noted in the Order and by the Commission's Presiding Officer at the pre-hearing conference and hearing, EHC's claims of discrimination are outside the scope of our consideration of the Blue Mountain and Latigo PPAs in these proceedings. Rather, the primary focus of our public interest determination in these proceedings is whether the pricing under the Blue Mountain and Latigo PPAs is just and reasonable to PacifiCorp's ratepayers because it conforms to the method for determining PacifiCorp's avoided cost in effect at the time. Significantly, the Division, the Office, and UCE all acknowledge that the pricing reflected in the PPAs is consistent with the method approved for calculating avoided cost rates in effect at the time of each PPA's execution. Tellingly, EHC takes no position as to whether the pricing in the PPAs is consistent with the Commission-approved avoided costs methodology—the most relevant and fundamental determination for these proceedings.

Given the clearly expressed legislative intent to foster QF development, it would not serve the public interest to deny Latigo and Blue Mountain the benefit of PPAs they negotiated in good faith, based on PacifiCorp's conduct as alleged by EHC. This order expresses no findings or conclusions as to whether or not EHC has a grievance against PacifiCorp with respect to EHC's negotiations for a PPA, because the substance of those negotiations is not relevant to our determinations in these dockets.

IV. Relevant Evidence

A. Discovery

The Petitions state the Commission should compel Blue Mountain, Latigo, and PacifiCorp to produce certain documents to further prove that PacifiCorp acted against the public interest by treating EHC in a disparate manner. Under Utah R. Civ. P. 26(b)(1), “[p]arties may discover any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality set forth below.” Subsection (b)(2) provides the following proportionality test:

Discovery and discovery requests are proportional if:

(b)(2)(A) the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues;

(b)(2)(B) the likely benefits of the proposed discovery outweigh the burden or expense;

(b)(2)(C) the discovery is consistent with the overall case management and will further the just, speedy and inexpensive determination of the case;

(b)(2)(D) the discovery is not unreasonably cumulative or duplicative;

(b)(2)(E) the information cannot be obtained from another source that is more convenient, less burdensome or less expensive; and

(b)(2)(F) the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.

As previously discussed, alleged discriminatory treatment of EHC by PacifiCorp as compared to PacifiCorp's treatment of Latigo or Blue Mountain is simply outside the scope of the Commission's consideration of the Blue Mountain and Latigo PPAs in these proceedings.

As such, EHC's purported need for additional discovery that is both cumulative and repetitious to prove irrelevant claims is far outweighed by the Commission's need to further the efficient and timely determination of these proceedings. Moreover, PacifiCorp, Blue Mountain and Latigo represent they provided all responsive documents in exhaustive efforts to respond to EHC's requests.²⁶

B. Mr. Fishback

At the pre-hearing conference, EHC requested PacifiCorp to cause Mr. Tom Fishback, an employee of PacifiCorp Transmission located in Portland, Oregon, to appear in Salt Lake City to testify at the hearing to prove EHC's disparate treatment and related due diligence claims discussed above. The Commission denied this request because, as discussed above, discriminatory treatment of EHC by PacifiCorp, as compared to the treatment of Latigo or Blue Mountain is outside the scope of the Commission's consideration of the Blue Mountain and Latigo PPAs in these proceedings. Moreover, any potential claims regarding disparate treatment in the context of PacifiCorp's administration of its transmission interconnection process (the process which Mr. Fishback administers) fall squarely under the jurisdiction of the Federal Energy Regulatory Commission ("FERC").

We also denied this request because, as also discussed above, Schedule 38 provides that PacifiCorp "reserves the right to condition execution of the power purchase agreement upon simultaneous execution of an interconnection agreement between the owner and [PacifiCorp's] power delivery function . . ." ²⁷ In other words, there is no requirement under

²⁶ See *e.g.* September 16, 2013, Tr. 9:20-25, 10:1-25, 11:1-25, 12:1-6, 19:1-25, 20:1-8, 21:15-25, 22:1-25, and 23:1-17.

²⁷ Schedule 38, Sheet 38.5.

Schedule 38 that an interconnection agreement be executed prior to the execution of a power purchase agreement; rather, that decision is left to PacifiCorp's discretion.²⁸ Mr. Clements testified interconnection agreements were not in place when the PPAs were executed. As such, there is no need to question Mr. Fishback in these proceedings regarding an alleged due diligence requirement that does not exist within Schedule 38. In short, Mr. Fishback's testimony regarding his actions as the administrator of PacifiCorp's FERC-governed transmission interconnection process is not relevant to our public interest determination in these proceedings.

C. Cross-Examination

EHC makes numerous claims throughout the Petitions that the Commission erred by sustaining objections regarding repetitious and cumulative questioning of witnesses regarding irrelevant topics. Without laboring each scenario, we note that Utah Admin. Code § R746-100-10 allows the Commission to exclude non-probative, irrelevant, or unduly repetitious evidence. Notwithstanding EHC's assertions, parties do not have an unfettered right to question witnesses. Moreover, pursuant to Utah Admin. Code § R746-100-10(E)(2), the Commission is required to "ensure that the taking of evidence and subsequent matters proceed as expeditiously as practicable." To allow parties free reign on cross-examination with no limits would be contrary to this mandate. EHC was afforded ample time and latitude in cross-examination to explore all relevant issues in the proceeding.

²⁸ We note that although PacifiCorp's decision to require execution of an interconnection agreement prior to that of a power purchase agreement is discretionary, PacifiCorp's "obligation to make purchases from a QF is conditioned upon all necessary interconnection arrangements being consummated." Schedule 38, Sheet 38.5. The execution of an interconnection agreement as a condition of PacifiCorp's obligation to purchase energy and capacity from a QF is also contained in the PPAs. In other words, whether the QFs enter into an interconnection agreement before or after a power purchase agreement is signed, PacifiCorp (and ultimately its customers) has no obligation to pay a QF for energy and capacity until an interconnection agreement is executed. We believe this further protects the public from any potential harm.

V. Intervention

The Petitions argue the Commission is required to consider EHC's claims of disparate treatment in these proceedings because we granted EHC's request to intervene—which included claims of disparate treatment, among other claims. The Commission's consideration of issues in a proceeding is not dictated by the matters referenced in a party's petition to intervene. Pursuant to Utah Code Ann. § 63G-4-207, the Commission grants intervention if “the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding” and “the interests of justice and the orderly and prompt conduct of adjudicative proceedings will not be materially impaired by allowing the intervention.” (Emphasis added). Based on these broad standards, EHC was granted intervention by the Commission's August 12, 2013, orders, which simply state: “[b]ased upon the request to intervene and for good cause appearing, the Commission will grant intervention.”²⁹

After EHC was granted intervention, the Commission established a schedule for these proceedings allowing for briefing on numerous issues. Upon consideration of the parties' positions regarding these issues, the Commission issued notice of a pre-hearing conference on September 6, 2013,³⁰ to be held on September 16, 2013, for the purpose of ruling on any outstanding motions and to establish the scope and procedure for the hearings scheduled on September 19, 2013. At the pre-hearing conference and later at the hearing, the Commission

²⁹ See, e.g., EHC's Petition to Intervene in the Blue Mountain proceeding: “EHC requests leave to intervene to give the PSC notice of its ownership of certain leases that are within the geographic footprint of the project commonly referred to as the Blue Mountain Wind Project (“Project”) and its concerns relating to the Project and the manner in which the Power Purchase Agreement (“PPA”) was approved and submitted under this docket. EHC believes that its interest in these leases and the subject land will be substantially affected by the current proceeding. EHC is also concerned about a conflict of interest with Blue Mountain Power Partner's current counsel.”

³⁰ The Commission issued an amended notice of pre-hearing conference on September 12, 2013, to accommodate a requested time change.

stated the focus of the Commission's consideration in these dockets is the Blue Mountain and Latigo PPAs, rather than EHC's claim of discrimination in seeking its own PPA.

EHC further argues the Commission acted inequitably by allowing EHC to intervene in this proceeding without first informing EHC that it could pursue claims of disparate treatment against PacifiCorp through the dispute resolution process outlined in Schedule 38. EHC claims the Commission cannot prejudice EHC for lack of notice of the Schedule 38 dispute resolution process because the latest version of that tariff was only recently made available on PacifiCorp's website. We have no forensic method to test the veracity of EHC's allegation regarding PacifiCorp's website. We note, however, that the most recent version of Schedule 38, including the pertinent dispute resolution process language was posted on the Commission's website on April 15, 2013, and subsequently approved by the Commission's order of June 10, 2013, in Docket No. 12-035-101. In addition, we presume EHC was aware of the dispute resolution process identified in Schedule 38 prior to the hearing because its pleadings include numerous references to a proceeding before this Commission earlier this year in which a QF filed a complaint against PacifiCorp for violations of Schedule 38. *See In the Matter of the Formal Complaint of Ros Vrba for Energy of Utah against Rocky Mountain Power*, Docket No. 13-035-22.³¹

VI. Mr. Dodge

We denied EHC's motion to disqualify Mr. Dodge as counsel for Blue Mountain by our order dated August 28, 2013. In that order, we stated that beyond Utah Admin. Code R746-100-6, which allows the Commission to preclude representation of more than one party by

³¹ See e.g., EHC's Objection to Approval of Blue Mountain Power Purchase Agreement at p.ii, filed August 26, 2013.

an attorney or firm in a proceeding, the Commission has no authority to disqualify a licensed attorney as counsel based on an alleged conflict of interest. We stand by the rationale supporting our decision on that issue.

ORDER

Pursuant to the discussion, findings and conclusions in our Order and herein, we deny EHC's Petitions. Review of this order is governed by Utah Admin. Code § R746-100-11, and Utah Code Ann. §§ 54-7-15, 63G-4-302(b) and 63G-4-401(3), which require the filing of a petition for judicial review of an order constituting final agency action within 30 days of issuance.

DATED at Salt Lake City, Utah, this 25th day of November, 2013.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#249035

CERTIFICATE OF SERVICE

I CERTIFY that on the 25th day of November, 2013, a true and correct copy of the foregoing was served upon the following as indicated below:

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