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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| <p>In the Matter of the Review of Electric Service Schedule No. 38, Qualifying Facilities Procedures, and Other Related Procedural Issues</p> | <p>Docket No. 14-035-140</p> <p>COMMENTS OF SUNEDISON, LLC IN SUPPORT OF SETTLEMENT AGREEMENT</p> |
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Intervenor SunEdison, LLC (“SunEdison”) files these comments in support of the partial stipulation reached by parties to this docket as reflected in the Settlement Agreement and proposed Schedule 38 tariff revisions (“Settlement”) filed on May 5, 2015. SunEdison signed and supports Commission approval of the Settlement. SunEdison understands that certain parties intend to offer live testimony in support of the Settlement at the hearing scheduled for May 26, 2015. SunEdison is separately filing these comments, however, to help explain one legal aspect of the Settlement that may not easily lend itself to live testimony. These Comments will address

this Commission’s jurisdiction over interconnection agreements entered into between PacifiCorp and developers of large Utah QF facilities.

Background

It appears to have been widely assumed by many in Utah that the Federal Energy Regulatory Commission (“FERC”) has exclusive jurisdiction over large QF interconnection agreements involving PacifiCorp’s transmission system. Indeed, current language in Schedule 38 appears to reflect such an assumption:

II. Process for Negotiating Interconnection Agreements

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Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's power delivery function.

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B. Procedures

For interconnections impacting the Company’s Transmission System, the Company will process the interconnection application through PacifiCorp Transmission Services following the procedures for studying the generation interconnection described in the Company’s Open Access Transmission Tariff, PacifiCorp FERC Electric Tariff, Fifth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff (OATT) on file with the Federal Regulatory Commission. A copy of the OATT is available on-line at <http://www.oasis.pacificorp.com>.

For interconnections impacting the Company’s Distribution System only, the Company will process 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 Electrical Interconnection using the Company's Commission-approved interconnection forms and agreements, which are provided electronically at the following address: <http://www.pacificorp.com/tran/ts/gip/qf.html>

In addition, the Commission's existing rule on QF interconnections, R746-312, applies only to QF interconnections with PacifiCorp's distribution system, and deals only with QFs up to 20 MW in size. There appear to be no Commission rules or orders governing interconnection agreements for QFs larger than 20 MW or QF facilities that interconnect with PacifiCorp's transmission system.

At some point, PacifiCorp apparently concluded that this Commission, and not FERC, has jurisdiction over QF interconnection agreements with its transmission system when all of the QF output is sold exclusively to PacifiCorp. In fact, PacifiCorp's current Standard Large Generator Interconnection Agreement for a Qualifying Facility includes the following or similar language:

2.3 Change in Qualifying Facilities Status. Interconnection Customer has represented that the Generating Facility is a Qualifying Facility. As a Qualifying Facility selling its electric output only to Transmission Provider, the Utah Public Service Commission has regulatory authority over the interconnection of the Generating Facility with Transmission Provider's Transmission System. If at any time during the term of this Agreement, all or a portion of the output of the Qualifying Facility is to be sold to a party other than Transmission Provider, regulatory authority for this interconnection will fall under the jurisdiction of the Federal Energy Regulatory Commission ("FERC") and this Agreement shall terminate upon the first date such electric output from the Generating Facility is produced for sale to such other party, and no later than sixty (60) days prior to such termination date, Interconnection Customer shall enter into a new Large Generator Interconnection Agreement with Transmission Provider pursuant to Transmission Provider's Open Access Transmission Tariff.

It thus appears that PacifiCorp's understanding of this Commission's jurisdiction over interconnection agreements involving large QFs may be inconsistent with the view held by others, perhaps including the Commission itself.

Relevant FERC Orders

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

In Re Western Massachusetts Electric Company, Docket No. ER92-67-001 (November 3, 1992), in rejecting a challenge to FERC jurisdiction over certain transmission agreements involving a QF facility, FERC distinguished between "matters subject to state regulation and matters subject to [FERC's] exclusive jurisdiction" by explaining:

Section 292.303 of our QF regulations prescribes the obligations of an electric utility to a QF. Section 292.303(c) requires electric utilities to interconnect with QFs. However, the requirement to interconnect under section 292.303(c) is limited to those interconnections "as may be necessary to accomplish purchases or sales" directly between the electric utility obligated to purchase from or sell to a QF and that QF. The requirement does not extend to utilities located between the buyer and the seller that provide transmission service."

ER92-67-001, 61 FERC at 61,661-62. In so distinguishing between those QFs that interconnect with and sell directly to the purchasing public utility and those QFs that also utilize transmission facilities of other public utilities, FERC appears to have concluded that jurisdiction over the former category of QF interconnection agreements lies with the relevant state commissions and not FERC.

FERC's apparent recognition of state jurisdiction over QF interconnection agreements with the public utility obligated to purchase the entire QF output has since been confirmed in subsequent FERC orders. For example, in FERC Order No. 2003, FERC held:

813. The Commission's Regulations govern a QF's interconnection with most electric utilities in the United States, including normally nonjurisdictional utilities. ***When an electric utility is obligated to interconnect under Section 292.303 of the Commission's Regulations, that is, when it purchases the QF's total output, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs.*** But when an electric utility interconnecting with a QF does not purchase all of the QF's output and instead transmits the QF power in interstate commerce, the Commission exercises jurisdiction over the rates, terms, and conditions affecting or related to such service, such as interconnections.

814. Thus, the Commission has jurisdiction over a QF's interconnection to a Transmission System if the QF's owner sells any of the QF's output to an entity other than the electric utility directly interconnected to the QF. Because the presence of any output sold to a third party determines Commission jurisdiction, we reject Cal Cogen and ELCON's requests that we establish jurisdiction over QF interconnections based on the amount of energy sold to a third party. Accordingly, this Final Rule applies when the owner of the QF seeks interconnection to a Transmission System to sell any of the output of the QF to a third party. This jurisdiction applies to a new QF that plans to sell its output to a third party, and to an existing QF interconnected to a Transmission System that historically sold its total output to an interconnected utility or on-site customer and now plans to sell output to a third party. ***Nevertheless, consistent with the Commission's Regulations, states will continue to exercise authority over QF interconnections when the owner of the QF sells the output of the QF only to an interconnected utility or to on-site customers.***

Order No. 2003, *Standardization of Generator Interconnection Agreements and Procedures*, 104 FERC 61103, ¶¶ 813-14 (July 24, 2003) (emphasis added; footnotes omitted).

Similarly, in FERC Order No. 2006-A, *Standardization of Small Generator Interconnection Agreements and Procedures*, 113 FERC 61,195, ¶ 105 (November 22, 2005), FERC held: “NARUC is correct that a QF selling at retail is not eligible to interconnect under either Order No. 2003 or Order No. 2006. Under the Public Utility Regulatory Policies Act of 1978, such interconnections are governed by state law” (footnotes omitted). In *Niagara Mohawk Power Corporation d/b/a National Grid*, ER07-1096-001, 121 FERC 61183, ¶ 13 (November 19, 2007), FERC confirmed: “In *Western Massachusetts Electric Company*, the Commission addressed the boundary between state and federal jurisdiction over agreements under which QFs, within the meaning of the Public Utility Regulatory Policies Act, interconnect with the transmission grid. Citing 18 C.F.R. § 292.306, ***the Commission held that states exercise jurisdiction over direct interconnections between a QF and the public utility that purchases its entire electric output***” (emphasis added; footnotes omitted).

FERC continued to recognize state jurisdiction over large QFs when the QF output is purchased exclusively by the incumbent utility in *Florida Power & Light Company*, holding:

Thus, if a QF avails itself of its PURPA privileges (i.e., the requirement that a utility purchase power from and sell power to QFs) by selling to the host utility pursuant to the PURPA-mandated purchase obligation of the host utility, Commission jurisdiction will attach (thereby requiring that the interconnection agreement be filed) as soon as and only if the QF is provided with an express right to sell output to third parties rather than on the date that sales to third parties occur. However, where a PPA or related interconnection

agreement expires or is silent on the right to sell to third parties, we will not assume that third party sales are occurring or planned. Instead, as we explained in Order No. 2003 and reiterated in *Niagara Mohawk*, *we will exercise jurisdiction or require the filing of an interconnection agreement only if there is some manifestation of a QF's "plan to sell" output to third parties.*

Docket No. EL10-43-000, 133 FERC 61121, ¶¶ 21-22 (November 32, 2010) (emphasis added).

Settlement Revised Tariff Language

The Commission has apparently never been called upon to approve interconnection agreements for QFs larger than 20 MW or for QFs that connect to transmission facilities, or to adopt rules governing such interconnections. In recognition of this fact, and in an effort to maintain consistency and utilize rules and procedures that exist and are understood, the parties to the Settlement have suggested that the interconnection rights, procedures and requirements as specified in PacifiCorp's FERC OATT be adopted by the Commission and incorporated into Schedule 38, subject, as appropriate, to Commission jurisdiction over such agreements. Thus, the stipulated language for revised Schedule 38 contained in the Settlement includes the following suggested language:

II. Process for Negotiating Interconnection Agreements

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon all necessary interconnection arrangements being consummated.

It is recommended that the owner initiate its request for interconnection as early in the planning process as possible, to ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement. Interconnection agreements (both transmission and distribution level

voltages) are handled by the Company's power delivery function, PacifiCorp Transmission Services.

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B. Procedures

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) completion of studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, (3) execution of an interconnection agreement.

The QF project owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis.

For interconnections greater than twenty (20) megawatts, the Company will process the interconnection application through PacifiCorp Transmission Services generally following the procedures for studying the generation interconnection described in the Company's Open Access Transmission Tariff, PacifiCorp FERC Electric Tariff, Fifth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff (OATT), as the same may be changed or updated, on file with the Federal Energy Regulatory Commission (FERC). A copy of the OATT is available on-line at <http://www.oasis.pacificorp.com>.

For interconnections equal to or less than twenty (20) megawatts, the Company will process the interconnection application in accordance with Utah Admin. Code R746-312.

The Company's interconnection forms and agreements, are provided electronically at the following address: <http://www.pacificorp.com/tran/ts/gip/qf.html>

III. Process for Filing a Complaint with the Commission on Contract Terms

The Commission has both informal and formal dispute resolution processes which can be reviewed on the Commission website at the following address: <http://www.psc.utah.gov/complaints/index.html>.

These processes are available for any matter as to which the Commission has jurisdiction, which may include (i) QF PPA contracts, (ii) small QF interconnection

agreements (less than 20 MW), and (iii) large QF interconnection agreements (more than 20 MW), so long as all of the QF output is sold exclusively to the Company. To the extent any portion of the QF output is sold to anyone other than the Company, a QF generation interconnection may be subject to FERC jurisdiction. Nothing in this Schedule will affect the jurisdiction of the Commission or FERC, and all parties will retain any and all rights they may have under any applicable state or federal statutes or regulations.

Conclusion

In recognition of the fact that this Commission has apparently not previously been asked to promulgate rules or otherwise exercise its jurisdiction over large QF interconnection agreements when the entire QF output is sold to PacifiCorp, SunEdison respectfully suggests that the Commission approve revised tariff language that adopts and incorporates into Schedule 38 PacifiCorp's established FERC OATT interconnection rights and requirements, at least until such time as the Commission elects to promulgate its own rules or otherwise enter orders in exercise of its jurisdiction over such interconnection agreements.

DATED this 22nd day of May 2015.

HATCH, JAMES & DODGE

/s/ _____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 22nd day of May 2015, on the following:

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