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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of: The Utah Public Service Commission Exercising Jurisdiction Over Schedule 38 and, as Adopted, PacifiCorp’s OATT Part IV.

Docket No. 15-2582-01
Ellis-Hall Consultants, LLC’s Comments in Support of Sage Grouse Energy Project, LLC’s Request for Agency Action

Intervenor Ellis-Hall Consultants, LLC (“Ellis-Hall”) files these comments in support of Sage Grouse Energy Project, LLC (“Sage Grouse’s”) Request for Agency Action (the “Sage Grouse Request for Agency Action”).

On May 29, 2015, Sage Grouse opened this docket to ask for clarification of the Commission’s statements and jurisdictional authority over PacifiCorp’s OATT, as adopted by Schedule 38. *See Sage Grouse Energy Project, LLC’s Request for Agency Action In the Matter of: The Utah Public Service Commission Exercising Jurisdiction Over Schedule 38 and, as Adopted, PacifiCorp’s OATT Part IV.* Sage Grouse notes that the Commission previously stated that it does not have jurisdiction over PacifiCorp’s OATT. Sage Grouse argues that this directly contradicts the Commission’s standing 2003 Schedule 38 order, which explicitly states that PacifiCorp “will follow the procedures for generation interconnection described in Part IV of [PacifiCorp’s] Open Access Transmission Tariff (Tariff) on file with the Federal Regulatory

Commission.” See P.S.C.U. No. 44 Electric Service Schedule No. 38 (attached to Sage Grouse’s Request for Agency Action Ex. 2). Ellis-Hall generally agrees with Sage Grouse’s analysis.

Ellis-Hall also believes that the Commission should hold in favor of Sage Grouse for three additional reasons.

First, the Commission’s 2003 order does not provide any grounds for PacifiCorp to unilaterally update or otherwise change Schedule 38 without requiring a Commission order approving such a change. See Commission February 24, 2003 Order (attached hereto as Ex. 1).

Second, Schedule 38 sets forth the requirements for a QF owner “with a design capacity greater than 1,000 kW who desire to make sales to the Company.” See P.S.C.U. No. 44 Schedule 38. This requires such QFs “to enter into written power purchase and interconnection agreements with [PacifiCorp] pursuant to the procedures” outlined therein. *Id.* In fact, the Division of Public Utilities noted that

The tariff is divided into two parts. The first part specifies the process for negotiating a purchase power agreement (“PPA”). In general, the first part specifies the procedures to be followed leading to the development of an indicative pricing proposal and (potentially) an acceptable PPA. ***As the tariff states, the process for the interconnection agreement will follow the procedures outlined in Part IV of PacifiCorp’s Open Access Transmission Tariff. Both agreement are necessary for PacifiCorp to purchase power from qualifying facilities (“QFs”).***

....

The (revised) tariff establishes a process to negotiate a PPA ***and*** an interconnection agreement, ***both of which are necessary in order for PacifiCorp to purchase power from a QF.***

Division of Public Utilities January 17, 2003 Memorandum 1-2 (attached hereto as Ex. 2) (emphasis added).

Thus, it is clear that the purpose of Schedule 38 was to establish procedures for a QF to ***sell*** energy to PacifiCorp and not to simply enter into a PPA.

As Sage Grouse contends, PacifiCorp has repeatedly attempted to modify Schedule 38 by filing improper revisions that require a Commission order to be effective. The revisions are also an attempt to circumvent the ratepayer and other public participants' ability to comment on the suggested modifications. Although improper, these changes seemingly diluted Schedule 38 from a "sales" centric requirement to a PacifiCorp PPA negotiation tool. Although related, these are very, very different concepts. The first protects the rate-paying customer. The latter advantages PacifiCorp at the rate-paying customer's expense.¹ And, PacifiCorp has tried to implement this change by slowly erasing the Commission's oversight of PacifiCorp's OATT interconnection requirements. This is not consistent with the purpose of Schedule 38.

Third, Ellis-Hall attempted to argue that the Commission should require PacifiCorp to comply with interconnection requirements as set forth in PacifiCorp's OATT, such as Site Control requirements. As Sage Grouse notes that the Commission explicitly refused to exercise such jurisdiction. The Commission then approved PacifiCorp's PPAs with Blue Mountain Power Partners, LLC ("BMPP") and Latigo Wind Park, LLC ("Latigo") without requiring them to demonstrate Site Control as required by FERC's OATT Site Control requirements, as adopted by Schedule 38. *See* Commission Dkt. No. 12-035-115 and 12-035-116.²

¹ This "sales"-centric purpose, which requires explicit adherence to PacifiCorp's OATT Part IV, supports PURPA's mandate to challenge PacifiCorp's monopoly and thereby encourage "the optimization of the efficiency of use of facilities and resources by electric utilities; and equitable rates to electric consumers." PURPA § 2611. In contrast, if Schedule 38 merely focuses on the necessary requirements to execute a PPA, PacifiCorp will, as it has demonstrably done in the past, push favored projects along its interconnection and alleged "QF" queues. This hurts competition and, thus, hurts rate-payers. Indeed, if these favorable projects are successful, they will promote PacifiCorp's vertical integration. If they are not, the supply of expected renewable energy will belatedly diminish and thereby increase prices. In either event, the rate-paying customer will be adversely affected.

² Ellis-Hall notes that these two dockets were previously appealed to the Supreme Court of Utah. The issue raised by Sage Grouse, however, is dissimilar from the arguments previously raised. Indeed, Ellis-Hall notes that the Commission's decision in these dockets relied on P.S.C.U. No. 49 Schedule 38 ("Tariff 49"). Tariff 49, which was never ordered by the Commission, contains significantly diluted interconnection process requirements in contrast to P.S.C.U. No. 44 Schedule 38 ("Tariff 44"). As explained by Sage Grouse, Tariff 44 is the operative version of Schedule 38 and explicitly requires that PacifiCorp "will follow the procedures for generation interconnection described in Part IV of [PacifiCorp's OATT]." Version 49 does not make this requirement. In any

Now, however, BMPP’s counsel, Mr. Gary Dodge, prays that “the Commission approve revised tariff language that adopts and incorporates into Schedule 38 PacifiCorp’s established FERC OATT interconnection rights and requirements. . . .” *See* SunEdison May 22, 2015 Comments 9 (Dkt. No. 14-035-140). Mr. Dodge argues that this is a requirement of federal law. Mr. Dodge’s latest argument is generally sensible. Consequently, Ellis-Hall generally refers the Commission to Mr. Dodge’s argument that the Commission has, and always has had, jurisdiction over PacifiCorp’s OATT, as adopted by Schedule 38. *See* SunEdison May 22, 2015 Comments 9 (*In the Matter of: Review of Electric Service Schedule No. 38, Qualifying Facilities Procedures, and Other Related Procedural Issues*, Dkt. No. 14-035-140). What is good for the goose is good for the gander. Ellis-Hall, therefore, asks the Commission to apply Mr. Dodge’s rationale to his own client, BMPP.

DATED this 9th day of June 2015.

Respectfully submitted,

/s/ Tony Hall

Tony Hall

Ellis-Hall Consultants, LLC – Member

event, this does not affect the Commission’s jurisdictional reach over PacifiCorp’s OATT as adopted by Schedule 38, whatever version may be valid.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of June, 2015, an original and ten (10) true and correct copy of the foregoing **Ellis-Hall Consultants, LLC's Comments in Support of Sage Grouse Energy Project, LLC's Request for Agency Action** were hand-delivered to:

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