Gary A. Dodge (0897)
Phillip J. Russell (10445)
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666
Email: gdodge@hjdlaw.com
prussell@hjdlaw.com

Counsel for Glen Canyon Solar A, LLC &
Glen Canyon Solar B, LLC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Glen Canyon Solar A, LLC and Glen Canyon Solar B, LLC's Request for Agency Action to Adjudicate Rights and Obligations under PURPA, Schedule 38 and Power Purchase Agreements with Rocky Mountain Power	Docket No. 17-035-36

GLEN CANYON SOLAR'S MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Pursuant to Utah Admin. Code R746-1-301 and Utah Code Ann. §§ 63G-4-201 & -501, Movants Glen Canyon Solar A, LLC and Glen Canyon Solar B, LLC (collectively, "**Glen Canyon Solar**") respectfully move the Public Service Commission of Utah ("**Commission**") to issue a preliminary injunction requiring PacifiCorp's merchant function, Rocky Mountain Power ("**RMP**"), to promptly communicate to PacifiCorp Transmission Services ("**PacTrans**") all information, directions, requests or assumptions required to ensure that PacTrans will perform interconnection studies relating to the Glen Canyon Solar QF projects that will include

assumptions regarding the use of RMP's existing transmission rights and resource re-dispatch options and the resulting potential to avoid unnecessary Network Upgrades.

FACTUAL BACKGROUND[1]

I. QF Interconnection Service and Transmission Service Process Background

1. RMP Electric Service Schedule 38 (**"Schedule 38"**) Section II.B. requires that for QF interconnections greater than 20 MW, PacTrans will process the interconnection application generally following the procedures for studying the generation interconnection described in the PacifiCorp Open Access Transmission Tariff (**"OATT"**).

2. Two complicated and interrelated processes governed by the PacifiCorp OATT, FERC Electric Tariff Volume No. 11, Updated July 13, 2017, are involved in adding a large QF to the PacTrans system: an interconnection request ("**Interconnection Request**"), which is focused on the interconnection and the interconnection customer (the QF); and a transmission service request ("**TSR")**, which is focused on transmission and the transmission customer (RMP). The Interconnection Request and TSR processes are discussed below.

A. *Interconnection Requests, Studies, and Interconnection Agreement*

3. Section IV of the OATT governs an Interconnection Request. It contemplates studies of a new generation resource as either or both of an energy resource or a network resource. As requested and appropriate, PacTrans must participate in scoping meetings and

[1] Glen Canyon Solar is providing with this Motion certain factual and legal background information relevant to its requested preliminary injunction. Source citations are provided for many of the referenced facts. Other facts are supported by Glen Canyon Solar's Direct Testimony on file herein, or are made in the form of a proffer in support of the requested injunctive relief. Glen Canyon Solar recognizes that the Commission will not—and cannot—resolve the underlying factual and legal disputes on this Motion for Preliminary Injunction. However, they are relevant to demonstrating that Glen Canyon Solar has satisfied all of the standards or requirements for issuance of a preliminary injunction.

prepare interconnection studies, which may include an initial feasibility study, a system impact study ("**SIS**") and/or a facilities study, relating to the requested interconnection. The studies of an energy resource focus on the facilities required to interconnect a QF ("**Interconnection Facilities**") and their associated costs ("**Interconnection Costs**"). Studies for a network resource include analysis of Interconnection Facilities and their associated Interconnection Costs, as well as an initial analysis of network transmission facility upgrades ("**Network Upgrades**")[2] that may be necessary to support the firm transmission service that the transmission customer—RMP—will later request through a TSR for the QF Resource to become a designated network resource ("**DNR**") under RMP's network operating agreement with PacTrans.

4. A QF seeking to make sales to RMP is required to enter into an interconnection agreement that "governs the physical interconnection of the project to the Company's

[2] PacifiCorp confuses and ignores critical distinctions between Interconnection Facilities and Network Upgrades. Such issues will be addressed elsewhere and resolution of the same is not required for purposes of this Motion. Nevertheless, it is important to note that FERC and the PacTrans OATT both clearly confirm that "Interconnection Facilities" and "Network Upgrades" are separate and distinct. Both terms are defined in Section 36 of the OATT. "Interconnection Facilities" include "all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. *Interconnection Facilities are sole use facilities and shall not include . . . Network Upgrades*." (OATT § 36, "Interconnection Facilities" (emphasis added)). "Network Upgrades" are "the additions, modifications, and upgrades to the Transmission Provider's Transmission System required *at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's Transmission System* to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System. (OATT § 36, "Network Upgrades" (emphasis added)). *See also Nevada Power Company*, 113 FERC. ¶ 61,007, 61,014-16 (FERC 2005) (finding that "[t]he network begins at the point where the interconnection facilities connect to the transmission system, not somewhere beyond that point." "Due to the integrated nature of the transmission grid, upgrades at or beyond the point where a customer connects to the grid benefit all users of that grid. Thus, we have rejected the direct assignment of grid facilities [costs] at or beyond the point where a customer connects to the grid").

transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon all necessary interconnection arrangements being consummated."[3]

5. Interconnection agreements and studies are handled by PacTrans, PacifiCorp's power delivery function.[4]

6. "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."[5]

7. For interconnections greater than twenty (20) megawatts—including both QF projects at issue in this docket—PacifiCorp is required to process the interconnection application through PacTrans pursuant to the procedures for studying the generation interconnection described in the OATT.[6]

8. When a QF submits an interconnection request to PacTrans, it must request either Energy Resource Interconnection Service (**"ER Interconnection Service"**) or Network Resource Interconnection Service (**"NR Interconnection Service"**).[7]

9. ER Interconnection Service allows the QF to connect its generating facility to the transmission system and be eligible to deliver output using the existing firm or non-firm capacity of the transmission system on an "as available" basis.[8]

---

[3] Schedule 38, Section II, at Sheet 38.9.
[4] *Id.*
[5] Schedule 38, Section II.B., at Sheet 38.10.
[6] *Id.*
[7] OATT § 38.2. A QF may also request that PacTrans conduct certain interconnection studies for both ER and NR Interconnection Service. *Id.*
[8] OATT § 38.2.1.1.

10. NR Interconnection Service allows the QF to have its generating facility be designated as a Network Resource, up to the full output of the facility, on the same basis as existing Network Resources interconnected to PacTrans' transmission system.[9]

11. A Network Resource is defined in the OATT as "any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff."[10]

12. When a Network Customer (i.e. RMP for the purpose of securing transmission service for QF output) receives Network Integration Transmission Service, PacTrans is required to provide firm transmission service over its transmission system to that Network Customer for the delivery of capacity and energy from its designated Network Resources to serve its Network Loads "on a basis that is comparable to [PacTrans'] use of the Transmission System to reliably serve its Native Load Customers."[11]

13. A QF that obtains ER Interconnection Service is also eligible to obtain Network Integration Transmission Service.[12]

14. Pursuant to the OATT, after a QF submits an interconnection request to PacTrans along with the required deposit of $10,000, PacTrans is required to conduct an Interconnection

---

[9] OATT § 38.2.2.1.
[10] OATT § 36 ("Network Resource").
[11] OATT § 28.3.
[12] *See* LGIA § 4.1.1.2. (interconnection customer with ER Interconnection Service "may obtain Point-to-Point Transmission Service, Network Integration Transmission Service, or be used for secondary network transmission service, pursuant to Transmission Provider's Tariff, up to the maximum output identified in the stability and steady state studies. In those instances, in order for Interconnection Customer to obtain the right to deliver or inject energy beyond the Large Generating Facility Point of Interconnection or to improve its ability to do so, transmission delivery service must be obtained pursuant to the provisions of Transmission Provider's Tariff.").

Feasibility Study to "preliminarily evaluate the feasibility of the proposed interconnection to the Transmission System."[13]

15. After the Interconnection Feasibility Study is completed, PacTrans will perform an Interconnection System Impact Study (**"Interconnection SIS"**). The purpose of the Interconnection SIS is to "evaluate the impact of the proposed interconnection on the reliability of the Transmission System."[14]

16. After the completion of the Interconnection SIS, PacTrans will perform an Interconnection Facilities Study, which "shall specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the [Interconnection SIS] in accordance with Good Utility Practice to physically and electrically connect the Interconnection Facility to the Transmission System."[15]

17. Upon the completion of these interconnection studies, the QF will be asked to execute a Large Generator Interconnection Agreement (**"LGIA"**). Prior to executing the LGIA, a QF may request that PacTrans offer it an Engineering and Procurement Agreement (**"E&P Agreement"**).[16]

18. An E&P Agreement would authorize PacifiCorp "to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection" for the Glen Canyon Solar QFs (the "**GC Resources**").[17] Pursuant to such an E&P Agreement, the QF must pay the cost of all activities authorized by the agreement and make advance payments

[13] OATT § 41.2.
[14] OATT § 42.3.
[15] OATT § 43.2.
[16] *See* OATT § 44.
[17] *Id.*

or provide security for such costs.[18] As such, an E&P Agreement can represent a very large financial impact on a QF.

B. *Transmission Service Requests and Studies*

19. The above-referenced process for an Interconnection Request does not, even after a LGIA is executed, guarantee transmission service for the QF's output. Rather, the transmission customer (RMP) must submit a TSR to PacTrans to obtain transmission service for QF output.

20. The TSR process is governed by Section III of the OATT. The TSR process is separate and distinct from the Interconnection Request process, although the studies performed and the results of the Interconnection Request process inform the TSR process.[19]

21. Pursuant to Schedule 38, the transmission customer—RMP here—is required to submit a TSR to PacTrans within seven (7) days of the date that a PPA is executed.[20]

22. Upon receipt of a TSR, PacTrans will determine "on a non-discriminatory basis whether a System Impact Study is needed."[21] That is, in addition to the Interconnection Request and studies identified above, the TSR process may include additional studies, such as a transmission SIS, but only if PacTrans determines that such additional studies are necessary.

23. Indeed, pursuant to the Large Generator Interconnection Agreement (**"LGIA"**) included as Attachment D to the OATT, when a QF—such as Glen Canyon Solar—"satisfies the requirements for obtaining Network Resource Interconnection Service, any future transmission service request for delivery from the [QF] within [PacTrans'] System of any amount of capacity

[18] *Id*.
[19] *See* OATT § 32.2(i) ("In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies.").
[20] Schedule 38, § II.B., at Sheet 38.10.
[21] OATT § 32.1.

and/or energy, up to the amount initially studied, will not require that any additional studies be performed or that any further upgrades associated with such [QF] be undertaken, regardless of whether or not such [QF] is ever designated by a Network Customer as a Network Resource and regardless of changes in ownership of the [QF]."[22]

24. Of particular relevance here, RMP, as the transmission customer submitting a TSR, is authorized to direct PacTrans to study potential options and impacts of various forms of planning and operational redispatch ("**Redispatch**") available under its network operating agreement with PacTrans and Section 32.3 of the OATT[23] to avoid unnecessary Network Upgrades when a QF is added as a DNR at an interconnection point with no remaining available transmission capacity ("**ATC**"). These redispatch options allow PacTrans and RMP to operate other network resources such that the QF can be designated as a network resource and RMP can purchase the QF's full output and transmit it to load, while at the same time avoiding the need to construct certain Network Upgrades. In other words, the Redispatch protocols allow a utility to fulfill its PURPA obligations to the QF, [24] while also satisfying the customer indifference standard by ensuring that customers will not pay for unnecessary and uneconomic Network Upgrades.[25]

---

[22] LGIA § 4.1.2.2.

[23] RMP's Redispatch rights and options are described in detail in paragraphs 49-56, below.

[24] *See e.g., Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215, at P. 38 (2013) ("The Commission has specifically held that: (1) the QF's obligation to the purchasing utility is limited to delivering energy to the point of interconnection by the QF with that purchasing utility; and (2) the QF is not required to obtain transmission service, either for itself or on behalf of the purchasing utility in order to deliver its energy from the point of interconnection with the purchasing utility to the purchasing utility's load.").

[25] 16 U.S.C. § 824a-3(b). FERC has interpreted Congress' intent in PURPA "to make ratepayers indifferent as to whether the utility used more traditional sources of power or the newly

II. Glen Canyon Solar's QF Resources

25. In early 2015, sPower, began development efforts for a 380 megawatt ("**MW**") solar facility in Kane County, Utah, in the Four Corners area, including initiation of discussions with RMP regarding the purchase of energy from the project and with PacTrans regarding interconnection of the project into PacTrans' Sigurd-to-Glen Canyon 230 kV transmission line ("**Sigurd-GC Line**").

26. After sPower was informed by PacTrans in an Interconnection Request scoping meeting that the Sigurd-GC Line has a total line capacity of less than 380 MW, sPower downsized its project to 240 MW and asked PacTrans to prepare an interconnection SIS for the non-QF project, with an option to later convert to QF projects.

27. The interconnection SIS prepared by PacTrans for the 240 MW non-QF project estimated approximately $15 million of Interconnection Costs. In addition, it estimated costs of nearly $400 million for significant Network Upgrades that would be required for firm network transmission service for the output of the non-QF resource.

28. In response, sPower withdrew its 240 MW request and its subsidiary, Glen Canyon Solar, submitted new interconnection and QF pricing requests. Initially, Glen Canyon Solar submitted requests for a combined total capacity of 138 MW. In a letter dated August 25, 2016 RMP provided Glen Canyon Solar avoided cost indicative pricing for these QFs. In that indicative pricing letter RMP stated [redacted]

encouraged alternatives." *Southern Cal. Edison, San Diego Gas & Elec.*, 71 FERC ¶ 61,269 at p. 62,080 (1995).

[redacted][26]

29. Glen Canyon Solar subsequently revised the 138 MW requests down to 95 MW in light of information provided by RMP which confirmed that RMP owns 95 MW of firm network transmission rights on the Sigurd-GC Line that can be used by RMP to transmit and utilize energy from the GC Resources ("**GC Energy**") without curtailment.[27]

30. The Total Transfer Capacity ("**TTC**") of the Sigurd-GC Line is 300 MW south to north,[28] the path is fully subscribed and there is no remaining ATC.[29] RMP holds 95 MW of long-term firm network integration transmission service rights on this path. That is, of the 300 MW of TTC, RMP has 95 MW of firm network transmission rights on the path.[30] As confirmed in the avoided cost pricing model RMP provided to Glen Canyon Solar, RMP's 95 MW of

[26] *See* Confidential Exhibit 3 (Letter from Bruce Griswold of Rocky Mountain Power to Joe Briney of sPower, dated August 25, 2016 Re: Response to Indicative Pricing Request at 1 – 2 [hereinafter "*Indicative Pricing Letter*"]).

[27] *See Id*. The avoided cost pricing model indicated that transmission constraints would require significant curtailment for deliveries exceeding 95 MW as a result of RMP's limited transmission rights on the path.

[28] TTC represents the megawatts of electric energy that can be moved or transferred reliably from one area to another through transmission lines (or paths) between those areas. See OATT, Attachment C, P. 261.

[29] ATC is a measure of a transmission path's remaining transfer capability for incremental commercial activity above and beyond already committed uses. *See* OATT, Attachment C, P. 260. PacTrans is responsible for making ATC available in a fair and non-discriminatory manner under its OATT.

[30] Of the remaining 205 MW of TTC on the Path, 190 MW are allocated to the Western Area Power Administration's Colorado River Storage Project, with the remaining 15 MW reserved for a transmission reliability margin.

transmission rights are sufficient to allow RMP to transmit, from the point of interconnection of the GC Resources to RMP's load, all of the GC Energy without curtailment.[31] Indeed, the GC Resources were sized to match exactly RMP's existing transmission rights and avoid curtailment.

III. The Glen Canyon Solar PPAs

31. On February 21, 2017, Glen Canyon Solar executed an Interconnection System Impact Study Agreement in connection with its request for interconnection for the 95 MW of QF Projects at issue in this docket for interconnection with the PacifiCorp transmission system. The entire output from these QFs will be sold to RMP pursuant to power purchase agreements currently before the Commission in Docket Nos. 17-035-26 and 17-035-28 (the **"GC PPAs"**).

32. The GC PPAs include required deadlines for certain progress to be made. Among these milestones is a requirement that Glen Canyon Solar provide a fully executed interconnection agreement (or other form of confirmation reasonably acceptable to PacifiCorp) to PacifiCorp 18 months before the "Scheduled Commercial Operation Date."

a. Glen Canyon Solar A, LLC is required to provide PacifiCorp with a fully executed Interconnection Agreement by February 28, 2018.[32]

b. Glen Canyon Solar B, LLC is required to provide PacifiCorp with a fully executed Interconnection Agreement by March 31, 2018.[33]

---

[31] *See Indicative Pricing Letter*.
[32] *See* Power Purchase Agreement between Glen Canyon Solar A, LLC and PacifiCorp (Redacted) (hereinafter "Glen Canyon Solar A PPA") at § 2.3(b) (on file with Commission in Docket 17-035-26).
[33] *See* Power Purchase Agreement between Glen Canyon Solar B, LLC and PacifiCorp (Redacted) (hereinafter "Glen Canyon Solar B PPA") at § 2.3(b) (on file with Commission in Docket 17-035-28).

33. The GC PPAs also require Glen Canyon Solar to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date.

a. The Guaranteed Commercial Operation Date for Glen Canyon Solar A, LLC is March 29, 2020.[34]

b. The Guaranteed Commercial Operation Date for Glen Canyon Solar B, LLC is April 30, 2020.[35]

34. If Glen Canyon Solar fails to achieve Commercial Operation "on or before the Scheduled Commercial Operation Date," then Glen Canyon Solar is required to "pay to PacifiCorp Delay Damages from and after the Scheduled Commercial Operation Date up to, but not including, the date that the Facility achieves Commercial Operation."[36]

a. The Scheduled Commercial Operation Date for Glen Canyon Solar A, LLC is September 29, 2019.[37]

b. The Scheduled Commercial Operation Date for Glen Canyon Solar B, LLC is October 31, 2019.[38]

35. The GC PPAs both state that Glen Canyon Solar must comply with the deadlines in Sections 2.3 and 2.4 "no matter what the source or reason," including "(viii) anything related

[34] *See* Glen Canyon Solar A PPA at § 1.1 (Defined Terms "Scheduled Commercial Operation Date" and "Guaranteed Commercial Operation Date"). *See also id*. at § 2.3(g).
[35] *See* Glen Canyon Solar B PPA at § 1.1 (Defined Terms "Scheduled Commercial Operation Date" and "Guaranteed Commercial Operation Date"). *See also id*. at § 2.3(g).
[36] *See* Glen Canyon Solar A PPA at § 2.4(b); Glen Canyon Solar B PPA at § 2.4(b).
[37] *See* Glen Canyon Solar A PPA at § 1.1 (Defined Terms "Scheduled Commercial Operation Date").
[38] *See* Glen Canyon Solar B PPA at § 1.1 (Defined Terms "Scheduled Commercial Operation Date").

to the Transmission Provider, Network Service Provider, Interconnection Provider, or Generation Interconnection Agreement . . .."

36. The GC PPAs further state that it is an Event of Default if Glen Canyon Solar fails to achieve Commercial Operation on or before the Commercial Operation Date,[39] subjecting Glen Canyon Solar to potential damages, and failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date allows PacifiCorp to terminate the PPA.[40]

37. If the PPA is terminated prior to the Commercial Operation Date because of a default by Glen Canyon Solar, for a period of two years following the date of such termination, neither Glen Canyon Solar (nor any affiliate or successor of Glen Canyon Solar), may thereafter require or seek to require PacifiCorp to enter into a power purchase agreement or otherwise purchase energy or capacity from the facility or any facility constructed on the premises under PURPA, or any other requirements of law.[41]

38. The GC PPAs were executed on or before May 1, 2017. Under Schedule 38, RMP is required to submit a TSR for the GC Resources within seven days of the date the PPAs are executed or otherwise as early as practicable based on applicable procedures in the OATT.[42] RMP's existing 95 MW of transmission rights on the relevant path, particularly when coupled with available Redispatch options (RMP's relevant existing network transmission rights and Redispatch options are collectively referred to herein as the "**Existing RMP Transmission Rights**"), match precisely the capacity of the GC Resources. Assuming RMP submits

[39] *See* Glen Canyon Solar A PPA at § 11.1.2(i); Glen Canyon Solar B PPA at § 11.1.2(i).
[40] *See* Glen Canyon Solar A PPA at §§ 11.3, 11.5, 2.4(c); Glen Canyon Solar B PPA at §§ 11.3, 11.5 & 2.4(c) .
[41] *See* Glen Canyon Solar A PPA at § 11.4; Glen Canyon Solar B PPA at § 11.4.
[42] RMP Schedule 38, § II.B, at Sheet 38.10.

appropriate information in connection with study requests, most or all of the extensive, costly Network Upgrades reflected in the July 26, 2016 Large Generator Interconnection System Impact Study for the larger non-QF project, as referenced in RMP's May 1, 2017 Request for a Declaratory Ruling, should not be needed for the GC Resources.

IV. Glen Canyon Solar's Interconnection Request

39. On February 21, 2017, Glen Canyon Solar executed an Interconnection System Impact Study Agreement in connection with its request for interconnection for the 95 MW QF GC Resources.

40. Section 42.4 of the OATT requires PacifiCorp to "use Reasonable Efforts[43] to complete the Interconnection System Impact Study within ninety (90) Calendar Days after the receipt of the Interconnection System Impact Study Agreement." PacTrans did not complete the System Impact Study within 90 days of the date it received the System Impact Study Agreement from Glen Canyon Solar. PacTrans has informed Glen Canyon Solar that it expects to complete the Interconnection System Impact Study in or about September of 2017.

41. Glen Canyon Solar has asked PacTrans to confirm that the Interconnection SIS for the GC Resources and the interconnection agreements that it will be expected to sign will reflect the assumption that RMP will use Existing RMP Transmission Rights (including those transmission rights RMP identified in the August 25, 2016 indicative pricing letter). Glen Canyon Solar is confident that incorporating this assumption into the Interconnection Studies for

[43] "Reasonable Efforts" are defined in the OATT to mean "with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests." *See* OATT, § 36.

the GC Resources will reveal that most or all of the Network Upgrades identified in the July 27, 2016 Interconnection System Impact Study for the larger, non-QF project are not necessary for Glen Canyon Solar's 95 MW of QF projects. PacTrans has confirmed its willingness and ability to incorporate these assumptions, but will do so only if RMP provides written confirmation that it may use Existing RMP Transmission Rights for the GC Resources output, and that Redispatch options should be studied and considered.[44]

42. Glen Canyon Solar has asked RMP on several occasions to provide the written confirmations requested by PacTrans, but RMP has refused to do so, claiming that it has no obligation to use Existing RMP Transmission Rights or to request studies using Redispatch to deliver the output from GC Resources.

43. When PacTrans delivers the completed Interconnection System Impact Study to Glen Canyon Solar, it will also provide an Interconnection Facilities Study Agreement. An Interconnection Facilities Study "shall specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study."[45]

44. Glen Canyon Solar will be required to sign the Interconnection Facilities Study Agreement and provide payment to PacifiCorp of not less than $100,000 within thirty (30) days

[44] For example, attached as Confidential Exhibit 4 to this Motion is a copy of an email exchange in which PacTrans noted: [redacted]

[45] OATT, § 43.2.

of its receipt.[46] If Glen Canyon Solar fails to comply with this requirement, PacifiCorp will deem Glen Canyon Solar's Interconnection Request to be withdrawn.[47] Withdrawal of the Interconnection Request will result in Glen Canyon Solar's loss of its interconnection queue position.[48]

45. Glen Canyon Solar reasonably expects to sign an E&P Agreement in May of 2018, assuming the proper resolution of its dispute in this docket.

V. Redispatch Options

46. Under Section 32.3 of the OATT, transmission customers have the right to utilize various Redispatch options to accommodate a new network resource even in the absence of ATC. That section provides, in relevant part:

> Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify (1) any system constraints, identified with specificity by transmission element or flowgate, (2) ***redispatch options (when requested by an Eligible Customer)*** including, to the extent possible, an estimate of the cost of redispatch….[49]

47. On December 24, 2014, PacifiCorp filed for FERC acceptance ("**FERC NOA Filing**")[50] a proposed amendment ("**NOA Amendment**") to the Network Operating Agreement (as amended, the "**NOA**") between PacTrans and RMP. The FERC NOA Filing sought confirmation that, under the NOA Amendment, PacTrans could, consistent with the Redispatch options contemplated by Section 32.3 of the OATT, "grant additional Designated Network

[46] *See* OATT, § 43.1.
[47] *See* OATT, § 38.6.
[48] *See id.*
[49] OATT, § 32.3, P. 111 (emphasis added). In this instance, "Eligible Customer" is synonymous with "Transmission Customer"; which in this case is RMP.
[50] Relevant portions of the FERC NOA Filing, including an attachment showing in redline the proposed and accepted amendments to the NOA, are attached hereto as Exhibit 1.

Resource ("**DNR**") applications on behalf of [RMP] **in order to enable firm delivery from QFs even in the absence of [ATC]**," so long as RMP agreed to operate within identified system limits.[51] The FERC NOA Filing cited a need for additional flexibility for managing RMP's other network resources in order to secure DNR status from PacTrans for QF projects in constrained areas so as to avoid "the construction of uneconomic Network Upgrades."[52]

48. The circumstances addressed in the FERC NOA Filing and NOA Amendment regarding QF purchases at a point with no ATC are precisely the circumstances faced by RMP with respect to the GC Resources.

49. PacifiCorp's stated purpose in requesting approval of the NOA Amendment was to confirm that RMP could "meet its PURPA must-take obligations by providing firm transmission service to deliver QFs, while at the same time avoiding the need to undertake potentially uneconomic transmission expansions."[53]

50. In the FERC NOA Filing, PacifiCorp represented that the referenced operational Redispatch is appropriately characterized as a "form" of the "planning redispatch" contemplated by Section 32.3 of the OATT.[54] It explained that this variant of planning redispatch "involves

[51] FERC NOA Filing at 1 (emphasis added).
[52] *Id*. at 3 (citing difficulties that arise given (1) PacifiCorp's "obligation under PURPA to purchase, and make firm transmission arrangements for, QF power," (2) FERC precedent that could be read to preclude PacifiCorp from granting DNR status to a QF "where there is zero ATC," and (3) "FERC policies that obligate a transmission provider to build transmission to accommodate firm transmission service requests, including new DNR requests, in constrained areas").
[53] *Id*. at 2.
[54] *Id.* at 8 ("PacifiCorp believes it is appropriate to characterize the proposed operational practice as a form of planning redispatch.").

an individual network customer [RMP] agreeing to operate within certain limits because there is insufficient capacity to accommodate all of the DNRs without limitation."[55]

51. The FERC NOA Filing explained that, while the traditional form of planning redispatch creates additional ATC through altered flows, under the operational variant of Redispatch RMP will operate its network resources within certain operational limits in constrained areas, and is "more akin to replacement or alternate resources."[56] The filing noted that this form of Redispatch is nevertheless properly characterized as a form of "planning redispatch," because "both approaches favor the efficient redispatch of resources over time-consuming and expensive network upgrades."[57] PacifiCorp also noted that this form of Redispatch remained "within the current OATT construct and study processes."[58]

52. FERC accepted the Amended NOA and, in a May 21, 2015 order (the "**FERC NOA Order**"),[59] confirmed that the NOA would "allow [PacifiCorp] to accommodate QF requests in constrained areas without building uneconomic upgrades,"[60] while also limiting the impact on other network customers "by requiring [RMP] to operate its portfolio of designated network resources within its network rights and within transmission system limits."[61]

53. The FERC NOA Order also confirmed that "[FERC] precedent requires electric utilities, such as PacifiCorp, to deliver a QF's power on a firm basis and prohibits the curtailment

---

[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.* at 8 n.25.
[59] PacifiCorp Proposed Network Operating Agreement Amendment, Docket No. ER-15-741-000, ER15-741-001, 151 FERC ¶ 61,170, Order Accepting Proposed Network Operating Agreement Amendment (May 21, 2015). The FERC NOA Order is attached hereto as Exhibit 2.
[60] FERC NOA Order at 3.
[61] *Id.* at 9.

of QF resources" except under very narrow circumstances not applicable here.[62] It further confirmed that, absent the availability of Redispatch, PacTrans and its transmission customers would be required to pay for Network Upgrades needed to accommodate QF energy.[63]

54. RMP has recently confirmed that it intends to utilize these Redispatch options in connection with its planned acquisition or purchase of significant new wind resources in Wyoming.[64] RMP claims that it has the right to use these Redispatch options for resources when it chooses to do so, but to refuse to do so for Glen Canyon Solar's QFs.[65] Glen Canyon Solar maintains that RMP's refusal to use its Redispatch options for these QFs constitutes unlawful discrimination.[66] The merits of RMP's claim that it has the right to discriminate and Glen Canyon Solar's claim that it does not can only be resolved on their merits in appropriate contexts—not on RMP's motion to dismiss for jurisdictional grounds nor this Motion for a

---

[62] *Id*. at 8.

[63] *Id*. at 9 (noting that PacifiCorp's use of operational Redispatch "would, at the same time, also allow its customers to avoid paying for network upgrades when the network upgrades are not justified by economic or reliability needs."). *See also* FERC NOA Filing at 4 (in which PacifiCorp acknowledged: "However, where the transmission system is constrained, and constraints cannot be relieved by planning redispatch, the OATT and FERC's transmission pricing policies obligate a transmission provider to build network upgrades to accommodate firm transmission service requests **and roll the cost of those network upgrades into rate base.**" (emphasis added)).

[64] *See Application for Approval of a Significant Energy Resource Decision and Voluntary Approval of Resource Decision*, Docket No. 17-035-40, June 30, 2017; June 30, 2017 Redacted Direct Testimony of Rick A. Vail at pp. 9-10 (lines 220-251), pp. 14-15 (lines 322-345); June 30, 2017 Redacted Direct Testimony of Rick T. Link at p. 7 (lines 137-148).

[65] *See* Rocky Mountain Power's Motion to Dismiss Glen Canyon Solar A, LLC and Glen Canyon Solar B, LLC's Request for Agency Action in this docket, dated July 14, 2017, at 16-19.

[66] *See, e.g.,* 18.C.F.R. § 292.304(a)(1)(ii) (prohibiting discrimination "against qualifying cogeneration and small power production facilities"); Utah Code § 54-3-7 (prohibiting public utilities from "extend[ing] to any person any form of contract or agreement, or any rule or regulation, or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons"); *id*. 54-3-8(1)(a) (prohibiting public utilities from "mak[ing] or grant[ing] any preference or advantage to any person" with regard to any "rates, charges, service, facilities or in any other respect")

preliminary injunction—but the Commission will be in a position to award appropriate and timely relief when it later determines the merits of those claims only if the injunctive relief requested herein is timely granted.

VI. RMP's Avoided Cost Pricing Model

55. The Commission has approved the use by RMP of an in-house generation dispatch model called the Generation and Regulation Initiative Decision Tool ("**GRID"**) in calculating avoided costs for larger QF projects ("**QF Model**"). To develop avoided cost pricing, the QF Model relies on two GRID studies performed by RMP, a "base case" and a "QF project case," which builds on the base case assumptions with the addition of modeling inputs reflecting the new QF resource. By comparing the net present value revenue requirement of the two model runs, RMP determines the system value of the incremental QF energy, accounting for RMP's transmission rights and limitations and the QF's operating characteristics, location, hourly generation pattern, and resource needs, as identified in RMP's most recent IRP, and as periodically updated, among other factors. This calculated value, or avoided cost, is the price offered to a QF.

56. Transfer capabilities between transmission "bubbles" are inputs to the QF Model that reflect RMP's transmission capacity rights and constraints. To the extent transmission or operational constraints restrict the ability of a QF to deliver its full generation output to RMP customer loads—thereby avoiding generation or purchases from other RMP resources—the model curtails QF generation. As an extreme example, if a QF project is located in an area with operational or transmission constraints that will not allow the delivery of any QF output, all QF generation would be curtailed, resulting in the avoidance of no RMP resources and reducing the

avoided cost price to zero. The QF Model ensures that avoided cost prices for a QF are no higher than the costs the utility actually expects to avoid, consistent with transmission and operational constraints and with PURPA's economic indifference standard.

57. The QF Model runs for the GC Resources assumed 95 MW of transmission capability south to north on the link between the Glen Canyon and Utah South transmission bubbles, at which point other available transmission links provide access to other parts of the RMP system. The QF Model's 95 MW of assumed transmission capability represents the 95 MW of Existing RMP Transmission Rights.[67]

58. To accurately reflect RMP's ability to serve customer load with GC Energy, the QF Model runs for the GC Resources economically redispatched other RMP generation resources and adjusted sales and purchases, subject to modeling constraints. The QF Model runs for the GC Resources thus resulted in redispatch—or backing down of purchases or generation—of other available system resources, including front office transactions and generation at Hunter, Huntington, Currant Creek and Lake Side, among others. The displacement of generation or purchases from these resources forms the basis for the avoided cost pricing offered to Glen Canyon Solar.

59. RMP's QF Model conforms with key requirements of PURPA. It considers QF resources as "must take" generation, consistent with the utility's obligation to purchase QF energy on a firm basis. It also satisfies the PURPA obligation of customer indifference, as QF pricing is set at precisely the level of costs that the model indicates can be avoided by RMP. Furthermore, the GRID model is consistent with the PURPA requirement that the public utility,

[67] *See Indicative Pricing Letter*.

and not the QF, is responsible for delivering and using QF energy beyond the point of interconnection, by assuming the use of the 95 MW of Existing RMP Transmission Rights—effectively treating the QF project as a DNR whose dispatch is prioritized in front of non-QF DNRs.

60. RMP's avoided cost pricing runs for the GC Resources are also consistent with the Redispatch Options of the NOA, which allow firm receipt and use of QF resources even without ATC at a delivery point. Since there is no remaining ATC on the relevant path, the GC Resources illustrate precisely why the use of Redispatch as contemplated in the NOA Amendment is prudent and necessary, as it alleviates the need for RMP, and by extension its ratepayers, to fund expensive, uneconomic Network Upgrades, while also satisfying RMP's PURPA obligations.

61. The redispatch of other available resources reflected in the QF Model for the Glen Canyon Solar QFs should also be reflected in the interconnection, transmission and other studies conducted for these QFs. By contrast, such redispatch assumptions would not be reflected in studies for a non-QF resource. Despite the clear distinction between QF and non-QF resources seeking network transmission service, RMP is attempting to cause PacTrans to prepare studies for the QF GC Resources without any consideration of the Redispatch of resources assumed in the QF Model and permitted under the OATT and the NOA, and that is necessary for RMP to satisfy its PURPA obligations. Indeed, RMP has gone so far as to predict that the studies for the GC Resources will show a need for costly Network Upgrades, and to indicate that RMP wishes

to directly assign these costs to Applicants as part of Interconnection Costs.[68] It is clearly inconsistent with Schedule 38, the OATT, the NOA, and FERC precedent for QF resource studies to be conducted under the same assumptions (e.g. no Redispatch) as for non-QF resources. Moreover, there is no available legal mechanism for direct assignment of Network Upgrade costs to a QF interconnecting to the transmission system as part of Interconnection Costs.[69]

ARGUMENT

I. AN INJUNCTION SHOULD ISSUE TO REQUIRE RMP TO PROVIDE INFORMATION TO PACTRANS IN CONNECTION WITH INTERCONNECTION AND TRANSMISSION STUDIES.

Glen Canyon Solar is entitled to a preliminary injunction to prevent irreparable harm resulting from RMP's refusal to submit information required to cause PacTrans to conduct interconnection studies that take into account RMP's existing transmission rights along the

[68] *See* Docket No. 17-035-25 (in which RMP incorrectly claims that the Network Upgrades identified for a non-QF resource are representative of Network Upgrades for a QF resource, and asks the Commission to "clarify" that Network Upgrade costs are "interconnection costs" directly assignable to QFs).

[69] Utah Admin. Code R746-312-10(2)(g)(v) provides that Interconnection Costs and distribution system upgrade costs for a Utah QF of 20 MW or less that connects to a distribution system can be assigned to the QF. No applicable comparable regulations exist for larger Utah QFs connecting to a transmission system. Rather, larger QF interconnections are processed according to PacifiCorp's FERC OATT and FERC has established different cost assignment policies for *distribution* system network upgrades and *transmission* system network upgrades. FERC policy provides that distribution system upgrade costs be directly assigned to the interconnecting customer but is explicit that transmission upgrades be funded by all users of the transmission system. FERC reasons that "[t]his is because an upgrade to the Distribution system generally does not benefit all transmission customers. Distribution facilities typically deliver electricity to particular localities, and do not serve a bulk delivery service for the entire system as is the case for transmission facilities." *See* FERC Order 2003, 104 FERC ¶ 61,103 at 697. The Utah Administrative Code maintains the distinction between distribution system upgrades and transmission network upgrades and the Commission should reject RMP's attempt to remove the distinction.

relevant transmission path, including all available planning and operational redispatch options, to deliver the output of the Glen Canyon Solar projects to RMP's load. This would be consistent with the assumptions RMP used in developing the avoided cost pricing for the GC Resources, and will avoid certain unnecessary and uneconomic Network Upgrades from being identified in the first instance, thereby ensuring that the interconnection studies for the GC Resources are performed in a nondiscriminatory manner.

Injunctive relief "'is an *anticipatory* remedy purposed to *prevent* the perpetration of a *threatened* wrong or to compel the cessation of a *continuing* one.'" *System Concepts, Inc. v. Dixon*, 669 P.2d 421, 428 (Utah 1983) (quoting *Anderson v. Granite Sch. Dist.*, 413 P.2d 597, 599 (1966) (emphasis in original)). "In issuing a preliminary injunction, the court is primarily attempting to preserve the power to render a meaningful decision on the merits." *Tri-State Generation & Transmission Assoc., Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir. 1986). *See also Zagg, Inc.*, 2015 UT App 52, ¶ 8 ("Injunctive relief is fundamentally preventive in nature, and an injunction serves to preserve the status quo pending the outcome of the case." (internal quotation marks omitted)).

Utah Rule of Civil Procedure 65A provides for the imposition of injunctive relief upon a showing that:

(1) The applicant will suffer irreparable harm unless the injunction issues;

(2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;

(3) The injunction, if issued, would not be adverse to the public interest; and

(4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

Utah R. Civ. Pro. 65A(e). As demonstrated below, Glen Canyon Solar can satisfy each of Rule 65A's requirements.

A. Glen Canyon Solar Will Suffer Irreparable Harm In The Absence Of An Injunction

Glen Canyon Solar will suffer irreparable harm if RMP does not provide PacTrans with the information it requires to study the implications of RMP's use of its existing transmission rights along the relevant transmission path, including planning and operational redispatch options. *See* Utah R. Civ. Pro. 65A(e)(1) (noting first element of injunction is that "[t]he applicant will suffer irreparable harm unless the injunction issues.") The "irreparable harm" element "is generally considered the most important" ground for injunctive relief. *System Concepts, Inc. v. Dixon*, 669 P.2d 421, 427 (Utah 1983). "'Generally, irreparable harm is that which cannot be adequately compensated in damages or for which damages cannot be compensable in money'—in other words, harm from which the injured party cannot be made whole by monetary compensation." *Zagg, Inc. v. Harmer*, 2015 UT App 52, ¶ 6, 345 P.3d 1273 (quoting *Hunsaker v. Kersh*, 1999 UT 106, ¶ 9, 991 P.2d 67). "Thus, an injunction may be appropriate to prevent harms that 'occasion damages that are estimated only by conjecture, and not by any accurate standard.'" *Id*. A party seeking an injunction need not show that irreparable harm is actual or certain but, rather, need only show "a likely or actual 'threatened' harm." *System Concepts, Inc.*, 669 P.2d at 428 (stating that injunctive relief "is an *anticipatory* remedy purposed to *prevent* the perpetration of a *threatened* wrong or to compel the cessation of a

continuing one." (emphasis in original) (quoting *Anderson v. Granite School Dist.*,413 P.2d 597, 599 (1966)).

A preliminary injunction directing RMP to provide the information and communications required by PacTrans to study available options in connection with interconnection and transmission studies is necessary to prevent irreparable harm to Glen Canyon Solar. A discussion of the process related to interconnection service and transmission service for QFs, and of the redispatch options available to RMP, is set forth in Glen Canyon Solar's Request for Agency Action in this docket.[70] That discussion is incorporated as though fully set forth herein and will not be repeated in full. As discussed in Section I.D., below, RMP has the ability to affect the results of interconnection and transmission studies performed by PacTrans by providing or withholding necessary information and requests.

PacTrans has indicated that it can perform studies assuming the use of RMP's existing transmission rights and planning and operational redispatch options, but only if RMP requests that it does so. By refusing to make such a request, RMP is manipulating the results of the interconnection and transmission studies to make it more likely that those studies will result in the suggestion that hundreds of millions of dollars in network upgrades are required to transmit the GC Energy from the point of interconnection to RMP's load. This is particularly harmful to Glen Canyon Solar as most or all of those network upgrades will likely not be required if RMP simply utilizes its transmission rights and redispatch options to transmit the GC Energy on a firm basis.

[70] *See* Glen Canyon Solar's Request for Agency Action at 4-12.

The irreparable harm to Glen Canyon Solar from RMP's failure to request that PacTrans study the optional use of RMP's existing transmission rights and redispatch options while performing the interconnection studies stems from the scheduling aspects of those studies and the deadlines associated with the GC PPAs. If, following the October 5, 2017 hearing in this docket, this Commission were to rule in favor of Glen Canyon Solar on the merits, RMP would then—at that time—have to ask PacTrans to conduct new studies. Like all QF PPAs, the GC PPAs have hard deadlines for Glen Canyon Solar to begin construction and provide deposits for work required, among other things. For example, Glen Canyon Solar is required to provide PacifiCorp with fully executed Interconnection Agreements on February 28, 2018 (Glen Canyon Solar A) and March 31, 2018 (Glen Canyon Solar B).[71] Any delay in studies related to the interconnection requests places these dates in serious jeopardy. Delays in interconnection studies also place at risk Glen Canyon Solar's ability to meet its Scheduled Commercial Operation Date (September 29, 2019 for Glen Canyon Solar A; October 31, 2019 for Glen Canyon Solar B) and its Guaranteed Commercial Operation Date (March 29, 2020 for Glen Canyon Solar A; April 30, 2020 for Glen Canyon Solar B).[72] According to the GC PPAs, Glen Canyon Solar may be subject to liability or contract termination if it fails to meet these dates, ***even if its failure is the result of delays by PacTrans***.[73]

If this Commission rules after the October 5, 2017 hearing that RMP acted improperly in failing to provide the information requested by PacTrans in connection with interconnection and transmission studies, that ruling will likely come too late for Glen Canyon Solar to receive a

[71] *See* Statement of Fact ¶ 31.
[72] *See* Statement of Fact ¶¶ 32-33.
[73] *See* Statement of Fact ¶¶ 34-36.

meaningful remedy because new studies will take additional time that the schedules in the GC PPAs do not allow.

A preliminary injunction in this matter is necessary to preserve the power of the Commission to issue a meaningful decision after the October 5, 2017 hearing. *See Tri-State Generation & Transmission Assoc., Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir. 1986) ("In issuing a preliminary injunction, the court is primarily attempting to preserve the power to render a meaningful decision on the merits."). *See also Zagg, Inc.*, 2015 UT App 52, ¶ 8 ("Injunctive relief is fundamentally preventive in nature, and an injunction serves to preserve the status quo pending the outcome of the case." (internal quotation marks omitted)).

Glen Canyon Solar will be irreparably harmed in the absence of a preliminary injunction.

B. The Threatened Injury To Glen Canyon Solar Outweighs Any Damage The Proposed Injunction May Cause RMP

RMP's refusal to provide PacTrans the information needed to study the implications of the option of RMP using its existing transmission rights and redispatch options is likely to result in the *de facto* death of the Glen Canyon Solar QF projects, which vastly outweighs any damage to RMP from being required to simply send a letter to PacTrans requesting that it take certain information into account when conducting interconnection and transmission studies. *See* Utah R. Civ. Pro. 65A(e)(2) (noting the second element for an injunction: "The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined.") As discussed above, the interconnection and transmission studies performed by PacTrans are intended—among other things—to determine whether any upgrades to current facilities are required in order to transmit the GC Energy to RMP's load. The answer to those questions will almost certainly be very different if RMP requests that PacTrans study the

option of RMP's use of its existing transmission rights and redispatch options. The results of those studies may thus determine if the Glen Canyon Solar QF projects are built. The sooner that proper studies are performed, the more likely Glen Canyon Solar can make decisions about whether to move forward with the project. The threatened injury to Glen Canyon Solar is the delay inherent in having PacTrans perform initial studies that do not take RMP's existing transmission rights and redispatch options into account and then having to conduct new studies with that information. This delay could cause Glen Canyon Solar to lose the option to build its project. RMP, on the other hand, suffers no harm from sending a simple letter to PacTrans and asking PacTrans to take those issues into account when conducting the studies.

The balance of harms clearly shows that Glen Canyon Solar will be significantly more harmed if the Commission declines to issue the injunction than if RMP is required to write a letter to PacTrans.

C. The Injunction Would Not Be Adverse To The Public Interest

Entry of the requested preliminary injunction would not be adverse to the public interest, but rather would promote significant public policies and, therefore, the third element of an injunction is satisfied. *See* Utah R. Civ. Pro. 65A(e)(3) ("The injunction, if issued, would not be adverse to the public interest."). "The 'public interest' in a public utility case is actually the interest of purchasers of electric power." *Tri-State Generation & Transmission Assoc., Inc.*, 805 F.2d at 357. *See also Comm. of Consumer Svcs. v. Pub. Serv. Commn.*, 595 P.2d 871, 883 (Utah 1979) ("'Public interest' is a standard of public utility regulation, and since what is found to be in the 'public interest' may change in different circumstances and under different facts, the Commission must always be free to regulate by law the utility to achieve results which benefit

the public."). The Utah Supreme Court has stated that the "public interest" relevant to PURPA focuses "on the setting of reasonable prices and on establishing incentives for the increased production of QF facilities to reduce reliance on fossil fuels." *Ellis-Hall Consultants, LLC v. Pub. Serv. Commn.*, 2014 UT 52, ¶ 22, 342 P.3d 256, 261 (internal quotation marks and citations omitted).

The issuance of the requested injunction is consistent with these public interest objectives. An injunction would further the objectives of PURPA by ensuring that unnecessary delays in performing proper interconnection and transmission studies don't hinder the goal of "increased production of QF facilities to reduce reliance on fossil fuels." *Id*. Moreover, the requested injunction would not be adverse to the interest of purchasers of electric power because the avoided-cost pricing mechanism in PURPA ensures that ratepayers are not negatively affected when a utility purchases power from a QF. *See id*., ¶23. (citing the ratepayer indifference standard set forth in 18 C.F.R. § 292.101(b)(6) and noting that "[b]oth federal and state law" balance public interest objectives by ensuring "that public utilities purchase QF power at the same rate the utility would have paid in acquiring or producing the same power through other means."). Moreover, a preliminary injunction will not affect the Commission's ability to determine the merits of Glen Canyon Solar's petition in this docket or to conduct a public interest review of the Glen Canyon Solar PPAs in other dockets. In contrast, the absence of a preliminary injunction will likely preclude timely completion of the projects even if the Commission ultimately determines that Glen Canyon Solar is right on the merits of its claims. The public interest therefore strongly supports issuance of a preliminary injunction.

D. Glen Canyon Solar Has Presented Serious Issues On The Merits Which Merit Further Litigation

In its Request for Agency Action in this docket, and in this Motion, Glen Canyon Solar has laid out the basis for its request for order that RMP must utilize its existing network transmission rights and resources, including planning and operational redispatch options, to transmit the GC Energy it purchases pursuant to the GC PPAs, and for orders that RMP must submit timely and appropriate information and requests to PacTrans related to interconnection and transmission studies.[74] The issues presented in this motion clearly satisfy the fourth element of an injunction because this case clearly presents serious issues on the merits, which should be the subject of further litigation. *See* Utah R. Civ. P. 65A(e)(4) ("There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation."). All of the facts and arguments asserted in the Request for Agency Action need not be repeated here. For purposes of this motion, however, a brief summary of the process relating to the Glen Canyon Solar PPAs is useful and demonstrates that Glen Canyon Solar has presented serious issues on the merits which merit further litigation.

In connection with procedures outlined in Schedule 38 for the GC PPAs, PacTrans is conducting or will conduct two separate System Impact Studies ("SIS") for each project—one SIS in connection with an Interconnection Request[75] ("**Interconnection SIS**") submitted by Glen

[74] *See generally* Glen Canyon Solar's Request for Agency Action at 16-25.
[75] An Interconnection Request is governed by Section IV of the OATT, and the scope and procedures for the Interconnection SIS are set forth in OATT Sections 42.3 and 42.4, respectively.

Canyon Solar to PacTrans, and another SIS in connection with a Transmission Service Request[76] ("**Transmission SIS**") submitted by RMP to PacTrans.[77] Both an Interconnection SIS and a Transmission SIS study potential impediments to providing the requested service and an estimate of the costs necessary to provide the requested service.[78] Importantly, both the Interconnection SIS and Transmission SIS study potential impediments to providing firm transmission service beyond the point of interconnection. As discussed in the Request for Agency Action in this docket, RMP can relieve any impediments to providing firm transmission service beyond the point of interconnection by utilizing its existing transmission rights and planning and operational redispatch options available to it as the transmission customer. However, PacTrans will not study or otherwise consider RMP's existing transmission rights or redispatch options that would enable firm transmission of the GC Energy beyond the point of interconnection unless RMP requests that it does so. RMP has repeatedly stated to Glen Canyon Solar that it will not submit such a request to PacTrans, thereby affecting the results of the Interconnection SIS and Transmission SIS and thus seriously harming Glen Canyon Solar.

The fact that PacTrans will not study RMP's existing transmission rights or redispatch options unless a request is submitted by RMP—the transmission customer who will take possession of the GC Energy at the point of interconnection and deliver that energy to load—allows RMP to manipulate the results of the Interconnection SIS and Transmission SIS in a way that prejudices Glen Canyon Solar. For example, if RMP were building a 95 MW solar project

[76] A Transmission Service Request ("**TSR**") is governed by Section III of the OATT, and the procedures for the Transmission SIS are set forth in OATT Section 32.3.
[77] RMP is currently conducting the SIS in connection with the Interconnection Agreement. RMP either is currently conducting the SIS in connection with the TSR or will conduct that study in the very near future.
[78] *See, e.g.*, OATT § 43.3

in Southern Utah using the same site as the GC Resources and with the same point of interconnection, RMP could—and very likely would—request that PacTrans study RMP's existing transmission rights and redispatch options so as to ensure that the Interconnection SIS and Transmission SIS do not conclude that network upgrades are required—as RMP clearly plans to do for its proposed new Wyoming wind resources. In this instance, however, RMP is forced by law to purchase energy from a QF developer and is refusing to submit such a request to PacTrans in the obvious hope that the Interconnection SIS and Transmission SIS will conclude that hundreds of millions of dollars of network upgrades are required to transmit the energy and that this will ultimately result in the GC Resources not being built.

This sort of discrimination is expressly prohibited by Schedule 38 and FERC's PURPA regulations. *See, e.g.*, Schedule 38, Section II.B. ("The QF project owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis."); 18 C.F.R. § 292.306 ("Each qualifying facility shall be obligated to pay any interconnection costs which the State regulatory authority . . . may assess against the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics."). *See also Indus. Cogenerators v. FERC*, 47 F.3d 1231, 1232 (D.C. Cir. 1995) ("Section 210 of the PURPA was enacted, in part, to address discrimination by electric utilities in the availability and price of power that they sell to and buy from cogeneration facilities for resale." (citing *FERC v. Mississippi*, 456 U.S. 742, 750-51 (1982)). For these reasons, the serious issues presented herein should be the subject of further litigation, and Glen Canyon Solar has satisfied the fourth element for a preliminary injunction.

CONCLUSION

For the reasons set forth above, and for the reasons set forth in Glen Canyon Solar's Request for Agency Action previously filed in this docket, Glen Canyon Solar respectfully requests that the Commission grant this motion for preliminary injunction and issue an order requiring RMP to submit a request to PacTrans that it consider and evaluate the use of RMP's existing transmission rights and planning and redispatch options in connection with the Interconnection SIS. Only through issuance of such a preliminary injunction can the Commission preserve its ability to award appropriate relief on the merits in the event it later determines that Glen Canyon Solar is entitled to relief.

DATED this 11th day of August 2017.

Respectfully submitted

HATCH, JAMES & DODGE, P.C.

By: _____

Gary A. Dodge
Phillip J. Russell

Attorneys for Glen Canyon Solar A, LLC and Glen Canyon Solar B, LLC

Certificate of Service
Docket No. 17-035-36

I hereby certify that a true and correct copy of the foregoing was served by email this 11th day of August 2017 on the following:

ROCKY MOUNTAIN POWER

Jeff Richards	robert.richards@pacificorp.com
Yvonne Hogle	yvonne.hogle@pacificorp.com
Bob Lively	bob.lively@pacificorp.com

PACIFIC POWER

Sarah K. Link	sarah.kamman@pacificorp.com
Karen J. Kruse	karen.kruse@pacificorp.com

DIVISION OF PUBLIC UTILITIES

Chris Parker	chrisparker@utah.gov
William Powell	wpowell@utah.gov
Patricia Schmid	pschmid@agutah.gov
Justin Jetter	jjetter@agutah.gov

OFFICE OF CONSUMER SERVICES

Michele Beck	mbeck@utah.gov
Cheryl Murray	cmurray@utah.gov
Steven Snarr	stevensnarr@agutah.gov
Robert Moore	rmoore@agutah.gov

EXHIBIT 1

PACIFICORP

Pacific Power |
Rocky Mountain Power
825 NE Multnomah, Suite 1600
Portland, Oregon 97232

December 24, 2014

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

RE: *PacifiCorp*
Network Operating Agreement Amendment, Docket No. ER15-___-000

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act ("FPA")[1] and Part 35 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure,[2] PacifiCorp hereby submits a proposed amendment to the Network Operating Agreement ("NOA") between PacifiCorp Transmission and PacifiCorp Energy.[3] PacifiCorp respectfully requests an effective date of 60 days after the date of filing, or February 22, 2015.

I. Executive Summary

The instant NOA amendment proposes a narrow, customer-specific operational solution to enable PacifiCorp to continue fulfilling its Public Utility Regulatory Policies Act of 1978 ("PURPA") mandatory purchase obligation and complying with the Commission's open access policies when qualifying facilities ("QF") are constructed in constrained areas of PacifiCorp's transmission system. In particular, the NOA amendment would allow PacifiCorp Transmission to grant additional Designated Network Resource ("DNR") applications on behalf of PacifiCorp Energy in order to enable firm delivery from QFs even in the absence of Available Transfer Capability ("ATC"), provided that PacifiCorp Energy agrees to operate its portfolio of DNRs in the affected area within system reliability limits defined by PacifiCorp Transmission and curtail QF power last, even if that is out of economic merit order. PacifiCorp Transmission could grant such DNRs under two specific circumstances: (1) to provide a

---

1 16 U.S.C. § 824d.

2 18 C.F.R. Part 35 (2014).

3 The NOA between PacifiCorp Transmission and PacifiCorp Energy is currently on file with the Commission and designated as PacifiCorp Service Agreement No. 504. *PacifiCorp*, Docket No. ER08-1424, Letter Order, dated Oct. 16, 2008.

longer-term measure until network upgrades are identified pursuant to PacifiCorp's Open Access Transmission Tariff ("OATT"), including the normal OATT Attachment K process; and (2) to provide an interim measure while previously-identified network upgrades are still being constructed.

Importantly, the proposed NOA amendment does not affect the transmission capacity reserved for any other existing PacifiCorp Transmission customer. Indeed, PacifiCorp is not proposing any modifications to its OATT, including, but not limited to, the interconnection process, the transmission service reservation process, or the transmission planning process. Rather, the NOA amendment simply allows PacifiCorp to meet its PURPA must-take obligations by providing firm transmission service to deliver QFs, while at the same time avoiding the need to undertake potentially uneconomic transmission expansions. For all of the foregoing reasons, which are discussed in more detail herein, PacifiCorp believes the proposed amendment is just and reasonable and should be approved.

II. Background

A. FERC-Approved Methodologies for Planning and Reserving Capacity for Network Customers and Determining ATC

PacifiCorp provides transmission service pursuant to its OATT, which contains Commission-approved methodologies for planning and reserving capacity for its network customers and for determining ATC. Nothing proposed herein would change those methodologies. Moreover, the NOA amendment would not diminish the transmission capacity reserved for service to any existing transmission customers. PacifiCorp will continue to plan, reserve transmission capacity, and determine ATC for its network customers, as well as serve firm their designated network loads using their DNRs in accordance with Order No. 888,[4] Order No. 890[5] and PacifiCorp's FERC-approved OATT.[6] This ensures that PacifiCorp reserves capacity equal to, but not in excess of, the

[4] *See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) ("Order No. 888"), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997) ("Order No. 888-A"), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[5] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[6] *See, e.g.*, PacifiCorp OATT, Attachment C.

amount necessary to reliably serve network load.[7] PacifiCorp will also continue to identify and plan for necessary transmission system upgrades pursuant to its Order No. 1000-compliant OATT Attachment K process.[8]

The proposed operational protocol is consistent with and does not change any of these FERC-approved methodologies or any other aspect of the PacifiCorp OATT.

B. Implementation of PURPA Must-Take Obligation in Constrained Areas

When QFs site projects in constrained areas, the intersection between the utility's PURPA must-take requirement and the Commission's open access policies requires the utility to navigate:

1. **Firm transmission arrangements for QFs.** FERC regulations and precedent that state a utility has an obligation under PURPA to purchase, and make firm transmission arrangements for, QF power, as well as to keep customers indifferent to such QF purchases.
2. **Limitations on granting DNR status.** FERC precedent that does not appear to support the granting of additional DNRs where there is zero ATC; and
3. **Constructing network upgrades to accommodate new DNRs.** FERC policies that obligate a transmission provider to build transmission to accommodate firm transmission service requests, including new DNR requests, in constrained areas.

As discussed in more detail below, these requirements collectively have the potential to require the construction of uneconomic network upgrades that are needed solely to accommodate the QF power sited in the constrained area, rather than to maintain compliance with reliability requirements (including load service) or to achieve improvements where upgrades are economically justified – traditionally the primary drivers of the open access transmission planning process.[9] In addition, there is a separate but related issue of how to provide firm transmission for the QF during any interim periods when transmission upgrades have been previously identified in accordance with PacifiCorp's OATT and Commission-approved transmission planning process and are in the process of being constructed.

---

[7] *See, e.g.*, Order No. 888 at p. 31,754 (addressing whether and how to set limits on the amount of network resources a customer can designate, ultimately limiting it to the resources a customer owns or commits to purchase, and noting that a transmission customer would have "an incentive not to oversubscribe its capacity requirements because the cost of excessive reserve margins will be prohibitive," which would protect the utility from having to incur costs that are out of proportion to the customer's load).

[8] PacifiCorp OATT, Attachment K; *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

[9] PacifiCorp recognizes that there are other considerations in the transmission planning process, but believes that reliable load service and economic considerations are the drivers most relevant to the instant proposal.

1. Firm Transmission Arrangements for QFs

PURPA obligates a utility to purchase, and make firm transmission arrangements for, a QF's power,[10] and to keep customers indifferent to such QF purchases.[11] PacifiCorp Energy has historically made these firm transmission arrangements by designating QF power purchase agreements ("PPA") as Network Resources under its Network Integration Transmission Service Agreement ("NITSA") with PacifiCorp Transmission. However, where the transmission system is constrained, and constraints cannot be relieved by planning redispatch, the OATT and FERC's transmission pricing policies obligate a transmission provider to build network upgrades to accommodate firm transmission service requests[12] and roll the cost of those network upgrades into rate base.[13]

2. Limitations on Granting DNR Status

Furthermore, Commission precedent does not appear to support the granting of new DNR requests where there is zero ATC.[14] In *Madison Gas & Electric v. Wisconsin Power & Light Company*, the Commission examined, among other issues, whether the transmission provider had acted inappropriately by granting its own merchant's request to designate a new network resource without first evaluating whether ATC was available to meet the request. The transmission provider defended its actions, arguing that "any network customer may designate network resources without regard to the amount of ATC, and that requests for network service (an initial service request or a change in a network resource for an existing service) cannot be rejected on the ground that there is no ATC."[15]

---

[10] *See, e.g.*, 18 C.F.R. § 292.303 (discussing a utility's obligation to interconnect with and purchase power from QFs); *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 38 (2013) ("*Pioneer*") (stating, for example, that the proposed curtailment provision "treats Pioneer Wind as if it is the transmission customer and it curtails Pioneer Wind as if it were a non-firm, secondary network service transmission customer that can be curtailed by PacifiCorp before any existing PacifiCorp Network Resource that was designated as a Network Resource prior to execution of the PPA between Pioneer Wind and PacifiCorp.") (emphasis added). The Commission has also stated that, once QF energy is purchased, it is the utility's responsibility to "deliver that energy to its load (or otherwise manage the energy)." *See, e.g.*, *Entergy*, 137 FERC ¶ 61,199 at P 52 (2011); *Exelon Wind*, 140 FERC ¶ 61,152 at P 50 (2012) (emphasis added). The Commission has not expanded on this statement other than to state what utilities cannot do (*e.g.*, utilities cannot treat QF purchases subordinate to tariff considerations and/or curtail QF output along with non-firm service).

[11] *See, e.g.*, 18 C.F.R. § 292.304 (a)(1)-(2) (stating that rates for QF purchases must "[b]e just and reasonable to the electric consumer of the electric utility and in the public interest; and [n]ot discriminate against qualifying cogeneration and small power production facilities. Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases.").

[12] *See, e.g.*, OATT Sections 32.3 and 32.4. These sections are discussed in more detail below.

[13] *See, e.g., Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, FERC Stats. & Regs. ¶ 31,005 (1994), *clarified*, 71 FERC ¶ 61,195 (1995) (FERC's Transmission Pricing Policy).

[14] *Madison Gas & Elec. Co v. Wisc. Power & Light Co.*, 80 FERC ¶ 61,331 at 62,103-04 (1997).

[15] *Id*. at 62,103-04.

The Commission disagreed, finding that the transmission provider had confused the restrictions placed on network customers in placing requests for network service with the procedures that a transmission provider must use to evaluate its ability to provide the requested service.[16] While a customer does not need to consider ATC when deciding whether to submit a request, the Commission concluded that the determination of ATC is most certainly an element of the transmission provider's evaluation of and response to the request.[17] To that end, the Commission stated:

> When a network service application (initial or proposed modification) is received, the transmission provider must evaluate ATC and determine if it is adequate to meet the request. This analysis would properly consider whether any pending reservations were conditional. If there is adequate ATC (as was the case here once the [MG&E] conditional reservation was canceled), the request should be granted. If there is inadequate ATC, the transmission provider would perform a system study to determine what changes to the transmission grid would be required to provide the requested service. Until sufficient ATC is available to meet the request, the application could not be granted. However, we note that the resource could be used as a substitute resource, accessible to the network customer on an as available basis with a priority above all other nonfirm transmission services.[18]

Thus, a potential conflict between federal obligations arises because, on the one hand, PURPA requires a utility to purchase QF power and make firm transmission arrangements (*e.g.*, DNR status) to deliver it, even if the QF has chosen to site in a constrained area. On the other hand, Commission open access policy and precedent do not appear to support the granting of new DNRs until sufficient ATC is available to meet the request. As discussed in the next section, this appears to put the utility in the position of having to construct network upgrades in order to accommodate the PURPA-required QF firm transmission service, even if the utility would not have otherwise constructed those upgrades – certainly not for load service, reliability or because they were cost-justified.[19]

3. Constructing Network Upgrades to Accommodate New DNRs

If a DNR request is pursued where constraints are present, the OATT essentially provides two options: (1) study whether the constraints can be resolved using planning redispatch; or (2) upgrade the system to relieve the constraints.[20] The OATT does not contemplate an option under which a network customer can decline to execute a Facilities

---

16 *Id*.

17 *Id*.

18 *Id* at 62,103-04. (emphasis added).

19 Indeed, simply using the QF resource "as a substitute resource, accessible to the network customer on an as available basis" (*i.e.*, secondary network service) would be inconsistent with FERC precedent that bars utilities from curtailing QFs as if they are non-firm, secondary network service transmission customers. *See Pioneer*, 145 FERC at P 38.

20 OATT Section 32.3 and 32.4.

Study Agreement but still receive a network resource designation and simply manage that new DNR along with the rest of its DNRs within its existing capacity limitations.

To that end, if planning redispatch does not resolve the constraints and the System Impact Study ("SIS") indicates that upgrades are needed to accommodate that transmission service request, OATT Section 32.4 states that PacifiCorp Transmission must tender a Facilities Study Agreement to the customer, and that "For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it…within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its Application shall be deemed withdrawn and its deposit shall be returned with interest."[21]

Building significant network upgrades that are solely to accommodate QFs and not otherwise necessary for load service or reliability nor cost-justified would seem to conflict with the PURPA customer indifference mandate, as well as run counter to FERC long-term transmission planning policies noted above. The following section describes the proposed NOA amendment, which is designed to address this conflict.

III. Proposed NOA Amendment

A number of QF resources have indicated a desire to interconnect with PacifiCorp in areas where the transmission system is constrained or has the potential to become constrained. The NOA amendment proposes a narrow, customer-specific operational solution to apply in such areas,[22] while still allowing PacifiCorp to fulfill its PURPA mandatory purchase obligation and comply with open access policies.

In particular, the new NOA provision would give PacifiCorp Transmission the right to grant additional DNR applications (QF and non-QF) in constrained areas without the construction of uneconomic network upgrades or during the interim period while approved upgrades are developed, provided that PacifiCorp Energy (as the network customer) agrees to operate its DNRs within its network rights under its NITSA and system limits defined by PacifiCorp Transmission and curtail QF power last, even if that is out of economic merit order. These proposed provisions have been developed within the construct of existing OATT study processes and concepts, *i.e.*, the existing OATT planning redispatch option.

---

[21] OATT Section 32.4 (emphasis added).

[22] Transmission providers and transmission customers have flexibility with respect to the terms and conditions they decide to include in their NOA. To that end, FERC recognized in Order No. 888-A that the NOA "is expected to be a highly detailed agreement between the transmission provider and network customer that establishes the integration of the network customer within the transmission provider's transmission system. Due to the unique characteristics of network customers' systems and the level of customer-specific information and arrangements required under a network operating agreement, it is likely that each network operating agreement will be different for each customer. Accordingly, the Commission does not believe it appropriate to mandate a particular form of network operating agreement for inclusion in the *pro forma* tariff." Order No. 888-A at 30,325.

The amendment language begins by stating that where an SIS indicates that (1) upgrades are needed to relieve system constraints and accommodate PacifiCorp Energy's request to designate a new Network Resource, and (2) the delivery of QF power has caused or contributed to those system constraints, then PacifiCorp Energy can choose from two standard OATT options: (1) planning redispatch or (2) a facilities study and construction of upgrades. The proposed NOA amendment falls under the planning redispatch option.

To that end, the new NOA provision would provide PacifiCorp Transmission the ability to grant additional DNRs even where there is zero ATC available, and provide PacifiCorp Energy the option to manage its DNRs within existing transmission system limits, under two different circumstances: (1) as an interim measure while network upgrades are being constructed; and (2) as a longer-term measure where no upgrades will be constructed for purposes of accommodating the QF request(s), but may later be identified as necessary by PacifiCorp Transmission pursuant to its OATT, including in the normal Attachment K process. More specifically:

- **Section 8.1(a) - Interim planning redispatch while facilities are being constructed.** Section 8.1(a) of the NOA amendment addresses circumstances where network upgrades were previously identified as necessary pursuant to the OATT, including the Attachment K planning process, and are currently being pursued. In order to remain fully consistent with the existing OATT construct, that same section also gives PacifiCorp Energy the option to enter into a Facilities Study Agreement if the necessary upgrades have not been previously identified, and PacifiCorp Energy would like those upgrades studied and constructed. In either case, this section contemplates upgrades being constructed, and addresses the treatment of new requests and resource management in the interim.

- **Section 8.1(b) - Longer-term planning redispatch.** Section 8.1(b) addresses circumstances where network upgrades have not been previously identified pursuant to the OATT, including the Attachment K planning process, and the treatment of new requests and resource management where there is no current plan to construct upgrades.

Importantly, in either case – whether an interim or longer-term plan – the amendment would allow PacifiCorp Transmission to grant DNR applications even if there is zero ATC, so long as PacifiCorp Energy agrees to operate within identified system limits unless and until upgrades are built and constraints are relieved. Also, under either option 8.1(a) or 8.1(b), PacifiCorp will prioritize its scheduled dispatch of its DNRs in the constrained area so that schedules of non-QF resources will be limited before any QF PPA schedules as necessary to maintain identified transmission limits. This provision ensures that QFs will remain protected and PacifiCorp will remain in

compliance with its PURPA obligations to purchase and make firm delivery arrangements for QF power.[23]

Other network customers will also remain protected under the proposed protocol, as it will only address PacifiCorp Energy's network service. Indeed, PacifiCorp will continue to comply with all of the FERC-approved methodologies for planning and reserving capacity for network customers and determining ATC noted above. Importantly, the proposal will not affect any other network customer's network allocation, and all network loads will continue to be served on a firm basis. Only PacifiCorp Energy's DNRs will be subject to the proposed operating protocol, unless another network customer requests similar treatment.

PacifiCorp believes it is appropriate to characterize the proposed operational practice as a form of planning redispatch. Traditional planning redispatch contemplates a transmission provider studying whether existing resources could be delivered firm in a different manner, *i.e.*, through a redispatch that alters flows and creates additional ATC for a new service request to also be delivered on a firm basis.[24] The proposed NOA amendment involves an individual network customer (PacifiCorp Energy) agreeing to operate within certain limits because there is insufficient capacity to accommodate all of the DNRs without limitation. Thus, the DNRs in that constrained area would be more akin to replacement or alternate resources, rather than resources that can be delivered firm through a redispatch that alters flows and creates additional ATC. However, both approaches favor the efficient redispatch of resources over time-consuming and expensive network upgrades, and for that reason, PacifiCorp believes it would be appropriate to characterize its proposed resource management as a form of planning redispatch.[25]

Finally, the proposed NOA amendment includes provisions that: (1) address certain considerations that can be taken into account for the prioritizing of non-QF DNRs; and (2) clarify that the NOA planning redispatch procedures will apply during normal operating conditions, not system emergency conditions. With regard to the first, the NOA amendment notes that PacifiCorp Energy can take additional contractual obligations into account in prioritizing the planning redispatch of its non-PURPA DNRs. This language is intended to address PacifiCorp Energy's ability to consider, for example,

---

[23] As noted above, the Commission has also stated that once QF energy is purchased, it is the utility's responsibility to "deliver that energy to its load (or otherwise manage the energy)." *See, e.g.*, *Entergy*, 137 FERC ¶ 61,199 at P 52 (2011); *Exelon Wind*, 140 FERC ¶ 61,152 at P 50 (2012) (emphasis added). While the Commission has not expanded on this statement other than to state what utilities cannot do (*e.g.*, utilities cannot treat QF purchases subordinate to tariff considerations and/or curtail QF output along with non-firm service), PacifiCorp believes that its proposed NOA amendment is consistent with this statement.

[24] *See, e.g.*, Order No. 890 at P 901 ("Planning redispatch is a product that Order No. 888 required transmission providers to use, in certain circumstances, to create additional transmission capacity to accommodate a request for firm transmission service.").

[25] Doing so also offers the benefit of keeping the proposal within the current OATT construct and study processes.

contractual liquidated damages provisions, when making decisions about the priority of non-QF DNRs.

With regard to the second, the NOA amendment makes it clear that the new planning redispatch procedures are different than the Reliability Redispatch Procedures discussed in Section 8.2 of the NOA, or the system emergency operations discussed in Section 307 of FERC's PURPA regulations.[26] In other words, the operations described in the NOA amendment apply during *normal* operating conditions. System emergency conditions have separate and distinct rules, including the right to curtail QF power on a nondiscriminatory basis to the extent it is contributing to the emergency – something not contemplated or addressed by this NOA amendment.[27]

IV. Communications

All communications and correspondence regarding this filing should be forwarded to the following persons:

Jeffery B. Erb
Assistant General Counsel
PacifiCorp Energy
825 N.E. Multnomah, Suite 600
Portland, OR 97232
Phone: (503) 813-5029
Jeff.Erb@pacificorp.com

Patrick C. Cannon
Senior Counsel
Pacific Power
825 N.E. Multnomah, Suite 1800
Portland, OR 97232
Phone: (503) 813-5613
Patrick.Cannon@pacificorp.com

Karen J. Kruse
TROUTMAN SANDERS, LLP
805 SW Broadway
Suite 1560
Portland, OR 97205-3326
Phone: (503) 290-2312
karen.kruse@troutmansanders.com

V. Effective Date

Consistent with 18 C.F.R. § 35.3(a)(1), PacifiCorp respectfully requests an effective date of 60 days after date of filing.

---

[26] 18 C.F.R. § 292.307.

[27] Nothing in this filing or the proposed NOA amendment modifies the ability of PacifiCorp Transmission to curtail the output of a QF, in accordance with the interconnection agreement and the Commission's regulations applicable in a system emergency. The Commission's regulations define "system emergency" as "a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property." 18 C.F.R. § 292.101(b)(4). In this limited emergency situation, PacifiCorp would have the right to discontinue purchases from QFs if such purchases would contribute to the system emergency. 18 C.F.R. § 292.307.

VI. Documents Submitted with this Filing; Request for Waiver

PacifiCorp is submitting the NOA amendment changes in eTariff format in accordance with the requirements of Order No. 714.[28] In addition to this transmittal letter, PacifiCorp is submitting a clean copy of the amended NOA (Exhibit A) and a redline copy of the amended NOA (Exhibit B).

To the extent necessary, PacifiCorp also respectfully requests waiver of any of the requirements in Part 35 of the Commission's regulations which have not been fulfilled by this filing.

VII. Conclusion

For the foregoing reasons, PacifiCorp respectfully requests that the Commission accept the proposed NOA amendment.

Respectfully Submitted,

/s/ Karen J. Kruse
Karen J. Kruse

Attorney for PacifiCorp

[28] *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).

EXHIBIT 2

151 FERC ¶ 61,170
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

PacifiCorp Docket Nos. ER15-741-000
ER15-741-001

ORDER ACCEPTING PROPOSED NETWORK OPERATING AGREEMENT AMENDMENT

(Issued May 21, 2015)

1. In this order, we accept PacifiCorp's proposed amendment to the Network Operating Agreement (Network Operating Agreement) between PacifiCorp and its merchant function, PacifiCorp Energy, to be effective February 22, 2015, as requested.

I. Background

2. On December 24, 2014, PacifiCorp filed the proposed amendment to the Network Operating Agreement pursuant to section 205 of the Federal Power Act (FPA).[1] PacifiCorp states that there is a potential conflict between the Commission's policies regarding the designation of network resources and the obligations imposed by the Public Utility Regulatory Policies Act (PURPA)[2] regarding qualifying facility (QF) power.[3] PacifiCorp notes that the Commission's precedent in *Madison Gas & Electric Company v. Wisconsin Power & Light Company*[4] does not appear to allow a transmission provider to grant new designated network resource requests unless there is sufficient available transfer capability (ATC) to meet that request.[5] In *Madison*, the Commission also noted

[1] 16 U.S.C. § 824d (2012).

[2] 16 U.S.C. § 824a-3 (2012).

[3] PacifiCorp December 24 Filing at 5.

[4] *Madison Gas & Elec. Co v. Wisc. Power & Light Co*., 80 FERC ¶ 61,331 (1997) (*Madison*).

[5] PacifiCorp December 24 Filing at 4 (citing *Madison*, 80 FERC at 62,103-04).

that a resource could be designated as a substitute "as-available" resource with priority above all non-firm transmission if there is no ATC.[6]

3. PacifiCorp further explains that PURPA requires a utility to purchase, and make firm transmission arrangements for, a QF's power, and to keep customers indifferent to such QF purchases.[7] PacifiCorp states that PacifiCorp Energy has historically made these firm transmission arrangements by designating QF power purchase agreements as network resources. PacifiCorp asserts that, when the transmission system is constrained, and constraints cannot be relieved by using planning redispatch, it is required to construct network upgrades to accommodate firm transmission service requests.

4. PacifiCorp states that this appears to put it in the position of having to construct network upgrades that are not justified by economic or reliability reasons.[8] Specifically, PacifiCorp explains that, because PURPA requires a utility to purchase QF power and make firm transmission arrangements to deliver it even if the QF has chosen to site in a constrained area, but Commission precedent does not allow the designation of a new network resource until sufficient ATC is available, a utility is in the position of having to construct network upgrades to accommodate the PURPA-required QF firm transmission service, even if the utility would not have otherwise constructed those upgrades for economic or reliability reasons.

5. PacifiCorp argues that building these upgrades that are solely to accommodate QFs, and not otherwise cost-justified or necessary for load service or reliability, could run contrary to the Commission's long-term planning policies and to the mandate that customers should be kept indifferent to QF purchases (i.e. they pay no more than the avoided cost).[9]

II. PacifiCorp Filing

6. PacifiCorp asserts that the proposed amendment to the Network Operating Agreement is designed to address this conflict. The proposed amendment would allow PacifiCorp to grant additional designated network resource applications on behalf of PacifiCorp Energy in order to enable firm delivery from QFs even if there is no ATC, provided that PacifiCorp Energy agrees to operate its portfolio of designated network

---

[6] *Madison*, 80 FERC at 62,103-04.

[7] PacifiCorp December 24 Filing at 4.

[8] *Id.* at 5.

[9] *Id.* at 6.

resources in the affected area within system reliability limits and curtail QF power last, even if that is out of economic merit order.[10] PacifiCorp's proposed amendment would allow the designation of network resources in two circumstances: (1) as an interim measure while previously-identified network upgrades are being constructed; and (2) as a longer-term measure where no upgrades will be constructed for purposes of accommodating the QF request(s). PacifiCorp states that the proposed amendment provisions have been developed within the construct of the existing Open Access Transmission Tariff (OATT) planning redispatch option.[11]

7. PacifiCorp believes that it is appropriate to characterize the proposed operational practice as a form of planning redispatch.[12] PacifiCorp states that the practice under its proposed amendment is distinguished from current OATT processes because, while traditional planning redispatch contemplates delivering designated resources in a different manner, the proposed Network Operating Agreement amendment involves a network customer (in this case, PacifiCorp Energy) agreeing to operate its network resources within certain limits because there is insufficient capacity to accommodate all of the designated network resources without limitation.[13] PacifiCorp argues that this amendment will allow it to accommodate QF requests in constrained areas without building uneconomic upgrades.[14]

8. PacifiCorp asserts that other network customers will remain protected under the proposed protocol because it will only address PacifiCorp Energy's network service. PacifiCorp maintains that the proposal will not affect any other network customer's network allocation, and that all network loads will continue to be served on a firm basis. PacifiCorp states that only PacifiCorp Energy's designated network resources will be subject to the proposed operating protocol, unless another network customer requests similar treatment.[15]

9. PacifiCorp states that the proposed Network Operating Agreement amendment includes provisions that: (1) address certain considerations that can be taken into account

---

[10] *Id.* at 1.

[11] *Id.* at 6.

[12] *Id.* at 8.

[13] *Id.*

[14] *Id.* at 2.

[15] *Id.* at 8.

for the prioritizing of non-QF designated network resources; and (2) clarify that the Network Operating Agreement planning redispatch procedures will apply during normal operating conditions, not system emergency conditions. PacifiCorp states that, with regard to the first, the proposed Network Operating Agreement amendment notes that PacifiCorp Energy can take additional contractual obligations into account in prioritizing the planning redispatch of its non-PURPA designated network resources. PacifiCorp states that, with regard to the second, the proposed Network Operating Agreement amendment makes it clear that the new planning redispatch procedures are different than the Reliability Redispatch Procedures discussed in Section 8.2 of the Network Operating Agreement, or the system emergency operations discussed in section 307 of the Commission's PURPA regulations.[16]

III. Notice of Filing and Responsive Pleadings

10. Notice of PacifiCorp's December 24, 2014 filing was published in the *Federal Register*, 80 Fed. Reg. 217 (2015), with interventions and protests due on or before January 14, 2015. None was filed.

11. On February 20, 2015, the Commission staff issued a letter notifying PacifiCorp that its filing was deficient. On March 23, 2015, PacifiCorp submitted a filing in response to the February 20, 2015 deficiency letter. Notice of PacifiCorp's March 23, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 16,669 (2015), with interventions and protests due on or before April 13, 2015. Utah Associated Municipal Power Systems (UAMPS) filed a timely motion to intervene and protest. On April 28, 2015, PacifiCorp filed a motion for leave to answer and answer to the UAMPS protest.

A. Deficiency Letter and Response

12. The deficiency letter asked four questions. First, PacifiCorp was asked to identify the transmission paths on which PacifiCorp Energy's schedules will not exceed the transmission limits prescribed by PacifiCorp and how the limits would be prescribed. In response, PacifiCorp states that its amendment is not limited to a particular line or area of PacifiCorp's system; rather, the amended Network Operating Agreement would apply in any area of PacifiCorp's system where QFs have caused or contributed to transmission constraints that limit PacifiCorp's ability to fully accommodate designated network resource requests. PacifiCorp explains that transmission limits would be prescribed in accordance with PacifiCorp's OATT Attachment C, which sets forth PacifiCorp's ATC methodology.[17]

[16] *Id.* at 8-9.

[17] PacifiCorp March 23 Filing at 3.

13. Second, PacifiCorp was asked to provide the amount of must-take QF power that PacifiCorp is currently contractually obligated to deliver, the amount of pending QF interconnection requests, and the transmission paths associated with this generation. In response, PacifiCorp identified the amount of QF generation in each state. With regard to specific transmission path information, PacifiCorp states that the amendment proposal is not limited to a particular line or area of PacifiCorp's system, but notes that in Utah there is a current need to implement the amendment because there has been an influx of QF requests and there is limited ATC.[18]

14. Third, PacifiCorp was asked to explain its statement that only PacifiCorp Energy would be subject to the proposed operating protocol, unless another network customer requests similar treatment, and asked how honoring such other customer requests would comply with the Commission's regulations. In response, PacifiCorp states that offering this treatment to other network customers is consistent with the Commission's open access policies. PacifiCorp explains that, if another customer requested a similar amendment to its network operating agreement, PacifiCorp would file a request for approval of the amendment pursuant to section 205 of the FPA, just as it has done with the proposed amendment in this case.[19]

15. Fourth, PacifiCorp was asked to clarify the long term solution to the constraints that PacifiCorp believes the proposed amendment addresses. In response, PacifiCorp states that it does not envision its proposal as an interim measure. PacifiCorp asserts that the first option of the proposed Network Operating Agreement amendment is an interim measure to be used until upgrades that have already been identified are constructed, but that the second option is intended to have an indefinite timeline. PacifiCorp explains that, in either case, requests for designation of network resources could be granted immediately, despite the fact that network upgrades have not yet been completed or identified pursuant to the OATT.[20]

B. Protest

16. UAMPS states that it is an interlocal association and a political subdivision of the State of Utah that provides power pooling, scheduling, resource management, and other electric services to its members, consisting of 44 municipal and other public power systems in eight western states.[21] UAMPS explains that it is a PacifiCorp transmission

[18] *Id.* at 4.

[19] *Id.* at 5.

[20] *Id.* at 6.

[21] UAMPS Protest at 2.

customer. UAMPS argues that PacifiCorp's proposed amendment to the Network Operating Agreement should be rejected, or at the least suspended and set for hearing.[22]

17. UAMPS argues that, if any other network customer can request a similar amendment to its network operating agreement, then the amendment should be proposed in PacifiCorp's generally applicable OATT.[23] UAMPS asserts that neither Order No. 888[24] nor PacifiCorp's OATT appears to qualify PacifiCorp's obligation to construct additional capacity when a request for network service requires such construction (and redispatch cannot create sufficient ATC to accommodate the request) on PacifiCorp's unilateral determination that the additions are cost-justified.[25]

18. UAMPS questions PacifiCorp's assertion that the proposed amendment will not impair transmission service for existing customers. UAMPS notes that, under the amendment, PacifiCorp Energy must curtail other resources if necessary to accommodate its PURPA deliveries without violating system reliability limits. UAMPS asserts that this will alter the amount of generation input on the transmission system for multiple generators, which will alter flows on the system and potentially create new constraints and affect other customers' transmission service use in real time operations.[26]

19. UAMPS argues that PacifiCorp has not committed to make any adjustments to its planning models in light of the proposed amendment, which makes it possible that a new designated network resource could be denied while a PacifiCorp QF designated network

[22] *Id.* at 11.

[23] *Id.* at 3.

[24] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[25] UAMPS Protest at 4.

[26] *Id.* at 4-5.

resource would be granted. UAMPS asserts that this could have a chilling effect on the addition of new designated network resources in the PacifiCorp footprint.[27]

20. UAMPS also contends that the proposed amendment should not be accepted without more complete cost justification. UAMPS states that there is no data in PacifiCorp's filing comparing the potential costs of PacifiCorp's proposed redispatch practice under the amendment to the costs of construction of additional facilities to accommodate the desires of PacifiCorp's merchant function.[28]

C. PacifiCorp Answer

21. PacifiCorp argues that the proposed customer-specific Network Operating Agreement is the appropriate place for the proposed language, not the generally applicable OATT. PacifiCorp asserts that PacifiCorp Energy is the only customer whose PURPA mandatory purchase obligation is likely to trigger the need for unnecessary upgrades and notes that, if UAMPS or any other network customer believes it has particular operational needs that would justify a similar redispatch protocol, PacifiCorp would welcome a discussion regarding incorporating a similar amendment to that customer's network operating agreement.[29]

22. PacifiCorp asserts that economic considerations are one of the primary factors to be considered in transmission planning.[30] PacifiCorp argues that UAMPS does not understand the circumstances under which PacifiCorp will not construct a network upgrade under the proposed amendment. PacifiCorp states that it is not upon PacifiCorp's unilateral determination that an upgrade is or is not cost justified; rather, it is when a QF chooses to site its project in a constrained area and the transmission studies performed in accordance with the OATT process demonstrate that there is insufficient ATC to accommodate the request.[31]

23. In response to UAMPS' concerns that PacifiCorp's curtailment practices pursuant to the proposed amendment could affect other customers' transmission service, PacifiCorp asserts that the proposal will not affect any other network customer's network

---

[27] *Id.* at 5-6.

[28] *Id.* at 7.

[29] PacifiCorp Answer at 3-4.

[30] *Id.* at 4-5.

[31] *Id.* at 6.

allocation, all network loads will continue to be served on a firm basis, and the physical transmission entitlements of other transmission customers will be preserved.[32]

24. PacifiCorp states that it did not provide a comparison of the costs of PacifiCorp's proposed redispatch to the costs of construction of additional facilities because no such comparison can be made with certainty at this time. PacifiCorp explains that it does not know exactly whether, when, and where the Network Operating Agreement amendment protocol will be used, as that depends almost exclusively on where QFs choose to site their projects, whether those projects remain viable and eventually come online, and whether allowing the QF power to flow in a particular constrained area will indeed require other resources to be backed down. With regard to the potential cost of construction of network upgrades, PacifiCorp contends that this amount also necessarily depends on the same QF-driven factors and the specific additional facilities necessary to accommodate those QF requests.[33]

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motion to intervene serves to make UAMPS a party to this proceeding.

26. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PacifiCorp's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

27. We will accept PacifiCorp's proposed amendment to the Network Operating Agreement, to be effective February 22, 2015, as requested. We find that PacifiCorp's proposed amendment is consistent with PURPA. As PacifiCorp acknowledges, Commission precedent requires electric utilities, such as PacifiCorp, to deliver a QF's power on a firm basis and prohibits the curtailment of QF resources except under two very narrow circumstances: (1) system emergencies; and (2) extreme light loading

[32] *Id.* at 8-9.

[33] *Id.* at 11-12.

conditions.[34] PacifiCorp's proposed amendment complies with these requirements because it would obligate PacifiCorp Energy to curtail the schedules of non-QFs before the schedules of any QFs during normal operating conditions.[35]

28. PacifiCorp's proposed amendment would, at the same time, also allow its customers to avoid paying for network upgrades when the network upgrades are not justified by economic or reliability needs. In addition, PacifiCorp appropriately proposes to limit the impact of the additional designation of network resources on the generation of other network customers by requiring PacifiCorp Energy to operate its portfolio of designated network resources within its network rights and within transmission system limits.[36] Moreover, PacifiCorp represents that the proposed amendment does not affect the transmission capacity reserved for any other existing PacifiCorp transmission customer or any other network customer's network allocation, and that all network loads will continue to be served on a firm basis.[37] While the proposed amendment departs from the *Madison* precedent that new designated network resource requests cannot be granted unless there is sufficient ATC, we believe that this departure is justified under the specific circumstances here, given PacifiCorp's commitments that the proposed amendment will not affect the transmission service received by other customers and PacifiCorp Energy's obligation to operate its entire portfolio of designated network resources within its existing network rights.

29. We are not persuaded by UAMPS' arguments that the proposed amendment to the Network Operating Agreement should be rejected or set for trial-type, evidentiary hearing. PacifiCorp Energy commits to operating its network resources within its existing transmission rights. Therefore, the additional designation of network resources

[34] *See* PacifiCorp Answer at 7-8 (citing *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215, at P 38 (2013) ("The Commission has specifically held that…the purchasing utility cannot curtail the QF's energy as if the QF were taking non-firm transmission service on the purchasing utility's system"); 18 C.F.R. § 292.307(b) ("During any system emergency, an electric utility may discontinue: (1) Purchases from a qualifying facility if such purchases would contribute to such emergency"); 18 C.F.R. § 292.304(f); *Entergy Servs., Inc.*, 137 FERC ¶ 61,199, at P 55 (2011) ("In Order No. 69, which implemented section [292.]304(f), the Commission stated that that section was intended to deal with a certain condition which can occur during light loading periods…Section [292.]304(f)…applies only to such low loading scenarios")).

[35] *See* PacifiCorp December 24 Filing at 9; PacifiCorp Answer at 7-8.

[36] *See* PacifiCorp December 24 Filing at 6.

[37] *Id.* at 2, 8.

pursuant to the proposed amendment should not impact ATC or impair the transmission rights of other customers. To the extent generation will be curtailed to accommodate these additional network resources, it will be the generation of PacifiCorp Energy, not the generation of any third party, that will be curtailed. We also disagree with UAMPS that the proposed amendment must be included in PacifiCorp's OATT. PacifiCorp has made it clear that any network customer requesting similar terms would be accommodated through an amendment to its network operating agreement. Finally, we disagree with UAMPS that PacifiCorp's proposal must be supported with a more complete cost justification. Any showing in this regard would be hypothetical, speculative, and not necessary to show that this proposal is just and reasonable.

The Commission orders:

PacifiCorp's proposed Network Operating Agreement amendment is hereby accepted, effective February 22, 2015, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

EXHIBIT 3
CONFIDENTIAL

EXHIBIT 4
CONFIDENTIAL