

153 FERC ¶ 61,272
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sage Grouse Energy Project, LLC

v.

Docket No. EL15-44-000

PacifiCorp

ORDER DENYING COMPLAINT

(Issued December 3, 2015)

1. On February 9, 2015, as amended on April 2, 2015 and June 16, 2015, Sage Grouse Energy Project, LLC (Sage Grouse) filed a complaint against PacifiCorp under Rule 206(a) of the Commission's Rules of Practice and Procedure.¹ Sage Grouse alleges that PacifiCorp has: (1) violated the PacifiCorp Open Access Transmission Tariff (OATT) and Order No. 2003² by mismanaging the generation interconnection queue;³ and (2) engaged in undue discrimination against Sage Grouse and other generation interconnection customers. In this order, we deny the complaint.

¹ 18 C.F.R. § 385.206(a) (2015).

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

³ Complaint at 3 & n.13, 19.

I. Complaint

2. Sage Grouse states that it is an entity seeking to develop a wind-powered small production generating facility in San Juan County, Utah.⁴ According to Sage Grouse, it is a Qualified Facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA).⁵ Sage Grouse states that, on August 26, 2014, it submitted an interconnection request for a Large Generator Interconnection Agreement (LGIA) that PacifiCorp accepted, processed, and deemed complete on September 2, 2014.⁶

3. Sage Grouse contends that PacifiCorp has: (1) violated the PacifiCorp OATT and Order No. 2003 by mismanaging the generation interconnection queue;⁷ and (2) engaged in undue discrimination against Sage Grouse and other generation interconnection customers as part of a scheme to control generation projects in the Western and Northwestern United States.⁸ Sage Grouse also alleges that PacifiCorp acted in a manner to “circumvent the Commission’s December 16, 2013 Order in Docket No. EL[14]-1-000” and “engage[d] in activities and practices that included acts against individuals in protected classes such as race, color, religion, sex and even citizenship and immigration status as defined in Civil Rights and Anti-Discrimination Laws”⁹ Sage Grouse requests expeditious fast track processing for its complaint.¹⁰

4. Sage Grouse claims that PacifiCorp mismanaged the queue because PacifiCorp processed invalid interconnection requests for two interconnection customers holding higher queue positions than Sage Grouse, specifically, Blue Mountain Power Partners,

⁴ *Id.* at 2. Sage Grouse states that it is the successor in interest to Summit Wind Power, LLC. *Id.* at 2 n.10.

⁵ *Id.* at 18.

⁶ *Id.* Sage Grouse states that, during its scoping meeting, it raised concerns regarding PacifiCorp’s processing of a competitor’s interconnection request and that Sage Grouse submitted an informal notice of dispute regarding the competitor’s demonstration of site control. *Id.* at 19.

⁷ *Id.* at 3 & n.13, 19.

⁸ *Id.* at 3. Sage Grouse alleges nine separate claims of misconduct by PacifiCorp. Where possible, we combine these claims into two primary allegations.

⁹ *Id.* at 2, 3, 38.

¹⁰ *Id.* at 4, 78 (citing 18 C.F.R. § 385.206(h)).

LLC (Blue Mountain) and Latigo Wind Park, LLC (Latigo).¹¹ Sage Grouse explains that, under PacifiCorp's OATT and the Large Generator Interconnection Procedures (LGIP), an interconnection request must demonstrate site control,¹² and failure to do so renders the interconnection request invalid.¹³

5. Sage Grouse alleges that, on March 21, 2012 and July 2, 2012, PacifiCorp deemed Blue Mountain's interconnection requests complete, even though Blue Mountain failed to reasonably demonstrate site control.¹⁴ Specifically, Sage Grouse contends that several parcels of land that Blue Mountain relied on to demonstrate site control belonged to other competing interconnection customers, including Sage Grouse. Moreover, Sage Grouse claims that PacifiCorp has always known, through actual and constructive notice, that Blue Mountain could not reasonably demonstrate site control because other interconnection customers owned these parcels.¹⁵ Sage Grouse asserts that PacifiCorp's refusal to withdraw Blue Mountain's interconnection request as required by PacifiCorp's LGIP and OATT, is improper.¹⁶ Sage Grouse contends that PacifiCorp's actions impact Sage Grouse's project, all other valid interconnection customers, and end user consumers

¹¹ *Id.* at 3.

¹² *Id.* at 5 (citing Exh. 5 (FERC LGIP § 3.3.1; PacifiCorp OATT § 38.3.1 (“To initiate an [i]nterconnection [r]equest, [i]nterconnection [c]ustomer must submit all of the following: . . . (iii) demonstration of [s]ite [c]ontrol . . . ”))), 20.

¹³ *Id.* at 5 (citing Exh. 6 (FERC LGIP § 3.3.3; PacifiCorp OATT § 38.3.3 (“An [i]nterconnection [r]equest will not be considered to be a valid request until all items in Section 3.3.1 have been received by [t]ransmission [p]rovider.”))).

¹⁴ *Id.* at 5-6. Sage Grouse states that PacifiCorp assigned Blue Mountain two queue positions, #0418 and #426, in PacifiCorp's interconnection queue. *Id.* at 6. Sage Grouse asserts that Blue Mountain voluntarily withdrew its interconnection request; therefore, PacifiCorp terminated queue position #418, and PacifiCorp subsequently assigned Blue Mountain a new interconnection queue position #426. *Id.* at 32.

¹⁵ *Id.* at 6. Sage Grouse notes that this is not the first instance in which PacifiCorp deemed complete an interconnection request that did not reasonably demonstrate site control. Sage Grouse also contends that Latigo submitted an agreement to erect a meteorological wind data measurement tower on certain land in order to demonstrate site control over that land, however, this agreement was insufficient to satisfy the OATT's requirements. *Id.* at 92-93.

¹⁶ *Id.* at 6 (citing Exh. 8 (FERC LGIP 3.6 ¶ 1; PacifiCorp OATT § 38.6 ¶ 2)).

who will end up paying higher prices.¹⁷ Additionally, Sage Grouse alleges that the interconnection studies needed for the Sage Grouse project will be inaccurate due to Blue Mountain's use of Sage Grouse land in its invalid interconnection request.¹⁸

6. Sage Grouse argues that PacifiCorp's motivation in deeming Blue Mountain's interconnection request complete was to "deter Sage Grouse from submission of an [i]nterconnection [r]equest" and that PacifiCorp executed an interconnection agreement with Blue Mountain in order to "block out Sage Grouse and seal its fate."¹⁹ Sage Grouse states that it submitted an interconnection request in early 2012, behind applications submitted by Blue Mountain and Ellis-Hall Consultants, LLC (Ellis-Hall).²⁰ Sage Grouse claims that Blue Mountain's interconnection request relied on parcels of land that were the subject of 18 Option Agreements held by Renewable Energy Development Company (REDCO). Sage Grouse states that, after REDCO entered into bankruptcy proceedings, Ellis-Hall purchased six of these Option Agreements.²¹ Nonetheless, Sage Grouse alleges that Blue Mountain included these six parcels in its interconnection request, based on the speculation that it would be able to secure all 18 Option Agreements.

7. Sage Grouse also claims that PacifiCorp has abused the Commission's confidentiality provisions to conceal Blue Mountain's deficient demonstration of site control.²² Sage Grouse states that it requested that PacifiCorp memorialize in writing that Blue Mountain's interconnection request, generating facility, and interconnection customer's interconnection facilities did not rely on, include, or use the Sage Grouse parcels of land.²³ Sage Grouse contends that PacifiCorp refused, on the basis that "FERC Confidentiality Requirements" and "non-disclosure agreement provisions" prevented it from doing so.²⁴ However, Sage Grouse claims that this information was made

¹⁷ *Id.* at 62.

¹⁸ *Id.* at 63.

¹⁹ *Id.* at 8.

²⁰ *Id.* at 9. Ellis-Hall is also an interconnection customer, holding queue position #420. *Id.* Ellis-Hall's substation is Sage Grouse's planned point of interconnection. *Id.* at 41.

²¹ *Id.* at 9.

²² *Id.* at 11, 48-49.

²³ *Id.* at 13.

²⁴ *Id.*

publically available during two hearings on Blue Mountain's Conditional Use Permit Applications to the San Juan County Planning Department, and so PacifiCorp was not at risk of violating any confidentiality provisions.²⁵

8. Sage Grouse also alleges that PacifiCorp demonstrated undue discrimination in refusing to process Sage Grouse's interconnection request and requiring Sage Grouse to secure "clear and convincing" evidence of its site control.²⁶ Sage Grouse also states that PacifiCorp required Sage Grouse to produce letters of authorization from land owners, which is not required by the LGIP or the OATT, and which PacifiCorp did not require of other customers. Sage Grouse alleges that PacifiCorp advised Sage Grouse that it was not going to process Sage Grouse's interconnection request due to the Option Agreements being contentious, in order to delay Sage Grouse's request and ensure that Blue Mountain would be allocated the remaining 80 MW of available interconnection capacity. Sage Grouse claims that this resulted in Sage Grouse's project having to bear significant network upgrades costs in order to interconnect, which would "effectively kill Sage Grouse's project"²⁷

9. Sage Grouse further alleges that PacifiCorp did not require Blue Mountain to withdraw from the queue and submit a new interconnection request with regard to its decision to change its project footprint,²⁸ and that PacifiCorp should have considered such a change a material modification under PacifiCorp's OATT.²⁹ Similarly, Sage Grouse alleges that PacifiCorp allowed Latigo to change its footprint and change its wind turbine technology during its System Impact Study, without deeming these changes a material modification.³⁰ Sage Grouse contends that these changes would require a full and complete re-study, which PacifiCorp did not conduct.³¹

²⁵ *Id.* at 15 (citing Exh. 24 (FERC LGIP 13.1.1.1) and Exh. 25 (PacifiCorp OATT § 48.1.1)).

²⁶ *Id.* at 10.

²⁷ *Id.* at 11; *see id.* at 12, 44.

²⁸ *Id.* at 10.

²⁹ *Id.* at 16-17 n.47. Sage Grouse claims that the power purchase agreement appears to rely on Blue Mountain's original proposed footprint, which included Sage Grouse land. *Id.* (citing Exh. 26).

³⁰ *Id.* at 99, 108-09.

³¹ *Id.* at 37, 109.

10. Thus, Sage Grouse claims that PacifiCorp has exercised undue preference for Blue Mountain and Latigo, by pushing these projects forward and executing power purchase agreements with these interconnection customers before they executed their respective LGIAs.³² In contrast, Sage Grouse states that PacifiCorp refused to execute a power purchase agreement with Ellis-Hall absent an executed LGIA. Sage Grouse notes that, in the last 10 years, PacifiCorp has never required that an LGIA be in place before executing a power purchase agreement. Sage Grouse also maintains that, as a result of the delay in obtaining a power purchase agreement, Ellis-Hall, the non-preferred interconnection customer between Latigo and Blue Mountain in the interconnection queue, was effectively locked out of access to PacifiCorp's transmission queue because the last remaining 140 MW of transmission capacity had already been reserved for Blue Mountain and Latigo. In addition, Sage Grouse states that PacifiCorp's refusal to execute a power purchase agreement with Ellis-Hall directly impacts Sage Grouse, since Ellis-Hall's substation is Sage Grouse's point of interconnection. Sage Grouse alleges that the only interconnection customers and QF owners that have been forced to secure fully executed LGIAs are those whose principal is a "visible minority."³³ Sage Grouse states that, even if PacifiCorp is not motivated by racial or gender reasons, it has purposefully and inconsistently applied its OATT to various projects, which violates the Commission's open access policy.³⁴ Sage Grouse states that the entire interconnection process relies on PacifiCorp to police itself, and argues that PacifiCorp is unable to do so because of conflicting interests.³⁵ Sage Grouse also disputes the validity of the estimated interconnection upgrade costs of \$18 million, which PacifiCorp has indicated would be necessary for Sage Grouse to interconnect to the PacifiCorp system.³⁶ Sage Grouse states that it asked PacifiCorp to explain the basis for this cost, but PacifiCorp refused to provide reasonable evidence to justify this cost.³⁷

11. Sage Grouse also claims that PacifiCorp has placed in its power purchase agreement for favored customers a favorable "Step In Provision," which allows PacifiCorp to take over a project if the interconnection customer fails to perform or defaults under the power purchase agreement. Sage Grouse alleges that this provision is

³² *Id.* at 38-40.

³³ *Id.* at 41.

³⁴ *Id.* at 42.

³⁵ *Id.* at 51.

³⁶ *Id.* at 58.

³⁷ *Id.*

part of PacifiCorp's scheme to expand its monopoly power and impose barriers to entry.³⁸ Sage Grouse alleges that some of these power purchase agreements were entered into with "sham" projects.³⁹

12. Sage Grouse makes several other allegations, including that: (1) PacifiCorp inappropriately allowed Blue Mountain to use wind data that was not produced on Blue Mountain's land; (2) PacifiCorp has engaged in undue discrimination by deeming affiliates as "credit worthy," foregoing initial and subsequent transmission security deposit for affiliates that it requires of other non-affiliated entities, and refusing to tender Ellis-Hall a credit application to determine creditworthiness;⁴⁰ and (3) the Commission should consider revising its orders to prevent PacifiCorp from "constructing an almost insurmountable barrier for QFs to interconnect with PacifiCorp's Transmission System that, like Sage Grouse, are not favored by PacifiCorp."⁴¹

13. Sage Grouse requests that the Commission: (1) deem Blue Mountain's demonstration of site control was not reasonable and order PacifiCorp to withdraw Blue Mountain's interconnection request; (2) sanction PacifiCorp for its purposeful violation of its OATT and Order No. 2003; (3) require PacifiCorp to pay any interconnection and transmission costs associated with its "scheme" to keep Sage Grouse from interconnecting to the PacifiCorp system; (4) perform due diligence on future interconnection requests to verify that site control claims are proper; and (5) require PacifiCorp to put Sage Grouse into the position it would have been if PacifiCorp had acted lawfully.⁴²

II. Notices of Filings and Responsive Pleadings

14. Notice of Sage Grouse's filing was published in the *Federal Register*, 80 Fed. Reg. 8636 (2015), with answers, interventions and protests due on or before March 11, 2015. On March 11, 2015, Ellis-Hall filed a motion to intervene and comments, and PacifiCorp filed an answer to the complaint. On March 16, 2015, Sage Grouse filed a motion for leave to file a responsive answer to PacifiCorp's answer by March 27, 2015.

³⁸ *Id.* at 59, 64-66, 68.

³⁹ *Id.* at 79.

⁴⁰ *Id.* at 42-44.

⁴¹ *Id.* at 49.

⁴² *Id.* at 73.

On March 31, 2015, Sage Grouse filed a motion to extend its filing time of its answer. On April 2, 2015, Sage Grouse filed an amended complaint.⁴³

15. Notice of Sage Grouse's amended complaint was published in the *Federal Register*, 80 Fed. Reg. 20,214 (2015), with answers, interventions, and protests due on or before April 22, 2015. On April 22, 2015, PacifiCorp filed an answer to the amended complaint. On June 16, 2015, Sage Grouse filed a second amended complaint.⁴⁴

16. Notice of Sage Grouse's second amended complaint was published in the *Federal Register*, 80 Fed. Reg. 36,326 (2015), with answers, interventions, and protests due on or before July 6, 2015. On July 1, 2015, PacifiCorp filed a motion for release of confidential materials. On July 2, 2015, Sage Grouse filed a motion for agency action by July 17, 2015, and an objection to PacifiCorp's motion for release of confidential materials. On July 6, 2015, PacifiCorp filed an answer to the second amended complaint. On July 10, 2015 PacifiCorp filed an answer to Sage Grouse's motion for agency action.

A. PacifiCorp Answer

17. In its answer, PacifiCorp argues that the complaint is substantively deficient, does not establish a *prima facie* case, and should be dismissed similar to the Commission's determination in *Canales*.⁴⁵ PacifiCorp states that, of the 90 attached Exhibits, many do not provide factual support for the complaint. For example, PacifiCorp notes that at least 18 of the Exhibits are simply portions of the Commission's *pro forma* LGIP and/or PacifiCorp's OATT, at least nine more of the Exhibits are duplicative of each other, and many more of the Exhibits are partial documents or completely missing.

18. PacifiCorp also argues that the complaint violates the Commission's Rules of Practice and Procedure,⁴⁶ and should be denied. PacifiCorp states that Sage Grouse's complaint is unsigned, does not include any attestation that the contents are true as stated, to the best knowledge and belief of the signer, and fails to identify any employees,

⁴³ Although Sage Grouse titled the filing as an answer, in fact, it raises new issues and thus amended the complaint.

⁴⁴ Similar to its first amended complaint, Sage Grouse titled the filing as an answer; however, the filing raises new issues and thus amended the complaint.

⁴⁵ PacifiCorp March 11 Answer at 7 (citing *Michael Canales v. Edison Int'l*, 147 FERC ¶ 61,020, at P 33 (2014) (denying complaint without prejudice for failure to establish a *prima facie* case) (*Canales*)).

⁴⁶ *Id.* at 9 (citing 18 C.F.R. § 385.2005(a)).

officers, directors, or counsel for communications. PacifiCorp also states that it was never served with a non-public version of the complaint, although the version filed with the Commission clearly suggests that some materials have been redacted or removed.

19. PacifiCorp argues that Sage Grouse's allegation that Blue Mountain and Latigo did not adequately demonstrate site control, and therefore that PacifiCorp improperly accepted their interconnection applications, is incorrect as a matter of fact and law. According to PacifiCorp, under its OATT, an interconnection customer is to submit a demonstration of site control or post an additional deposit of \$10,000.⁴⁷ The interconnection customer can reasonably demonstrate site control to PacifiCorp by showing:

- (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the [g]enerating [f]acility;
- (2) an option to purchase or acquire a leasehold site for such purpose; or
- (3) an exclusivity or other business relationship between [i]nterconnection [c]ustomer and the entity having the right to sell, lease or grant [i]nterconnection [c]ustomer the right to possess or occupy a site for such purpose.^[48]

20. PacifiCorp states that Blue Mountain submitted an Asset Purchase Agreement between its predecessor, Cedar Wind Holdings, LLC, and the trustee of the REDCO bankruptcy estate. According to PacifiCorp, among the assets transferred to Blue Mountain under the Asset Purchase Agreement were 12 Option Agreements that Sage Grouse and Ellis-Hall claim had expired and Sage Grouse and Ellis-Hall sought to buy directly from the landowners. PacifiCorp contends that it properly accepted Blue Mountain's interconnection application because Blue Mountain reasonably demonstrated that it had either "an option to purchase or acquire a leasehold site" or a "business relationship between [i]nterconnection [c]ustomer and the entity having the right to sell, lease or grant [i]nterconnection [c]ustomer the right to possess or occupy a site" for the purpose of constructing the proposed project.⁴⁹ PacifiCorp adds that,

⁴⁷ *Id.* at 10 (citing PacifiCorp OATT § 38.3.1 (Initiating an Interconnection Request)).

⁴⁸ *Id.* (citing PacifiCorp OATT § 36).

⁴⁹ *Id.* at 11.

in 2012, the Bankruptcy Court for the District of Utah analyzed the Option Agreements and held that the Option Agreements had not automatically expired in the event of REDCO's default, and that the trustee had the right to assume and assign the Option Agreements.⁵⁰

21. PacifiCorp maintains that Sage Grouse's documentation does not establish that Blue Mountain lacked site control; rather Sage Grouse's documentation only establishes that Sage Grouse might also have been able to reasonably demonstrate site control for some of the same properties in 2012. Regardless, PacifiCorp adds, it is unaware of any OATT provision or Commission regulation that requires it to independently verify and validate site control documentation submitted by an interconnection customer, and Sage Grouse cites no such obligation. PacifiCorp states that its well-followed policy is to assume that all interconnection customers submit true and accurate information in accordance with the Commission's rules.⁵¹

22. PacifiCorp states that Latigo submitted a Wind Energy Evaluation Agreement between Latigo and Redd Enterprises that also provided Latigo with "the exclusive right to negotiate with Landowner for an easement or lease agreement for wind energy development on the Property."⁵² PacifiCorp argues that it properly accepted Latigo's interconnection application because Latigo reasonably demonstrated that it had "an exclusivity or other business relationship" with "the entity having the right to sell, lease or grant [i]nterconnection [c]ustomer the right to possess or occupy [Latigo's proposed] site."⁵³

23. PacifiCorp argues that Sage Grouse's allegations of trickery are internally inconsistent and without merit. PacifiCorp states that it has no record of an interconnection request or any attempt to submit an interconnection request by Sage Grouse in 2012. In response to Sage Grouse's assertion that PacifiCorp violated confidentiality practices, PacifiCorp argues that it has acted in accordance with its obligation under the OATT to protect confidential information that it receives from applicants.⁵⁴ PacifiCorp states that Sage Grouse's request that PacifiCorp make a

⁵⁰ *Id.* at 12-13 (citing Transcript of Record, *In re Renewable Energy Dev. Corp.*, Case No. 11-38145, Doc. No. 148, at 16 (Bankr. D. UT June 20, 2012)).

⁵¹ *Id.* at 10.

⁵² *Id.* at 15 (citing Complaint, Exh. 65, at § 6).

⁵³ *Id.* at 14 (citing PacifiCorp OATT §§ 36, 38.3.1).

⁵⁴ *Id.* at 24 (citing PacifiCorp OATT § 48.1.2).

determination of whether certain plots are “Sage Grouse parcels of land” appears to go far beyond the limited disclosure purportedly made with respect to Ellis-Hall and Blue Mountain, and the materials made public in the Conditional Use Permit proceedings before the San Juan County Planning Department.⁵⁵ PacifiCorp states that it acted appropriately in refusing to provide such information to a competitor of Blue Mountain.

24. With regard to Sage Grouse’s allegation of undue discrimination, PacifiCorp states that, since initially submitting its interconnection request, Blue Mountain has made modifications to its project footprint and has reduced its proposed generating capacity as a result of the use of fewer turbines. PacifiCorp argues that neither of these modifications resulted in a change to the Blue Mountain project’s point of interconnection, or its effect on the PacifiCorp system, and PacifiCorp determined that they would not have an adverse “material impact on the cost or timing of any [i]nterconnection [r]equest with a later queue priority date,” and, thus, no material modification occurred.⁵⁶

25. With respect to Latigo’s change in wind turbine models, PacifiCorp determined that the difference in the operating characteristics between the two models in question would not have any impact on PacifiCorp’s system, and so would not have any impact on later-queued positions. With regard to Latigo’s changed transmission line route, PacifiCorp determined that the change, and the resulting minimal alteration in line length, would not have any measurable effect on PacifiCorp’s system. As a result, PacifiCorp determined that neither change would result in a material impact on the cost or timing of any interconnection request with a later queue priority date and so determined that they were not material modifications.

26. In response to Sage Grouse’s allegation regarding PacifiCorp’s execution of power purchase agreements prior to an LGIA, PacifiCorp states that Sage Grouse conflates two different processes under two fundamentally different statutes that involve two completely separate business functions. PacifiCorp states that the execution of the interconnection agreement is governed by the OATT and the Commission’s policies under the Federal Power Act (FPA), and the process is managed by PacifiCorp’s transmission function. Conversely, PacifiCorp states that the execution of power purchase agreements with QFs is governed by PURPA, as administered by the states, and the process is managed by PacifiCorp’s marketing function, PacifiCorp Energy. PacifiCorp states that its transmission function and marketing function employees operate independently from each other, and there is absolutely no coordination between the

⁵⁵ *Id.*

⁵⁶ *Id.* at 18.

PacifiCorp personnel negotiating the generator interconnection agreement and the PacifiCorp personnel negotiating the power purchase agreement.

27. In addition, PacifiCorp states that, despite its claims, Sage Grouse does not appear to be a QF. PacifiCorp has found no evidence that Sage Grouse has filed a notice of self-certification with the Commission claiming QF status. PacifiCorp adds that Sage Grouse's project has a capacity rating of 199.2 MW, which is well above the 80 MW limit required to be categorized as a small power production facility and obtain QF status. Additionally, PacifiCorp has found no evidence that Sage Grouse has attempted to split its project into multiple phases so that portions of it might qualify for QF status. PacifiCorp asserts that Sage Grouse's claim of QF status appears to be a further example of the baseless and unsupportable claims in the complaint.

28. Finally, PacifiCorp requests waiver of sections 38.6 and 42.2 of its OATT, pending the outcome of the complaint proceeding. PacifiCorp states that Sage Grouse was required to execute a System Impact Study Agreement and provide a study deposit by February 20, 2015, but instead, Sage Grouse had requested that all work be suspended on its interconnection request. PacifiCorp seeks waiver of section 42.2 and 38.6 so that PacifiCorp need not withdraw Sage Grouse from the queue and to permit Sage Grouse until 10 business days following a final order in this proceeding to cure its deficiency.

B. Ellis-Hall Comments

29. Ellis-Hall agrees with Sage Grouse that PacifiCorp did not require a reasonable demonstration of site control from, and improperly allocated interconnection capacity on PacifiCorp's interconnection queue to, both Blue Mountain and Latigo. Ellis-Hall also states that PacifiCorp had actual and constructive notice that Blue Mountain's and Latigo's interconnection requests relied on incorrect information before PacifiCorp deemed them complete.⁵⁷

30. Ellis-Hall notes that its interest in this proceeding, in many respects, differs from Sage Grouse's. Ellis-Hall states that it will receive an economic benefit from Sage Grouse's contract to interconnect through Ellis-Hall's connector/collector substation. However, Ellis-Hall argues that, under the present circumstance, where PacifiCorp has informed Sage Grouse of the need for network upgrade costs to interconnect to the system, the viability of Sage Grouse's project is in question. Ellis-Hall states that, if Blue Mountain's and Latigo's interconnection requests were

⁵⁷ Ellis-Hall Comments at 2 (citing Complaint at 6).

withdrawn from the interconnection queue, the need for network upgrades would not exist for Sage Grouse.⁵⁸

31. Ellis-Hall echoes Sage Grouse's concern that Blue Mountain used, at least in part, wind data obtained from meteorological wind measuring towers located on Ellis-Hall's land. Ellis-Hall asserts that Blue Mountain then used this data to execute a power purchase agreement. Ellis-Hall contends that Blue Mountain's interconnection request and power purchase agreement all rely on wind data not reflective of its own project, and, consequently, Blue Mountain's wind turbine generator selection for its interconnection request was not appropriate for Blue Mountain's generating facility.

32. Ellis-Hall also alleges that, as a result of PacifiCorp improperly awarding Latigo a higher position in the queue and failing to withdraw Latigo's interconnection request as required by the OATT and Order No. 2003, Ellis-Hall was unable to procure the total 200 MW it requested and was informed that it must bear the costs for a substantial network upgrade.⁵⁹

33. Finally, Ellis-Hall states that it acknowledges that the discrimination identified in Sage Grouse's complaint has prejudiced Ellis-Hall and impaired its ability to advance its own renewable energy projects.⁶⁰

C. Amended Complaint

34. On April 2, 2015, as supplemented on April 3, 2015, Sage Grouse filed an amendment to the complaint. Sage Grouse asserts that Order No. 2003 requires that a developer have actual site control; otherwise the interconnection process becomes highly inefficient and undermines the purpose of PURPA.⁶¹ Sage Grouse contends that developers without viable projects take up valuable interconnection capacity, and as in the case of Blue Mountain and Latigo, risk that proposed facilities will fail, which negatively impacts ratepayers. Sage Grouse argues that the Commission should insist that a "reasonable" demonstration of site control actually requires rights to the sited property. Sage Grouse argues that, otherwise, competing developers will be squeezed out from the queue and PacifiCorp's favored developers will either ultimately fail to build

⁵⁸ *Id.* at 3 (citing Complaint at 40).

⁵⁹ *Id.* at 3-4 (citing Exh. 1, PacifiCorp August 31, 2012 Feasibility Study Report for Ellis-Hall at 12).

⁶⁰ *Id.* at 4 (citing Complaint at 39-41).

⁶¹ Amended Complaint at 5.

(because they have no right to the land) or will turn operations over to PacifiCorp, extending PacifiCorp's monopoly power.

35. Sage Grouse alleges that PacifiCorp is inconsistently applying the OATT requirements, stating that PacifiCorp required Sage Grouse to make an indisputable demonstration of site control, but did not require the same of Blue Mountain or Latigo.⁶² Sage Grouse claims that Blue Mountain and Latigo did not meet the required showing, and, even if an interconnection customer makes a *prima facie* demonstration of site control, a reasonable demonstration also means that PacifiCorp must further investigate site control when third parties challenge such claims (i.e., when landowners dispute a developer's claims). Sage Grouse notes that, although PacifiCorp states that it need merely "assume" site control documentation is correct so as to not pick "winners and losers," PacifiCorp has investigated multiple claims of site control over the same land in the context of Utah Public Service Commission (Utah Commission) proceedings involving Blue Mountain and Latigo.⁶³

36. Sage Grouse observes that PacifiCorp did not specifically deny Sage Grouse's allegation that Blue Mountain used a parcel of land whose Option Agreement was never counter signed by the landowner (the Meyer parcel).⁶⁴ Sage Grouse states that the Meyer parcel could never have been part of the bankruptcy proceeding because there was no valid contract to be sold by the trustee. In addition, Sage Grouse contends that PacifiCorp "encouraged" Blue Mountain and Latigo to change their footprints without deeming them material modifications, which is a violation of 18 C.F.R. § 1c.2(a). Sage Grouse states that the Commission should investigate Blue Mountain, Latigo, and PacifiCorp for direct and indirect fraud.

37. Sage Grouse asserts that PacifiCorp had actual knowledge that Blue Mountain's proffered site control was false, through its participation in the REDCO bankruptcy, where landowners raised objections, because of the Utah Commission actions, as well as through various communications between Ellis-Hall, Sage Grouse, and PacifiCorp regarding the disputed land.⁶⁵ Sage Grouse states that PacifiCorp did not dispute that it had actual and constructive notice of Sage Grouse's interest in the sites used by Blue Mountain, and the Commission should deem the allegations admitted. Sage Grouse

⁶² *Id.* at 8.

⁶³ *Id.* at 9.

⁶⁴ *Id.* at 12.

⁶⁵ *Id.* at 25.

also states that the Commission should find that PacifiCorp knew that Blue Mountain has no rights to the parcels of land.

38. Sage Grouse also disputes PacifiCorp's claim that Blue Mountain's demonstration of site control was reasonable on its face absent a bankruptcy court order approving the sale of the Option Agreements from REDCO to Blue Mountain.⁶⁶ Sage Grouse asserts that, on November 16, 2012, almost five months after Blue Mountain was placed in the interconnection queue, PacifiCorp informed Blue Mountain that it did not have Blue Mountain's site control documentation, which demonstrates that PacifiCorp did not require a reasonable demonstration of site control.⁶⁷ Sage Grouse alleges that Blue Mountain then sent PacifiCorp copies of the REDCO expired Option Agreements that belonged to Sage Grouse. Sage Grouse states that none of these contracts was executed, and therefore, Blue Mountain could not demonstrate a right to these contracts without a bankruptcy court's order approving the sale of these contracts.

39. Sage Grouse argues that PacifiCorp's claim that the bankruptcy proceeding determined that the "Lease Options were valid at the time of sale" and "presumptively valid"⁶⁸ is incorrect, and rather that the bankruptcy court ordered the REDCO trustee to sell its interest in the expired Option Agreements to Blue Mountain "as-is, where-is, if-is." Sage Grouse asserts that the bankruptcy court explicitly stated that it was not quieting title to interests in the lands.⁶⁹

40. Sage Grouse disputes PacifiCorp's contention that Latigo's alleged use of Sage Grouse's land is immaterial because: (1) Latigo has a history of failing to submit reasonable documentation of site control and has admitted that it does not currently have site control; and (2) Latigo's site control documentation uses Sage Grouse's land.

41. Sage Grouse argues that PacifiCorp has repeatedly not required Latigo to demonstrate site control. Sage Grouse states that, on May 5, 2008, PacifiCorp deemed complete Latigo's interconnection requests for Queue #219-A and #219-B, which were requests for the same project as the current Latigo project Queue #384.⁷⁰ Sage Grouse

⁶⁶ *Id.* at 13.

⁶⁷ *Id.* (citing Complaint, Exh. 26).

⁶⁸ *Id.* (citing March 11 Answer at 4 n.4, 12).

⁶⁹ *Id.* at 13-14 & Exh. G (REDCO Bankr. Tr. 24:4-25:22).

⁷⁰ *Id.* at 15-16 (citing <http://www.oasis.oati.com/PPW/PPWdocs/pacificorplgiaq.htm>).

alleges that Latigo #219-A and #219-B did not have site control, however, Sage Grouse asserts that PacifiCorp deemed Latigo Wind Park #219-A and #219-B withdrawn for not commissioning a system impact study, not for lack of site control.

42. Sage Grouse states that, on March 25, 2011, Latigo submitted a new interconnection request to PacifiCorp. Sage Grouse contends that, on April 11, 2011, PacifiCorp sent Latigo a letter stating that Latigo provided no documentation of site control.⁷¹ Then, on April 25, 2011, Latigo submitted a Wind Energy Evaluation Agreement, dated April 23, 2011, to erect a meteorological tower as documentation of site control. Sage Grouse states that this agreement is dated after Latigo submitted its interconnection request and after the cure period should have expired. Sage Grouse also contends that the agreement does not evidence any right for the “purpose of constructing the [g]enerating [f]acility,” and the negotiation exclusivity provision in the agreement does not change that outcome.⁷²

43. Sage Grouse states that Latigo admitted that it did not have site control before the San Juan County Commissioners, on June 29, 2012.⁷³ In addition, Sage Grouse notes that the Latigo System Impact Study Report was published on September 21, 2011. Therefore, Sage Grouse contends that Latigo could not have met the site control requirements under OATT § 42.2.

44. Sage Grouse also argues that Latigo has claimed site control for its generating facility for land that it does not have rights to use. Sage Grouse states that the term “device”⁷⁴ in PacifiCorp’s definition of generating facility cannot refer to a single piece of equipment and cannot exclude the connector cables running between the turbines and ending at PacifiCorp’s meter because connector cables are necessary parts of the generating facility. Sage Grouse asserts that Latigo’s connector cables run from the turbines to the meter, and it is undisputed that they run over Sage Grouse’s land without any legal right to use that land.

⁷¹ *Id.* at 16 (citing Complaint, Exh. 66).

⁷² *Id.* at 17 (citing PacifiCorp OATT § 36; PacifiCorp March 11 Answer at 15).

⁷³ *Id.* (citing Complaint, Exh. 77).

⁷⁴ *Id.* at 18 (citing PacifiCorp OATT § 36 (Definitions) (“Generating Facility shall mean Interconnection Customer’s device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer’s Interconnection Facilities.”)).

45. Sage Grouse argues that PacifiCorp did not act reasonably by allowing Blue Mountain and Latigo to change their projects without deeming these changes material modifications, and PacifiCorp is choosing “winners and losers” and rewarding favored interconnection customers’ projects by allocating them interconnection capacity on the interconnection queue while allowing them to cure deficiencies at a later time.⁷⁵ Sage Grouse states that PacifiCorp’s determination that Blue Mountain’s and Latigo’s modifications were not material is also not reasonable because PacifiCorp has not diligently updated its Open Access Same-Time Information System (OASIS), meaning that PacifiCorp is providing bad information to lower-queued and potential interconnection customers.⁷⁶

46. In further support of its arguments that PacifiCorp has failed to diligently update its OASIS, Sage Grouse states that PacifiCorp has not provided schedule deviation links to indicate that Latigo’s project was allowed to remain in the queue with “in process” status for over one-and-a-half years after receiving its Interconnection Facilities Report before executing an LGIA.⁷⁷ Sage Grouse states that this update should have happened after 60 days without a mutual agreement posted on OASIS.

47. According to Sage Grouse, PacifiCorp cannot conclude that developer modifications are not material if it is providing misinformation to the public and interconnection customers, because PacifiCorp cannot know all of the negative implications of this misinformation.⁷⁸ For instance, Sage Grouse claims that Latigo changed the layout of at least 25 of its 27 turbines; however, PacifiCorp has not required Latigo to undertake either a System Impact Restudy or Facilities Restudy. Sage Grouse alleges that PacifiCorp is permitting Latigo to continue forward based on inaccurate information and a wind turbine generator that is no longer manufactured. Sage Grouse states that the Commission should hold PacifiCorp responsible for misleading other developers that follow project updates on OASIS.

⁷⁵ *Id.* at 22.

⁷⁶ *Id.*

⁷⁷ *Id.* at 23 (citing <http://www.oasis.oati.com/PPW/PPWdocs/pacificorplgiaq.htm>).

⁷⁸ Sage Grouse requests that the Commission consider expanding the definition of “material modification,” which is explicitly limited to the impact a modification could have on a later queued interconnection request and does not consider that changes in project footprints can increase risks to the rate payers. *Id.* at 24-25.

48. Sage Grouse also argues that Latigo has changed its operation date, and that, under Commission precedent, a suspension in commercial operation date of more than three years is a material modification.⁷⁹ Sage Grouse states that PacifiCorp's OASIS shows that Latigo's Projected Commercial Operation Date is December 31, 2012, and it would be impossible for Latigo to meet the maximum three-year extension deadline of December 31, 2015 because Latigo has not begun significant construction. Sage Grouse argues that any extension beyond this date is a material modification, and PacifiCorp must remove Latigo from its interconnection queue.

49. Sage Grouse asserts that the Commission should grant PacifiCorp's requested waiver of its OATT provisions; however, Sage Grouse denies PacifiCorp's allegations set forth in PacifiCorp's March 11 Answer. Sage Grouse states that, on October 1, 2014, it and PacifiCorp committed to study the Sage Grouse project in two phases, with one part being 80 MW and the other 40 MW. However, according to Sage Grouse, PacifiCorp failed to conduct the study as agreed and, instead, studied the project as one 199.2 MW phase, thereby "sandbag[ing] Sage Grouse to disqualify it as a Qualified Facility"⁸⁰ Sage Grouse alleges that, on October 14, 2014, Sage Grouse spoke with PacifiCorp's in-house counsel, who stated that PacifiCorp had executed a QF interconnection agreement with Blue Mountain, and that Sage Grouse could not be a QF because it was too close to Blue Mountain. Sage Grouse contends that the only way Sage Grouse is not one mile away from Blue Mountain's generating facility is if PacifiCorp is still relying on Blue Mountain's original generating facility footprint, which relies on Sage Grouse's land.

50. Sage Grouse argues that the Commission should strike PacifiCorp's answer for failure to admit or deny, specifically in detail, each material allegation of the pleading, as required by Rule 213(c)(2)(1). Sage Grouse states that PacifiCorp's general categorical denial of the allegations does not constitute a "clear and concise statement" of disputed factual allegations and does not "specifically and in detail" admit or deny the allegations.⁸¹

⁷⁹ *Id.* at 23 (citing *Montgomery Great Falls Energy Partners LP v. NorthWestern Corp.*, 123 FERC ¶ 61,181 (2008)).

⁸⁰ *Id.* at 3.

⁸¹ *Id.* at 4.

51. Sage Grouse responds to various other issues raised by PacifiCorp.⁸² Sage Grouse verifies the complaint as required by Rule 2005. In addition, Sage Grouse states that it did not file a non-public version of its complaint, and filed only the redacted version, noting that, if it were a real concern, PacifiCorp could have notified Sage Grouse before filing its answer. Sage Grouse also states that it has attempted to correct errors to its exhibits. Sage Grouse asserts that, contrary to PacifiCorp's contention that Sage Grouse lacks standing to argue Ellis-Hall's interests, Sage Grouse is arguing its own interests and Sage Grouse has a "cognizable interest" because its project is directly linked to the success of Ellis-Hall.

52. Sage Grouse argues that it was ready to submit its interconnection request on November 1, 2012, but PacifiCorp told Sage Grouse that, if it used the Option Agreements used by Blue Mountain to demonstrate site control, Sage Grouse would lose its \$20,000 deposit.⁸³ Sage Grouse states that, even if it were true that PacifiCorp would have processed Sage Grouse's interconnection request, PacifiCorp would not be able to process both Blue Mountain's and Sage Grouse's requests because of the proximity requirements for a QF, evidenced by the fact that PacifiCorp is refusing to acknowledge Sage Grouse's status as a QF. Sage Grouse concludes that overlapping site control representations cannot constitute a reasonable demonstration of site control.

D. PacifiCorp Answer to Amended Complaint

53. In its answer, PacifiCorp argues that it did not agree to study the Sage Grouse project in two phases and that none of the three exhibits that Sage Grouse attached to its amended complaint suggests otherwise. PacifiCorp claims that Sage Grouse concocts statements by PacifiCorp personnel in an effort to bolster its incorrect claim that it is a QF.⁸⁴ PacifiCorp reiterates that Sage Grouse's proposed 199.2 MW facility clearly exceeds the 80 MW size limit required to be categorized as a small power production facility and obtain QF status.⁸⁵ PacifiCorp also argues that Sage Grouse provides no evidence in support of the claims that that PacifiCorp counsel Matthew McVee "repeatedly stated that Sage Grouse was not a QF because PacifiCorp had executed a QF Interconnection Agreement with [Blue Mountain], that [Blue Mountain] was a QF,

⁸² *Id.* at 26-28.

⁸³ *Id.* at 28.

⁸⁴ PacifiCorp April 22 Answer at 5 (citing Amended Complaint at 3).

⁸⁵ *Id.* at 6 (citing 16 U.S.C. § 796(17)(A)(ii) (2012) (definition of "small power production facility"))).

and that Sage Grouse could not be a QF because it was too close to [Blue Mountain].”⁸⁶ PacifiCorp notes that, unless Blue Mountain and Sage Grouse were affiliates, such alleged statements would be incorrect as a project’s proximity to unrelated facilities has no bearing on QF status.⁸⁷

54. PacifiCorp states that it has at all times acted in accordance with its OATT and treated all of its interconnection applicants in a fair and non-discriminatory manner. PacifiCorp argues that Sage Grouse has taken advantage of the interconnection process by submitting multiple notices of dispute prior to PacifiCorp conducting any substantive work on the interconnection request. In addition, PacifiCorp disputes the claim that “PacifiCorp does not contest that it refused to process Sage Grouse’s [i]nterconnection [r]equest and required Sage Grouse to secure ‘clear and convincing evidence’ of its [s]ite [c]ontrol, beyond the OATT requirement”⁸⁸ PacifiCorp asserts that it did not require Sage Grouse to produce any additional evidence for site control, and Sage Grouse has provided no such evidence. PacifiCorp states that it accepted the site control documentation included in Sage Grouse’s interconnection request.

55. PacifiCorp also disagrees with Sage Grouse’s claim that it “was ready to submit its [i]nterconnection [r]equest on November 1, 2012” but that “PacifiCorp’s Mr. Fishback told Sage Grouse that if it submitted leases used by [Blue Mountain] that Sage Grouse would lose its \$20,000 [deposit].”⁸⁹ PacifiCorp asserts that it is not aware of any evidence that Mr. Fishback made the alleged statement, nor does it believe that Mr. Fishback would have made such a statement. Further, PacifiCorp notes that this statement conflicts with Sage Grouse’s assertion that “Sage Grouse submitted its [i]nterconnection [r]equest in early 2012.”⁹⁰

⁸⁶ *Id.* (citing Amended Complaint at 3).

⁸⁷ *Id.* (citing 18 C.F.R. § 292.204(a)(1) (“Except as provided in paragraph (a)(4) of this section, the power production capacity of a facility for which qualification is sought, together with the power production capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts.”)).

⁸⁸ *Id.* at 7 (citing Amended Complaint at 4 n.4).

⁸⁹ *Id.* at 8 (citing Amended Complaint at 28 & Exh. M).

⁹⁰ *Id.* (citing Complaint at 9).

56. With regard to Sage Grouse's claim that there is no legal separation between PacifiCorp's divisions, PacifiCorp argues that Sage Grouse has offered no evidence to support a claim of improper communications. Instead, PacifiCorp states that Sage Grouse has substantiated the fact that the PacifiCorp divisions have appropriate communication prohibitions in place. For example, Sage Grouse's allegation that, because Mr. Clements (a PacifiCorp merchant function employee) emailed Blue Mountain "to say that PacifiCorp did not have copies of [Blue Mountain]'s [s]ite [c]ontrol documentation . . ." actually supports PacifiCorp's position that it maintains a separation of functions.⁹¹ PacifiCorp asserts that this statement demonstrates that PacifiCorp's merchant function personnel were not involved in that process, and would and should not have access to those materials.

57. PacifiCorp disputes Sage Grouse's assertions that PacifiCorp made multiple "admissions" in its March 11 Answer, including that "PacifiCorp has now admitted that it violated its OATT."⁹² PacifiCorp states that it unequivocally denies this (and any other) allegation that it violated its OATT. PacifiCorp disagrees with Sage Grouse's claim that "PacifiCorp admits that [Blue Mountain]'s [i]nterconnection [r]equest originally used Sage Grouse's land for its footprint."⁹³ PacifiCorp clarifies that all that it stated was that any allegation of overlap in the footprints of the Blue Mountain project and Sage Grouse project is moot, as there was no overlap between the two developers' site control documentation at the time that Sage Grouse submitted its interconnection request. PacifiCorp also disputes Sage Grouse's claim that PacifiCorp admitted that a change in a wind project's footprint necessarily requires PacifiCorp to revise a System Impact Study if there is no change to the point of interconnection and no other impact to PacifiCorp's system that would constitute a material modification under the OATT.⁹⁴

58. PacifiCorp reiterates its belief that, in certain circumstances, more than one party can reasonably demonstrate site control over the same location, and that this is consistent with Order No. 2003. PacifiCorp states that, in its March 11 Answer, it argued:

The primary basis for Sage Grouse's Complaint is that it believes it has development rights to the same or similar parcels of land as those used in [Blue Mountain]'s

⁹¹ *Id.* at 9 (citing Amended Complaint at 13).

⁹² *Id.* at 10 (citing Amended Complaint at 11).

⁹³ *Id.* (citing Amended Complaint at 19).

⁹⁴ *Id.* at 11.

Interconnection Applications. Yet, as described above, there are situations (this is one) where more than one party can reasonably demonstrate [s]ite [c]ontrol. Indeed, the Commission has recognized that [s]ite [c]ontrol need not be exclusive, and may even be speculative, during the initial stages of an Interconnection Application.^[95]

59. PacifiCorp disputes Sage Grouse's response that "Order No. 2003 . . . says no such thing" and that "PacifiCorp is misrepresenting the law."⁹⁶ PacifiCorp argues that Sage Grouse misses the point, which is that it stands to reason, based on the Commission's discussion in Order No. 2003, that interconnection requests may be based on nonexclusive land rights. PacifiCorp asserts that, in Order No. 2003, the Commission effectively set aside Edison Mission's concerns about speculative requests at the interconnection request stage by noting that a \$250,000 security at a later stage will discourage speculation.⁹⁷ PacifiCorp contends that the Commission had the opportunity to state that speculative requests were impermissible, but it did not do so, and that the Commission did not even state that the \$10,000 deposit was intended to discourage speculative interconnection requests. Rather, PacifiCorp notes, the Commission merely pointed to the \$250,000 additional security required later on in the interconnection process as a discouragement. PacifiCorp asserts that the clear implication is that, if the Commission did not overtly object to interconnection requests based on speculative land rights, then the Commission also would not object to interconnection requests based on overlapping claims to land.

60. PacifiCorp asserts that the documentation provided with Blue Mountain's interconnection request was reasonable, and that Sage Grouse's claims that PacifiCorp is required to investigate disputes over site control between competitors is contrary to the Commission's clear intent that the interconnection process itself will act as a deterrent to speculative development.⁹⁸ Thus, PacifiCorp states that Sage Grouse's allegation that "PacifiCorp is misrepresenting the law" is incorrect and based on Sage Grouse's continued refusal to acknowledge the Commission's established policy on generator interconnections.

⁹⁵ *Id.* (citing PacifiCorp March 11 Answer at 13 n.39).

⁹⁶ *Id.* at 12 (citing Amended Complaint at 6 n.5).

⁹⁷ *Id.* (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 101).

⁹⁸ *Id.*

61. PacifiCorp disputes Sage Grouse's claim that PacifiCorp had "constructive and actual knowledge that [Blue Mountain] does not have rights to parcels of land in its [g]enerating [f]acility footprint"⁹⁹ and that PacifiCorp improperly concluded that Blue Mountain had reasonably demonstrated site control. Additionally, PacifiCorp contends that, while certain letters (that Sage Grouse attaches to its amended complaint) from land owners that were included in its 2014 interconnection request do appear to be dated in 2012, Sage Grouse failed to submit an interconnection request until August 25, 2014. PacifiCorp notes that Sage Grouse's interconnection request was submitted more than three months after PacifiCorp executed an interconnection agreement with Blue Mountain based on additional site control documentation submitted by Blue Mountain, and more than two full years after Blue Mountain had submitted its interconnection request.¹⁰⁰

62. PacifiCorp argues that Sage Grouse continues to make unsupported allegations that PacifiCorp acted improperly when accepting Blue Mountain's site control demonstration. PacifiCorp argues that it was entirely reasonable to rely on Blue Mountain's Asset Purchase Agreement as evidence of site control because "[t]he [Asset Purchase Agreement], among other things, purports to transfer 'certain rights, executory contracts and unexpired leases, pursuant to Bankruptcy Code § 365.'"¹⁰¹ Thus, PacifiCorp states, in accordance with its OATT, it evaluated the Asset Purchase Agreement and determined that it reasonably demonstrated that Blue Mountain had either "an option to purchase or acquire a leasehold site" or a "business relationship between [Blue Mountain] and the entity having the right to sell, lease or grant [Blue Mountain] the right to possess or occupy a site."¹⁰²

63. PacifiCorp also rejects Sage Grouse's arguments that "[n]o counter signature was ever made" on the Meyers Option Agreement with REDCO, "there was no contract," and, therefore, "PacifiCorp Has No Basis to Deem [Blue Mountain]'s Demonstration of Site Control Reasonable."¹⁰³ PacifiCorp states that Sage Grouse misunderstands the Commission's regulations and PacifiCorp's responsibilities under its OATT for evaluating site control at the interconnection request stage. PacifiCorp argues that, when

⁹⁹ *Id.* at 13 (citing Amended Complaint at 7 n.7; Complaint at 6).

¹⁰⁰ *Id.* at 13-14 (citing Amended Complaint, Exh. L).

¹⁰¹ *Id.* at 14 (citing PacifiCorp March 11 Answer at 11 (citing Asset Purchase Agreement at 1, D)).

¹⁰² *Id.*

¹⁰³ *Id.* at 14-15 (citing Amended Complaint at 11, 12).

taken at face value, as PacifiCorp did when first evaluating Blue Mountain's site control documentation, the Asset Purchase Agreement reasonably demonstrated that Blue Mountain had site control. Further, even if PacifiCorp had been aware at this time that there was a dispute over the validity of the Option Agreements, which it was not, this issue would not have prevented PacifiCorp from deeming the Asset Purchase Agreement sufficient for site control demonstration purposes.

64. PacifiCorp asserts that Sage Grouse cannot argue in good faith that there was not a dispute at the point in time that Blue Mountain filed its interconnection request about the rightful owners of the Option Agreements.¹⁰⁴ Indeed, as Sage Grouse acknowledges, PacifiCorp's OATT does not confer on PacifiCorp the right, power, or responsibility to adjudicate whether its interconnection customers have actual title to or the ultimate development rights for properties set forth in their interconnection requests.¹⁰⁵ Instead, the disagreement over the Option Agreements properly belongs in Utah State Court, not in PacifiCorp's generator interconnection process.

65. PacifiCorp also argues that Blue Mountain has not made material modifications to the interconnection request.¹⁰⁶ PacifiCorp states that, as it explained in its March 11 Answer, Blue Mountain has made modifications to its project footprint and has reduced its proposed generating capacity as a result of the use of fewer turbines. PacifiCorp states that it evaluated these changes, in accordance with its OATT, and properly concluded that, because neither resulted in a change to the point of interconnection, or its effect on the PacifiCorp system, such changes were not material modifications. PacifiCorp states that Sage Grouse's amended complaint provides nothing to contradict this and, instead, that Sage Grouse attempts to fabricate an issue of material dispute where no such issue exists.

66. PacifiCorp asserts that Latigo also has reasonably demonstrated site control. PacifiCorp points out that Latigo's interconnection request was initially deemed deficient because it did not reasonably demonstrate site control or include the alternative \$10,000 deposit. According to PacifiCorp, Sage Grouse even acknowledges that this is the case, but Sage Grouse still somehow contends that PacifiCorp "has repeatedly not required Latigo to demonstrate [s]ite [c]ontrol."¹⁰⁷ PacifiCorp asserts that this claim again reveals Sage Grouse's willingness to fabricate facts.

¹⁰⁴ *Id.* at 16.

¹⁰⁵ *Id.* (citing Amended Complaint at 7 n.7).

¹⁰⁶ *Id.* at 16-17.

¹⁰⁷ *Id.* at 18 (citing Amended Complaint at 15).

67. In response to PacifiCorp's deficiency notice, Latigo submitted a Wind Energy Evaluation Agreement that, among other things, provided Latigo with "the exclusive right to negotiate with Landowner for an easement or lease agreement for wind energy development on the Property."¹⁰⁸ PacifiCorp states that, after evaluating Latigo's Wind Energy Evaluation Agreement, it determined that Latigo reasonably demonstrated site control and accepted Latigo's interconnection request as complete. PacifiCorp states that Sage Grouse incorrectly argues that, because the Wind Energy Evaluation Agreement "would do nothing for Latigo in the event that the landowner did not want any energy generation devices on his or her land," this fact alone renders the agreement insufficient for site control demonstration.¹⁰⁹ Rather, PacifiCorp contends that the Wind Energy Evaluation Agreement's exclusivity provision falls squarely within the definition of site control under the OATT and that PacifiCorp was correct in concluding that Latigo had reasonably demonstrated site control.

68. In response to Sage Grouse's argument that, because Latigo's interconnection request would have required certain "connector cables" to cross over certain parcels of Sage Grouse's land that Latigo does not have the rights to use, PacifiCorp states that Sage Grouse provides no evidence to support its contention that such "connector cables" would actually run over Sage Grouse's land.¹¹⁰ Moreover, PacifiCorp states that the only evidence Sage Grouse offers is a statement that the Commission should compare Latigo's interconnection request with Sage Grouse's Exhibit 60 to the complaint. However, PacifiCorp asserts that Exhibit 60 clearly contradicts Sage Grouse's claim, as all three of these parcels are clearly identified in the chart as being used for the "Transmission Line" and not the "Generation" portions of the Latigo project, and, pursuant to PacifiCorp's OATT, an interconnection customer needs to demonstrate site control only for the generating facility, not interconnection facilities.

69. PacifiCorp states that Sage Grouse correctly contends that, because Latigo's projected Commercial Operation Date is December 31, 2012, if Latigo's project does not go into service by December 31, 2015 (i.e., a three-year extension), then such delay could be deemed to be a material modification.¹¹¹ However, PacifiCorp contends that it cannot remove interconnection customers from its generator interconnection queue solely

¹⁰⁸ *Id.* (citing Complaint, Exh. 65, at § 6).

¹⁰⁹ *Id.* at 19 (citing Amended Complaint at 17).

¹¹⁰ *Id.* at 20.

¹¹¹ *Id.* at 21 (citing Amended Complaint at 23-24; PacifiCorp OATT § 39.4.5).

because a competitor has alleged that it would be impossible for the project to be online at some point in the future.¹¹²

70. Additionally, PacifiCorp contends that an interconnection customer's decision to simply revise the layout of its wind turbines, without any substantial changes electrically to the project or a change to the point of interconnection, does not automatically result in changes to the cost or timing of a later queued project.¹¹³ PacifiCorp states that its *pro forma* LGIA addresses the interconnection customer's and the transmission provider's *interconnection* facilities, not the precise location of the interconnection customer's *generating* facility.¹¹⁴

E. Second Amended Complaint

71. Sage Grouse states that it has recently discovered additional information that supports its Complaint. Sage Grouse asserts that Blue Mountain's principal, Michael Cutbirth, testified in unrelated litigation that PacifiCorp would treat Blue Mountain favorably and "definitely [had] an affinity for the project."¹¹⁵ Sage Grouse also alleges that an internal Blue Mountain document stated that Blue Mountain "spoke to a professional contact in Pacificorp's [sic] renewable procurement department who told him that Pacificorp [sic] would like to see Blue Mountain constructed [and] indicated that *aside from increasing the [power purchase agreement] rate, Pacificorp [sic] would be willing to take action to support the project.*"¹¹⁶ Moreover, Sage Grouse claims that an April 2013 email shows that PacifiCorp "expedit[ed] [Blue Mountain] through credit."¹¹⁷

¹¹² *Id.* at 21-22.

¹¹³ *Id.* at 22.

¹¹⁴ *Id.* (citing PacifiCorp OATT, Attachment N, Appendix 6 (PacifiCorp Large Generator Interconnection Procedures, Standard Large Generator Interconnection Agreement)).

¹¹⁵ Second Amended Complaint at 3 (citing Exh. 1, *Champlain/GEI Management Co., Inc. v. Darin Huseby*, Supplemental Declaration of Michael Cutbirth in Support of Plaintiff's Motion for Temporary Restraining Order at 5, Docket No. CV No. 3:12-CV-489-AC, U.S. Dist. Court for the Dist. of Oregon (Mar. 18, 2012)).

¹¹⁶ *Id.* (citing Exh. 2 (Sage Grouse's emphasis)).

¹¹⁷ *Id.* at 4 (citing Exh. 3).

72. Sage Grouse further states that email correspondence between Latigo and PacifiCorp demonstrates that PacifiCorp was “pushing” Latigo’s power purchase agreement through, in order to lock in a favorable rate for the project because PacifiCorp intended to take it over. Sage Grouse also notes that Latigo’s LGIA currently relies on a Clipper Liberty Series Turbine that was no longer being manufactured at the time of LGIA execution, and Latigo’s power purchase agreement relies on a Siemens turbine. In fact, Sage Grouse argues, Latigo is planning to use a GE turbine, which was never studied by PacifiCorp. Sage Grouse alleges that PacifiCorp “pushed” the Latigo power purchase agreement and LGIA forward despite these significant problems. Sage Grouse claims that PacifiCorp’s motivation was to reserve capacity for Latigo before Ellis-Hall and Sage Grouse could do so. Sage Grouse also asserts that it does not believe a change to Latigo’s wind turbines was completed within 90 days of the approval of the power purchase agreement nor was it restudied, as required by the power purchase agreement.¹¹⁸ In the event that PacifiCorp did restudy, Sage Grouse states that PacifiCorp needs to explain why these results have not been published and posted on OASIS.

73. Sage Grouse avers that, on February 17, 2015, PacifiCorp (dba Rocky Mountain Power) sent a letter to landowners stating that it was going to begin maintaining a transmission line easement over the landowners’ properties pursuant to an easement obtained in 1955.¹¹⁹ Sage Grouse observes that PacifiCorp’s interest in this easement coincidentally comes only eight days after Sage Grouse filed its original complaint with the Commission and that PacifiCorp routinely performed maintenance of these easements without notification. Sage Grouse alleges that, now that Latigo’s project is slotted to move forward and PacifiCorp needed access to put up additional cables to support the interconnection, PacifiCorp had to submit such notice to landowners. Sage Grouse concludes that it is clear that PacifiCorp has intended to allow Latigo the use of its easements because, in the end, it will become PacifiCorp’s project.

74. Sage Grouse states that Latigo was supposed to interconnect with PacifiCorp’s transmission system and be delivering energy to PacifiCorp by May 1, 2015; however, this has not happened. Sage Grouse asserts that the project remains in an unconfirmed, “received” status on the transmission queue¹²⁰ and that PacifiCorp has stated that it would remain “in [received]” status until such time as facilities are in service [delivering energy

¹¹⁸ *Id.* at 5 (citing Latigo Power Purchase Agreement § 2.8).

¹¹⁹ *Id.* at 6-7 (citing Exh. 6).

¹²⁰ *Id.* at 8 (citing Exh. 14;
http://www.oasis.oati.com/PPW/PPWdocs/TSR_Queue.xls).

to the transmission customer].”¹²¹ In addition, Sage Grouse claims that Latigo has missed its facility completion date of June 1, 2015, as required by its LGIA.¹²² Sage Grouse also believes that PacifiCorp has failed to collect the interconnection financial security and that Latigo has paid no penalties for missed deadlines, yet PacifiCorp has not withdrawn Latigo from the interconnection queue. Sage Grouse argues that this directly affects all the lower-queued interconnection customers.

75. Sage Grouse contends that PacifiCorp has inappropriately allowed Latigo to remain in process on the interconnection queue for approximately a year and a half after Latigo completed its Interconnection Study Process, instead of either executing an LGIA with Latigo or filing an unexecuted LGIA with the Commission within the time permitted by section 46.2 of the OATT. Sage Grouse states that PacifiCorp’s OASIS makes no reference to any schedule deviation to justify this delay.¹²³ Sage Grouse claims that, if PacifiCorp had followed its OATT, PacifiCorp would have had to deem Latigo withdrawn in 2015 due to lack of progress and all lower queued positions, including Ellis-Hall and Sage Grouse, would have moved up the interconnection queue.

76. Sage Grouse states that, on June 18, 2013, PacifiCorp designated both Blue Mountain and Latigo as network resources.¹²⁴ Sage Grouse alleges that PacifiCorp prematurely reserved the remaining transmission capacity out of the Pinto substation for Latigo and Blue Mountain – skipping Ellis-Hall, which was ahead of Blue Mountain on the interconnection queue – because neither Blue Mountain nor Latigo had an executed and approved power purchase agreement with PacifiCorp at that time.

77. Sage Grouse reiterates its allegation that PacifiCorp has engaged in racial discrimination against Ms. Ceruti, the principal of Sage Grouse. Sage Grouse argues that a Rocky Mountain employee, Yvonne Hogle, admitted that PacifiCorp rebuffed Sage Grouse’s attempt to negotiate a power purchase with PacifiCorp in the absence of an executed LGIA. Sage Grouse contends that it has made multiple requests for information relating to its project, including PacifiCorp’s legal basis for deeming Sage Grouse “adverse” and for refusing to answer its questions, however, its questions have gone unanswered. Sage Grouse states that Ms. Hogle has refused to answer Sage Grouse’s questions unless it withdraws its complaint before the Commission.

¹²¹ *Id.* (citing Exh. 13).

¹²² *Id.* (citing Exh. 8).

¹²³ *Id.* at 10 (citing PacifiCorp OATT § 46).

¹²⁴ *Id.* at 11 (citing Exhs. 11-13).

F. PacifiCorp Answer to Second Amended Complaint

78. PacifiCorp responds that Mr. Cutbirth is not an employee, representative, or agent of PacifiCorp, and thus his affidavit has no probative value. PacifiCorp states that Mr. Cutbirth does not even make the referenced statements himself, and instead quotes the statement from an email to him. PacifiCorp contends that Sage Grouse's quotation of Mr. Cutbirth's affidavit is, therefore, at best, inadmissible hearsay.¹²⁵

79. PacifiCorp disputes Sage Grouse's allegation that PacifiCorp was "pushing" Latigo's power purchase agreement through in order to lock in a favorable rate for the project because PacifiCorp intended to take it over. According to PacifiCorp, the step-in provisions cited by Sage Grouse are common security provisions in power purchase agreements, and are used to protect parties if a developer fails to comply with the terms of the agreement and, as a result, are not exercised if the developer complies with the terms of the power purchase agreement. PacifiCorp states that the inclusion of this type of provision in the Blue Mountain and Latigo power purchase agreements is standard industry practice and does not provide evidence of any intent of PacifiCorp to take over those projects.¹²⁶

80. Regarding Sage Grouse's allegations regarding certain easements, PacifiCorp asserts that the easements have been in effect for over 50 years, and are nothing more than evidence that PacifiCorp engages in required vegetation management in accordance with North American Electric Reliability Corporation and Western Electricity Coordinating Council Reliability Standards, and good utility practice. PacifiCorp states that there is no evidence that PacifiCorp is granting a preference to Latigo; rather, the letters to landowners are merely evidence that PacifiCorp engages in routine vegetation management and any claims that these documents represent something more are unfounded.¹²⁷

81. In response to Sage Grouse's claim that Latigo was supposed to interconnect with PacifiCorp's transmission system and be delivering energy to PacifiCorp by May 1, 2015, PacifiCorp notes that Sage Grouse conflates transmission with interconnection and PacifiCorp emphasizes that it has permitted Latigo extensions of certain deadlines just as it has to other entities, such as Ellis-Hall. PacifiCorp maintains that it has acted at all

¹²⁵ PacifiCorp July 6 Answer at 8.

¹²⁶ *Id.* at 6.

¹²⁷ *Id.* at 15.

times in a manner that balances the need to process queue requests quickly with the needs of QFs and developers.¹²⁸

82. PacifiCorp contends that Sage Grouse is incorrect in arguing that Latigo has missed its facility completion date of June 1, 2015, as required by its LGIA, and should therefore have been removed from the interconnection queue. According to PacifiCorp, Appendix B to the Latigo LGIA includes a list of milestones for the Latigo project, and the milestone that Sage Grouse appears to be referencing relates to the date for which PacifiCorp is required to provide backfeed service to the Latigo facility.¹²⁹

83. In response to Sage Grouse's assertion that Latigo should have been removed from the interconnection queue for failure to timely execute an LGIA, PacifiCorp contends that there was no such failure. According to PacifiCorp, on March 19, 2012, PacifiCorp sent Latigo a draft LGIA to interconnect a QF and, pursuant to section 46.1 of PacifiCorp's OATT, requested comments within 30 days. PacifiCorp observes that Latigo did provide comments, but PacifiCorp was unable to agree to the changes requested, and, rather than litigate the unexecuted interconnection agreement, PacifiCorp agreed to extend the execution deadline so that the parties could continue negotiations. PacifiCorp states that these extensions were not out of the ordinary and were not granted to Latigo in any preferential manner. PacifiCorp adds that Ellis-Hall has been granted similar extensions. PacifiCorp states that, on August 8, 2013, PacifiCorp and Latigo executed an LGIA.¹³⁰

84. PacifiCorp refutes Sage Grouse's allegations that PacifiCorp prematurely and improperly reserved the remaining transmission capacity out of the Pinto substation for Latigo and Blue Mountain because neither Blue Mountain nor Latigo had the required power purchase agreement with PacifiCorp at that time. PacifiCorp states that PacifiCorp's merchant subsidiary properly submitted the merchant subsidiary's request to designate the Latigo qualifying facility as a network resource on June 14, 2013, which was granted by PacifiCorp Transmission on July 17, 2013. On July 3, 2013, PacifiCorp's merchant subsidiary and Latigo executed the power purchase agreement. PacifiCorp avers that, insofar as the power purchase agreement remains in effect and has not been terminated, maintaining the queue position is completely permissible.¹³¹

¹²⁸ *Id.* at 10.

¹²⁹ *Id.* at 13.

¹³⁰ *Id.* at 12.

¹³¹ *Id.* at 14.

85. PacifiCorp states that the Blue Mountain and Latigo power purchase agreements and LGIAs were arms-length transactions with independent parties, negotiated and executed in accordance with PURPA and Utah laws and regulation, and that Sage Grouse has not demonstrated otherwise. PacifiCorp argues that references to obligations in the Blue Mountain or Latigo power purchase agreements are outside the scope of this proceeding and should be directed to the Utah Public Service Commission, which has previously issued a decision regarding both the Blue Mountain and Latigo power purchase agreements.¹³²

86. PacifiCorp further denies Sage Grouse's claim that PacifiCorp is discriminating against Ms. Ceruti because she is an African American woman. Moreover, PacifiCorp argues that such allegations are outside the Commission's jurisdiction. PacifiCorp states that Sage Grouse continues to fabricate its arguments without the slightest attempt to confirm whether the allegations have any basis in fact. PacifiCorp contends that the Commission should not ignore Sage Grouse's lack of candor simply because Sage Grouse is proceeding *pro se*.¹³³

III. Discussion

A. Procedural Matters

87. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), Ellis-Hall's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

88. To prevail in a proceeding under section 206 of the FPA and Rule 206 of the Commission's regulations, a complainant must first demonstrate that an existing practice

¹³² *Id.* at 8 (citing *In the Matter of the Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Blue Mountain Power Partners, LLC*, UPSC Docket No. 13-035-115; *In the Matter of the Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Latigo Wind Park, LLC*, UPSC Docket No. 13-035-116).

¹³³ *Id.* at 17.

is unjust, unreasonable, unduly discriminatory, or preferential.¹³⁴ A complainant must present a *prima facie* case demonstrating the unjustness.¹³⁵

89. We find that Sage Grouse has not met the burden of presenting a *prima facie* case to support its complaint, as amended, and we will, accordingly, deny the complaint. We find that Sage Grouse has not provided adequate support for its allegations, nor sufficiently described how its supporting documents support the broad allegations. Specifically, we find that the complaint does not provide a sufficient factual basis to find that PacifiCorp violated its OATT or Order No. 2003, or that PacifiCorp has engaged in undue discrimination against Sage Grouse or undue preference for Blue Mountain and Latigo.

1. Site Control Demonstration

90. We find that Sage Grouse failed to make a *prima facie* showing that Blue Mountain and Latigo failed to provide sufficient documentation to allow PacifiCorp to deem their respective interconnection requests complete. We agree with PacifiCorp that nothing in its OATT or Order No. 2003 requires PacifiCorp to independently verify site control, other than to assess whether the documentation presented by the interconnection customer reasonably demonstrates site control, as defined in the OATT. Therefore, we find that it was reasonable for PacifiCorp to take the Asset Purchase Agreement at face value, and so conclude that Blue Mountain reasonably demonstrated site control under the OATT.¹³⁶ We also agree with PacifiCorp that it is not required to adjudicate whether interconnection customers have actual title to the property set forth in the interconnection request. In addition, we reject Sage Grouse's arguments that

¹³⁴ 16 U.S.C. § 824e(b) (2012); 18 C.F.R. § 385.206 (2015).

¹³⁵ See, e.g., *Canales*, 147 FERC ¶ 61,020 at P 33. As set forth in the Commission's regulations, a complainant establishes a *prima facie* case if the complainant: (1) clearly identifies the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements; and (2) explains how the action or inaction violates the applicable statutory standards or regulatory requirements. See 18 C.F.R. §§ 385.206(b)(1)-(2) (2015). To that effect, the Commission requires that the complainant provide the Commission with evidentiary materials, including documents that support the facts in the complaint. See 18 C.F.R. § 385.206(b)(8) (2015); *Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, Cal. v. Trans Bay Cable L.L.C.*, 146 FERC ¶ 61,100, at P 23 n.25 (2014).

¹³⁶ Notably, Sage Grouse, itself, contends that "PacifiCorp must at least verify that the documentation, on its face, demonstrates the Developer's rights to that land." Amended Complaint at 7.

PacifiCorp inappropriately deemed Blue Mountain's interconnection request complete on the basis that Sage Grouse had an interest in some of the parcels, because there is no evidence that Sage Grouse ever submitted an interconnection request in 2012.

91. We find that, with regard to Latigo's demonstration of site control, the Wind Energy Evaluation Agreement's exclusivity provision falls within the definition of site control under the OATT. We believe that it was reasonable for PacifiCorp to find that the Wind Energy Evaluation Agreement appears to provide Latigo with rights that would reasonably demonstrate site control, and Sage Grouse has not provided evidence that PacifiCorp was required to do anything more than assess whether the agreement met the site control requirements under the OATT. Even considering Sage Grouse's arguments that PacifiCorp has, in the Utah Commission proceedings, conducted diligence regarding site control disputes, Sage Grouse has not demonstrated that the OATT requires such action.

92. In addition, we deny Sage Grouse's allegation that PacifiCorp abused the Commission's confidentiality provisions. Notably, PacifiCorp provided a December 19, 2014 letter in which it had informed Sage Grouse that "there is no overlap in the site control documentation between [Sage Grouse's and Blue Mountain's] projects."¹³⁷ We find that PacifiCorp adequately addressed Sage Grouse's concern that the Blue Mountain and Sage Grouse projects relied on the same land. We also find that PacifiCorp was not required to memorialize this in writing, using the specific language that Sage Grouse requested, and we agree with PacifiCorp that it acted in accordance with its obligation under the OATT to protect confidential information that it receives from applicants.¹³⁸

2. Material Modifications

93. We find that Sage Grouse failed to support its allegations that PacifiCorp engaged in undue discrimination or preference by not deeming Blue Mountain's and Latigo's changes material modifications and requiring Blue Mountain and Latigo to withdraw from the queue and submit new requests. In Order No. 2003, the Commission found that what constitutes a material modification should be determined by the transmission provider "on a reasonable basis" based on the impact of the modification.¹³⁹ PacifiCorp states that it assessed the impact of these requested changes and concluded that they were not material modifications under the OATT because they would not have an adverse

¹³⁷ PacifiCorp March 11 Answer at 6 & Attach. 2.

¹³⁸ *Id.* at 23-24 (citing PacifiCorp OATT § 48.1.2).

¹³⁹ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 168.

impact on later queued customers. PacifiCorp concluded that Blue Mountain's footprint modifications did not result in a change to the Blue Mountain project's point of interconnection or its effect on the PacifiCorp system. Additionally, PacifiCorp concluded that Latigo's revision of the layout of its wind turbines, without any substantive changes electrically to the project or a change to the point of interconnection, did not result in changes to the cost or timing of later-queued projects. PacifiCorp explains that the OATT provides that, "prior to both the execution of the [System Impact Study Agreement] and the execution of the Facility Study Agreement, changes are permitted to the 'technical parameters [of the project's] . . . technology,' although in the latter case any incremental costs must be borne by the Interconnection Customer."¹⁴⁰

94. We also reject Sage Grouse's claim that Blue Mountain's and Latigo's changes necessitate a re-study. PacifiCorp's OATT is clear on the situations where re-study is required, i.e., PacifiCorp is only required to conduct a re-study if there is a higher-queued project that drops out of the queue, a material modification of a higher-queued project, or a re-designation of the Point of Interconnection.¹⁴¹ None of those scenarios is applicable here.

95. Finally, we reject Sage Grouse's claim that PacifiCorp must remove Latigo from the queue because it will be "impossible" for Latigo to meet its commercial operation date. As PacifiCorp states, it would be inappropriate for PacifiCorp to withdraw an interconnection customer from the generation interconnection queue solely because a competitor alleges that the customer will not be online at a point in the future. Similarly, we reject Sage Grouse's allegations that PacifiCorp has improperly permitted Latigo to miss deadlines, fail to pay penalties, and remain in the queue because these allegations are not supported by the evidence in the record.

3. Other Issues

96. In addition, we find that, even as amended, Sage Grouse's complaint fails to comply with various procedural requirements. Specifically, the complaint fails to provide: (1) the name and address of the person against whom the complaint is directed, as required by 18 C.F.R. § 385.203(a)(5) (2015); (2) a certificate of service, as required by 18 C.F.R. § 385.203(a)(9) (2015); (3) the address of the complainant, as required by 18 C.F.R. § 385.203(a)(10) (2015); (4) the location of the complainant's principal place of business, as required by 18 C.F.R. § 385.203(b)(2) (2015); (5) the name, address, and

¹⁴⁰ PacifiCorp March 11 Answer at 19 n.62 (citing PacifiCorp OATT §§ 39.4.1, 39.4.2).

¹⁴¹ See PacifiCorp OATT §§ 41.4, 42.6, 43.5.

telephone number of at least one person upon whom service should be made, as required by 18 C.F.R. § 385.203(b)(3) (2015); and (6) a form of notice, as required by 18 C.F.R. § 385.203(d) (2015). It also does not appear that Sage Grouse filed a confidential version of its complaint with the Commission. We will deny the request for fast-track processing because the complaint failed to justify the request. We will also deny Sage Grouse's motion to strike PacifiCorp's March 11 Answer for failure to admit or deny, specifically in detail, each material allegation of the pleading, as required by Rule 213(c)(2)(1).

97. We find good cause to grant PacifiCorp's requested waiver. The Commission has previously granted waivers of tariff provisions in situations where, as relevant here: (1) the waiver is of limited scope; (2) a concrete problem was remedied by granting the waiver; and (3) the waiver would not have undesirable consequences, such as harming third parties.¹⁴² We find that PacifiCorp's requested waiver satisfies each of the aforementioned conditions.¹⁴³ PacifiCorp's requested waiver is of limited scope and only affects Sage Grouse's ability to retain its position in PacifiCorp's generation interconnection queue. PacifiCorp's requested waiver also addresses a concrete problem that needs to be remedied, because it allows Sage Grouse to remain in the queue pending resolution of this proceeding and provides 10 business days after the date of this order for Sage Grouse to cure its financial deficiency. We also find that the requested waiver will not have undesirable consequences, as allowing Sage Grouse to remain in the interconnection queue preserves the *status quo*. Moreover, no parties have objected to PacifiCorp's requested waiver, and Sage Grouse requests that the Commission grant PacifiCorp's request.¹⁴⁴ Accordingly, we will grant PacifiCorp's request for waiver of sections 38.6 and 42.2 of its OATT.

98. Finally, we will dismiss Sage Grouse's allegations regarding "acts against individuals in protected classes such as race, color, religion, sex and even citizenship and immigration status as defined in Civil Rights and Anti-Discrimination Laws" because

¹⁴² See, e.g., *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,122, at P 45 (2015); *N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61061, at P 19 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,214, at P 9 (2013).

¹⁴³ PacifiCorp March 11 Answer at 30-31.

¹⁴⁴ Amended Complaint at 2.

they are not within the Commission's jurisdiction under the FPA, and are more appropriately addressed in some other forum.¹⁴⁵

The Commission orders:

(A) Sage Grouse's complaint is hereby denied, as discussed in the body of this order.

(B) PacifiCorp's request for waiver of sections 38.6 and 42.2 of its OATT is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴⁵ See, e.g., *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the Cal. Indep. Sys. Operator*, 121 FERC ¶ 61,184, at P 188 (2007) (“[A]s we have previously stated, and the Supreme Court has affirmed, Congress has not charged the Commission with processing civil rights claims.”).