

154 FERC ¶ 61,223  
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. EL16-31-000

PacifiCorp

ORDER DENYING COMPLAINT

(Issued March 16, 2016)

1. On January 19, 2016, as amended January 20, 2016, 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.<sup>1</sup> Sage Grouse alleges that PacifiCorp has violated section 38.3.4 (Scoping Meeting) and section 41 (Interconnection Feasibility Study) of PacifiCorp's Open Access Transmission Tariff (OATT) in conducting a feasibility study and issuing a feasibility study report based on erroneous assumptions. In this order, we deny the complaint, as discussed below.

**I. Complaint**

2. Sage Grouse alleges that PacifiCorp has improperly determined that Sage Grouse is not a qualifying facility (QF) as defined by the Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>2</sup> in order to force Sage Grouse to bear the costs of all necessary interconnection and transmission costs to upgrade PacifiCorp's network. Sage Grouse states that, on October 1, 2014, PacifiCorp held a scoping meeting with Sage Grouse,<sup>3</sup>

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<sup>1</sup> 18 C.F.R. § 385.206(a) (2015).

<sup>2</sup> 16 U.S.C. § 824a-3 (2012).

<sup>3</sup> Complaint at 2 (citing Exh. 1 (Scoping Meeting Email)).

during which PacifiCorp suggested that the proposed Sage Grouse project be studied in two or three phases, as identified in Sage Grouse's project map submitted with its interconnection request.<sup>4</sup> Sage Grouse asserts that it concurred,<sup>5</sup> but that PacifiCorp did not conduct the feasibility study as agreed, but rather studied the project as one large 200 MW phase, and determined that the "Interconnection Customer [Sage Grouse] will NOT operate this generator as a [QF]."<sup>6</sup> Sage Grouse alleges this constitutes a violation of sections 38.3.4 and 41 of PacifiCorp's OATT,<sup>7</sup> and that this error will require Sage Grouse to undertake expenses for a system impact study that will need to be redone. Sage Grouse argues that the Commission has exclusive authority to determine QF status and that the Commission's regulations do not contemplate a role for the utility to set or determine QF status.<sup>8</sup>

3. Sage Grouse further argues that PacifiCorp has failed to classify other similarly situated developers as non-QFs for failing to follow the Commission's certification rules,<sup>9</sup> and has, therefore, "exercised its non-existent authority in a discriminatory and prejudicial manner."<sup>10</sup> According to Sage Grouse, PacifiCorp executed its large generator interconnection agreement and power purchase agreement with Latigo Wind Park, LLC and with Blue Mountain Power Partners, LLC (Blue Mountain), when neither had filed any QF certification with the Commission.

4. Sage Grouse alleges that it has protested PacifiCorp's determination that Sage Grouse is not a QF; however, PacifiCorp has repeatedly refused to answer Sage Grouse's questions.<sup>11</sup> Sage Grouse requests that the Commission order state that a utility has no

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<sup>4</sup> *Id.* at 2-3 (citing Exh. 2 (Redacted Map)).

<sup>5</sup> *Id.* at 3 (citing Exh. 3 (Feasibility Study Agreement), Exh. 4 (Ceruti Decl.)); *id.* at 4.

<sup>6</sup> *Id.* at 4 (citing Exh. 5 (Feasibility Study Report), at 1) (emphasis by Sage Grouse).

<sup>7</sup> *Id.* at 3 (citing Exh. 3 (Feasibility Study Agreement) § 4.0).

<sup>8</sup> *Id.* (citing *Indep. Energy Producers Ass'n v. Cal. Pub. Utils. Comm'n*, 36 F.3d 848, 853-54, 858 (9th Cir. 1994) (*Indep. Energy Producers Ass'n*)).

<sup>9</sup> *Id.* at 5 (citing 18 C.F.R. § 292.203(a) (2015)).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 6 (citing Exh. 6 (Hogle Email)).

authority to determine the QF status of an interconnection customer and require PacifiCorp to redo Sage Grouse's feasibility study assuming Sage Grouse is a QF. Moreover, Sage Grouse requests that the Commission order state that PacifiCorp cannot require Sage Grouse to move its project into a system impact study until the feasibility study is revised.

5. Sage Grouse also requests that the Commission grant a temporary waiver of sections 38.6 (Withdrawal) and 42.2 (Execution of Interconnection System Impact Study Agreement) of PacifiCorp's OATT until: (1) PacifiCorp completes and publishes results of an accurate feasibility study; and (2) Sage Grouse completes its litigation against Blue Mountain resolving a dispute over certain land rights relevant to Sage Grouse's and Blue Mountain's positions in PacifiCorp's interconnection queue.<sup>12</sup> Sage Grouse argues that its request for waiver is limited in scope because it is limited to sections 38.6 and 42.2 of PacifiCorp's OATT, and further argues that the request is *per se* limited in scope because the Commission previously granted PacifiCorp's similar request in the December 2015 Order. Sage Grouse also states that its requested waiver will remedy two concrete problems. First, Sage Grouse asserts that the requested waiver is necessary so that Sage Grouse need not incur costs for the system impact study phase with inaccurate and unreliable results. Second, Sage Grouse argues that the requested waiver will allow Sage Grouse to bring finality to its prior complaint, with respect to certain contested land rights. Additionally, Sage Grouse asserts that the waiver will not have undesirable consequences, such as harming third parties, because there is no change of conditions since the Commission granted PacifiCorp's previous similar request for waiver.<sup>13</sup>

## **II. Notice of Filings and Responsive Pleadings**

6. Notice of Sage Grouse's complaint was published in the *Federal Register*, 81 Fed. Reg. 4,274 (2016), with answers, interventions, and protests due on or before February 8, 2016. On January 27, 2016, PacifiCorp filed a motion to dismiss and for order to show cause and request for shortened answer period and expedited treatment.<sup>14</sup> On February 2, 2016, the Commission granted PacifiCorp an extension of time to file its answer to the complaint until March 3, 2016. On February 4, 2016, Sage Grouse filed a response to

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<sup>12</sup> *Id.* at 8 (citing *Sage Grouse Energy Project, LLC v. PacifiCorp*, 153 FERC ¶ 61,272, at P 97 (2015) (December 2015 Order)).

<sup>13</sup> *Id.* at 10 (citing December 2015 Order, 153 FERC ¶ 61,272 at P 97).

<sup>14</sup> Although PacifiCorp filed a motion to intervene, as respondent in this proceeding, it is automatically deemed to be a party. 18 C.F.R. § 385.102(c)(2) (2015).

PacifiCorp's January 27, 2016 motion. On March 2, 2016, PacifiCorp filed an answer to the complaint.

### **III. PacifiCorp Motion to Dismiss**

7. PacifiCorp argues that Sage Grouse's complaint is a collateral attack on the Commission's December 2015 Order,<sup>15</sup> and that Sage Grouse rehashes issues that were already disposed of in the December 2015 Order.<sup>16</sup> Moreover, PacifiCorp avers that all but one of the exhibits to the instant complaint are duplicative of exhibits produced in Docket No. EL15-44-000.<sup>17</sup> Additionally, PacifiCorp asserts that the affidavit included with the current complaint provides no new, relevant information, but instead merely reiterates information and allegations previously raised in Docket No. EL15-44-000.<sup>18</sup> Moreover, PacifiCorp argues that the December 2015 Order is now final and unappealable, insofar as Sage Grouse did not seek rehearing, and that the complaint should be dismissed with prejudice.<sup>19</sup>

8. Additionally, PacifiCorp requests that the Commission issue an Order to Show Cause as to why Sage Grouse's principals should not be suspended from appearing before or filing pleadings with the Commission under Rule 2102 of the Commission's Rules of Practice and Procedure and Rule 11 of the Federal Rules of Civil Procedure.<sup>20</sup> PacifiCorp asserts that Sage Grouse repeatedly has failed to attempt to comply with the Commission's regulations, resulting in PacifiCorp and Commission staff incurring significant additional time and expense to address Sage Grouse's filings.<sup>21</sup> In response to Sage Grouse's claim that PacifiCorp has repeatedly refused to answer Sage Grouse's questions regarding its classification as a QF, PacifiCorp asserts that Sage Grouse fails to acknowledge any of the other communications between PacifiCorp's transmission

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<sup>15</sup> PacifiCorp Motion to Dismiss at 2-3 (citing December 2015 Order, 153 FERC ¶ 61,272).

<sup>16</sup> *Id.* at 3-6.

<sup>17</sup> *Id.* at 5-6.

<sup>18</sup> *Id.* at 6-7.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.* at 7-8 (citing 18 C.F.R. § 385.2102 (2015); Fed. R. Civ. Pro. 11(b)(1)).

<sup>21</sup> *Id.* at 7, 9, 10.

business unit and Sage Grouse, including those communications where Sage Grouse was informed that studying the project in phases would not result in fundamental changes unless additional points of interconnection were requested.<sup>22</sup>

9. PacifiCorp also argues that the instant complaint appears to be designed to cause unnecessary delay, contrary to Rule 11. PacifiCorp asserts that rather than pay an additional deposit to stay in the queue, Sage Grouse filed another complaint and a request for waiver of sections 38.6 and 42.2 to further delay its expulsion from the queue. PacifiCorp notes that the request does not include any request for expedition or any other indication of a need for action, but that, instead, Sage Grouse seems content with causing unnecessary and unwarranted delay in PacifiCorp's administration of its interconnection queue.<sup>23</sup>

10. PacifiCorp seeks expedited treatment of its motion to dismiss, a shortened answer period of seven days, and an order dismissing the complaint by February 4, 2016. PacifiCorp also requests an extension for the time to file an answer to the complaint of two weeks following any order denying its motion.<sup>24</sup>

#### **IV. Sage Grouse Response to PacifiCorp Motion**

11. Sage Grouse disputes PacifiCorp's contention that the result of a new feasibility study would be the same, stating that, for financing and planning purposes, Sage Grouse needs a breakdown of the costs by phase and part.<sup>25</sup> Sage Grouse also denies that it is attempting to rehash claims that were "clearly" rejected in the prior proceeding.<sup>26</sup> Sage Grouse states that, in the prior proceeding, it challenged PacifiCorp's compliance with its OATT relating to other interconnection customers' reasonable demonstration of site control. Sage Grouse argues that it made no mention of its feasibility study,<sup>27</sup> and

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<sup>22</sup> *Id.* at 8 (citing Exh. 1 (Email from M. McVee to K. Ceruti)).

<sup>23</sup> *Id.* (citing Complaint at 2, 7).

<sup>24</sup> *Id.*

<sup>25</sup> Sage Grouse Response at 2.

<sup>26</sup> *Id.* at 3 (citing PacifiCorp Motion to Dismiss at 1).

<sup>27</sup> *Id.* (citing Sage Grouse Complaint, Docket No. EL15-44-000).

instead, it was PacifiCorp that attacked Sage Grouse as not being a QF.<sup>28</sup> Sage Grouse states that the issue was not material to Sage Grouse's first complaint, and PacifiCorp incorrectly calls Sage Grouse's "Answer" a "First Amendment to the First Complaint."<sup>29</sup> Sage Grouse asserts that the statements at issue were part of a responsive answer to PacifiCorp's own argument.<sup>30</sup> Furthermore, Sage Grouse also argues that, in the prior proceeding, no one ever argued whether PacifiCorp acted within its power to determine Sage Grouse's QF status.

12. Sage Grouse also claims that the arguments in the instant complaint were not ripe until PacifiCorp issued a notice that it would withdraw Sage Grouse from its interconnection queue on January 4, 2016, if Sage Grouse did not move to the system impact study.<sup>31</sup> However, Sage Grouse argues that the feasibility study results are an integral part of the system impact study, and it makes no sense for Sage Grouse to move forward with feasibility results that improperly deem it a non-QF. Sage Grouse notes that, after it filed the instant complaint, PacifiCorp then attempted to deem Sage Grouse withdrawn from the interconnection queue for "lack of progress."<sup>32</sup> According to Sage Grouse, these events conclusively demonstrate that PacifiCorp had no intention of fulfilling its OATT obligations to Sage Grouse and PacifiCorp is overreaching its authority to determine Sage Grouse's status. Sage Grouse notes that both of these events occurred after the Commission issued the December 2015 Order, and so any notion that the December 2015 Order encompassed issues that had not yet occurred is false.<sup>33</sup>

13. Sage Grouse argues that PacifiCorp's motion for an Order to Show Cause is extreme and entirely misplaced, and PacifiCorp does not cite any specific failure by Sage Grouse to comply with the Commission's rules.<sup>34</sup> According to Sage Grouse, PacifiCorp mistakenly believes that Sage Grouse's position is that PacifiCorp has never

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<sup>28</sup> *Id.* (citing PacifiCorp March 11, 2015 Answer, Docket No. EL15-44-000, at 25 ("Sage Grouse Does Not Appear to Be a QF")).

<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 5 (citing <http://www.oasis.oati.com/PPW/PPWdocs/pacificorplgiaq.htm>).

<sup>33</sup> *Id.* (citing Complaint at 6).

<sup>34</sup> *Id.* at 6.

responded to any of Sage Grouse's questions. Sage Grouse states that it simply contends that "PacifiCorp has repeatedly refused to answer Sage Grouse's questions."<sup>35</sup> Sage Grouse provides three examples as evidence of PacifiCorp's non-responsiveness and level of confusion regarding the Sage Grouse project.<sup>36</sup> Sage Grouse admits to much confusion regarding which PacifiCorp personnel answer which questions, but claims that any mistake it made in communicating with PacifiCorp was not purposeful.<sup>37</sup> Accordingly, Sage Grouse asserts that the Commission should deny PacifiCorp's motion in its entirety and allow this proceeding to continue.

## V. PacifiCorp Answer

14. PacifiCorp states that it categorically denies Sage Grouse's unsupported statements and unsubstantiated allegations. PacifiCorp argues that the complaint rehashes claims that were clearly presented to, and rejected by, the Commission in Docket No. EL15-44-000,<sup>38</sup> and, rather than file a timely request for rehearing or submit an additional security deposit, Sage Grouse has filed this unfounded complaint. PacifiCorp contends that the complaint is a direct collateral attack on the Commission's findings in the December 2015 Order<sup>39</sup> and should be denied.<sup>40</sup> PacifiCorp points out that Sage Grouse's complaint requests the same waiver of sections 38.6 and 42.2 of PacifiCorp's OATT that PacifiCorp requested and was granted in the December 2015

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<sup>35</sup> *Id.* (citing Complaint at 6).

<sup>36</sup> *Id.* at 6-10 (citing Sage Grouse Response Exh. 1 (Email from Sage Grouse to K. Bremer); Exh. 2 (Email from B. Griswold to Sage Grouse); Exh. 3 (Email from Sage Grouse to Y. Hogle); Exh. 4 (Email from Sage Grouse to M. McVee); PacifiCorp's Motion to Dismiss, Exh. 1 (Email from M. McVee to K. Ceruti)).

<sup>37</sup> *Id.* at 10.

<sup>38</sup> *Id.* at 4-5 (citing Complaint at 2-3; PacifiCorp Motion to Dismiss at 3-4; December 2015 Order, 153 FERC ¶ 61,272 at PP 2, 27, 52, 53).

<sup>39</sup> *Id.* at 4 (citing December 2015 Order, 153 FERC ¶ 61,272 at P 89).

<sup>40</sup> *Id.* (citing *Cargill Power Markets, LLC v. Pub. Serv. Co. of N.M.*, 141 FERC ¶ 61,141, at P 18 (2012); *Cal. ex. rel. Brown v. Powerex*, 139 FERC ¶ 61,210, at P 22 (2012); *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,244, at P 175 (2011); *KeySpan-Ravenswood, Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 107 FERC ¶ 61,142, at P 22 (2004); *Brian Hamilton v. El Paso Nat. Gas Co.*, 141 FERC ¶ 61,229, at P 37 (2012)).

Order (which expired). PacifiCorp states that, even if the Commission considers any of the arguments in the instant complaint to be new, Sage Grouse's failure to raise them in the prior proceeding precludes it from doing so now.<sup>41</sup>

15. PacifiCorp also contends that the complaint fails to present a *prima facie* case demonstrating that an existing practice is unjust, unreasonable, unduly discriminatory, or preferential,<sup>42</sup> and the complaint exhibits are either irrelevant or contradict Sage Grouse's claim.<sup>43</sup> Specifically, PacifiCorp asserts that Exhibit 1 is an email indicating only that a scoping meeting was to occur on October 1, 2014 and provides no other substantive information. PacifiCorp states that, contrary to Sage Grouse's claim that Exhibit 2 (Sage Grouse's interconnection request) and Exhibit 3 (executed interconnection feasibility study agreement) support its contention that PacifiCorp agreed to study Sage Grouse's interconnection project in phases,<sup>44</sup> there is nothing in Sage Grouse's interconnection application that includes any request or reference to a phased project. Furthermore, PacifiCorp notes that nowhere on the project map attached to Sage Grouse's interconnection request does it state that Sage Grouse intended the project to be built in phases. Similarly, PacifiCorp observes that the interconnection feasibility study agreement provides no evidence of an agreement to study the project in phases.

16. Finally, PacifiCorp argues that Exhibit 4 (Ms. Ceruti's affidavit) includes wholly self-serving and completely unsupported statements written more than a year after the scoping meeting.<sup>45</sup> PacifiCorp disputes Ms. Ceruti's statement that, "[d]uring the scoping meeting, the participants discussed various documents from Sage Grouse's [i]nterconnection request that identified the Sage Grouse project in multiple parts."<sup>46</sup> PacifiCorp asserts that, if these "various documents" exist, then Sage Grouse should have

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<sup>41</sup> *Id.* at 5 (citing *NStar Elec. Co. v. ISO New England, Inc.*, 120 FERC ¶ 61,261, at P 33 (2007)).

<sup>42</sup> *Id.* (citing 16 U.S.C. § 824e(b) (2012); 18 C.F.R. § 385.206 (2015); December 2015 Order, 153 FERC ¶ 61,272 at P 88).

<sup>43</sup> *Id.* at 6 (citing *Michael Canales v. Edison Int'l*, 147 FERC ¶ 61,020, at PP 26 n.41, 30 (2014) (*Canales*); December 2015 Order, 153 FERC ¶ 61,272 at P 89).

<sup>44</sup> *Id.* at 7 (citing Complaint at 2).

<sup>45</sup> *Id.* (citing *Ariz. Pub. Serv. Co.*, 18 FERC ¶ 61,197, at 61,400 (1982)).

<sup>46</sup> *Id.* (citing Complaint, Exh. 4, at P 6).

(and would have) included such documents with the complaint, and Sage Grouse failed to do so.<sup>47</sup>

17. PacifiCorp also disputes Sage Grouse's allegation that PacifiCorp violated its OATT and mismanaged its generation interconnection queue in studying Sage Grouse's project as a single 199.2 MW facility. PacifiCorp states that, in order for it to study Sage Grouse's project in phases, Sage Grouse would have needed to submit a formal request and all supporting technical data needed for the additional studies. According to PacifiCorp, Sage Grouse admits that it submitted only one interconnection request and did not formally request, nor provide the supporting technical data required to move forward with, a phased project study approach.<sup>48</sup> Further, PacifiCorp contends that the provisions in section 41.2 of PacifiCorp's OATT and section 4 of the feasibility study agreement do not suggest that the parties agreed that PacifiCorp would conduct the feasibility study in phases.<sup>49</sup>

18. Additionally, PacifiCorp argues that Sage Grouse fails to explain how the results of the feasibility study would change if it were conducted in phases. PacifiCorp states that Sage Grouse's contention that PacifiCorp "completely sandbagged Sage Grouse . . . in order to force Sage Grouse to bear the costs of all necessary . . . upgrade[s] to PacifiCorp's network" was raised in its prior complaint and fails to recognize that nothing PacifiCorp does or says affects whether Sage Grouse is a QF.<sup>50</sup> Further, PacifiCorp adds, Sage Grouse conflates interconnection costs with transmission expenses. According to PacifiCorp, under PURPA, QFs are still responsible for interconnection costs and Sage Grouse's QF status would not impact its requirement to

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<sup>47</sup> PacifiCorp notes that Sage Grouse's other exhibits also lack any factual support for its allegations, stating that: (1) Exhibit 5, a copy of Sage Grouse's feasibility study, accurately described Sage Grouse's proposed "199.2 MW of new generation"; (2) Exhibit 6 is one of many communications between PacifiCorp and Sage Grouse and does not support the allegation that PacifiCorp has refused to communicate with Sage Grouse; (3) Exhibit 7 is a copy of the December 2015 Order, which condemns Sage Grouse's complaint because that order addresses each and every issue raised; (4) Exhibit 8 is a Tenth Circuit decision that Sage Grouse incorrectly claims proves that the site control materials in the prior complaint are now "doubly invalid"; and (5) Exhibits 9 and 10 are the Notice of Complaint and a Model Protective Order. *Id.* at 7-8 n.23.

<sup>48</sup> *Id.* at 8 (citing Complaint, Exh. 2 (Initial Application)).

<sup>49</sup> *Id.* at 9.

<sup>50</sup> *Id.* at 2, 9 (citing Complaint at 3).

pay for the interconnection costs associated with its project.<sup>51</sup> In addition, PacifiCorp states that the feasibility study is a “preliminary evaluat[ion] [of] the feasibility of the proposed interconnection,”<sup>52</sup> and does not impose cost responsibilities.<sup>53</sup>

19. PacifiCorp maintains that there is nothing to support Sage Grouse’s assertion that it is a QF, and Sage Grouse’s proposed 199.2 MW facility exceeds the 80 MW size limit required to be categorized as a small power production facility and obtain QF status.<sup>54</sup> Further, PacifiCorp argues that there is no evidence that Sage Grouse has filed a self-certification claiming QF status, and that, if Sage Grouse believes it qualifies as a QF, then it should file a self-certification claim with the Commission, rather than seek an order regarding its QF status through a complaint.<sup>55</sup>

20. PacifiCorp states that the email chain submitted by Sage Grouse as evidence that PacifiCorp repeatedly refused to answer Sage Grouse’s questions demonstrates that PacifiCorp conducted itself in a professional and respectful manner when communicating with Sage Grouse. PacifiCorp argues that Sage Grouse’s claim that PacifiCorp “assessed its own immediate costs necessary to overcome its own transmission constraints to Sage Grouse, on the pretext that Sage Grouse is not a QF,”<sup>56</sup> is blatantly untrue, as the feasibility study is an optional preliminary study, and PacifiCorp has assessed no costs to Sage Grouse to date. PacifiCorp states that Sage Grouse has offered no factual support in stating that PacifiCorp engaged in “anti-competitive and abusive conduct.”<sup>57</sup> Finally, PacifiCorp contends that Sage Grouse’s request that the Commission “create a

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<sup>51</sup> *Id.* at 3, 10 (citing 18 C.F.R. §§ 292.101, 292.306 (2015); *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215, at P 38 n.73 (2013)).

<sup>52</sup> *Id.* at 10 (citing PacifiCorp OATT § 41.2).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 11-12 (citing 16 U.S.C. § 796(17)(A)(ii) (2012)).

<sup>55</sup> *Id.* at 12.

<sup>56</sup> *Id.* at 12-13 (citing Complaint at 6).

<sup>57</sup> *Id.* at 13 (citing Complaint at 6-7).

presumption that PacifiCorp has acted in bad faith and levy appropriate sanctions against PacifiCorp”<sup>58</sup> contradicts all of the evidence in this proceeding.<sup>59</sup>

21. PacifiCorp requests that the Commission deny Sage Grouse’s request for waiver of sections 38.6 and 42.2 of PacifiCorp’s OATT and disputes Sage Grouse’s allegation that PacifiCorp improperly waited until the Commission issued the December 2015 Order to deem Sage Grouse’s interconnection request withdrawn from the queue.<sup>60</sup> PacifiCorp explains that Sage Grouse failed to execute a system impact study agreement and provide the study deposit by the deadlines required by PacifiCorp’s OATT, but, as a courtesy to Sage Grouse, PacifiCorp filed a request for waiver from its obligation to terminate Sage Grouse’s interconnection request, which the Commission granted, providing 10 business days after the date of the December 2015 Order for Sage Grouse to cure its financial deficiency.<sup>61</sup> PacifiCorp explains that it waited for the December 2015 Order to become final and non-appealable and then another 10 business days (i.e., until January 21, 2016) before removing Sage Grouse from its generation interconnection queue, in accordance with its OATT and the December 2015 Order.<sup>62</sup> PacifiCorp notes that Sage Grouse did not seek rehearing of the December 2015 Order.<sup>63</sup>

22. PacifiCorp argues that Sage Grouse’s request to permit it to avoid paying the required deposit and remain in PacifiCorp’s queue indefinitely fails to demonstrate good cause.<sup>64</sup> PacifiCorp disputes Sage Grouse’s contention that the request for waiver is *per se* limited in scope and states that the Commission has previously found that, even where a request is limited to a single section of a tariff, it is not of “limited scope” if it “does not solely reflect specific and unique facts and [if it] could constitute precedent that would allow market participants to avoid [the] . . . requirements set forth in the tariff

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<sup>58</sup> *Id.* (citing Complaint at 7).

<sup>59</sup> *Id.* (citing Complaint, Exh. 6 (Hogle Email Chain)).

<sup>60</sup> *Id.* at 14, 16.

<sup>61</sup> *Id.* at 14-15 (citing December 2015 Order, 153 FERC ¶ 61,272 at P 97).

<sup>62</sup> *Id.* at 15 (citing Exh. A (Email from K. Bremer to Sage Grouse)).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 16 (citing PacifiCorp Motion to Dismiss at 7-8.).

agreement.”<sup>65</sup> PacifiCorp argues that Sage Grouse has not provided any evidence that it is “uniquely situated” among interconnection customers and avers that granting Sage Grouse’s waiver request would establish dangerous precedent to allow interconnection customers to avoid OATT requirements but remain in the queue.<sup>66</sup> PacifiCorp notes that Sage Grouse’s request is not limited by duration.<sup>67</sup>

23. PacifiCorp also disagrees with Sage Grouse’s contention that granting the requested waiver will remedy a concrete problem because, even if the Commission were to find that Sage Grouse qualifies as a QF, that finding would not require PacifiCorp to reconsider Sage Grouse’s feasibility study as nothing substantive would change in the feasibility study.<sup>68</sup> In addition, PacifiCorp argues that the litigation in Utah against Blue Mountain would not result in Blue Mountain being removed from the queue, since the Commission has already determined that Blue Mountain adequately demonstrated site control.<sup>69</sup>

24. Finally, PacifiCorp argues that the requested waiver will result in undesirable consequences because granting the waiver would upset the *status quo* and reinsert Sage Grouse into the queue, which could delay timely processing of the queue.<sup>70</sup> PacifiCorp contends that Sage Grouse must file a new interconnection request or requests if it wishes to proceed with its project.<sup>71</sup>

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<sup>65</sup> *Id.* at 17 (citing *SunPower Corp.*, 142 FERC ¶ 61,251, at P 27 (2013); *Gaelectric, LLC v. NorthWestern Corp.*, 148 FERC ¶ 61,107, at P 35 (2014)).

<sup>66</sup> *Id.* (citing *SunPower Corp.*, 142 FERC ¶ 61,251 at P 27).

<sup>67</sup> *Id.* at 17 n.67 (citing *Meyer v. Greenbriar Capital Holdco Inc.*, Case No. 150700015 (7th Dist. Utah)).

<sup>68</sup> *Id.* at 17-18 (citing Complaint at 8-10; PacifiCorp OATT § 41.4).

<sup>69</sup> *Id.* at 18 (citing December 2015 Order, 153 FERC ¶ 61,272 at P 90; PacifiCorp March 11, 2015 Answer, Docket No. EL15-44-000, at 6).

<sup>70</sup> *Id.* (citing *Meridian Energy USA, Inc. v. Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,206, at P 30 (2013)).

<sup>71</sup> *Id.* at 19 (citing PacifiCorp OATT §§ 38, 41.1).

## VI. Discussion

25. To prevail in a proceeding under section 206 of the Federal Power Act (FPA) and Rule 206 of the Commission's regulations, a complainant must first demonstrate that an existing practice is unjust, unreasonable, or unduly discriminatory or preferential.<sup>72</sup> A complainant must present a *prima facie* case demonstrating the unjustness.<sup>73</sup> We find that Sage Grouse has not met the burden of presenting a *prima facie* case to support its complaint and we will, accordingly, deny the complaint. We find that Sage Grouse has neither provided adequate support for its allegations, nor sufficiently described how its supporting documents support the broad allegations it makes.

26. The basis of Sage Grouse's complaint is the contention that PacifiCorp has unlawfully determined that Sage Grouse is not a QF.<sup>74</sup> Specifically, Sage Grouse claims that PacifiCorp "ignor[ed] the agreed terms and QF classification presented in Sage Grouse's Scoping Meeting."<sup>75</sup> Instead, Sage Grouse would have PacifiCorp consider its project to include three phases that are small enough to individually qualify as QFs.<sup>76</sup>

27. After examining the evidence, we find that Sage Grouse has not demonstrated that its interconnection request ever included three phases. First, neither the interconnection application nor executed feasibility study agreement contains any reference to phases. With regard to Sage Grouse's claim that a color-coded diagram of its proposed project provided with its interconnection request demonstrates that the project was to be studied

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<sup>72</sup> 16 U.S.C. § 824e(b) (2012); 18 C.F.R. § 385.206 (2015).

<sup>73</sup> 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 v. Trans Bay Cable L.L.C.*, 146 FERC ¶ 61,100, at P 23 n.25 (2014).

<sup>74</sup> Complaint at 1.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

in three phases,<sup>77</sup> the diagram provides no description of the proposed project, at least none that describes or labels the project in phases. Moreover, the diagram has five (not three) different colors, which on its face, appears to set forth the ownership interests in the various parcels of land and not an agreement to study the project in phases.<sup>78</sup> Furthermore, Sage Grouse has not provided any proof that, following the scoping meeting, the parties agreed to split out the costs of the feasibility study, which would have provided strong support that the parties agreed to three phases. Finally, Ms. Ceruti's declaration references "various documents" discussed at the scoping meeting that describe the proposed project in phases, however, Sage Grouse has not produced them in this proceeding.<sup>79</sup>

28. Sage Grouse has not made a case that PacifiCorp violated the terms of its OATT or that its practices somehow disqualified Sage Grouse from obtaining QF status. Therefore, we find that the complaint fails to satisfy the *prima facie* burden under section 206 of the FPA and Rule 206 of the Commission's regulations.

29. We also find that Sage Grouse's complaint in this proceeding constitutes an untimely request for rehearing and an improper collateral attack on the Commission's December 2015 Order.<sup>80</sup> Sage Grouse here raises an allegation that it previously made in a prior proceeding and that was disposed of in the December 2015 Order, i.e., that PacifiCorp inappropriately determined that Sage Grouse was not a QF in conducting the feasibility study for the facility.<sup>81</sup> Having considered Sage Grouse's complaint, as amended, as well as the responsive pleadings filed in Docket No. EL15-44-000, the Commission determined that Sage Grouse failed to meet its *prima facie* burden under section 206 of the FPA, including Sage Grouse's claims regarding QF status.<sup>82</sup> Notably, Sage Grouse failed to file a request for rehearing of the December 2015 Order within the

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<sup>77</sup> *Id.* at 2 (citing Exh. 2 (Redacted Map)); Confidential Exh. 2, Exh. F.

<sup>78</sup> *Compare* Confidential Exh. 2, Exh. C, at 1 *with* Confidential Exh. 2, Exh. F.

<sup>79</sup> PacifiCorp Answer at 7 (citing Complaint, Exh. 4, at P 6).

<sup>80</sup> *See Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,244, at P 175 (2011) ("[W]e will not entertain here what essentially constitutes an untimely request for rehearing and an improper collateral attack of those [prior] orders.").

<sup>81</sup> December 2015 Order, 153 FERC ¶ 61,272 at PP 49, 52.

<sup>82</sup> *Id.* PP 27, 49, 52, 53, 89.

time prescribed by statute.<sup>83</sup> If Sage Grouse thought that the Commission had erred by failing to address Sage Grouse's arguments that PacifiCorp inappropriately determined that Sage Grouse was not a QF, Sage Grouse should have timely sought rehearing in that proceeding. It did not.<sup>84</sup>

30. In light of our denial of the complaint, Sage Grouse's request for waiver and PacifiCorp's motion to dismiss are moot. In addition, we will not issue an Order to Show Cause as PacifiCorp requests because, at this time, we do not find that the severe sanction of disqualification is warranted.

The Commission orders:

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>83</sup> 18 C.F.R. § 385.713(b) (2015) ("A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding."). On December 16, 2015, Sage Grouse requested a 30-day extension of time to file a request for rehearing, which was properly rejected as impermissible under the statute.

<sup>84</sup> While Sage Grouse is correct that the determination of QF status is exclusively within the Commission's jurisdiction, *see Indep. Energy Producers Ass'n*, 36 F.3d 848 at 858, this does not mean that a utility may not tell a facility, which is neither self-certified nor Commission-certified, that the utility does not believe that the facility meets the technical requirements for QF status. To date, Sage Grouse has filed neither a notice of self-certification nor an application for Commission certification. Sage Grouse, thus, has not followed the Commission's procedures to establish the QF status of its proposed facility or facilities, and the Commission has not been given an opportunity to exercise its exclusive jurisdiction to itself determine whether Sage Grouse's facility (or facilities) meets the requirements for QF status.