

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of:

PACIFICORP, dba Pacific Power,
Applicant-Respondent,

and

OREGON PUBLIC UTILITY
COMMISSION,
Respondent,

v.

RENEWABLE ENERGY
COALITION, NORTHWEST &
INTERMOUNTAIN POWER
PRODUCERS COALITION,
COMMUNITY RENEWABLE
ENERGY ASSOCIATION and
OREGON SOLAR ENERGY
INDUSTRIES ASSOCIATION,
Petitioners,

And

NEWSUN ENERGY, LLC,
Intervenor below.

CA No. A175363

Public Utility Commission of Oregon
Docket No. UM 2108

**PETITIONERS' PETITION FOR
RECONSIDERATION**

INDEX OF CONTENTS

I.	INTRODUCTION AND SUMMARY.....	1
II.	BACKGROUND	3
III.	ARGUMENT.....	5
A.	The Order Contains Factual Errors Regarding the Nature of the Rights and Privileges of Interconnections Customers	5
1.	The Order Overlooked Contractual Rights Revoked.....	5
2.	The Order Misunderstood the Clustering Provisions of PacifiCorp’s Preexisting QF-LGIP	8
3.	The Order Also Incorrectly Minimized the Priority Rights of Preexisting Interconnection Customers’ Queue Positions.....	12
B.	The Order Erred in Application of the Law to the Facts Because the PUC Had Discretion to Suspend or Revoke a Right or Privilege of a Person, Making the PUC’s Proceeding a Contested Case	14
C.	Respondents’ Remaining Assertions Are Inapt	20
1.	Standing Arguments Are Misplaced.....	21
2.	PacifiCorp’s Preservation Argument Is Misplaced	23
IV.	CONCLUSION.....	24

INDEX OF EXHIBITS

Exhibit A: Copy of Court’s Order- Determining Jurisdiction; Dismissing Judicial Review

Exhibit B: Copy of Feasibility Study Agreement of Dalreed Solar, LLC

INDEX OF AUTHORITIES

Cases

<i>Berry v. Metro Elec. Joint Apprenticeship & Training Comm.</i> , 155 Or App 26, 963 P2d 712 (1998)	3, 14, 18
<i>Brian v. Or. Gov't Ethics Comm'n</i> , 319 Or 151, 874 P2d 1294 (1994)	21
<i>Campbell Ranch, Inc. v. Water Res. Dep't</i> , 28 Or App 243, 558 P2d 1295 (1977)	15
<i>Cascadia Wildlands v. Dep't of State Lands</i> , 293 Or App 127, 427 P3d 1091 (2018)	22
<i>Fairbanks v. Bureau of Labor and Indus.</i> , 323 Or 88, 913 P2d 703 (1996)	14
<i>Friends of Eugene v. City of Eugene</i> , 195 Or App 20, 96 P3d 1256, (2004)	23
<i>Morrison v. Univ, of Or. Health Sciences Cent.</i> , 68 Or App 870, 685 P2d 439 (1984)	14
<i>Patton v. State Bd. of Higher Educ.</i> , 293 Or 363, 647 P2d 931 (1982)	1
<i>Polk County v. Dep't of Land Conservation & Dev.</i> , 199 Or App 501, 112 P3d 409 (2005), <i>vacated</i> , 342 Or 344 (2007), <i>on</i> <i>remand</i> , 217 Or App 521, 527, 176 P3d 432, <i>rev denied</i> , 345 Or 317 (2008)	22

Statutes

16 USC § 824a-3(a)-(b)	16, 19
ORS 183.310(2)	1, 2, 3, 4, 14, 18, 21, 24
ORS 183.310(7)	21
ORS 183.482(1)	3
ORS 183.482(2)	21, 22, 23
ORS 758.535 (3)	16, 19

ORS 758.535(2)(a)..... 16, 19

Other Authorities

18 CFR § 292.306(a).....16

18 CFR § 292.30816

46 Op Atty Gen 7 (1987)15

OAR 860-082-0010(1).....15

ORAP 4.1523

ORAP 5.4023

ORAP 6.25(1)2

ORAP 7.55(4)(a)(i)2

Neptune Regional Transmission System, LLC v. PJM Interconnection, LLC,
110 FERC ¶ 61,098 (Feb. 10, 2005)13

PacifiCorp,
171 FERC ¶ 61,112 (May 12, 2020)16

Small Generator Interconnection Rulemaking,
OPUC Docket No. AR 521, Order No. 09-196 (June 6, 2009),
<https://apps.puc.state.or.us/orders/2009ords/09-196.pdf>17

*Staff Investigation Into Interconnection Of PURPA QF Larger Than 10
Megawatts*,
OPUC Docket No. UM 1401, Order No. 10-132 (Apr 7, 2010),
<https://apps.puc.state.or.us/orders/2010ords/10-132.pdf> 8, 9, 10, 13, 18

Standardization of Generator Interconnection Agreements and Procedures,
Order No. 2003, 68 Fed Reg 49,845 (Aug. 19, 2003).....13

PETITION FOR RECONSIDERATION

Petitioners Renewable Energy Coalition, Northwest & Intermountain Power Producers Coalition, Community Renewable Energy Association, and Oregon Solar Energy Industries Association respectfully petition for reconsideration of the Court's Order Determining Jurisdiction and Dismissing Judicial Review (hereafter the "Order").

I. INTRODUCTION AND SUMMARY

The Order granted the motions to determine jurisdiction filed by Respondents PacifiCorp dba Pacific Power ("PacifiCorp") and the Public Utility Commission (the "PUC"), and dismissed judicial review based on the conclusion that the proceedings below did not meet the definition of "contested case" in the Administrative Procedures Act ("APA"). ORS 183.310(2).

The Order correctly stated that this Court has jurisdiction if the proceedings before the PUC meet the definition of "contested case" and that the PUC's characterization of the proceeding is not controlling. *See Patton v. State Bd. of Higher Educ.*, 293 Or 363, 366, 647 P2d 931 (1982). However, the Order erred to conclude that the proceedings did not meet the definition of contested case under ORS 183.310(2)(a)(B). As explained more fully herein, this petition submits two grounds for reconsideration.

First, the Order contains errors of fact regarding the nature of the rights or

privileges affected by the PUC's orders on review, thus warranting reconsideration under ORAP 6.25(1)(a). The Order erred by overlooking that the PUC's orders on review terminated preexisting contractual rights under interconnection study agreements. It further erred by concluding that the cluster study provisions of PacifiCorp's preexisting qualifying facility Large Generator Interconnection Process ("QF-LGIP") enabled PacifiCorp to unilaterally terminate QFs' contractual feasibility study rights or otherwise enabled PacifiCorp to subject preexisting interconnection customers to the newly proposed cluster study process. More generally, the Order overlooked the significance of existing interconnection customers' priority queue position rights in effect at the time of the PUC's orders. These errors are significant because they incorrectly minimize the nature of the rights or privileges revoked by the PUC's orders.

Second, the Order erred in applying the law to the facts, thus warranting reconsideration under ORAP 6.25(1)(e).¹ The PUC had "discretion to suspend or revoke a right or privilege of a person." ORS 183.310(2)(a)(B). Indeed, the PUC exercised discretion by balancing applicable legal standards under the Public Utility Regulatory Policies Act of 1978 ("PURPA") and related state and federal rules in deciding to terminate the rights of preexisting interconnection customers,

¹ The normal disfavor for reconsideration of legal arguments does not apply because the Appellate Commissioner issued the Order. ORAP 7.55(4)(a)(i).

including contractual rights under preexisting interconnection study agreements and priority queue position rights of such customers. In doing so, the PUC found good cause to revoke the rights of such persons, as its own administrative rules required of it. *See Berry v. Metro Elec. Joint Apprenticeship & Training Comm.*, 155 Or App 26, 30-31, 963 P2d 712 (1998) (holding a finding of “good cause” constitutes exercise of discretion). The Order erred to conclude no rights or privileges were revoked within the meaning of ORS 183.310(2)(a)(B).

Thus, the Court should grant reconsideration and conclude that the proceedings below constituted a contested case over which this Court has jurisdiction for purposes of judicial review under ORS 183.482(1).

II. BACKGROUND

In PUC Docket No. UM 2108 below, the PUC approved PacifiCorp’s application to change the procedures under which PacifiCorp studies and constructs interconnection of certain renewable energy facilities to PacifiCorp’s system. PacifiCorp sought PUC approval to transition from a “serial process” for such interconnections premised on a “first-received, first-served” framework to a “cluster study process” premised on a “first ready (to connect), first served” framework. Order at 2; *see also* Petitioners’ Resp. to Motions to Determine Jurisdiction at 4-7 (discussing the pre-existing interconnection process and the impact of the PUC’s order on preexisting interconnection customers).

The PUC did not hold a contested case hearing, but rather it held public workshops and meetings. At a public meeting on August 12, 2020, the PUC decided to approve PacifiCorp's proposal with certain modifications, and it later issued a written order, PUC Order No. 20-268, granting PacifiCorp's application. Petitioners timely sought reconsideration of PUC Order No. 20-268, which the PUC denied through PUC Order No. 20-465.

Petitioners sought judicial review of PUC Order No. 20-268 and PUC Order No. 20-465 in this Court and in the Marion County Circuit Court. Respondents each filed a motion to determine jurisdiction, asserting, as the PUC had in its orders, that the proceedings below were other than a contested case. Petitioners filed a response in opposition, asserting that the proceedings below met the definition of "contested case" in ORS 183.310(2)(a)(B) because the PUC had discretion to suspend or revoke rights or privileges of preexisting interconnection customers in response to PacifiCorp's application.

On June 17, 2021, the Appellate Commissioner issued the Court's Order dismissing judicial review before this Court. The Order stated, "it appears the PUC did not have discretion to suspend or revoke the right at issue in this case, and therefore the court concludes that UM 2108 proceedings do not constitute a contested case under ORS 183.310(2)(a)(B)." Order at 4.

III. ARGUMENT

The Order should be reconsidered because it erred in two related respects. First, the Order overlooked important details regarding the nature of the rights or privileges of interconnection customers in the serial interconnection queue at the time of the PUC's orders. Second, the Order erred to conclude that such rights or privileges could be revoked without any exercise of discretion by the PUC – even though the PUC expressly balanced applicable legal standards in an exercise of discretion revoking such rights or privileges.

A. The Order Contains Factual Errors Regarding the Nature of the Rights and Privileges of Interconnections Customers

As petitioners previously argued in their response, developers in the serial interconnection queue at the time of the PUC's approval of PacifiCorp's application had contractual study agreement rights and priority queue position rights under administrative rules, PUC orders, executed contracts. *See* Petitioners' Resp. to Motions to Determine Jurisdiction at 4-7. The Order misunderstood the full extent of the rights of preexisting interconnection customers that were revoked by the PUC's orders on review.

1. The Order Overlooked Contractual Rights Revoked

The Court's Order overlooked, and did not address, that the rights revoked by the PUC's orders on review included contractual rights memorialized in interconnection study agreements. Specifically, PacifiCorp requested, and the

PUC granted, authority to terminate contractual rights held by interconnection customers under interconnection study agreements with PacifiCorp. *See id.* at 9-10 (discussing the PUC’s revocation of contractual interconnection study rights).

This fact is demonstrated by the circumstances of Dalreed Solar, LLC (“Dalreed Solar”), which is a developer of a proposed facility that was in PacifiCorp’s serial interconnection queue at the time of PUC approval of PacifiCorp’s application. In UM 2108, Dalreed Solar sought rehearing or reconsideration on multiple issues, including whether PUC Order No. 20-268 meant that PacifiCorp no longer needed to honor its obligations under a fully executed interconnection feasibility study agreement. PUC Docket No. 2108, Dalreed Solar, LLC’s Appl. for Reh’g and Recons. and/or Req. for Waiver at 2 (Sept. 14, 2020), available at

<https://edocs.puc.state.or.us/efdocs/HAG/um2108hag171623.pdf>.²

In Order No. 20-334, the PUC denied rehearing or reconsideration to Dalreed Solar, effectively confirming that the PUC’s orders had terminated

² Dalreed Solar’s executed feasibility study agreement was filed and is available in Dalreed Solar’s complaint proceeding. *Dalreed Solar v. PacifiCorp*, PUC Docket No. UM 2125, Dalreed Solar’s Motion for Summary Judgment, Att. B at 13-16 (Jan. 4, 2021), available at <https://edocs.puc.state.or.us/efdocs/HAO/um2125hao1709.pdf> (hereafter “Dalreed Feasibility Study Agreement”); *see also* PUC’s Motion for Leave to File Amended Reply at 1 (conceding that the agreement was fully executed). The Dalreed Solar Feasibility Study Agreement is attached as Exhibit B to this petition for reconsideration to aid the Court.

Dalreed Solar's contractual rights under its feasibility study agreement with PacifiCorp. PUC Docket No. 2108, Order No. 20-334 at 1, available at <https://apps.puc.state.or.us/orders/2020ords/20-334.pdf>.

To further illustrate, an interconnection study agreement is a binding contract between PacifiCorp and the interconnection customer. As the Dalreed Solar Feasibility Study Agreement states, the purpose of the contract is for the Transmission Provider, PacifiCorp, to “perform an Interconnection Feasibility Study to assess the feasibility of interconnecting the proposed Large Generating Facility to the Transmission System, and of any Affected Systems[.]” Dalreed Feasibility Study Agreement at Recitals. The Dalreed Feasibility Study Agreement provides: “Transmission Provider shall cause to be performed an Interconnection Feasibility Study consistent with Article 6.0 of the QF-LGIP.” *Id.* at ¶ 2. It further provides the assumptions regarding the proposed facility for purpose of the study and required that PacifiCorp's resulting feasibility study contain a non-binding estimate of the costs to construct the interconnection. *Id.* at ¶¶ 3-5 & Attach. A. It also required Dalreed Solar to provide a deposit of \$10,000 for the expected costs to complete the study. *Id.* at ¶ 6.

While it arose from the PUC-approved interconnection process, the terms of Dalreed Feasibility Study Agreement make clear it is a binding contract. It was executed by both parties as a binding contract and contained several standard

contractual provisions, including an integration clause, *id.* at ¶ 7.2, a waiver provision, *id.* at ¶ 7.3, a provision waiving the right to demand a jury trial in a dispute, *id.* at ¶ 7.3.1, a governing law provision, *id.* at ¶ 7.4, and an assignment provision, *id.* at ¶ 7.5.

As a result of the proceedings below, Dalreed Solar, and any similarly situated interconnection customer, will not receive its contracted-for feasibility study and no longer has a contractual right to demand the same be supplied by PacifiCorp. The revocation of Dalreed Solar's interconnection study rights provides a concrete example of the contractual rights revoked by the PUC's orders on review, which were overlooked by the Court's Order dismissing judicial review.

Thus, the rights affected by the PUC's orders included preexisting contractual rights of interconnection customers.

2. The Order Misunderstood the Clustering Provisions of PacifiCorp's Preexisting QF-LGIP

The Court's Order incorrectly concluded PacifiCorp already had the right to revoke any rights and privileges impacted through cluster study provisions of the preexisting QF-LGIP. Order at 3. In doing so, the Order adopted the argument made by the PUC's reply, which cited Article 4.2 of PacifiCorp's preexisting QF-LGIP. *See* PUC Reply at 9 (citing PUC Order No. 10-132, App. A, p. 20).

However, the Order erred to conclude PacifiCorp's preexisting QF-LGIP, approved by PUC Order No. 10-132, allowed PacifiCorp to terminate feasibility

study agreements existing at the time of the PUC’s orders on review, such as the Dalreed Feasibility Study Agreement. PacifiCorp’s preexisting QF-LGIP only allowed for use of a cluster study and shared allocation of upgrade costs later in the process at the system impact study phase. Those procedures explain: “Clustering shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, *for the purpose of conducting the Interconnection System Impact Study.*” PUC Order No. 10-132, App. A, p. 6, available at <https://apps.puc.state.or.us/orders/2010ords/10-132.pdf> (emphasis added). Similarly, in Article 4.2, the procedures provided: “At Transmission Provider's option, Interconnection Requests may be studied serially or in clusters *for the purpose of the Interconnection System Impact Study.*” *Id.*, App. A, p. 20 (emphasis added).

But under the preexisting process, the feasibility study occurs prior to the system impact study. *Id.*, App. A, pp. 20-28 (Articles 6 & 7). And PacifiCorp’s ability to conduct clustering at the system impact study stage in the preexisting process did not give PacifiCorp the right to terminate any feasibility study agreements or avoid conducting feasibility studies. *See id.* The process adopted by the PUC eliminated the feasibility study phase and replaced it with a new option for an “informational study” and, in the process, terminated all existing feasibility

study agreements. PUC Order No. 20-268 at App. A, 7-9.³

Additionally, even at the system impact study phase, the clustering authorized under the preexisting interconnection process was much more limited than that approved by the PUC's orders on review. The preexisting process only allowed PacifiCorp to cluster interconnection customers that had entered the interconnection queue through submittal of an application within 180 days of each other. It provided: "If Transmission Provider elects to study Interconnection Requests using Clustering, *all Interconnection Requests received within a period not to exceed one hundred and eighty (180) Calendar Days*, hereinafter referred to as the 'Queue Cluster Window' shall be studied together." PUC Order No. 10-132, App. A, p. 20, Article 4.2 (emphasis added).

In contrast, the newly approved process deleted this 180-day limitation on clustering and allowed PacifiCorp to cluster all geographically or electrically similar interconnection requests that enter the queue in each annual cluster study window, or even at any point over the course of the year preceding the cluster study window. PUC Order No. 20-268 at App. A, 7, 24; *see also* PacifiCorp's

³ *See also* PUC Docket No. UM 2108, PacifiCorp's Compliance Filing per Order No. 20-268, Small Generator Interconnection Procedures (SGIP) for Oregon-jurisdictional generators that are 20 MW or less and Large Generator Interconnection Procedures for Oregon-jurisdictional generators greater than 20 MW (LGIP), at Attach. 1, pp. 24-26 (Aug. 31, 2020), available at <https://edocs.puc.state.or.us/efdocus/HAD/um2108had153615.pdf> (hereafter "PacifiCorp's Compliance Filing").

Compliance Filing at Attach. 1 at 11-13, 20-22, Articles 3.1 & 4.2. Thus, in the illustrative example of Dalreed Solar, approval of the new process subjected Dalreed Solar to potential cost responsibility for upgrades necessitated by customers entering the queue more than 180 days after Dalreed Solar, which was not allowed under the prior clustering process.

PacifiCorp itself acknowledged the limitations of the clustering provisions in the preexisting process. It described the preexisting clustering provision as being “largely silent regarding how those Cluster Studies would be performed.”

PacifiCorp’s Application, PUC Docket No. UM 2108, at 10 (June 15, 2020), available at <https://edocs.puc.state.or.us/efdocs/HAA/haa145410.pdf>. If

PacifiCorp already had the authority to revoke the priority rights of preexisting interconnection customers, unilaterally terminate preexisting feasibility study agreements, and implement the newly developed cluster study process, it would not have filed the application seeking PUC approval of the new cluster process.

The upshot of these additional details overlooked by the Court’s Order is that there were preexisting contractual rights for completion of a feasibility study that were revoked by the PUC’s orders on review, as well as other rights inherent in customers’ priority queue position in the preexisting serial queue process. And PacifiCorp did not possess the right to unilaterally revoke such rights under the cluster study provisions of preexisting QF-LGIP.

3. The Order Also Incorrectly Minimized the Priority Rights of Preexisting Interconnection Customers' Queue Positions

In addition to the contractual study agreement rights discussed above, the Order misunderstood and unreasonably minimized the full extent of the rights or privileges of preexisting interconnection customers that were revoked by the PUC's orders on review. *See* Order at 4 (characterizing the rights revoked as rights that only directly impact PacifiCorp).

As petitioners previously argued in their response, developers in the serial interconnection queue at the time of the PUC's approval of PacifiCorp's application had priority rights under administrative rules and PUC orders to proceed through that process. Those are valuable preexisting rights that would have allowed such customers to avoid paying for the cost of upgrades to PacifiCorp's system necessitated to interconnect facilities proposed by lower-queued interconnection customers. *See* Petitioners' Resp. at 4-7.

The PUC and its Staff acknowledged that such preexisting interconnection customers would have their rights revoked by approval of PacifiCorp's application. The Staff Report appended to the PUC's order estimated that the preexisting customers included a total of 17 large customers and 23 small customers, which would lose their preexisting priority rights. PUC Order No. 20-268, Append. A, pp. 35-36. The only option offered to such customers was to potentially participate in PacifiCorp's new cluster process in the upcoming transition cluster, thus losing

their priority rights in the queue ahead of subsequent interconnection customers.

Id.

The customer's queue position is a valuable development asset. It "prioritizes the interconnection customer's project by assigning the customer a position in the queue based upon the date the interconnection provider determines that the customer's application is valid." *Neptune Regional Transmission System, LLC v. PJM Interconnection, LLC*, 110 FERC ¶ 61,098, 61,404-405 (Feb. 10, 2005) (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed Reg 49,845, at P 35 (Aug. 19, 2003)). As the Federal Energy Regulatory Commission ("FERC") has explained, "[i]t is the queue position that becomes an important baseline for interconnection customers in determining their business costs and risks." *Id.*⁴ The customer must pay PacifiCorp to obtain such priority right and must comply with the deadlines in the process to maintain such a priority right. The queue position is also transferrable by sale or otherwise to another entity that acquires the proposed generating facility – further demonstrating it is a valuable right possessed by the customer. PUC Order No. 10-132, App. A, p. 20 (Article 4.3).

⁴ Although the FERC interconnection procedures are not directly applicable, the Oregon serial queue process was "based upon" that FERC process, and FERC's more robust caselaw on the subject is therefore relevant. PUC Order No. 10-132 at 1.

While the interconnection customer's right in its priority queue position is not so inviolate that it may never be modified or revoked by a regulatory agency, the Order misunderstood the nature of the right by suggesting it is a right that only directly regards PacifiCorp and not the interconnection customer.

B. The Order Erred in Application of the Law to the Facts Because the PUC Had Discretion to Suspend or Revoke a Right or Privilege of a Person, Making the PUC's Proceeding a Contested Case

This Court should reconsider its Order and conclude that the PUC could not revoke the rights at issue without an exercise of discretion, and therefore the proceedings below meet the definition of a contested case in ORS 183.310(2)(a)(B).

As noted above, a "contested case" includes a proceeding where "the agency has discretion to suspend or revoke a right or privilege of a person." ORS 183.310(2)(a)(B). "The starting point for determining whether an interest amounts to a 'right' or 'privilege' for purposes of ORS 183.310 is the defining source, not ORS 183.310 itself." *Berry*, 155 Or App at 30. For example, a probationary apprenticeship is not a right or a privilege if it is "terminable without cause," but a non-probationary apprenticeship is a right or privilege if it is terminable only for "good cause." *Id.* at 30-31 (citing *Fairbanks v. Bureau of Labor and Indus.*, 323 Or 88, 913 P2d 703 (1996)); see also *Morrison v. Univ. of Or. Health Sciences Cent.*, 68 Or App 870, 872, 685 P2d 439 (1984) (dismissal of dentistry school student for

lack of skills development and adequate performance was discretionary act requiring contested case); *Campbell Ranch, Inc. v. Water Res. Dep't*, 28 Or App 243, 247, 558 P2d 1295 (1977) (proceeding where agency has discretion to revoke rights to appropriate water under applicable legal standards is a contested case). Thus, if balancing of competing factors or application of a legal standard is necessitated, the right or privilege may only be revoked through an exercise of discretion, and the proceeding is a contested case.⁵

Under that test, the proceedings below were a contested case. As explained above, the rights revoked in this case were important rights of preexisting interconnection customers, which even included binding contractual rights in the form of study agreements. The PUC's own rules expressly require a finding of good cause to waive any of the preexisting administrative rules for small generators, even on a prospective basis – a standard the PUC itself applied in this case. PUC Order No. 20-268, App. A at 2 (citing OAR 860-082-0010).

Further, the legal source of the rights or privileges here – PURPA and related state and federal law and regulation – includes legal standards that required the PUC to balance interests and exercise discretion regarding the preexisting

⁵ See also 46 Op Atty Gen 7, 109-115 (1987) (discussing legislative history and concluding an agency exercises discretion “where it makes a choice” under “a flexible ‘reasonableness’ or ‘substantiality’ standard” or “a permissive rather than mandatory statute or rule”).

interconnection right at issue here. The federal statute itself requires implementation of rules that are “just and reasonable,” that “do not discriminate,” and that “encourage” development of qualifying facilities. 16 USC § 824a-3(a)-(b). And FERC’s interconnection rules likewise require the PUC to assess interconnection costs “on a nondiscriminatory basis[,]” 18 CFR § 292.306(a), and to include “reasonable standards to ensure system safety and reliability of interconnected operations[,]” 18 CFR § 292.308. In FERC’s own order in response to PacifiCorp’s new cluster study proposal, FERC specifically addressed the standards applicable to “state jurisdictional QFs” and “remind[ed] all parties . . . that PURPA requires non-discriminatory access for all QFs.” *PacifiCorp*, 171 FERC ¶ 61,112, P 169 (May 12, 2020).⁶

The record before the PUC confirms the PUC’s understanding that it was balancing interests under the applicable legal standards. During the public meeting, the Commissioners explained that the goal was to strike an appropriate “balance” under PURPA. Tr, Aug. 12, 2020, at 18:9-21, 50:1-3, 153:25 to 154:9.⁷ The Commissioners deliberated extensively on the question of whether preexisting

⁶ See also ORS 758.535(2)(a) & (3) (requiring PUC to establish rules that protect safety and are consistent with PURPA).

⁷ A transcript of the public meeting was prepared and attached to an application for reconsideration. Application for Rehearing or Reconsideration of Community Renewable Energy Association, Oregon Solar Energy Industries Association, and NewSun Energy LLC, Attach. No. 1 (Oct. 12, 2020), available at <https://edocs.puc.state.or.us/efdocs/HAG/um2108hag163114.pdf>.

customers in the serial queue should be allowed to proceed through the preexisting serial queue process or be forced to abandon their priority queue position and participate in the new cluster study. Tr, Aug. 12, 2020, 69:23 to 92:20.

Ultimately, the Commissioners decided to force preexisting customers to forfeit their priority queue rights but made adjustments to PacifiCorp's initial proposal by allowing more leeway for preexisting customers to enter the first window for the cluster process. *See id.* (making the "transition cluster" available to five additional small generators but getting "rid of the serial queue process").

Indeed, the PUC's authority to exercise discretion to revoke, or not revoke, the rights of preexisting interconnection customers is further confirmed by the PUC's 2009 order adopting interconnection rules for small generators where the PUC preserved the rights of customers then in the queue. The PUC's 2009 order stated: "We find that a public utility must continue to process any applications that are pending at the time these rules go into effect under the process that was applicable at the time the application was submitted." PUC Docket No. AR 521, Order No. 09-196 at 5, available at <https://apps.puc.state.or.us/orders/2009ords/09-196.pdf>. The PUC explained that "an interconnection applicant *may choose* to resubmit its application under the small generator interconnection rules." *Id.* (emphasis added).

Similarly, when the PUC adopted the QF-LGIP in 2010, it specifically

preserved the right of then-existing interconnection customers to proceed through the preexisting process or the new process. PUC Order No. 10-132, App. A, p. 22-23 (Article 5.1.1). With respect to preexisting interconnection study agreements, the PUC-approved rules specifically provided: “If an Interconnection Study Agreement has been executed prior to the effective date of this QF-LGIP, such Interconnection Study *shall be completed in accordance with the terms of such agreement.*” *Id.* (emphasis added).

In this case, however, the PUC exercised discretion to revoke such rights of preexisting customers. Tr, Aug. 12, 2020, 69:23 to 92:20.⁸ Where the PUC decides an issue one way in 2009 and 2010, but decides the same question the opposite way in 2020, the PUC has exercised discretion in so deciding the issue. Thus, for purposes of ORS 183.310(2)(a)(B), the PUC exercised discretion under its PURPA authority when it retroactively revoked preexisting contractual and regulatory rights of QFs in PacifiCorp’s serial interconnection queue.

The PUC’s reply asserted that PURPA does not itself require a contested case proceeding, but that argument is misplaced. PUC’s Reply at 5-8. The question is whether PURPA and related state law require the PUC to exercise discretion through applicable legal criteria, not whether PURPA itself mandates

⁸ PacifiCorp’s compliance filing demonstrates that the preexisting legacy provision was deleted from the previously effective procedures. PacifiCorp’s Compliance Filing at Attach. 1, p. 23, Article 5.1.

use of a contested case. *See Berry*, 155 Or App at 30-31.

The Order also errs to conclude that “waiver’ as to PacifiCorp is not synonymous with ‘suspension’ or ‘revocation’ as to qualifying facilities.” Order at 4. This reasoning overlooks the framework from which the proceeding arose. PacifiCorp is a regulated utility that had obligations to preexisting interconnection customers under binding interconnection study agreements and other regulatory requirements implemented by the PUC. *E.g.*, 16 USC § 824a-3(f)(1); ORS 758.535(2)(a) & (3). Instead of joining all preexisting interconnection customers as parties to the proceeding to terminate their preexisting contractual and priority queue position rights, PacifiCorp sought an order from the PUC that, in effect, terminated such rights. The fact that the PUC’s order did not individually identify all preexisting interconnection customers whose rights were terminated does not change the effect of the regulatory action taken by the PUC.⁹

The revocation of rights of QFs is well illustrated by the comment letter of Dalreed Solar’s developer. The developer explained that he expected PacifiCorp to honor the terms of the Dalreed Solar Feasibility Study Agreement but “recently learned PacifiCorp was waiting for the Commission to approve its plan to change how it studies qualifying facilities like mine for interconnection purposes.” Energy

⁹ Indeed, the lack of notice provided to such preexisting customers was an ongoing source of concern in the abbreviated proceeding. Tr, Aug. 12, 2020, 37:21 to 38:9.

of Utah Comments, Docket No. UM 2108, at 1 (Aug. 6, 2021), available at <https://edocs.puc.state.or.us/efdocs/HAC/um2108hac134057.pdf>. The developer “never received notice from PacifiCorp that [his] project may be subject to a different type of study, study fee structure, and different timelines than what [he] had originally anticipated.” *Id.* He was understandably “very concerned that . . . the new process will delay [his] project and make it more expensive than it already is.” *Id.* He requested that the PUC “ensure that pending projects like mine are still able to choose whether they participate in this new interconnection study process.” *Id.* at 2. In response, the PUC approved PacifiCorp’s application and terminated the Dalreed Solar Feasibility Study Agreement, as well as its priority queue position, and later denied reconsideration.

In sum, the Court’s Order misunderstood the nature of the rights and privileges at issue and erred to conclude that the proceeding below did not include an exercise of discretion by the PUC to revoke such rights and privileges. Therefore, the Court should grant reconsideration and hold that it has jurisdiction over this petition for judicial review.

C. Respondents’ Remaining Assertions Are Inapt

Respondents reply filings made additional procedural arguments that appear to be related to petitioners’ standing and preservation of arguments for appeal. These procedural arguments are misplaced. The only question currently before the

Court is whether the PUC had discretion to revoke a right or privilege of any “person,” ORS 183.310(2)(a)(B), thus conferring jurisdiction on this Court. In any event, although the Order did not appear to adopt these arguments, petitioners address them here to ensure the arguments are joined.

1. Standing Arguments Are Misplaced

Respondents’ reply filings appear to challenge petitioners’ standing to argue the PUC failed to hold contested case hearings. PacifiCorp Reply at 4 (arguing petitioners “should not be allowed to . . . piggy-back an issue” of failure to hold a contested case to obtain judicial review); PUC Reply at 10 (asserting petitioners “are not interconnection customers themselves and had no rights, contractual or otherwise at issue”). These arguments are unavailing.

The petition for review included affidavits demonstrating petitioners are adversely affected or aggrieved persons entitled to petition for review under ORS 183.482(2). The petitioners submitted such affidavits because the PUC failed to rule on petitioners’ petitions to intervene below, leaving ambiguous petitioners’ “party” status under ORS 183.482(2). Petitioners submit that they each possess standing as a “party” under ORS 183.482(2) because the PUC treated petitioners as parties in the proceedings below, even though it never ruled on petitions to intervene. *See Brian v. Or. Gov't Ethics Comm'n*, 319 Or 151, 156-60, 874 P2d 1294 (1994) (a “party” to agency proceeding has standing without any showing of

aggrievement); *see also* ORS 183.310(7) (defining “party”).

However, petitioners’ affidavits show that petitioners are adversely affected or aggrieved by the PUC’s orders as required for non-parties by ORS 183.482(2). An advocacy organization is aggrieved if the challenged order conflicts with its organizational interests and mission. *Polk County v. Dep’t of Land Conservation & Dev.*, 199 Or App 501, 505-07, 112 P3d 409 (2005), *vacated*, 342 Or 344 (2007), *on remand*, 217 Or App 521, 527, 176 P3d 432, *rev denied*, 345 Or 317 (2008) (land-use advocacy organization aggrieved where challenged order would create urban sprawl, which the organization sought to minimize); *see also Cascadia Wildlands v. Dep’t of State Lands*, 293 Or App 127, 131-139, 427 P3d 1091 (2018) (standing exists where at least one petitioner has suffered an injury to a substantial interest from the challenged governmental action).

Here, petitioners’ affidavits demonstrate that the PUC’s orders on review conflict with each organization’s purpose and goal of promoting renewable and/or non-utility-owned energy development because the PUC’s orders impose new and unreasonable obstacles for such development. *See* Petition for Rev., Attach. C, Affidavit of John Lowe at ¶ 10 (Renewable Energy Coalition); *id.*, Attach. D, Affidavit of Spencer Gray, at ¶ 10 (Northwest & Intermountain Power Producers’ Coalition); *id.* at Attach. E, Affidavit of Les Perkins, at ¶ 12 (Community Renewable Energy Association); *id.* at Attach. F, Affidavit of Angela Crowley-

Koch at ¶ 9 (Oregon Solar Energy Industries Association). That demonstrates aggrievement even for non-parties.

The comments submitted to the PUC in the proceeding below, as detailed above, even further confirm the harm to the interests of petitioners. *See Friends of Eugene v. City of Eugene*, 195 Or App 20, 29-30, 96 P3d 1256, 1262 (2004) (materials in the record may also support standing). The PUC's order terminating renewable energy developers' preexisting queue positions and interconnection study agreements harms the interests that the petitioner organizations were created to protect. Thus, petitioners would have standing to challenge the failure to hold a contested case prior to revoking such rights.

2. PacifiCorp's Preservation Argument Is Misplaced

PacifiCorp further appears to assert that the PUC's failure to hold a contested case is not at issue in this petition for judicial review. PacifiCorp's Reply at 1-4. But PacifiCorp's assumptions regarding the issues that would be raised in this Court are without basis because there is no requirement to identify issues that will be raised in this Court until the merits briefing stage. ORS 183.482(2); ORAP 4.15, 5.40. In any event, if this Court determines it has jurisdiction, at least one petitioner is likely to argue on the merits that it was reversible error for the PUC to fail to hold contested case procedures before

retroactively revoking the rights of existing interconnection customers.¹⁰ Such issue was preserved below.¹¹ Thus, the respondents’ arguments do not defeat this Court’s jurisdiction.

IV. CONCLUSION

For the reasons stated above, the Court should grant reconsideration and conclude that it has jurisdiction because the PUC’s proceedings below met the definition of contested case in ORS 183.310(2)(a)(B).

¹⁰ There was no basis to claim the PUC failed to hold contested case proceedings in the petition filed in the circuit court because that court only has jurisdiction if contested case proceedings were not required.

¹¹ *See, e.g.*, Joint Comments of NewSun Energy LLC and Oregon Solar Energy Industries Association, PUC Docket No. UM 2108, 5 (July 17, 2020), available at <https://edocs.puc.state.or.us/efdocs/HAC/um2108hac165238.pdf> (arguing, “The queue reform, as proposed, would apply retroactively to interconnection requests made before the effective date of the tariff . . . without sufficient notice”); Comments of Renewable Energy Coalition, Community Renewable Energy Association, and the Oregon Solar Energy Industries Association, PUC Docket No. UM 2108, at 16-18, 23, 50-51 (July 17, 2020), <https://edocs.puc.state.or.us/efdocs/HAC/um2108hac164842.pdf> (arguing interconnection customers with pending interconnection requests should have the option to proceed through the serial queue and the PUC’s procedures were inadequate); Northwest & Intermountain Power Producers Coalition’s Comments, PUC Docket No. UM 2108, at 1, 3 (July 17, 2021), <https://edocs.puc.state.or.us/efdocs/HAC/um2108hac161331.pdf> (arguing the PUC should “provide stakeholders an opportunity to conduct discovery to understand and comment properly” and questioning the “retroactive” effect of the proposal).

Dated this 13th day of July 2021.

Respectfully submitted,

SANGER LAW, PC

s/ Irion Sanger

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Attorney for Petitioner Community
Renewable Energy Association

Exhibit A

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of

PACIFICORP, dba Pacific Power,
Applicant-Respondent,

and

OREGON PUBLIC UTILITY COMMISSION,
Respondent,

v.

RENEWABLE ENERGY COALITION, NORTHWEST AND INTERMOUNTAIN POWER
PRODUCERS COALITION, OREGON SOLAR ENERGY INDUSTRIES ASSOCIATION
and COMMUNITY RENEWABLE ENERGY ASSOCIATION,
Petitioners,

and

NEWSUN ENERGY, LLC,
Intervenor below.

Public Utility Commission of Oregon No. UM2108

Court of Appeals No. A175363

ORDER DETERMINING JURISDICTION; DISMISSING JUDICIAL REVIEW

Respondent Public Utility Commission (PUC)'s motion for leave to file an amended reply, which is unopposed, is granted. The court has considered the amended reply in ruling on the motions at issue in this order.

Respondents PacifiCorp and PUC each move for a determination of jurisdiction and argue that the PUC order at issue in this judicial review (arising from PUC Docket No. UM 2108) is an order in other than a contested case, and, therefore, jurisdiction for judicial review is with the circuit court. Petitioners respond that this is a contested case proceeding and, therefore, this court has jurisdiction over the judicial review. For the reasons explained below, the court determines that the proceeding is other than a contested case. Therefore, under ORS 183.484, jurisdiction for judicial review of the PUC order at issue is with the circuit court. Accordingly, this judicial review is dismissed.¹

¹ ORS 14.165(2)(a) provides that, if an action or other proceeding against a public body is filed in the Court of Appeals, but this court does not have authority to decide the case, the court shall "[t]ransfer the case to the court or tribunal authorized by law to decide the case if the Court of Appeals determines that another court or tribunal is authorized by law to decide the case." However, because petitioners have also filed a

ORDER DETERMINING JURISDICTION; DISMISSING JUDICIAL REVIEW

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Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

The relevant facts are as follows. PacifiCorp is a public utility company that, on a national level, is regulated by the Federal Energy Regulatory Commission (FERC) and, on a state level, by PUC. PacifiCorp receives connection requests from electricity generators, otherwise known as "qualifying facilities," to connect to PacifiCorp's transmission or distribution systems. In 2020, PacifiCorp applied for and received approval from FERC to make changes to its system for processing connection requests. After receiving approval from FERC, PacifiCorp sought similar approval from PUC by means of an "Application for an Order Approving Queue Reform Proposal." The proposal included, among other things, a request that PUC grant PacifiCorp a waiver from various administrative rules which provide that PacifiCorp must respond to connection requests in the order that they are received--the "serial process." PacifiCorp sought waiver because, under the serial process, its system became backlogged; in order to process connection requests more efficiently, PacifiCorp sought to respond based not on a "first received, first served" basis, but, instead, on a "first ready (to connect), first served" basis--the "cluster process." PUC did not hold a contested case hearing but, rather, gave notice that it would hold two public workshops regarding PacifiCorp's proposal. At a public meeting on August 12, 2020, PUC decided to adopt PacifiCorp's proposal; it later issued an order granting PacifiCorp's application (Order No. 20-268). Petitioners timely sought reconsideration of that order and PUC ultimately denied reconsideration and memorialized its decision in Order No. 20-465. Order No. 20-465 states,

"A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. * * * A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484."

Petitioners filed petitions for judicial review of Order Nos. 20-268 and 20-465, in both this court and Marion County Circuit Court.

Pursuant to ORS 138.482(1), "[j]urisdiction for judicial review of contested cases is conferred upon the Court of Appeals." However, under ORS 183.484(1), jurisdiction for "judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has a principal business office." Thus, whether this court has jurisdiction over the judicial review proceedings depends on whether this is a contested case. "Deciding whether a proceeding is a contested case does not depend on the kind of hearing the

petition for judicial review of the PUC order in Marion County Circuit Court Case Number 21CV03740, it appears that no purpose would be served by transferring this judicial review to the circuit court.

ORDER DETERMINING JURISDICTION; DISMISSING JUDICIAL REVIEW

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agency actually conducted; the appropriate analysis is whether the proceeding qualified as a contested case under the APA." *Oregon Env. Council v. Oregon State Bd. of Ed.*, 307 Or 30, 38, 761 P2d 1322 (1988).

"A proceeding is a contested case if it satisfies one of four definitions set forth in ORS 183.310(2)(a) and does not fall within the definitional exception in ORS 183.310(2)(b)." *Rooklidge v. DMV*, 217 Or App 172, 178, 174 P3d 1120 (2007), *rev den*, 345 Or 94 (2008). A contested case includes an agency proceeding in which "the agency has discretion to suspend or revoke a right or privilege of a person." ORS 183.310(2)(a)(B). Petitioners argue that this case falls into that category; that is, they argue that, here, PUC, in the proceedings below, had discretion to suspend or revoke a right or privilege of a person. In particular, they assert that "the very purpose of the proceeding was to force some developers to either move from an existing process into a new process or else abandon their projects, which altered their rights or privileges under their contracts and/or PUC rules and policies." According to petitioners, by issuing Order No. 20-268, PUC has prevented qualifying facilities from having control over the timeline through which they may obtain rights through contracts with PacifiCorp, thereby suspending or revoking the rights of those qualifying facilities. Simply put, petitioners' purported right is the right of interconnection customers to have their interconnection requests processed under the serial process. Thus, the issue the court must resolve is if interconnection customers have a right to process their interconnection requests under the serial process, then whether, through the UM 2108 proceedings, PUC had discretion to suspend or revoke that right.

"The starting point for determining whether an interest amounts to a 'right' or 'privilege' for purposes of ORS 183.310 is the defining source, not ORS 183.310 itself." *Berry v. Metro Electrical Joint Apprenticeship*, 155 Or App 26, 30, 963 P2d 712 (1998). The "defining source" is the rule of law that establishes the purported right or privilege at issue. Petitioners identify the defining sources as Order No. 10-132 from PUC Docket No. UM 1401 and OAR 860-082-0060. Through Order No. 10-132, PUC adopted various procedures regarding large generator interconnections. OAR 860-082-0060 sets forth procedures regarding small generator interconnections. Thus, the court turns to whether Order No. 10-132 and OAR 860-082-0060 confer rights on petitioners.

Order No. 10-132 explicitly provides that transmission providers, such as PacifiCorp, may study interconnection requests serially or in clusters, and may allocate the costs of interconnection requests without regard to queue position. Thus, PacifiCorp was entitled to deploy either the serial process or the cluster process to interconnection requests, and although it chose to deploy the serial process for a period of time, it was not required to do so, as related to Order No. 10-132. For that reason, Order No. 10-132 does not confer the right petitioners assert.

The court next turns to whether OAR 860-082-0060(3) confers the right to have interconnection requests processed under the serial process. That rule provides that, "[i]n addition to the timelines and requirements in OAR 860-082-0025, the timelines and

ORDER DETERMINING JURISDICTION; DISMISSING JUDICIAL REVIEW

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

requirements in sections (5) through (12) of this rule apply to Tier 4 interconnection reviews." Unlike Order No. 10-132, the timelines and requirements referred to in OAR 860-082-0060(3) do impose timing mandates on transmission providers such as PacifiCorp. However, even assuming that those mandates confer rights related to those timelines and requirements on interconnection customers, the court determines that PUC does not have discretion to "suspend or revoke" those rights and, therefore the UM 2108 proceedings do not constitute contested case proceedings under ORS 183.310(2)(a)(B).

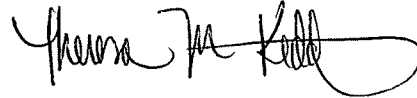
As noted, even assuming OAR 860-082-0060(3) confers the right that petitioners' assert, in order for the UM 2108 proceedings to constitute a contested case under ORS 183.310(2)(a)(B), PUC must have had discretion to "suspend or revoke" interconnection customers' purported right to have their connection requests processed under the serial process. Petitioners argue that, because PUC is authorized to waive OAR 860-082-0060 for good cause, and because that rule entitles qualifying facilities to have their connection requests processed within certain timelines, waiver of that rule is akin to suspending or revoking the right to those timelines. See OAR 860-082-0010(1) (authorizing PUC to "waive any of the Division 082 rules for good cause shown"). However, PUC's ability to waive one of its own rules for good cause is not equivalent to "discretion to suspend or revoke the rights" of qualifying facilities.

In *Berry v. Metro Electrical Joint Apprenticeship*, the court held that a nonprobationary apprenticeship that may only be terminated for "good cause" would trigger the contested case requirements of the APA pursuant to ORS 183.310(2)(a)(B). 155 Or App at 30-31. The court explained, "Because of that 'good cause' standard, a nonprobationary apprentice does have a right or privilege in continuing with the apprentice program and any dismissal triggers the contested case requirements of the APA." *Id.* at 31. Petitioners analogize to *Berry* to support their argument that the "good cause" standard that PUC must meet in order to waive a Division 082 rule ultimately confers a right on interconnection customers to have their interconnection requests processed under the serial process. Yet, "waiver" as to PacifiCorp is not synonymous with "suspension" or "revocation" as to qualifying facilities. By waiving OAR 860-082-0060 as to PacifiCorp, PUC is not directly suspending or revoking any right of the qualifying facilities; it is allowing PacifiCorp to not be bound by the rule's many requirements, and PacifiCorp's choices in light of that waiver do not amount to PUC's "discretion to suspend or revoke a right." In *Berry*, the "good cause" standard related to the agency's discretion to terminate the right itself. Here, although PUC's waiver may indirectly, ultimately impact petitioners' rights, that result does not meet the definition of "contested case" under ORS 183.310(2)(a)(B). PUC must have "discretion to suspend or revoke a right or privilege"--not discretion to take action that may indirectly, ultimately impact a right or privilege. Accordingly, it appears that PUC did not have discretion to suspend or revoke the right at issue in this case, and, therefore, the court concludes that the UM 2108 proceedings do not constitute a contested case under ORS 183.310(2)(a)(B).

ORDER DETERMINING JURISDICTION; DISMISSING JUDICIAL REVIEW

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In sum, because, in this case, PUC did not have discretion to suspend or revoke a right, the proceedings underlying this judicial review do not meet the definition of contested case proceedings under ORS 183.310(2)(a)(B). Instead, the proceedings are other than a contested case. Accordingly, jurisdiction over this judicial review lies with the circuit court and, because petitioners have already filed a petition for judicial review in Circuit Court Case Number 21CV03740, and state that they are "prepared to proceed" with judicial review in the circuit court, this judicial review is dismissed.



THERESA M. KIDD
APPELLATE COMMISSIONER
6/17/2021 12:43 PM

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondents

Costs: No costs allowed

c: Karen Kruse
Adam Lowney
Irion A Sanger
Joni Sliger
Gregory M Adams
Anna Marie Joyce
Dallas Steven DeLuca
Stephanie S Andrus
Denise G Fjordbeck

ej

ORDER DETERMINING JURISDICTION; DISMISSING JUDICIAL REVIEW

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Exhibit B

APPENDIX 2 to QF-LGIP
INTERCONNECTION FEASIBILITY STUDY AGREEMENT

THIS AGREEMENT is made and entered into this 17th day of July, 2020 by and between Dalreed Solar LLC, a limited liability company organized and existing under the laws of the State of Utah ("Interconnection Customer") and PacifiCorp, a corporation existing under the laws of the State of Oregon ("Transmission Provider "). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by Interconnection Customer dated April 20, 2020; and
Page 12

WHEREAS, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System; and

WHEREAS, Interconnection Customer has requested Transmission Provider to perform an Interconnection Feasibility Study to assess the feasibility of interconnecting the proposed Large Generating Facility to the Transmission System, and of any Affected Systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1. When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in Transmission Provider's OPUC-approved QF-LGIP.
2. Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection Feasibility Study consistent with Article 6.0 of this QF-LGIP.
3. The scope of the Interconnection Feasibility Study shall be subject to the assumptions set forth in Attachment A to this Agreement.
4. The Interconnection Feasibility Study shall be based on the technical information provided by Interconnection Customer in the Interconnection Request, as may be modified as the result of the Scoping Meeting. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection Feasibility Study and as designated in accordance with Article 3.3.4 of the QF-LGIP. If, after the designation of the Point of Interconnection pursuant to Article 3.3.4 of the QF-LGIP, Interconnection Customer modifies its Interconnection Request pursuant to

Article 4.4, the time to complete the Interconnection Feasibility Study may be extended.

5. The Interconnection Feasibility Study report shall provide the following information:

Preliminary identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

Preliminary identification of any thermal overload or voltage limit violations resulting from the interconnection; and

Preliminary description and non-bonding estimated cost of facilities required to interconnect the Large Generating Facility to the Transmission System and to address the identified short circuit and power flow issues.

6. Interconnection Customer shall provide a deposit of \$10,000 for the performance of the Interconnection Feasibility Study.

Upon receipt of the Interconnection Feasibility Study Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection Feasibility Study.

Any difference between the deposit and the actual cost of the study shall be paid by or refunded to Interconnection Customer, as appropriate.

7. Miscellaneous.

7.1. Disclaimer. Any costs estimated by Transmission Provider will represent a good faith estimate of future costs based on good utility practices; however, the estimated costs are based on assumptions which have a degree of uncertainty. Furthermore, facts which affect costs may not be discovered until construction begins, and events could arise which also affect costs. Accordingly, Transmission Provider shall not be liable for the accuracy of the cost estimate or any damages or other claims related to Interconnection Customer's reliance on the cost estimate provided under this Agreement.

7.2. Integration; Amendment. This Agreement contains the entire agreement of the Parties with respect to the subject matter, and replaces and supersedes in the entirety all prior agreements between the Parties related to the same subject matter. This Agreement may be modified only by a subsequent written amendment or agreement executed by both Parties.

7.3. Remedies; Waiver. The failure of a Party to insist, in any one or more instances, on performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term,

covenant or condition, but the obligations of the Parties with respect thereto shall continue in full force and effect. No waiver of any provision or condition of this Agreement by a Party shall be valid unless in writing signed by such Party or operational by the terms of this Agreement. A waiver by any Party of the performance of any covenant, condition, representation or warranty of any other Party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by any Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time.

7.3.1. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE, OR TO REQUEST THE CONSOLIDATION OF, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

- 7.4. **Governing Law.** This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of Oregon applicable to contracts made and to be performed wholly within the State of Oregon. Any judicial action or proceeding arising under this Agreement shall be adjudicated in Oregon.
- 7.5. **Assignment.** Transmission Provider may at any time assign its rights and delegate its obligations under this Agreement, in whole or in part, including, without limitation, transferring its rights and obligations under this Agreement to any: (i) affiliate; (ii) successor in interest, or (iii) corporation or any other business entity in conjunction with a merger, consolidation or other business reorganization to which PacifiCorp is a party. Affiliate includes any entity in which Berkshire Hathaway Inc. owns more than a 5% interest, over which Berkshire Hathaway Energy exercises management control, or which is listed on an exhibit to this Agreement.
- 7.6. **Execution.** If in concurrence with this Agreement, the Interconnection Customer shall sign both attached originals. Interconnection Customer should retain one copy for their records and return the other copy to the Transmission Provider within thirty (30) Calendar Days of the date of the attached cover letter. The Transmission Provider will begin the Study upon verification that the Agreement, Deposit, and Technical Data (Attachment A) are complete and have been submitted as required by the QF-LGIP.

IN WITNESS THEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

PacifiCorp

By: **Rick Vail** Digitally signed by Rick Vail
Date: 2020.07.13 14:50:40
-07'00'
Title: VP, Transmission
Date: 07/13/2020

Dalreed Solar LLC

By: *Rocco Vrba*
Title: President
Date: 7.17.2020

**Attachment A to Appendix 2
Interconnection Feasibility
Study Agreement**

**ASSUMPTIONS USED IN CONDUCTING THE
INTERCONNECTION FEASIBILITY STUDY**

The Interconnection Feasibility Study will be based upon the information set forth in the Interconnection Request and agreed upon in the Scoping Meeting held on May 11, 2020.

Designation of Point of Interconnection and configuration to be studied.

- Connection to east 34.5 kV bus at Dalreed substation

Designation of alternative Point(s) of Interconnection and configuration.

- line tap on a 34.5 kV line out of Dalreed substation

The above assumptions have been provided and/or confirmed by Interconnection Customer. Other assumptions provided and/or confirmed by Interconnection Customer and Transmission Provider are set forth below.

- Transmission Provider: 80 MW solar QF
- Interconnection Customer:

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing **Petitioners' Petition for Reconsideration** on all of the following:

Dallas DeLuca, OSB #072992	Denise Fjordbeck, OSB #822578
Anna Joyce, OSB #013112	Oregon Department of Justice
Markowitz Herbold PC	Business Activities Section
1455 SW Broadway, Suite 1900	1162 Court St. NE
Portland, OR 97201-3412	Salem, OR 97301-4096

By

- Mailing, by placing the copy in a postage prepaid sealed envelope addressed to the attorney's or other person's last known address as shown above and deposited with the U.S. Postal Service at Portland, OR by registered or certified mail.
- Commercial Delivery Service
- Facsimile
- Hand Delivery
- E-mail
- Electronic Service via the Appellate Courts' eFiling system at the email address as recorded on the date of service in the appellate eFiling system.

I further certify that I served a copy of the foregoing **Petitioners' Petition for Reconsideration** on all of the following:

Karen Kruse, OSB #112733	Oregon Public Utility Commission
825 NE Multnomah Ste 2000	Stephanie S. Andrus, OSB #925123
Portland OR 97232	Oregon Department of Justice
karen.kruse@pacificorp.com	Business Activities Section
	1162 Court St. NE
	Salem, OR 97301-4096

CERTIFICATE OF SERVICE

Adam Lowney, OSB #053124
Adam@mrg-law.com
McDowell Rackner & Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

By

- Mailing, by placing the copy in a postage prepaid sealed envelope addressed to the attorney's or other person's last known address as shown above and deposited with the U.S. Postal Service at Portland, OR by registered or certified mail.
- Commercial Delivery Service
- Facsimile
- Hand Delivery
- E-mail
- Electronic Service via the Appellate Courts' eFiling system at the email address as recorded on the date of service in the appellate eFiling system.

DATED this 13th day of July 2021.

s/ Gregory Adams
Gregory M. Adams, OSB No. 101779
greg@richardsonadams.com
Richardson Adams, PLLC
515 N. 27th Street
Boise, ID 83702
Telephone: 208-938-2236
Fax: 208-938-7904

Attorney for Petitioner Community
Renewable Energy Association

CERTIFICATE OF SERVICE

CERTIFICATE OF FILING

I certify that I filed the foregoing **Petitioners' Petition for Reconsideration** with the Appellate Court Administrator via the Oregon Appellate Court eFiling system.

DATED this 13th day of July 2021.

s/ Gregory Adams

Gregory M. Adams, OSB No. 101779

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