

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1742**

Surprise Valley Electrification Corp.,)	
Complainant,)	
)	
v.)	
)	
PacifiCorp, dba Pacific Power,)	SURPRISE VALLEY’S REPLY TO
Defendant.)	PACIFICORP’S RESPONSE TO
)	MOTION TO STRIKE OR CLARIFY
)	SCOPE OF PROCEEDING
)	
)	
)	

I. INTRODUCTION

Surprise Valley Electrification Corp. (“Surprise Valley”) submits this reply urging the Oregon Public Utility Commission (the “Commission” or “OPUC”) Administrative Law Judge (“ALJ”) Michael Grant to strike portions of PacifiCorp’s answer (“Answer”) to Surprise Valley’s complaint (“Complaint”). Despite PacifiCorp’s apparent backing off the arguments raised in its Answer, PacifiCorp has not withdrawn or retracted its affirmative defense that the general transfer agreement (“GTA”) between PacifiCorp and Bonneville Power Administration (“BPA”) limits Surprise Valley’s ability to sell the net output of the Paisley geothermal project (“Paisley Project”) to PacifiCorp. For the reasons explained in Surprise Valley’s motion and this reply, PacifiCorp’s affirmative defense and arguments regarding the GTA should stricken, or the scope clarified to prevent the company from raising these arguments.

PacifiCorp’s response (“Response”) is notable because it agrees that the GTA is subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission (“FERC”), and that it has no bearing on PacifiCorp’s obligation to enter into a Public

Utility Regulatory Policies Act (“PURPA”) contract with Surprise Valley. Response at 15. PacifiCorp instead argues that it is relevant because it provides factual background and supports the company’s legal arguments regarding FERC Order No. 69. Id. at 15-16. PacifiCorp did not raise the GTA to provide context to its arguments, but as an affirmative defense that would defeat the legal consequences of PacifiCorp’s otherwise unlawful actions. Even if not raised as an affirmative defense, it would be inappropriate for the Commission to interpret the terms or otherwise opine about the impact of the GTA on the issues in this case.

Proper investigation of PacifiCorp’s arguments and the GTA would require the Commission to address the specific facts of a transmission contract that is outside of its expertise and jurisdiction. First, the Commission would be required to allow Surprise Valley to investigate and submit testimony on PacifiCorp’s factual claims regarding the GTA. This may be impossible since PacifiCorp admits that it does not have sufficient facts to prove its GTA-related allegations. Next, the Commission would need to review and determine the factual and legal meaning of the terms and conditions of the GTA, which would inappropriately step into an area of FERC’s exclusive jurisdiction.

Rather than being dissatisfied with the GTA, PacifiCorp now explains that it is not interested in amending the transmission agreement. Response at 14-15, 21-22. The company appears to be pleased that the GTA can be used as yet another obstacle to entering into a power purchase agreement (“PPA”) with Surprise Valley. If the GTA would actually impose costs on PacifiCorp, then the company should revise it. Any consideration of the GTA should also include whether PacifiCorp’s transmission function is illegally refusing to revise the GTA to support its merchant function’s refusal to

purchase the Paisley Project's net output. The Commission, however, does not have jurisdiction to order a utility to change a transmission contract, which is another reason PacifiCorp's affirmative defense and arguments should be stricken.

II. SURPRISE VALLEY'S MOTION IS TIMELY

PacifiCorp asserts that Surprise Valley's motion to strike is untimely and should be rejected because it was not filed within ten days of PacifiCorp's Answer. Response at 13. Surprise Valley's motion is timely because it was filed promptly after discovering that the GTA was not relevant to the issues in this proceeding. Regardless of the timeliness of Surprise Valley's filing, the Commission always has the discretion to strike evidence or pleadings upon its own motion. See Oregon Rules of Civil Procedure ("ORCP") 21E. In fact, the Commission has the affirmative duty to dismiss or refuse to address arguments and evidence that are outside of its jurisdiction. See ORCP 21A.

Surprise Valley's motion to strike should be granted to prevent the Commission from addressing an irrelevant or frivolous plea, including "one which does not raise any issue in the proceeding." Kashmir Corp. v. Nelson, 37 Or App 887, 892, 588 P.2d 133 (1978). The grounds for a motion to strike may not be immediately apparent in some circumstances, and is timely, if made at the time it becomes clear the stricken material is irrelevant or frivolous. See Benjamin v. Wal-Mart Stores, Inc., 185 Or App 444, 468, 61 P3d 257, 261 (2002) rev denied 335 Or 479 (2003). In this proceeding, Surprise Valley investigated the basis for PacifiCorp's affirmative defense through discovery, and filed the motion within ten days of receiving PacifiCorp's data responses establishing that the GTA defense is irrelevant and does not raise any legitimate issues in this proceeding. Attachment A (PacifiCorp Response to Surprise Valley Data Requests 1.15, 1.16, 1.17)

(“PacifiCorp’s transmission service to the Bonneville Power Administration (BPA) is not at issue in the complaint”).

PacifiCorp’s affirmative defense and supporting arguments can also be independently dismissed or removed from the scope of the case on the grounds that the Commission lacks jurisdiction over the GTA’s subject matter. ORCP 21A. A subject matter defense can be raised at any time. ORCP 21A&(G)(4); see Waddill v. Anchor Hocking, Inc., 330 Or 376, 385, 8 P.3d 200, 203-204 (2000) adhered to on recons., 331 Or 595 (2001). There is simply no point in the parties litigating the impact of a transmission agreement that is within FERC’s exclusive jurisdiction and outside of the Commission’s expertise.

III. ARGUMENT

PacifiCorp’s Answer should be stricken because the company raised the GTA as an affirmative defense with the purpose of defeating Surprise Valley’s claims for relief. PacifiCorp effectively admits that the GTA is not relevant for the purposes of barring Surprise Valley’s claims (which is the sole purpose of an affirmative defense). Regardless of whether PacifiCorp uses the GTA as an explicit or implicit negation of its PURPA obligation, the Commission does not have the legal authority to address how or why the GTA impacts the issues in this case. Similarly, the Commission cannot issue an order that PacifiCorp should modify the GTA to ensure that it is not an obstacle to Surprise Valley selling the net output of the Paisley Project. If the GTA is somehow an obstacle to entering into a PURPA contract, then PacifiCorp should revise the GTA with BPA and/or before FERC to ensure that it has taken all steps to effectuate a purchase from Surprise Valley.

1. The ALJ Should Ignore PacifiCorp’s One-Sided Characterization of the Issues in its Response

PacifiCorp focuses more than half of its Response laying out its legal theory of the case. PacifiCorp’s theory has little or no bearing on the Motion to Strike that is now before ALJ Grant. Further, PacifiCorp’s legal theory rests heavily on factual claims that Surprise Valley will contest, and that cannot properly be resolved in a motion to strike. Surprise Valley will address each aspect of PacifiCorp’s legal theory and factual arguments at the appropriate juncture in this proceeding. Nonetheless, in an effort to provide appropriate context for the issues to be addressed in the Motion to Strike, Surprise Valley here briefly responds to PacifiCorp’s expiation of its theory.

PacifiCorp first asserts that it “believes” that Surprise Valley’s allegation that “PacifiCorp has a mandatory purchase obligation under PURPA . . . is legally incorrect and contrary to [FERC] policy and Commission precedent.” Response at 3. Despite claiming it does not have a mandatory purchase obligation, PacifiCorp appears to admit it has a PURPA obligation when it states that it is willing to enter into: 1) a standard off system contract with Surprise Valley for the Paisley Project’s full net output; or 2) an on system PPA for a small portion of the net output. *Id.* at 9 n.21. Surprise Valley obligated itself to wheel power to PacifiCorp since at least May 2014, when Surprise Valley stated it was ready to sign a draft PPA. This triggered PacifiCorp’s obligation to purchase the entire net output of the Paisley Project under PURPA.

PacifiCorp claims that it has refused to enter into a PPA to date because Surprise Valley: 1) must make appropriate transmission arrangements to sell the full net output; 2) has not signed a standard off-system PPA; and 3) has rejected or otherwise failed to make

transmission arrangements. Id. at 9. PacifiCorp also disagrees with Surprise Valley's argument that it can deliver energy through power displacements. Id. at 17-21.

PacifiCorp's claims are incorrect. In fact, despite nearly two years of negotiations, PacifiCorp never raised any of these objections to Surprise Valley, and did not make them until it filed its Answer. For example, the evidence will show that PacifiCorp: 1) was not willing to sign a standard off system PPA because the company concluded that it was not appropriate; 2) agreed to purchase the full net output without transmission arrangements; and 3) never requested or even identified the issue of Surprise Valley providing its own "transmission arrangements" in nearly two years of detailed negotiations regarding all aspects of the Paisley Project. PacifiCorp has simply re-written the history of negotiations between Surprise Valley and itself to match legal theories that it appears to have recently developed (or at least only recently explained to Surprise Valley).

Similarly, Surprise Valley is willing, able, and ready to provide firm transmission service over its own transmission system in a manner that is consistent with Commission and FERC precedent, as well as the firm transmission service that Surprise Valley provides to PacifiCorp. What is good for PacifiCorp to transmit its power across Surprise Valley's system is apparently not good enough for Surprise Valley to transmit the Paisley Project's power across its own system. In addition, Surprise Valley's methods of tracking its power are perfectly acceptable under its power and transmission contracts with BPA, and consistent with how other utilities have verified QF power deliveries.

The issues in this complaint are also much broader than transmission arrangements or whether the PPA should be an on or off system contract. These include

consideration of the company's delays, stonewalling, bad faith negotiations, extensive efforts to kill the project, constantly changing positions and obstacles, and repeated broken promises to enter into a PPA to purchase the full net output at avoided cost rates in effect prior to August 20, 2014.

While PacifiCorp has the right to raise many of its defenses, legal arguments and evidence, the company does not have the right to use a FERC jurisdictional contract as an obstacle to entering into a PURPA contract in an Oregon Commission proceeding. PacifiCorp's affirmative defense and supporting arguments based on the GTA should therefore be stricken.

2. PacifiCorp Seeks to Use the GTA as Grounds to Avoid Entering Into a PPA with Surprise Valley

PacifiCorp raised the GTA as an affirmative defense to bar Surprise Valley's recovery in this proceeding. The goal of an affirmative defense is not to "directly controvert the allegations of the claim to which it responds; instead, it alleges new facts that, if true, defeat the claim." Oregon Civil Pleading and Practice (2012 rev.) Chapter 22, Responsive Pleadings: Answers, Affirmative Defenses, and Replies, §22.5-1. Therefore, even if a plaintiff's claims are meritorious, an affirmative defense would bar recovery, if the facts underlying the defense prove to be accurate. Affirmative defenses do not illustrate background facts or support other legal arguments, but negate civil liability.

PacifiCorp raised eight affirmative defenses, including alleging that the GTA is a bar to Surprise Valley's complaint. The GTA related-affirmative defense argues that granting Surprise Valley's claims for relief would have the practical result of the Paisley Project's net output being used to serve Surprise Valley's load under the terms of the

requirements contract between BPA and Surprise Valley, unless BPA over-schedules under the GTA. PacifiCorp Answer ¶ 153. PacifiCorp further alleges that BPA’s failure to schedule properly under the GTA would result in PacifiCorp’s customers paying twice for the net output of the Paisley Project. *Id.* PacifiCorp peppers these arguments throughout its Answer with the goal of showing why Surprise Valley’s claims should be rejected because they will result in increased costs to PacifiCorp and its ratepayers. *Id.* at 7-8, ¶¶ 14, 96, 98, 109. Essentially, by couching its arguments as an affirmative defense, PacifiCorp’s Answer argues that, even if the Commission rules in favor of Surprise Valley on all other issues, the company should not be required to purchase power from Surprise Valley because of the GTA.

3. The GTA-Related Affirmative Defense and Supporting Arguments Should Be Stricken Because PacifiCorp Now Agrees that the GTA Cannot Defeat Its PURPA Obligation

PacifiCorp’s Response backtracks from its Answer, and admits that the “FERC-jurisdictional terms and conditions of the GTA between PacifiCorp and Bonneville have no bearing on whether PacifiCorp is obligated to enter into a standard Oregon QF PPA with Surprise Valley.” Response at 15 (emphasis added). Indeed, PacifiCorp concedes that it cannot rely upon a contract to nullify its obligation to purchase the Paisley Project’s net output. Motion to Strike at 10-12. If the GTA has no bearing on PacifiCorp’s obligation to enter into a PURPA contract, then it has no place in an affirmative defense or arguments that it should not enter into a PURPA contract.

4. The Commission Does Not Have the Jurisdiction or the Expertise to Interpret the Terms and Conditions of the GTA or to Determine Its Impact on the Issues in this Proceeding

Despite having included the GTA as an affirmative defense, PacifiCorp now seeks to re-characterize its basis for raising the transmission agreement. The company claims it raised the GTA only to “illustrate flaws in Surprise Valley’s legal arguments and the risks to PacifiCorp and its customers if PacifiCorp were to agree to Surprise Valley’s displacement proposal.” Response at 14-15. This new portrayal is simply a backdoor effort to prop up its affirmative defense and argue that the Commission should not (rather than cannot) grant Surprise Valley’s claims. PacifiCorp is not raising the FERC jurisdictional contract as simple factual issue, but as justification and support for its refusal to purchase the Paisley Project’s net output.

To ascertain the accuracy of PacifiCorp’s claims that the GTA could harm the company’s customers, the Commission will need to allow Surprise Valley to investigate, and, then issue an order interpreting, the terms and conditions of the GTA and BPA’s scheduling practices. For example, PacifiCorp has alleged that if BPA overschedules under the GTA, then the company may pay twice for the Paisley Project’s net output. PacifiCorp Answer at 8 and ¶ 98 n.25. In addition, PacifiCorp claims that the only benefit to the company under certain circumstances would be the potential availability of transmission capacity. *Id.* at ¶ 14. These arguments are based on PacifiCorp’s interpretation of the terms and conditions of the GTA, which the company claims do not identify the Paisley Project “in the GTA, so its output would merely reduce the load metered at the points identified in the GTA.” *Id.* at 8.

Any conclusion by the Commission that the specific terms and conditions of the GTA undermine Surprise Valley's legal arguments or inappropriately impose costs on PacifiCorp's customers would require the Commission to interpret the meaning of these terms. This would result in the Commission directly addressing transmission issues over which it does not have jurisdiction. As explained in the Motion to Strike, the Commission does not have the authority or the expertise to address factual matters regarding the GTA, or its impact on PacifiCorp's PURPA obligation or ratepayers.

Consideration of the GTA would also require the Commission to determine if PacifiCorp has unreasonably used the GTA to avoid entering into a PURPA contract. If the GTA imposes costs on PacifiCorp's customers, then the next question is whether PacifiCorp can take, or has taken, any actions to amend or revise the GTA. A key issue in this proceeding is whether PacifiCorp illegally raised obstacles to avoid entering into a PURPA contract with Surprise Valley. For example, PacifiCorp did not mention the existence of the GTA until Surprise Valley threatened to file a complaint after more than a year of fruitless negotiations. Attachment A (PacifiCorp Response to Surprise Valley Data Request 1.19).

According to PacifiCorp, the company can (but has decided not to) revise the GTA to prevent any alleged costs from being shifted to its customers. Attachment A (PacifiCorp Response to Surprise Valley Data Request 1.21). PacifiCorp now appears to be satisfied with the transmission agreement because it provides the company with a new argument against purchasing the full net output of the Paisley Project. Again, the Commission does not have jurisdiction or the expertise to evaluate whether alleged

obstacles in the GTA were created by PacifiCorp to prevent, or could be remedied by PacifiCorp to effectuate, the purchase of the Paisley Project's net output.

Finally, it may be impossible to verify the accuracy of PacifiCorp claims because the company admits that it does not have factual information to support its GTA-related allegations. Attachment A (PacifiCorp Response to Surprise Valley Data Request 1.15, 1.16, 1.17 and 1.18). PacifiCorp should not be allowed to "illustrate flaws" in Surprise Valley's legal arguments based on facts it cannot support or claims the company admits are not at issue in the case.

5. PacifiCorp Can Fully Raise Its Arguments, Without Requiring the Commission to Interpret the Terms, Conditions, and Impact of the GTA

PacifiCorp also asserts that the GTA is key support for its legal argument regarding FERC Order 69, which the company claims depends on the facts that: 1) Surprise Valley purchases its wholesale power from BPA and not PacifiCorp; 2) PacifiCorp is not a party to Surprise Valley and BPA's power contract; and 3) PacifiCorp transfers energy under the GTA. Response at 16. Surprise Valley's complaint essentially made each of these basic factual points, which PacifiCorp stipulated to. Complaint at ¶¶ 7-9; Answer at ¶¶ 5-7. In addition, Surprise Valley is not seeking to strike any reference to the mere existence of the GTA. Motion to Strike at 1 n.1. The facts already stipulated to are sufficient to allow the Commission to interpret FERC policy regarding whether QFs can deliver power via displacement, and there is no need for the Commission to interpret the provisions of the GTA.

PacifiCorp appears to admit this point. PacifiCorp states that, "[f]or the purpose of an Order No. 69 analysis, the relevant fact is simply that the GTA is not an all-requirements contract between Surprise Valley and PacifiCorp." Response at 20

(emphasis in original). Surprise Valley has never claimed otherwise, and is not seeking to strike that fact the BPA-PacifiCorp transmission agreement is not an all-requirements contract with PacifiCorp. PacifiCorp further states that “[t]he finer details of the GTA . . . are beside the point.” Id. Again, Surprise Valley agrees, and these “finer details” should be stricken so that there is no need to address them in testimony or legal briefing.

PacifiCorp also over emphasizes the importance of FERC Order 69. First, PacifiCorp repeatedly argues that Order 69’s displacement requirements only apply to an all requirements buyer and an all requirements seller. This would mean a displacement sale between Surprise Valley and BPA. As PURPA does not apply to BPA, this would mean that many QFs located in the Pacific Northwest would simply be unable to sell their power via displacement.

Depending on whether PacifiCorp changes its positions again, the issue of Order 69 may also become moot. Surprise Valley raised the Order 69 power displacement issue to contradict PacifiCorp’s claims that it had no PURPA obligation unless power directly flowed from the Paisley Project to its system, rather than flowing by displacement. While PacifiCorp agreed to purchase the net output via displacement through most the negotiations in 2014, PacifiCorp changed its mind in August 2014. However, from August 2014 to the filing of its Answer in July 2015, PacifiCorp argued that it did not need to purchase any electrons that did not flow on its system.

PacifiCorp appears to have changed its mind again, as the company says it is now willing to purchase the total net output, but only through an off system PPA. Either an on or off system PPA would result in PacifiCorp purchasing the vast majority of the net output through displacement. Therefore, PacifiCorp appears to agree that it must buy

power delivered through displacement, but only through an off system PPA. PacifiCorp may change its position again, as the company is required to purchase power through displacements under on system contracts as well. Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 53-54 (May 13, 2005) (simultaneous buy-sell contract); Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 07-360 at 31-32 (Aug. 20, 2007) (simultaneous buy-sell contract).

The characterization of the Paisley Project as on-system or off-system has no legal relevance to PacifiCorp's PURPA obligation to purchase the net output. PacifiCorp must purchase QF power, whether the power is delivered directly or indirectly through displacement. FERC has explained that its "regulations require the electric utility's [PURPA] purchase obligation to be applied to both off-system as well as on system QFs on a comparable basis." PáTu Wind Farm, LLC v. Portland General Electric Co., 151 FERC ¶ 61,223 at P. 46 (2015). This may mean that PacifiCorp's protestations regarding power displacements and Order 69 may be much ado about nothing, which further emphasizes the irrelevance of the GTA.

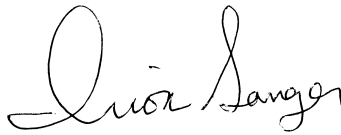
IV. CONCLUSION

PacifiCorp's Response does not retract its affirmative defense, but recasts it in attempt to convince the Commission to interpret an irrelevant transmission agreement and conclude that it is an obstacle to entering into a PPA with Surprise Valley. Whether as an affirmative defense or "background" material, any Commission ruling on the meaning of the GTA would address issues outside of the Commission's jurisdiction or expertise. Disputes regarding any interpretation of the GTA should be resolved by FERC,

not this Commission. Therefore, the Commission should strike the affirmative defense and supporting arguments regarding the GTA or otherwise prevent PacifiCorp from raising arguments regarding the GTA in this proceeding.

Dated this 30th day of November, 2015.

Respectfully submitted,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a large initial "I" and a long, sweeping underline.

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Of Attorneys for Surprise Valley Electrification
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Attachment A

UM 1742 / PacifiCorp
October 26, 2015
SVEC Data Request 1.15

SVEC Data Request 1.15

Refer to PacifiCorp's Answer at page 7. Please identify and provide all documents regarding how BPA schedules power to meet Surprise Valley's load every hour.

Response to SVEC Data Request 1.15

PacifiCorp has no information regarding how the Bonneville Power Administration (BPA) schedules power to meet Surprise Valley's load every hour.

UM 1742 / PacifiCorp
October 26, 2015
SVEC Data Request 1.16

SVEC Data Request 1.16

Refer to PacifiCorp's Answer at page 7. Please provide BPA's hourly schedules for Surprise Valley for the last twelve months the information is available.

Response to SVEC Data Request 1.16

PacifiCorp objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. PacifiCorp's transmission service to the Bonneville Power Administration (BPA) is not at issue in the complaint. Without waiving its objection, PacifiCorp responds as follows:

PacifiCorp has no information regarding BPA's hourly schedules for Surprise Valley.

UM 1742 / PacifiCorp
October 26, 2015
SVEC Data Request 1.17

SVEC Data Request 1.17

Refer to PacifiCorp's Answer at page 7. Please identify on an hourly basis the amount BPA has under scheduled "its deliveries to Surprise Valley, in relation to Surprise Valley's actual load" for the past twelve months. Please provide all supporting documentation.

Response to SVEC Data Request 1.17

PacifiCorp objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. PacifiCorp's transmission service to the Bonneville Power Administration (BPA) is not at issue in the complaint. Without waiving its objection, PacifiCorp responds as follows:

PacifiCorp has no information regarding BPA's hourly schedules for Surprise Valley.

UM 1742 / PacifiCorp
October 26, 2015
SVEC Data Request 1.18

SVEC Data Request 1.18

Refer to PacifiCorp's Answer at page 8. Please identify on an hourly basis the amount BPA has over scheduled "its deliveries to Surprise Valley, in relation to Surprise Valley's actual load" for the past twelve months. Please provide all supporting documentation.

Response to SVEC Data Request 1.18

PacifiCorp objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. PacifiCorp's transmission service to the Bonneville Power Administration (BPA) is not at issue in the complaint. Without waiving its objection, PacifiCorp responds as follows:

PacifiCorp has no information regarding BPA's hourly schedules for Surprise Valley.

SVEC Data Request 1.19

Refer to PacifiCorp's Answer at page 8. Please identify when and provide all documents regarding how PacifiCorp informed Surprise Valley of the existence of the General Transfer Agreement (GTA) between BPA and PacifiCorp. If the date and documents are confidential settlement discussions, please identify the approximate date when PacifiCorp informed Surprise Valley of the existence of the GTA between BPA and PacifiCorp.

Response to SVEC Data Request 1.19

PacifiCorp objects to this request as not reasonably calculated to lead to the discovery of admissible evidence to the extent that it requests information related to confidential settlement discussions between PacifiCorp and Surprise Valley and/or information already in Surprise Valley's possession. Without waiving its objection, PacifiCorp responds as follows:

The General Transfer Agreement (GTA) is a publically available PacifiCorp Federal Energy Regulatory Commission (FERC) Rate Schedule accessible on the FERC website. The GTA is also the contractual arrangement under which Bonneville Power Administration (BPA) delivers power to Surprise Valley and other BPA customers interconnected to PacifiCorp's electric system. The Company assumed that Surprise Valley would have reviewed any transmission arrangements, specifically the GTA, as part of due diligence prior to executing any agreement to purchase power from BPA. Please refer to Attachment SVEC 1.19.

SVEC Data Request 1.21

Refer to PacifiCorp's Answer at page 8. Please identify what modifications to the GTA are necessary so that the Paisley Project's net output would not merely reduced the load metered at the points identified in the GTA.

Response to SVEC Data Request 1.21

The General Transfer Agreement (GTA) does not identify any behind-the-meter generation on Surprise Valley's system. Section 5 of the GTA states that the "Transferor" (PacifiCorp) shall make electric power and energy available at all times during the term of the agreement "in the amount of [Bonneville Power Administration's] requirements at such points and at the approximate voltages specified...." Bonneville Power Administration's (BPA) requirements at such points are determined "from measurements made by meters installed at the locations and in the circuits specified in [Exhibit] B...." The metering identified in Exhibit B, Table 18, Revision No. 3 to the GTA states that metering at the Lakeview Point of Delivery (POD) (the proposed delivery point for Paisley net output to PacifiCorp) is the 69 kilovolt (kV) circuit over which electric power and energy flows for delivery to Surprise Valley. Absent any modification to Section 5 or Exhibit B, and possibly other provisions, PacifiCorp's transmission obligation to BPA under the GTA would be based solely on the metered readings in the Lakeview substation. Those meter readings would be reduced by any behind-the-meter generation. The GTA could be modified in a number of ways to account for behind-the-meter generation, subject to negotiation between the parties to that agreement.