

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1742**

Surprise Valley Electrification Corp.,	)	
Complainant,	)	SURPRISE VALLEY
	)	ELECTRIFICATION CORP.'S
v.	)	MOTION TO COMPEL DISCOVERY
	)	
PacifiCorp, dba Pacific Power,	)	
Defendant.	)	
	)	
	)	

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**I. INTRODUCTION**

Surprise Valley Electrification Corp. (“Surprise Valley”) files this motion to compel discovery, requesting that the Oregon Public Utility Commission (the “Commission” or “OPUC”) Administrative Law Judge (“ALJ”) Michael Grant require PacifiCorp to provide full and complete answers to Surprise Valley’s data request 12.1(c), contained in Attachment 5. ALJ Grant has already had to compel PacifiCorp to comply with the rules of discovery once in this proceeding.<sup>1</sup> Yet PacifiCorp has continued to repeatedly refuse to provide information within PacifiCorp’s possession that is likely to lead to discovery of admissible evidence that will assist the Commission in resolving this dispute.

Through this motion, Surprise Valley seeks the last-known addresses of former PacifiCorp employees whom PacifiCorp admits have knowledge of the underlying facts

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<sup>1</sup> See Ruling: Motion to Compel Granted, Docket No. UM 1742 (Nov. 19, 2015).  
<sup>2</sup> See Attachment 5. Other former employees identified are Michael Reid, who was a PacifiCorp attorney involved in PPA negotiations, Natalie Wessling, Howard Ferris, and Phil Ricker. Howard Ferris is listed as employed by PacifiCorp on in PacifiCorp’s response to Surprise Valley data request 12.1(c);

in dispute. Without those addresses, Surprise Valley cannot exercise its statutory right to issue subpoenas and depose critical witnesses. And, without such depositions, Surprise Valley will be unable to: 1) fully test the accuracy of PacifiCorp's assertions made in interrogatory-style data requests; and 2) fill in the many gaps in several of PacifiCorp's data responses. Surprise Valley's counsel and experts will be unable meaningfully cross-examine and rebut PacifiCorp's chosen witnesses, who are trained and paid to tell PacifiCorp's story.

The request to provide addresses within a party's possession is a stock discovery request. In fact, Oregon Rule of Civil Procedure ("ORCP") 36B(1) specifically states that a party may use discovery to obtain the "the identity or location of persons having knowledge of any discoverable matter." The Commission's administrative rules do not curtail that right. PacifiCorp's contrary position fails because it would allow PacifiCorp to unilaterally determine what information Surprise Valley may obtain and who Surprise Valley may ask questions of in depositions and/or cross examination. Therefore, for the reasons explained in more detail below, the ALJ should compel PacifiCorp to produce the addresses. Specifically, Surprise Valley seeks the last-known addresses of the following former employees: John Younie, Jim Partouw, and Eric Birch.<sup>2</sup>

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<sup>2</sup> See Attachment 5. Other former employees identified are Michael Reid, who was a PacifiCorp attorney involved in PPA negotiations, Natalie Wessling, Howard Ferris, and Phil Ricker. Howard Ferris is listed as employed by PacifiCorp on in PacifiCorp's response to Surprise Valley data request 12.1(c); however, PacifiCorp has subsequently informed Surprise Valley that the Company no longer employs Mr. Ferris. At this time, Surprise Valley does not intend to call any of these individuals witnesses or subpoena them, and their addresses are not included in this motion to compel.

## II. MEET AND CONFER CERTIFICATION

Counsel for Surprise Valley certifies that the parties have conferred and been unable to resolve the dispute. Surprise Valley has attached four email strings to this motion, which demonstrate the long-standing and extensive efforts by counsel for Surprise Valley. As demonstrated therein, Surprise Valley first sought to obtain complete interrogatory-style responses regarding the details of PacifiCorp's metering and transmission requirements.<sup>3</sup> After finding that discovery method to be time-consuming and costly, Surprise Valley ultimately sought to simply obtain contact information for the individuals PacifiCorp has identified as possessing information about these matters. Despite these attempts, as explained in this motion, the parties appear to have a fundamental disagreement regarding the right to conduct independent discovery of individuals not designated by the regulated utility as its spokesperson. Specific to this motion, PacifiCorp has clearly refused to simply provide the contact information for its former employees who were directly involved processing Surprise Valley's request for a qualifying facility ("QF") contract and related transmission arrangements PacifiCorp believes are necessary before it will purchase the net output of the Paisley Project.<sup>4</sup>

## III. BACKGROUND

Since commencement of this proceeding, Surprise Valley has sought to understand the grounds that PacifiCorp has raised for its refusal to enter into a power purchase agreement ("PPA") with Surprise Valley. Through its answer and its written

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<sup>3</sup> See also SVEC/200, Culp/28, 35 and SVEC/300, Saleba-Tabone/25, 30-31 (describing the difficulty in obtaining this information through the discovery process and citing to relevant PacifiCorp responses to Surprise Valley data requests).

<sup>4</sup> See Attachment 3 at p. 1, and Attachment 4 at p. 2-4.

discovery responses to date, the primary grounds that PacifiCorp has raised are: 1) insufficient metering is in place to allow for PacifiCorp to accept Surprise Valley's entire net output onto PacifiCorp's system; and 2) Surprise Valley does not possess "transmission arrangements" across Surprise Valley's own system that PacifiCorp deems suitable. Yet PacifiCorp has refused to provide complete written answers in discovery as to whether there are any remaining metering issues, and what transmission arrangements would allow PacifiCorp to enter into a PPA with Surprise Valley.

On August 26, 2014, less than a week after PacifiCorp's avoided cost rates dropped, PacifiCorp for the first time informed Surprise Valley that it would not enter into PPA. PacifiCorp's QF contract administrator, Bruce Griswold, stated that the grounds for refusal to enter into a PPA were that the Company does "not have a final confirmation on the metering, the cost of the metering, agreement in place on who pays for metering and whether that metering schemes without a doubt clearly shows that your project is delivering power to our system."<sup>5</sup> Prior to filing of the complaint, PacifiCorp never communicated to Surprise Valley the additional steps Surprise Valley must take to resolve this apparent metering issue. Nor did it ever clearly explain the problem.

Thus, Surprise Valley has sought in discovery to identify the type of metering that would allow Surprise Valley to "without a doubt" clearly show that the Paisley Project "is delivering power to [PacifiCorp's] system."<sup>6</sup> PacifiCorp has refused to provide clear written answers in discovery.<sup>7</sup> Thus, even after hiring experts to evaluate the material

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<sup>5</sup> SVEC/202, Culp/83.

<sup>6</sup> Id.

<sup>7</sup> E.g., SVEC/200, Culp/28, 35, n. 43, 55; SVEC/300, Saleba-Tabone/24, 30-31 n. 25, 30-31.

supplied by PacifiCorp in discovery thus far, it remains a mystery to Surprise Valley what additional metering (if any) would satisfy PacifiCorp.<sup>8</sup>

Additionally, in its answer to Surprise Valley's complaint, PacifiCorp for the first time raised the issue that Surprise Valley had not provided "transmission arrangements" over Surprise Valley's own system to deliver the net output of the Paisley Project.<sup>9</sup> Surprise Valley always understood that it would transmit the QF's entire net output across its system.<sup>10</sup> Surprise Valley also possesses sufficient firm capacity on its own system to ensure that uninterrupted energy transfers are made to PacifiCorp's system equal to the QF's net output.<sup>11</sup> Surprise Valley was therefore surprised by PacifiCorp's position in its answer because the need for additional transmission arrangements was never articulated to Surprise Valley during the many months of negotiations. In fact, internal correspondence produced in discovery reveals that PacifiCorp's own employees understood that there would be no documented third-party transmission arrangements across Surprise Valley's own system. SVEC/300, Saleba-Tabone/18-22.

Thus, Surprise Valley has propounded numerous data requests seeking to understand: 1) *precisely* what transmission arrangements would satisfy PacifiCorp; 2) whether these transmission requirements are a technical necessity imposed by PacifiCorp's transmission function or a commercial preference imposed by PacifiCorp's merchant personnel; 3) whether these requirements were created before or after the avoided cost rates decreased; 4) when PacifiCorp believes that it clearly communicated

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<sup>8</sup> SVEC/300, Saleba-Tabone/23-24, n.25.

<sup>9</sup> See PacifiCorp's Answer at p. 3:3-11, p. 3 n. 5, p. 4:19-20, Pars. 12 & 147.

<sup>10</sup> SVEC/200, Culp/13-14, 23.

<sup>11</sup> SVEC/400, Anderson/3-9.

its alleged transmission requirements to Surprise Valley; and 5) whether PacifiCorp's transmission function has the capability to accept the Paisley Project's net output.<sup>12</sup>

It now appears from written discovery responses that PacifiCorp's litigation position is that Surprise Valley must enter into a point-to-point transmission agreement with itself and must deliver its QF output in pre-scheduled, whole megawatt-hour ("MWh") blocks.<sup>13</sup> PacifiCorp appears to believe that delivering in whole-MWh blocks requires the QF to package its kilowatt-hour ("kWh") net output up into the larger MWh blocks with non-QF imbalance energy. While it is not clear, PacifiCorp appears to be insisting that Surprise Valley create its own balancing authority, or purchase unspecified scheduling, imbalance, and possibly other ancillary services from PacifiCorp Transmission because the QF is located in PacifiCorp's balancing authority.<sup>14</sup> After over two and half years since contacting PacifiCorp ESM about selling the net output of the Paisley Project, PacifiCorp continues to refuse to explain what specific ancillary services

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<sup>12</sup> See, e.g., SVEC/300, Saleba-Tabone/30 & n.30; see also Ruling: Motion to Compel Granted, Docket No. UM 1742 (Nov. 19, 2015) (compelling production of some material on this topic).

<sup>13</sup> SVEC/300, Saleba-Tabone/28-34.

<sup>14</sup> Id. The Federal Energy Regulatory Commission ("FERC") has directly ruled that a purchasing utility cannot demand that an off-system QF deliver via whole-MWh blocks under the Public Utility Regulatory Policies Act ("PURPA") or impose other restrictive scheduling requirements upon QFs. PáTu Wind Farm, LLC v. Portland Gen. Elec. Co., 151 FERC ¶ 61,223, P 46 (2015). Surprise Valley reserves the right to demonstrate that PacifiCorp cannot lawfully impose the MWh-block scheduling requirement on Surprise Valley. However, since PacifiCorp has raised the MWh-block scheduling requirement as its defense, Surprise Valley is entitled to conduct complete discovery into the basis for that requirement.

it is requiring or even willing to accept. Surprise Valley has only obtained this limited knowledge of PacifiCorp's position after twelve rounds of discovery.<sup>15</sup>

Yet Surprise Valley still lacks a clear understanding of the basis for PacifiCorp's position or what PacifiCorp really wants. It is still unknown whether the MWh-block is a technical necessity imposed by PacifiCorp's transmission function or a commercial preference imposed by PacifiCorp's merchant personnel. It also unknown whether there is any less restrictive form of transmission arrangement that PacifiCorp Transmission has the technical capabilities to accept from Surprise Valley's QF, such as the simply deliveries of the entire net output without costly new metering or whole-MWh blocks as proposed by Surprise Valley's witness.<sup>16</sup> Surprise Valley questions whether PacifiCorp's transmission personnel truly believe that MWh-block delivery is necessary or appropriate, given that Surprise Valley's experts believe it is not and that the Kootenai Electric Cooperative, Inc. QF was able to deliver under identical circumstances without MWh blocks supplemented with non-QF imbalance energy.<sup>17</sup> Further, as the twelve rounds of written data requests demonstrate, obtaining this information through a written interrogatory-style response is time-consuming, expensive, and ultimately fruitless for Surprise Valley. Surprise Valley must wait 14 days to receive PacifiCorp's written response to each question, and then must follow-up with additional requests when the

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<sup>15</sup> Surprise Valley has never refused to provide additional "transmission arrangements" to PacifiCorp. Surprise Valley may be willing to provide additional "transmission arrangements" to PacifiCorp, including purchasing them from PacifiCorp Transmission, if PacifiCorp would simply tell Surprise Valley what it wants Surprise Valley to provide.

<sup>16</sup> See SVEC/400, Anderson/3-9.

<sup>17</sup> See SVEC/300, Saleba-Tabone/14-15, 21-22, 32, 34-35; SVEC/500, Dolan/5-10.

response is evasive or incomplete. This process through twelve rounds of discovery has caused massive delays in this case.

Thus, Surprise Valley concluded that it may be more fruitful to investigate these issues through questioning of individuals with knowledge of the Surprise Valley transmission investigations and PPA negotiations, such as current and former PacifiCorp employees with personal knowledge of the matter. Simply questioning individuals with knowledge, under oath, is more likely to quickly produce the relevant information Surprise Valley seeks.

After initially objecting and providing very little, PacifiCorp has identified and provided the names of all current and former employees engaged in processing Surprise Valley's PPA request and the transmission implementation steps needed to allow PacifiCorp to accept Surprise Valley's entire net output through its supplemental response to data request 1.35.<sup>18</sup> PacifiCorp also provided, after objecting and initially only under cover of confidentiality, the names of its current and former employees involved in compiling several itemized data requests in supplemental response to data request 12.1.<sup>19</sup> However, PacifiCorp continues to object to providing Surprise Valley with the addresses of its former employees, as requested informally through emails and as requested formally in data request 12.1(c).<sup>20</sup> PacifiCorp does not deny that it possesses the last-known addresses of the three former employees at issue. Yet PacifiCorp has agreed to only provide the phone numbers of these individuals on a confidential basis, which precludes the ability to subpoena them.

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<sup>18</sup> See Attachment 5.

<sup>19</sup> See id.

<sup>20</sup> See id.; see also Attachment 3 at p. 1.



As demonstrated in the attached email correspondence, Surprise Valley informed PacifiCorp of its intent to depose current and former PacifiCorp employees in January 2016, and has diligently attempted to obtain the contact information for those individuals. Surprise Valley had agreed that, in order to move the case forward, it would file its direct testimony based upon what information it has been able to obtain and then conduct depositions of some current and former employees in order to be prepared to respond to PacifiCorp's apparent position. PacifiCorp agreed to the schedule based on these assumptions.

Surprise Valley possesses PacifiCorp's address, and can therefore properly file subpoena's for current PacifiCorp employees at their place of employment. However, at this point, Surprise Valley lacks the last-known addresses of PacifiCorp's former employees, and cannot therefore even initiate the filing of subpoenas of these individuals in order to attempt to depose them.

#### **IV. LEGAL STANDARD**

In a proceeding before the Commission, discovery is a matter of right, and the Commission follows the Oregon court rules of discovery, to the extent not inconsistent with the Commission's administrative rules.<sup>21</sup> Under the ORCP, a party is entitled to discovery of any matter that is relevant to a claim or defense.<sup>22</sup> Specifically, "parties may inquire regarding any matter, not privileged, which is relevant to the claim or

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<sup>21</sup> OAR § 860-001-0000(1); OAR § 860-001-0500; Re Pacific Power & Light, dba PacifiCorp, Docket No. UE 177, Order No. 08-003 at 2 (2008); Re Portland General Elec. Co., Docket No. UE 102, Order No. 98-294 at 3 (1998)("[d]iscovery is a right afforded to parties in a legal proceeding by our rules and by the Oregon Rules of Civil Procedure, which we follow except where our rules differ.").

<sup>22</sup> ORCP 36(B).

defense of the party seeking discovery or to the claim or defense of any other party, including . . . the identity or location of persons having knowledge of any discoverable matter.”<sup>23</sup> Relevant evidence must: 1) tend to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence; and 2) be of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.<sup>24</sup>

In addition, “[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence.”<sup>25</sup> The Oregon courts and the Commission have affirmed that the information sought need not be admissible itself, as long as it is reasonably calculated to lead to the discovery of admissible evidence.<sup>26</sup>

A party may move to compel production under ORCP 46 if the opposing party is not responsive to the discovery request. On a motion to compel, “an evasive *or incomplete answer* is to be treated as a failure to answer.”<sup>27</sup> The Commission expects parties to err “on the side of producing too much information . . . rather than too little.”<sup>28</sup>

## V. ARGUMENT

Surprise Valley seeks the addresses of the three former employees individuals to issue valid subpoenas to obtain the deposition testimony of the individuals. Although not always used in Commission proceedings, depositions are a basic form of discovery. The

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<sup>23</sup> ORCP 36B(1) (emphasis added).

<sup>24</sup> OAR § 860-001-0450.

<sup>25</sup> ORCP 36(B).

<sup>26</sup> Baker v. English, 324 Or. 585, 588 n.3 (1997); Re Portland Extended Area Service Region, Docket No. UM 261, Order No. 91-958 at 5 (July 31, 1991).

<sup>27</sup> ORCP 46A(3) (emphasis added).

<sup>28</sup> Re Portland General Electric Co., Docket No. UE 196, Order No. 09-046 at 8 (Feb. 5, 2009).

useful purposes of a deposition are numerous and include: 1) to allow Surprise Valley to determine knowledge of relevant facts; 2) to create admissions for use at the hearing; 3) to obtain and preserve testimony of witnesses that PacifiCorp is unlikely to offer itself; 4) to develop information that will be relied upon by Surprise Valley's experts and counsel in developing cross examination of PacifiCorp's expert and lay witnesses; and 5) to simply learn additional background information for further investigation and discovery. As explained below, each of the former employees at issue possesses relevant information, and therefore Surprise Valley is statutorily entitled to obtain their addresses to subpoena and depose them.

**A. The Rules Specifically Entitle Surprise Valley to the Former Employees' Locations and Addresses.**

As noted above, the applicable rules specifically provide that PacifiCorp must provide "*the identity or location of persons having knowledge of any discoverable matter.*"<sup>29</sup> It is well established that the last-known locations of potential witnesses are subject to discovery.<sup>30</sup>

PacifiCorp has stated that it intends to protect its employees or has confidentiality concerns, but that is no excuse. In a civil dispute, the courts regularly require disclosure of far larger lists of former employees' contact information than that sought here.<sup>31</sup> If a

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<sup>29</sup> ORCP 36B(1).

<sup>30</sup> See, e.g., Robinson v. Jones Lang LaSalle Americas, Inc., 2012 WL 3763545, at \*3 (D. Or. Aug. 29, 2012) (ruling, in employment case, "plaintiff must identify the name, address and telephone number of the employer, dates of employment, and position for all employment since July 1, 1998, approximately ten years prior to the beginning of her work with" defendant employer).

<sup>31</sup> See Margulies v. Tri-County Metro. Transp. Dist. of Or., 2013 WL 5593040, at \*22 (D. Or. Oct. 10, 2013) (ordering TriMet to produce the names, mailing addresses, and email addresses for all of its current and former bus and train operators that were employed on or after January 22, 2010).

former employees' location was confidential, no subpoena could ever issue to compel such persons to testify in court. There is no basis to provide heightened protection to PacifiCorp's former employees.

PacifiCorp has not denied that it possesses the last-known addresses of the former employees in supplemental response to data request 1.35. Therefore, PacifiCorp must supply those addresses a matter of law.

**B. The Former Employees Are Likely to Possess Relevant Information.**

There is no question that the witnesses have knowledge regarding matters that are relevant to this proceeding. The former employees include: John Younie, Jim Partouw, and Eric Birch.<sup>32</sup> PacifiCorp's own data response demonstrates that the witnesses at issue directly worked on either the transmission and metering arrangements for acceptance of Surprise Valley's net output or were involved in the PPA negotiations.<sup>33</sup> Both topics are relevant.

Mr. Younie was the primary point of contact on the PPA negotiations with Surprise Valley frequently inquired into the status of PacifiCorp Transmission's review of the transmission arrangements.<sup>34</sup> During the time period of August 2013 to August 2014, Mr. Younie was in frequent and sometimes near daily contact with Surprise Valley, and is the individual with the most personal knowledge regarding what PacifiCorp communicated to Surprise Valley regarding most of the factual issues in this proceeding.

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<sup>32</sup> See Attachment 5. At this time, Surprise Valley does not intend to call other employees who were employed with the Company, and their addresses are not included in this motion to compel.

<sup>33</sup> Id.

<sup>34</sup> SVEC/200, Culp/4-18.

Mr. Partouw is a merchant function employee, and PacifiCorp describes his role as being involved in the network transmission service request on PacifiCorp's system to accept the net output of the Paisley Project.<sup>35</sup> Mr. Portouw was directly involved in evaluating the ability accept the project's new output and deliver it to PacifiCorp loads as a network resource, and specifically stated to other PacifiCorp employees: "Do not anticipate any issues."<sup>36</sup> He was deeply involved in processing the Surprise Valley transmission designations, which he recognized was the "first time we will contract for a resource on another customers system within PACW BAA."<sup>37</sup> Mr. Portouw is likely to possess information pertinent to how so many issues could have arisen and how it could be so difficult to resolve them, but PacifiCorp is unlikely to offer him as a witness and Surprise Valley cannot compel his testimony without his address for a subpoena.

Mr. Birch is a former transmission employee who was involved in evaluating the metering and transmission implementation for the QF.<sup>38</sup> The record already demonstrates that Mr. Birch will possess useful information on the critical unanswered questions. According to Mr. Younie's Schedule 37 worksheet dated August 22, 2013, Mr. Birch was the PacifiCorp employee who was "doing the study" on the "Status of interconnection or transmission arrangement" necessary to complete the QF transaction.<sup>39</sup> He was still designated in April 2014 by Mr. Younie as the person who would determine

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<sup>35</sup> See Attachment 5.

<sup>36</sup> SVEC/202, Culp/15.

<sup>37</sup> SVEC/202, Culp/25; see also id. at 15-16, 27, 36-38, 67.

<sup>38</sup> See id.

<sup>39</sup> SVEC/202, Culp/6.

the steps necessary to bring the project online.<sup>40</sup> He was engaged in direct communications regarding the transmission needs with Surprise Valley personnel.<sup>41</sup>

In fact, ALJ Grant has already ruled that the topic of PacifiCorp's transmission function is relevant.<sup>42</sup> It therefore follows that the former transmission function employees are likely to possess relevant information, if they are among the individuals who processed the network transmission request and metering arrangements that would have allowed acceptance of Surprise Valley's entire net output.

Likewise, ALJ Grant has also ruled that the topic of QF contracts is relevant, even on a Company-wide basis.<sup>43</sup> The former employees who negotiated several of those contracts and were specifically involved in negotiating the transaction with Surprise Valley, such as John Younie, and possess information relevant to why the parties reached an impasse.

**C. Surprise Valley Is Entitled to Depose Any Individuals Who May Possess Relevant Information.**

The thrust of PacifiCorp's objection to providing contact information for potential witnesses to the proceeding is that depositions may not be used in Commission

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<sup>40</sup> Id. at 69.

<sup>41</sup> SVEC/200, Culp/38-39.

<sup>42</sup> See Ruling: Motion to Compel Granted, Docket No. UM 1742, at 2 (Nov. 19, 2015) ("Surprise Valley seeks information related to PacifiCorp's transmission function and its network transmission service under its Open Access Transmission Tariff (OATT). PacifiCorp is correct that Surprise Valley's complaint arose from its effort to obtain a PPA, but the company's defense that its transmission function lacks the capability to accept the entire net output makes Surprise Valley's data request 1.47 relevant to this proceeding.")

<sup>43</sup> See Ruling: Motion to Compel Granted, Docket No. UM 1742, at 1 (Nov. 19, 2015) (granting motion to compel discovery of PacifiCorp's QF contracts and, stating "Surprise Valley is entitled to investigate whether PacifiCorp has been willing to accept power delivered through displacement with other qualifying facilities, as well as whether the company has agreed to any unique delivery arrangements in its other contracts.")

proceedings on individuals who possess relevant information unless PacifiCorp designates that person as its spokesperson. Surprise Valley has not even been able to file subpoenas to formally request depositions.<sup>44</sup> In essence, then, PacifiCorp seeks to quash a subpoena before it is even filed by withholding the contact information needed to file the subpoena. This procedural tactic ignores that Surprise Valley has the right to independently conduct discovery into relevant matters, including through the use of depositions of witnesses that PacifiCorp would prefer to keep quiet.

Oregon law specifically provides a party to a Commission proceeding with the right to conduct depositions. ORS § 756.538(2) states: “In any proceeding requiring a hearing, the commission or any party to the proceeding may take the testimony of *any person* by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the proceeding, or for both purposes.” (emphasis added.) The language of the statute is unambiguous and therefore settles the issue.

PacifiCorp’s position that it gets to pick the witnesses Surprise Valley may call is further belied by ORS § 756.543, which specifically entitles any party to issue a subpoena to non-parties. That section states:

(1) The Public Utility Commission shall issue subpoenas to any party to a proceeding before the commission upon request and proper showing of the general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, *other than the parties or their officers or employees*, or employees of the commission, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). If the commission certifies that the testimony of a witness was relevant and material, any person who paid fees and mileage to that witness shall be reimbursed by the commission and from moneys referred to in ORS 756.360, subject to the limitations provided in ORS 756.360.

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<sup>44</sup> Surprise Valley reserves the right to depose additional individuals who are still employed by PacifiCorp or who may become former employees during this proceeding.

The statutory provision that says witnesses that appear by subpoena, other than the parties or their officers or employees of the commission, would be superfluous if you could only depose individuals that a party elects to sponsor. Accordingly, Surprise Valley has a statutory right to obtain issuance of subpoenas to depose any current or former employee of PacifiCorp with knowledge of the matters at hand and even compel them to appear at the hearing if necessary.

Despite these clear statutory directives, PacifiCorp argues that the Commission's administrative rules allow the defendant to choose who the plaintiff will depose.<sup>45</sup> But none of the provisions of the administrative rules bar Surprise Valley from choosing which individuals with relevant information it will depose. PacifiCorp has pointed to OAR § 860-001-0520(1), which states: "The testimony of *a witness* may be taken by deposition at any time before the record in a docket is closed." (emphasis added.) PacifiCorp argues that the rule unequivocally establishes that depositions may only be had of witnesses previously identified in the contested case by PacifiCorp. But the rule does not state that. There is no qualifier to the word "witness" in the rule that limits the witnesses a party may call, and as noted above the statutes specifically allow Surprise Valley to compel non-parties of its choosing to become witnesses.<sup>46</sup>

PacifiCorp has also pointed to In re Portland Gen. Elec. Co.: Application to Amortize the Boardman Deferral, Docket No. UE 196, Order No. 10-051, at 4-5 (Feb. 11, 2010). There, parties sought to impose discovery sanctions, *after the close of discovery and without filing a motion to compel*, against Portland General Electric Company

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<sup>45</sup> See Attachment 2 at p. 2.

<sup>46</sup> See ORS § 756.543.



(“PGE”) for its refusal to disclose information in the possession of non-parties, where PGE was uniquely positioned to obtain that information. The Commission ruled that PGE had not been as forthcoming as it should have been, and rejected PGE’s argument that the parties should have sought to obtain the information directly instead of obtaining it from PGE.<sup>47</sup> It then stated, in dicta, “Under OAR 860-014-0070 and 860-014-0065, data requests may only be served on parties to the proceeding and depositions may only be taken of witnesses in the proceeding.”<sup>48</sup> But the order is clearly distinguishable. It did not deny an attempt to independently obtain information from non-parties, as allowed by Oregon statutes. Indeed, the Commission specifically “encourage[d] . . . parties to bring discovery disputes to the Commission’s attention early in the proceedings, rather than in testimony and briefing, so the Commission can react appropriately” – just as Surprise Valley is doing here, for the second time in this proceeding.<sup>49</sup>

In any event, Oregon’s statutes only allow the Commission to promulgate administrative rules “concerning the manner of applying for and taking depositions and the use thereof.”<sup>50</sup> There is no lawful basis to categorically bar depositions of individuals whom the regulated utility prefers to keep in the dark. Therefore, PacifiCorp’s reading of the administrative rules would contravene the mandates of the statute and, if adopted, would render the Commission’s rule ineffective.<sup>51</sup> The Commission cannot “blindly to

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<sup>47</sup> In re Portland Gen. Elec. Co.: Application to Amortize the Boardman Deferral, Order No. 10-051 at 5 (Feb. 11, 2010).

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> ORS § 756.538.

<sup>51</sup> See Schultz v. Springfield Forest Products, 151 Or. App. 727, 731, 951 P.2d 169 (1997) (“If the agency concludes that an administrative rule that it must apply is not in accordance with a statute or is unconstitutional it must follow the superior rather than the subordinate law.”).

apply” any limitations on the use of depositions in the rules when such limitations are plainly “inconsistent with a statute.”<sup>52</sup>

More fundamentally, PacifiCorp’s position, if adopted, would undermine the credibility of the Commission’s proceedings and violate basic notions of due process. Depriving a plaintiff of the right to choose which individuals it will depose would allow a defendant to prevail simply by presenting only witnesses who lack knowledge of information necessary to prove the claims, or who have been trained to carefully “spin” the message the Company wants to convey. While that tactic may be PacifiCorp’s strategy, it cannot be endorsed by the Commission.

PacifiCorp recently used this strategy to successfully prevent cross examination of a PacifiCorp witness about statements made by an employee with Berkshire Hathaway Energy, which owns PacifiCorp. In Docket No. UM 1734, PacifiCorp is seeking to significantly alter its PURPA policies in a manner that will make it extremely difficult, if not impossible, for the vast majority of QFs to obtain financing.

At the evidentiary hearing in UM 1734, counsel attempted to cross examine PacifiCorp’s witness Bruce Griswold regarding testimony at a Congressional hearing made by Jonathan Weisgall, Berkshire Hathaway’s Vice President of Legislative & Regulatory Affairs.<sup>53</sup> Mr. Griswold was the only witness PacifiCorp sponsored in UM 1734. While Mr. Weisgall’s testimony was relevant to the issues in this proceeding and was admitted, the ALJ barred questioning Mr. Griswold because he did not have personal

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<sup>52</sup>

Id.

<sup>53</sup>

In the Matter of PACIFICORP, dba PACIFIC POWER's Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap, Docket No. UM 1734, Hearing Transcript at 25, line 2 to 28, line 4 (“UM 1734 Tr.”) (which has been marked “Attachment 6”).

knowledge of Mr. Weisgall's testimony.<sup>54</sup> PacifiCorp's interpretation of the rules in this proceeding, combined with its efforts to bar cross examination of its own witnesses on relevant statements made by its corporate owners or employees, will effectively prevent Surprise Valley from obtaining relevant factual information on the key issues in this proceeding.

In sum, this dispute presents the simple question of whether Surprise Valley has the right to conduct its own independent investigation into the completeness and accuracy of PacifiCorp's position. The answer is easy. Surprise Valley is not limited to obtaining PacifiCorp's version of the facts through its interrogatory responses or through cross-examination of PacifiCorp's chosen spokesperson.<sup>55</sup> Surprise Valley is entitled to the contact information of potential witnesses it may call at deposition or the hearing.

## VI. CONCLUSION

For the reasons discussed above, Surprise Valley respectfully requests that the ALJ require PacifiCorp to provide complete responses to Surprise Valley data request data request 12.1(c), contained in Attachment 4 hereto.


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<sup>54</sup> UM 1734 Tr. at 27, lines 16-22 ("I don't think it is appropriate for you to examine Mr. Griswold, who [has] no knowledge and I think has not been shown to have had any discussions with either the witness before the federal agency or with any of those involved in preparing that testimony. So he would have no insights to offer, reasonably could be expected in this proceeding.")

<sup>55</sup> See Flynn v. Portland Gen. Elec. Corp., 1989 WL 112802, at \*2 (D. Or. Sept. 21, 1989) (compelling production of "cover sheets of deposition transcripts from a prior case, and the names and addresses of the deponents, in order to allow [movants] to conduct independent discovery" – even though the details of the prior case were subject to confidentiality agreement).

Dated this 28th day of March, 2016.

Respectfully submitted,

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

---

Irion A. Sanger  
Sanger Law, PC  
1117 SE 53rd Avenue  
Portland, OR 97215  
Telephone: 503-756-7533  
Fax: 503-334-2235  
irion@sanger-law.com

Attachment 1

First Email String

**Subject:** RE: UM 1742

**Date:** Friday, February 12, 2016 at 2:35:06 PM Pacific Standard Time

**From:** McVee, Matthew

**To:** Irion Sanger

**CC:** Hardie, Lisa

Irion – The requirements for off-system QFs to sell net output to a public utility to which the QF is not interconnected are clear. FERC has specifically held that it is the QF's obligation to deliver energy to the point of interconnection with the purchasing utility. PacifiCorp's requirements to enter into a PPA with an off-system QF in Oregon are identified in the standard agreement, which has been through a regulatory process. PacifiCorp has provided information regarding the ancillary services identified in the PPA in negotiations. PacifiCorp has also identified the data requirements to accomplish firm delivery. If you are seeking to discuss delivery in compliance with the standard PPA, PacifiCorp is always willing to discuss. However, PacifiCorp is not comfortable negotiating through DRs. If Surprise Valley wants to discuss a resolution involving a transmission arrangement for delivery, I can schedule a call to discuss.

Regarding 9.8, you state that “[Surprise Valley is] entitled to know when ESM provided information to Transmission, and when ESM received information from Transmission.” PacifiCorp provided the dates and is willing to supplement the response to explain that FERC has determined that constant revisions to the NITSA are not required for new generation.

PacifiCorp will respond to your revision to the language of 10.1 and provide the names of all individuals who worked on the transmission studies.

PacifiCorp will provide these revisions no later than next Wednesday.

Regarding your reference to the Transfer Agreement, that is a completely different situation. It does not involve a power sale. It is a pass through. Again, PacifiCorp is willing to discuss as a possible resolution, but the Transfer Agreement is well outside the scope of the complaint.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]

**Sent:** Wednesday, February 10, 2016 7:33 PM

**To:** McVee, Matthew

**Cc:** Hardie, Lisa

**Subject:** [INTERNET] Re: UM 1742

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Matt

The response to DR 1.31 is incomprehensible and provides no clear guidance. PacifiCorp has known about Surprise Valley wanting to sell power for years now. Under PacifiCorp's view of what transmission arrangements need to be provided (which we are still unclear about), what metering is necessary? It is a very simple question and very easy to answer, which you can either give us in writing or we can ask in person.

We are not clear as to what ancillary services would apply, and it is unreasonable for us to guess what you think should apply. There is only a limited number of them, and it would be very easy for you to answer. It took years and

numerous data requests for ESM to even tell us that it would accept (at least some) them from Transmission. Our questions are very simple and basic, and very easy to answer, which you can give us in writing or we can ask in person.

Regarding 9.8, we have asked when ESM provided Transmission information, when Transmission provided ESM information, and when ESM communicated information to SVEC. We are entitled to know when PacifiCorp believes ESM communicated certain information to SVEC. You have provided similar information about when ESM communicated information to SVEC in other data responses. We are entitled to know when ESM provided information to Transmission, and when ESM received information from Transmission. Again, you can just give us this information, or we can ask about it in person.

The roles have been reversed and SVEC provides transmission service to PacifiCorp. SVEC does not require anything like this, and (if it did) SVEC would at least tell PacifiCorp what it wants.

From your email, you state that it is hard to understand that we cannot understand basic transmission issues. Please pretend for a moment that SVEC, SVEC's former lawyer working on this, SVEC's FERC lawyer, other PURPA lawyers I have talked to, myself, and our consultants are really stupid and spell in out in basic English what is required. For example, if SVEC makes an off system sale, SVEC needs x, y and z, and then the metering will or will not be required.

I believe that you are intentionally refusing to provide us with this basic information, and I am done trying to resolve this issue. It would be great if you provide the information, but I am not expecting it.

Again, please provide in writing the information that you are willing to provide and let me know when it can be provided, and then we can set a schedule for the rest of the case.

**Irion Sanger**

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---

**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Wednesday, February 10, 2016 at 3:47 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: UM 1742

See the response to DR 1.31. It all depends on the form of delivery and the form of agreement Surprise Valley executes.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Wednesday, February 10, 2016 3:43 PM

**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: UM 1742

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Matt

I will respond in detail, but I am not optimistic that these disputes will be resolved, especially given that there are some data responses that you are not willing to answer regardless. Also, unless I missed it, your email does not address whether ESM believes SVEC needs to have the half a million dollars in metering upgrades constructed.

Please let me know when you can provide the information that you are willing to provide in writing so that we can set a schedule.

We have been going back and forth for weeks about these discovery responses, and it is time to move on with testimony, depositions, a hearing, and briefing.

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**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Wednesday, February 10, 2016 at 3:17 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: UM 1742

Irion –

Perhaps it would help this process if we identify the exact language. Your original email specifically stated "Other subparts specifically ask for information regarding PacifiCorp ESM's communications to PacifiCorp transmission." Your email below now appears to be focusing on ESM's communications to Surprise Valley regarding the status of ESM's transmission request. PacifiCorp responded to those portions of the request in its response. PacifiCorp objects to requests for information already in the possession of Surprise Valley. Any such requests are unreasonable and burdensome, and appear intended to limit the Commission's review of relevant evidence through procedural games. If I am misinterpreting the intent, I apologize. If there are specific communications you know exist, but are no longer available to Surprise Valley, PacifiCorp will provide



those.

Regarding the allegedly unknown information regarding transmission and metering, it is hard to understand how Surprise Valley, an electric utility and transmission customer of Bonneville, does not understand these issues. As you say, this is basic information. If your outside experts have not been able to provide advice as to what is needed to support firm delivery that is concerning, given that it is generally well understood in the industry. Additionally, some of your statements below are simply not applicable. For example, the firm delivery required in the standard off-system QF PPA supports a wholesale energy sale - there is no load service, thus no load imbalance is required. Load imbalance would be associated with the ESM NITSA service, which is ESM's responsibility and unrelated to the PPA. Your outside experts should have been able to identify that. I'm also reasonably sure that Surprise Valley would be able to provide transmission across its system, so a purchase of transmission should not be an issue. Furthermore, there is no need for Surprise Valley to form its own BA, ancillary services are available from PacifiCorp Transmission to utilities located within the PacifiCorp BAA - although Surprise Valley has the right to do so or join another BAA - this is explicit in the OATT (and identical to provisions in Bonneville's OATT).

Finally, PacifiCorp disagrees with your continued mischaracterization of the issues in this dispute, the scope of the complaint and position of the parties. It is not accurate to imply that ESM has refused to accept ancillary services provided by PacifiCorp Transmission to facilitate Surprise Valley's firm delivery of the net output from the Paisley Project. You are well aware of the parties discussions to date attempting to resolve this matter, and PacifiCorp's position that it must have assurances that it can account for the energy purchased and delivered. It is difficult to imagine that, if the roles were reversed, Surprise Valley would not require the same data PacifiCorp requires to ensure its customers receive what they are paying for.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Tuesday, February 09, 2016 1:08 PM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: UM 1742

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Matt

Regarding 9.8, every single subpart asks PacifiCorp ESM to "Please also identify the date on which PacifiCorp ESM communicated" or "identify the dates on which PacifiCorp ESM provided". These ask PacifiCorp ESM to provide information about what it did. Surprise Valley also needs the information that PacifiCorp ESM communicate to and received communications from PacifiCorp Transmission and Surprise Valley.

We do not agree that you have fully provided information or that it is appropriate for you to refuse to provide relevant information.

There are major pieces of information that Surprise Valley does not know regarding transmission and metering. We do not know if PacifiCorp believes the half a million dollars to metering upgrades need to occur under its view that SVEC needs to purchase transmission or form its own balancing authority. For example, we do not know whether PacifiCorp ESM wants both generator and load imbalance service. We have retained outside experts, and it is not clear to us what PacifiCorp ESM would accept. It took years and disputes over numerous data requests to get PacifiCorp ESM to state that it would even accept some form of ancillary services from PacifiCorp transmission. There must be some litigation advantage that I have not thought of regarding why you are refusing to provide this basic information.

Please provide whatever information you are willing to provide, and we can set a schedule for the rest of the case. We will obtain this and more information through depositions/cross examination.

**Irion Sanger**

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**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>

**Date:** Friday, February 5, 2016 at 2:22 PM

**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>

**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>

**Subject:** RE: UM 1742

Regarding 9.8, subparts other than d, g and i specifically request dates PacifiCorp ESM took some action. Subparts a, b, c, e, f and h all request "the date by which PacifiCorp Transmission provided PacifiCorp ESM..." You state below that the "Other subparts specifically ask for information regarding PacifiCorp ESM's communications to PacifiCorp transmission." This is not accurate. Please point to the specific subparts.

You then stated that "it is impossible to determine if PacifiCorp ESM delayed processing the studies without knowing when PacifiCorp Transmission provided or communicated certain information." PacifiCorp has provided all of the dates associated with the provision of documents from PacifiCorp Transmission to ESM.

Regarding 10.2, PacifiCorp has responded accurately to the request. PacifiCorp has explained the relationship between ESM and PacifiCorp Transmission on numerous occasions, specifically see the response to 1.31 1st Supplement. There is no final confirmation without a pending transmission request.

PacifiCorp reiterates its objection to 9.9 and 10.4.

PacifiCorp will respond to your revision to the language of 10.1 and provide the names of all individuals who worked on the transmission studies.

I also have to say that I too have never experienced this level of difficulty in the discovery process. PacifiCorp has responded to ten sets of data requests, providing responses to the language of the request. PacifiCorp has also provided supplemental responses to accommodate revisions to the language in the data request after the fact. PacifiCorp has even provided responses to request entirely irrelevant to a dispute over a QF PPA. I agree, and apologize for the delay in providing the supplemental response to 8.1, however, given the continued barrage of threats from SVEC, PacifiCorp is understandably cautious. It is, however, hard to understand how further detail regarding operation of a service from PacifiCorp Transmission (identified in the OATT), and not relevant to any of the claims in the complaint, would impair SVEC's processing of the case

currently held in abeyance at SVEC's request. Additionally, I don't know what additional information you need regarding operation of an ancillary services agreement. SVEC is an electric utility taking purchasing ancillary services under its network transmission agreement with Bonneville and should be fully aware of how the system operates.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Friday, February 05, 2016 8:14 AM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: UM 1742

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Matt

I have not heard back for almost a week. We received the responses to the eighth set, which took about a month to provide a long response, which used a lot of words to carefully not provide us any more information.

Please let me know: 1) what additional information you can provide; and 2) when it will be provided. We want to set a schedule for testimony as soon as possible, with testimony due this month.

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**From:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Date:** Saturday, January 30, 2016 at 11:55 AM  
**To:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** Re: UM 1742

Matt

Regarding 9.8 and 10.2, I do not agree to your limited offer to supplement the response based on the items you identified in your January 22, 2015. In regards to 9.8, you wrote: "Accordingly, only subparts d, g and i are

relevant. Subparts d and g were within the timeframes in the OATT. PacifiCorp will clarify that Subpart i.”

I disagree. Other subparts specifically ask for information regarding PacifiCorp ESM’s communications to PacifiCorp transmission. We are not looking to determine if PacifiCorp transmission delayed the process, but whether PacifiCorp ESM delayed the process. However, it is impossible to determine if PacifiCorp ESM delayed processing the studies without knowing when PacifiCorp Transmission provided or communicated certain information.

In regards to 10.2, you state that “Transmission arrangements in an executed agreement between the parties unrelated to the QF PPA at issue in this matter are not relevant.”

This issue is relevant for a number of reasons, including the statement by PacifiCorp ESM that no transmission arrangements are needed, that PacifiCorp tied these issues in the PPA negotiations, and PacifiCorp ESM has refused to state whether or what metering arrangements are needed. Knowing what transmission arrangements PacifiCorp Transmission believes are necessary is relevant. This is not a minor issue as SVEC does not know today, after years of discussions, whether about a half a million dollars in metering needs to be installed to make a QF sale to PacifiCorp. Bruce wrote on August 26, 2014 that PacifiCorp ESM does not have final verification of the metering issue and the purpose of determining what metering was needed was the transmission studies. PacifiCorp ESM has made this issue relevant.

Please provide the names of the individuals who worked on the transmission studies.

I want to emphasize that I have never experienced this level of difficulty in the discovery process. There are a number of data responses that the company has provided partial or misleading information that we have let slide. If we cannot resolve this issue, then we will explore more fully other discovery issues in depositions as well.

Please let me know when you can provide all the updated information (8th, 9th and 10th sets) so that we can reset the schedule for testimony and (if necessary) schedule depositions.

**Irion Sanger**

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**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Friday, January 29, 2016 at 3:59 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: UM 1742

Irion –

Regarding 9.4, I can explain the objection more in the response. Regarding 9.8 and 10.2, are you agreeing

with our offer to supplement the response based on the relevant items I identified in my January 22 email? Regarding 9.9, I suggest that we call the ALJ to discuss whether PacifiCorp Transmission's processing of ESM's interconnection request is relevant. If the ALJ agrees, we will provide the information. Regarding 10.4, I have offered to supplement the response subpart c to state that the Transfer Agreement does not meet the requirements of PacifiCorp's standard off-system QF PPA to allow for capacity payments in the standard contract. PacifiCorp will also supplement the response to subpart b.

As to PacifiCorp's response to SVEC 1.35 and 10.1, I don't believe we've discussed any concerns regarding these responses and perhaps this is a terminology issue. SVEC 1.35 requested a listing of all individuals involved in processing SVEC's request for interconnected operations. SVEC 10.1 specifically asked for transmission function employees. A "transmission function employee" is a specific type of employee under FERC regulations. Please clarify if you meant all employees supporting transmission in writing the System Impact Study, Facilities Study, and Construction Agreement arising from AREF # 79456228. We can provide that information.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Tuesday, January 26, 2016 5:15 PM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] UM 1742

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Matt

I want to summarize where I think we are in terms of discovery and schedule.

PacifiCorp has agreed to provide updated responses to the 8th set.

Surprise Valley will drop our request for additional information in response to 9.4, if PacifiCorp will provide an updated response explaining the basis for the objection (the basis you have stated in emails).

We still have outstanding disputes regarding 9.8, 9.9, 10.2 and 10.4. If the company will provide responsive information to 9.8, 9.9 and 10.2, then we will simply submit testimony on the issues in 10.4 and move to strike any PacifiCorp information that could have been submitted on this issue if the company raises it in rebuttal.

If we cannot resolve this discovery dispute, then I do not want to delay our testimony and we will still file in early February (pending the review of the supplemental responses to the 8th set). Instead, we will depose PacifiCorp employees on these and numerous other issues, which can be done after we file our testimony. I have never experienced this level of difficulty in the discovery process. There is a long list of data requests in addition to these in which we are not satisfied with the responses, but we have not pursued or stopped pursuing the matter. Please let me know if you have any changes to PacifiCorp's response to SVEC 1.35 and 10.1.

I am happy to discuss this with you or Sarah.

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Attachment 2

Second Email String

**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)  
**Date:** Monday, March 14, 2016 at 4:13:03 PM Pacific Daylight Time  
**From:** McVee, Matthew  
**To:** Irion Sanger  
**CC:** Hardie, Lisa

With respect to depositions, the language of ORS 860-014-0065 states that only witnesses can be deposed. We believe this refers only to witnesses offering prefiled testimony and subject to cross-examination at hearing. The Oregon PUC has stated, for example, that “[u]nder OAR 860-014-0070 and 860-014-0065, data requests may only be served on parties to the proceeding and depositions may only be taken of witnesses in the proceeding.” In re PGE, Docket No. UE 196, Order No. 10-051 (Feb. 11, 2010). If anybody who is deposed suddenly becomes a “witness” under this rule simply because they have been deposed, the rule becomes circular and this Oregon PUC holding doesn’t make sense. Do you have authority for a different interpretation?

Also, would your goal be to use such deposition testimony as evidence at hearing? If so, how would you intend to address the hearsay issue this raises? The OAR’s limitation on prevents the prejudicial hearsay issues that arise in the context of contested case proceedings and their limited opportunities for live testimony. We think this is the reason the limitation on depositions exists in the Commission rule.

You have previously suggested you will depose PacifiCorp employees on “numerous” issues after Surprise Valley files its direct testimony. PacifiCorp will take steps to enforce the limitation and/or seek necessary additional process to protect PacifiCorp’s rights and prevent the harassment of employees while PacifiCorp prepares its rebuttal testimony.

**From:** Irion Sanger [mailto:irion@sanger-law.com]  
**Sent:** Monday, March 14, 2016 9:11 AM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

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Matt

I am not sure if we intend to introduce the responses as exhibits. I am seeking the information in order to prepare for depositions and cross examination. I want to have Surprise Valley’s personnel familiar with the case and my experts review the materials without have to sign the protective order. I am striving hard to limit use of the protective order. Frankly, given what happened with Sierra Club and the protective order, there is a certain amount of concern about reviewing PacifiCorp confidential material especially information that is publicly available in another form.

I disagree with your interpretation of the procedural rules. I can subpoena an individual to appear as a witness, especially a key factual matter in a litigation. After I subpoena the individual, then they become a witness that I can depose. There are key and critical factual issues that only certain PacifiCorp current and former employees have knowledge of. It would be a violation of fundamental due process to not provide Surprise Valley an opportunity to conduct discovery and question individuals on these key factual issues. I believe this would be a reversible procedural error if the commission prevented us from deposing individuals the company has decided not introduce as witnesses. Obviously, if PacifiCorp would stipulate to certain facts or issues, then we would not need to litigate or conduct discovery on these issues.



Let me know if PacifiCorp is planning on objecting to the deposition of current and former employees that the company may not be intending to call as witnesses. I cannot identify which individuals we plan to depose until I can have my team review the information designated as confidential.

**Irion Sanger**

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**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Thursday, March 10, 2016 at 4:45 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Irion – PacifiCorp has asserted confidentiality to protect its employees. If you anticipate introducing the responses as evidence, we will of course provide public versions. Please let me know if that is your intent and I will have them prepared. If you are simply seeking an understanding of the extent of employees working on responses, is there an issue with maintaining the confidentiality of PacifiCorp's responses? If so, please let me know and we can discuss. Regarding 12.1(c), and depositions, we are willing to discuss any depositions SVEC may wish to take, so long as those depositions (and the related deposition notices) comport with OPUC rules. But we'd note that Oregon Administrative Rules and OPUC precedent limit the taking of depositions to witnesses in a proceeding. For this reason, we are wondering how your request for detailed information on these individuals is likely to lead to the discovery of admissible evidence.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Wednesday, March 09, 2016 4:33 PM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

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---

Matt

I sending this email regarding the 12th set of data requests.

First, I request that you remove the confidentiality from the materials submitted in response to SVEC 12th set of data requests.

There are two groups of documents that are labeled as confidential. First, the list of PacifiCorp employees who helped prepare data responses is listed as confidential. PacifiCorp has already listed the names of these employees in other data responses, and I do not see any reason why they should be considered confidential. Second, the organization chart and list of names of company employees should not be considered confidential. Even if portions are confidential, the majority should not be considered confidential. For example, the fact that Rick Vail is the VP of Transmission is a commonly known fact. The fact that Bruce is the Director of Short Term Origination and QF contracts and is under the Director of Origination is a publicly known fact. If there are portions that you believe are confidential, then it is your responsibility to provide a redacted version of the document.

Second, you appear to misunderstand our data request 12.1(c). We are looking for the contact information listed in 1.35. We may depose these individuals and we need their contact information.

**Irion Sanger**

Sanger Law PC  
1117 SE 53rd Ave  
Portland OR 97215

503-756-7533 (tel)  
503-334-2235 (fax)  
[irion@sanger-law.com](mailto:irion@sanger-law.com)

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---

**From:** "McNay, Kaley" <[Kaley.McNay@pacificorp.com](mailto:Kaley.McNay@pacificorp.com)>  
**Date:** Tuesday, March 1, 2016 at 4:18 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>, Brad Kresge <[bradsvec@frontier.com](mailto:bradsvec@frontier.com)>  
**Cc:** "Stanfill, Dagmar" <[Dagmar.Stanfill@pacificorp.com](mailto:Dagmar.Stanfill@pacificorp.com)>, "Watkins, Betsy" <[Betsy.Watkins@pacificorp.com](mailto:Betsy.Watkins@pacificorp.com)>, C&T Discovery <[ctdiscovery@PacifiCorp.com](mailto:ctdiscovery@PacifiCorp.com)>, "Apperson, Erin" <[Erin.Apperson@pacificorp.com](mailto:Erin.Apperson@pacificorp.com)>, "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>, "Kamman, Sarah" <[Sarah.Kamman@pacificorp.com](mailto:Sarah.Kamman@pacificorp.com)>, "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>, "Harkins, Lisa" <[Lisa.Harkins@pacificorp.com](mailto:Lisa.Harkins@pacificorp.com)>, "[karen.kruse@troutmansanders.com](mailto:karen.kruse@troutmansanders.com)" <[karen.kruse@troutmansanders.com](mailto:karen.kruse@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Please see attached for PacifiCorp's Responses to SVEC Set 12 (1-16). Please let me know if you have any trouble opening the attached file.

Thank you.

**Kaley McNay**

PacifiCorp  
Coordinator, Regulatory Operations  
Direct: 503-813-6257

## Attachment 3

### Third Email String

**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)  
**Date:** Tuesday, March 22, 2016 at 4:31:33 PM Pacific Daylight Time  
**From:** McVee, Matthew  
**To:** Irion Sanger  
**CC:** Hardie, Lisa

Irion – You are correct, PacifiCorp will require formal notice of depositions. In our discussions, we agreed to depositions of those employees allowed under the OARs, meaning witnesses.

Regarding a motion to compel, PacifiCorp is not willing to put former employee contact information into the public domain unless ordered by the PUC. However, former employees are not witnesses and cannot bind the company, so there is questionable probative value to support a motion to compel.

Furthermore, Surprise Valley has already presented its direct case and PacifiCorp has not yet had a chance to respond and set the scope for Surprise Valley's Reply Testimony. Depositions, at this time, are unnecessary and are a blatant attempt to interfere with PacifiCorp ability to respond to Surprise Valley's Direct Testimony. PacifiCorp only has six weeks to conduct discovery and file its Rebuttal. Surprise Valley has had eight months to conduct discovery and present its case.

**From:** Irion Sanger [mailto:irion@sanger-law.com]  
**Sent:** Tuesday, March 22, 2016 4:07 PM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

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---

Matt

Thank you for your response.

We would not object to PacifiCorp calling any witnesses that we depose to the hearing, and we never suggested otherwise. We would be seeking information from individuals that PacifiCorp is not (or may not) be calling upon to testify. We are not opposed to PacifiCorp calling any individuals to testify at the hearing, including those that are deposed.

While you did not directly respond to my question, I assume that you are not agreeing to informally schedule depositions.

We will file a motion to compel to at least obtain the contact information for the former PacifiCorp employees. Under the Oregon rules, we cannot serve a notice of deposition without the contact information, which you are not providing. We also cannot serve a deposition with the information deemed confidential under the protective order. Unless you are willing to informally work out a schedule of depositions, then we need their addresses.

Finally, you agreed to the schedule based on both of our understanding that we would seek to depose PacifiCorp employees. You cannot now use that schedule as a shield to prevent us from deposing individuals. You could have raised these concerns before we set a schedule. If required, we can always modify the schedule.

**Irion Sanger**

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1117 SE 53rd Ave  
Portland OR 97215

503-756-7533 (tel)  
503-334-2235 (fax)  
[irion@sanger-law.com](mailto:irion@sanger-law.com)

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---

**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Tuesday, March 22, 2016 at 3:38 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Irion, PacifiCorp will send non-confidential versions the list of employees that responded to the DRs (Attachment 12.1-1) and PacifiCorp org chart (Attachment 12.2) today. It appears that your request in 12.1(c) is not limited to the DRs identified in the request. PacifiCorp will provide the phone numbers we have for the employees that have left the company. Please note that two additional employees identified in 1.35 are no longer at the company. Employee and former employee personal contact information is confidential.

Regarding depositions, you may disagree with PacifiCorp's view that depositions are only permitted for testifying witnesses, but it is not clear to us that your interpretation is correct. We base our conclusion on the Commission order stating otherwise.

In any case, assuming the Commission were to agree with you and allow SVEC to depose PacifiCorp employees who are not testifying in response to SVEC's direct testimony, you are correct that hearsay testimony is generally admissible in administrative hearings. The caveat, however, is that that hearsay must be (at a minimum) probative and its admission fundamentally fair.

We would take steps to make sure the fairness principle is honored. Keep in mind that, under Oregon civil procedure, no interrogatories are allowed, so depositions are the only vehicle in Oregon state court for obtaining narrative responses in discovery. That is not true at the Oregon PUC. SVEC is free to obtain narrative responses through data requests. Moreover, Oregon civil courts rely on live testimony at trial. In that instance, a company can freely call any witness it needs to to fully respond to another party's proposed exhibits and offers of proof. Here, if SVEC attempts to introduce the deposition testimony of a non-testifying witness, PacifiCorp may not have filed any testimony from that party, and could not seek clarification from that party at hearing, so PacifiCorp's rights would be abridged. For that reason, if SVEC seeks to depose non-testifying witnesses and use their deposition excerpts at trial, PacifiCorp would take steps to ensure PacifiCorp obtains a full and fair hearing on the evidence at issue. It might do so, for example, by seeking the right to call deponents live to offer redirect testimony in response to any deposition excerpts SVEC might seek to enter into the record. We believe Judge Grant would understand the need for this due process.

Finally, we'd note that the scope of SVEC's rebuttal testimony is limited in scope. SVEC is not permitted to

introduce new facts beyond the scope of SVEC's direct unless it is responsive to PacifiCorp's testimony, nor is SVEC entitled to another bite of the apple. SVEC's rebuttal must be responsive to PacifiCorp's testimony. We would therefore object to any requests by SVEC to admit deposition testimony that is outside of that limited scope. SVEC had plenty of time to take depositions before it filed its direct testimony. This limitation on scope is therefore not only traditional and well known, but also fair.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Tuesday, March 22, 2016 7:41 AM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

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Matt

Once again, you have ignored my request. It has been ten days since you admitted that the material designated as confidential should not be treated as confidential. Surprise Valley intends to file a motion to compel to obtain the contact information for former employees, and to request that you remove the confidentiality designation.

By the close of business today, Tuesday, March 22, please provide: 1) a complete non-confidential response to SVEC's 12th set of data requests, including the contact information for former PacifiCorp employees who worked on the Surprise Valley matter; 2) whether you intend to object to Surprise Valley deposing current and former PacifiCorp employees that PacifiCorp may decide not to sponsor as witnesses; and 3) whether you would like to informally schedule depositions or will require SVEC to formally serve depositions.

**Irion Sanger**  
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1117 SE 53rd Ave  
Portland OR 97215

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503-334-2235 (fax)  
[irion@sanger-law.com](mailto:irion@sanger-law.com)

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**From:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Date:** Wednesday, March 16, 2016 at 11:50 AM  
**To:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Matt

My responses are below in red text.

Please let me know as soon as possible if you are going to provide the information regarding former employees and remove the confidential designation, or if we need to raise this issue to the ALJ.

Also, let me know as soon as possible if you disagree with my analysis below or are otherwise going to seek to limit our ability to depose individuals to only those individuals of your choosing. It will be easier to schedule depositions for everyone if you are not going to try to make this as expensive and time consuming as possible.

You may obviously raise whatever objections you like, but PacifiCorp knew that we intended to conduct depositions, you did not raise these objections until now, and you agreed to the schedule. We have the right to depose any individual on factual issues relevant to this case. This is yet another example of the amazingly creative efforts you have employed to prevent Surprise Valley from obtaining basic factual information in this case.

**Irion Sanger**

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503-334-2235 (fax)  
[irion@sanger-law.com](mailto:irion@sanger-law.com)

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---

**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Monday, March 14, 2016 at 4:13 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

With respect to depositions, the language of ORS 860-014-0065 states that only witnesses can be deposed. We believe this refers only to witnesses offering prefiled testimony and subject to cross-examination at hearing. The Oregon PUC has stated, for example, that “[u]nder OAR 860-014-0070 and 860-014-0065, data requests may only be served on parties to the proceeding and depositions may only be taken of witnesses in the proceeding.” In re PGE, Docket No. UE 196, Order No. 10-051 (Feb. 11, 2010). If anybody who is deposed suddenly becomes a “witness” under this rule simply because they have been deposed, the rule becomes circular and this Oregon PUC holding doesn’t make sense. Do you have authority for a different interpretation?

Yes. The order you reference does not apply because we have the right to subpoena witnesses. ORS 756.543 In addition, ORS 756.538 states that “In any proceeding requiring a hearing, the commission or any party to the proceeding may take the testimony of any person by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the proceeding, or for both purposes.” Accordingly, we have a statutory right to have the PUC issue

subpoenas to depose any current or former employee of PacifiCorp with knowledge of the matters at hand – particularly where you have refused to completely explain PacifiCorp’s metering requirements and transmission requirements through interrogatory style data requests. Even if your responses had been complete, we have the right to put a witness with knowledge under oath and test the veracity of your assertions.

Also, would your goal be to use such deposition testimony as evidence at hearing? If so, how would you intend to address the hearsay issue this raises? The OAR’s limitation on prevents the prejudicial hearsay issues that arise in the context of contested case proceedings and their limited opportunities for live testimony. We think this is the reason the limitation on depositions exists in the Commission rule.

First of all, hearsay does not apply in PUC proceedings. Second, even if it did, a statement by PacifiCorp’s employees offered against PacifiCorp is not hearsay in a complaint proceeding against PacifiCorp. Or. Evidence Code 801(4)(b). Further, even if PacifiCorp’s current and former employees’ deposition testimony could be construed as hearsay (which it obviously is not), the hearsay rule would not apply to statements made at a deposition in perpetuation of testimony under ORCP 39I, where PacifiCorp has chosen not to offer the witness itself and may not have taken steps to ensure the witness’s availability at the scheduled hearing date. OEC 801(4)(c).

You have previously suggested you will depose PacifiCorp employees on “numerous” issues after Surprise Valley files its direct testimony. PacifiCorp will take steps to enforce the limitation and/or seek necessary additional process to protect PacifiCorp’s rights and prevent the harassment of employees while PacifiCorp prepares its rebuttal testimony.

You have taken my quote out of context in order to misrepresent its meaning. We are seeking to depose PacifiCorp employees because you have failed to provide accurate responses to our transmission arrangement and metering questions. There are numerous data responses that you have provided incomplete and likely inaccurate information. If we are going to depose individuals, then I am providing you with notice that our depositions will cover other relevant issues that are in dispute in this proceeding.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Monday, March 14, 2016 9:11 AM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

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Matt

I am not sure if we intend to introduce the responses as exhibits. I am seeking the information in order to prepare for depositions and cross examination. I want to have Surprise Valley’s personnel familiar with the case and my experts review the materials without have to sign the protective order. I am striving hard to limit use of the protective order. Frankly, given what happened with Sierra Club and the protective order, there is a certain amount of concern about reviewing PacifiCorp confidential material especially information that is publicly available in another form.

I disagree with your interpretation of the procedural rules. I can subpoena an individual to appear as a witness, especially a key factual matter in a litigation. After I subpoena the individual, then they become a witness that I can depose. There are key and critical factual issues that only certain PacifiCorp current and former employees have



knowledge of. It would be a violation of fundamental due process to not provide Surprise Valley an opportunity to conduct discovery and question individuals on these key factual issues. I believe this would be a reversible procedural error if the commission prevented us from deposing individuals the company has decided not introduce as witnesses. Obviously, if PacifiCorp would stipulate to certain facts or issues, then we would not need to litigate or conduct discovery on these issues.

Let me know if PacifiCorp is planning on objecting to the deposition of current and former employees that the company may not be intending to call as witnesses. I cannot identify which individuals we plan to depose until I can have my team review the information designated as confidential.

**Irion Sanger**

Sanger Law PC  
1117 SE 53rd Ave  
Portland OR 97215

503-756-7533 (tel)  
503-334-2235 (fax)  
[irion@sanger-law.com](mailto:irion@sanger-law.com)

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---

**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Thursday, March 10, 2016 at 4:45 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Irion – PacifiCorp has asserted confidentiality to protect its employees. If you anticipate introducing the responses as evidence, we will of course provide public versions. Please let me know if that is your intent and I will have them prepared. If you are simply seeking an understanding of the extent of employees working on responses, is there an issue with maintaining the confidentiality of PacifiCorp's responses? If so, please let me know and we can discuss. Regarding 12.1(c), and depositions, we are willing to discuss any depositions SVEC may wish to take, so long as those depositions (and the related deposition notices) comport with OPUC rules. But we'd note that Oregon Administrative Rules and OPUC precedent limit the taking of depositions to witnesses in a proceeding. For this reason, we are wondering how your request for detailed information on these individuals is likely to lead to the discovery of admissible evidence.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Wednesday, March 09, 2016 4:33 PM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

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clicking links or providing information.

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Matt

I sending this email regarding the 12th set of data requests.

First, I request that you remove the confidentiality from the materials submitted in response to SVEC 12th set of data requests.

There are two groups of documents that are labeled as confidential. First, the list of PacifiCorp employees who helped prepare data responses is listed as confidential. PacifiCorp has already listed the names of these employees in other data responses, and I do not see any reason why they should be considered confidential. Second, the organization chart and list of names of company employees should not be considered confidential. Even if portions are confidential, the majority should not be considered confidential. For example, the fact that Rick Vail is the VP of Transmission is a commonly known fact. The fact that Bruce is the Director of Short Term Origination and QF contracts and is under the Director of Origination is a publicly known fact. If there are portions that you believe are confidential, then it is your responsibility to provide a redacted version of the document.

Second, you appear to misunderstand our data request 12.1(c). We are looking for the contact information listed in 1.35. We may depose these individuals and we need their contact information.

**Irion Sanger**

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---

**From:** "McNay, Kaley" <[Kaley.McNay@pacificorp.com](mailto:Kaley.McNay@pacificorp.com)>  
**Date:** Tuesday, March 1, 2016 at 4:18 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>, Brad Kresge <[bradsvec@frontier.com](mailto:bradsvec@frontier.com)>  
**Cc:** "Stanfill, Dagmar" <[Dagmar.Stanfill@pacificorp.com](mailto:Dagmar.Stanfill@pacificorp.com)>, "Watkins, Betsy" <[Betsy.Watkins@pacificorp.com](mailto:Betsy.Watkins@pacificorp.com)>, C&T Discovery <[ctdiscovery@PacifiCorp.com](mailto:ctdiscovery@PacifiCorp.com)>, "Apperson, Erin" <[Erin.Apperson@pacificorp.com](mailto:Erin.Apperson@pacificorp.com)>, "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>, "Kamman, Sarah" <[Sarah.Kamman@pacificorp.com](mailto:Sarah.Kamman@pacificorp.com)>, "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>, "Harkins, Lisa" <[Lisa.Harkins@pacificorp.com](mailto:Lisa.Harkins@pacificorp.com)>, "[karen.kruse@troutmansanders.com](mailto:karen.kruse@troutmansanders.com)" <[karen.kruse@troutmansanders.com](mailto:karen.kruse@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Please see attached for PacifiCorp's Responses to SVEC Set 12 (1-16). Please let me know if you have any trouble opening the attached file.

Thank you.

**Kaley McNay**  
PacifiCorp  
Coordinator, Regulatory Operations  
Direct: 503-813-6257

## Attachment 4

### Fourth Email String

**Subject:** Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)  
**Date:** Friday, March 25, 2016 at 5:41:56 PM Pacific Daylight Time  
**From:** Irion Sanger  
**To:** Hardie, Lisa D.  
**CC:** McVee, Matthew

Lisa

Please see my responses in redline below. My email is a little laconic because of the late hour and the fact that we hope to file our motion early Monday. If you want to discuss, please call me tonight or over the weekend.

**Irion Sanger**

Sanger Law PC  
1117 SE 53rd Ave  
Portland OR 97215

503-756-7533 (tel)  
503-334-2235 (fax)  
[irion@sanger-law.com](mailto:irion@sanger-law.com)

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---

**From:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Date:** Friday, March 25, 2016 at 5:07 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Hi, Irion,

Matt is unavailable today, so he asked me to get back to you on your email today.

Can you explain exactly what you would be moving to compel? I've got back and looked through the communications I've seen, and I don't think PacifiCorp's is suggesting that Surprise Valley can't take depositions at all. Let me see where I think things are, and maybe we can figure this out.

We will be moving to compel copies of the confidential addresses of the former PacifiCorp employees. This will necessarily address PacifiCorp's argument that we cannot depose PacifiCorp current or former employees that the company elects not to sponsor as witnesses. We will likely also be seeking clarification that we do not have to wait until PacifiCorp files its testimony to depose these individuals.

Timing issues. In contested case hearing with prefiled testimony, parties usually wait until a witness files testimony, then depose that witness about their testimony. For example, PacifiCorp is now determining which Surprise Valley witnesses (if any) PacifiCorp would like to depose about what they've said in their testimony before PacifiCorp files testimony of its own. PacifiCorp assumed you would do the same: review PacifiCorp's testimony once it's filed, depose any of PacifiCorp's witnesses (if you'd like), and then file Surprise

Valley's rebuttal testimony.

That's how it's ordinarily done. For example, PacifiCorp did not try to depose Surprise Valley's witnesses before they filed their testimony. That would have been unusual and disruptive to the process, as they were presumably still in the process of developing their testimony.

Is there a reason you are proposing to do it differently here? Is there something you'd lose by deposing PacifiCorp's witnesses *after* they file their testimony? Do you think you need more time for your reply testimony, for example? It would help if you could explain exactly what you are proposing to do and why.

As the email streams explain, the reason Surprise Valley is seeking to depose witnesses is because PacifiCorp has refused to provide information in discovery. PacifiCorp has been evasive and refused to respond to dozens of data requests regarding transmission arrangements on Surprise Valley's system, metering, and the network transmission request. We informed PacifiCorp that we were going to seek that information that the company has not provided in discovery through depositions immediately. The only reason we moved forward with our testimony was because the case has already been delayed too long. If we understood that PacifiCorp did not believe depositions should be filed before a party files testimony, then PacifiCorp should have informed me of that in the numerous emails regarding depositions that occurred before we filed our testimony on March 15. The fact that we have filed our testimony should benefit the company because now you are privy to our understanding of the factual issues.

Uncertainty about SVEC's specific request. It's not clear to me, after reviewing the communications, who Surprise Valley is intending to depose or when. Without any details about the who, where, or when, it's hard to know in the abstract exactly what PacifiCorp might be objecting to or waiving.

If Surprise Valley sent PacifiCorp a formal deposition notice, it would allow PacifiCorp to review the notice and object to specific elements of the notice (the identity of the deponent, the timing proposed for the deposition, the intended scope, etc.). That would help narrow the issues for discussion, and if it needs to go to the Commission for resolution, it would also narrow the scope of that dispute, which we think the ALJ would appreciate. Would you be willing to take this step?

We only obtained non-confidential versions of key information regarding the individuals we wish to depose last week. Yes, we can serve our depositions and allow the company to decide if it believes the specific individual should be deposed, but it is impossible for us to serve depositions on former employees without their addresses. In addition, we need to resolve as a threshold issue whether we can be prevented from deposing PacifiCorp current and former employees on the grounds of timing.

Depositions, generally. Looking at Commission orders, the Commission rules do appear to limit depositions to testifying witnesses. It also is unusual (as well burdensome) to try to depose a witness before a party has filed testimony (or before the party has even identified with certainty who their witnesses may be). I'm not sure if any specific depositions you intend to take would be problematic, but a formal notice would probably clear that up.

I disagree. Depositions can be conducted as part of the discovery process, especially if a party is unable to obtain answers through the usual data request process. While I agree that depositions are not commonly used in Oregon PUC proceedings, I believe we simply disagree about whether we can seek to depose individuals that PacifiCorp elects not to sponsor as a witness. For example, John Younie and Bruce Griswold were intimately involved in many of the key issues of the case. PacifiCorp cannot refuse to allow to us gain factual knowledge that these two individuals have by deciding not to answer our questions or refusing to sponsor them as a witness. Our previous emails have established that PacifiCorp and SVEC have differences of opinion on this matter, which can only be resolved by filing a motion.

Confidentiality. I'm not sure this relates to the motion to compel you note, or to the deposition notices, but after reviewing the previous correspondence, I also wanted to circle back on the confidentiality issue (regarding org charts and former employees) to see where that stands. PacifiCorp is very concerned about

removing the confidential designation from former employee contact information—not for the Company’s protection, but for the protection of former employees. If you still think this designation needs to be removed for some reason, can you let us know? If you could state the grounds for removing that designation, it would be helpful. PacifiCorp is hesitant to expose the information of former employees without a solid basis for doing so.

**It is impossible for us to serve depositions on former employees without their addresses.**

In summary, it would be helpful if you would let PacifiCorp know what information you would be seeking with a motion to compel. If it’s related to depositions, let’s talk first about what you are proposing, so we can identify the specific issues in dispute. If it’s related to confidential former employee information, I think you can appreciate the reason for PacifiCorp’s concerns. Perhaps we could discuss and narrow that issue, too. And if it’s something else, please let us know precisely what it is you are looking for.

**As I have previously emailed multiple times, we are intended to depose PacifiCorp’s current and former employees on the issues that PacifiCorp has refused to provide complete answers regarding transmission arrangements, the metering, and the network transmission request. As we are going through the process of actually conducting depositions, we are evaluating what additional issues we are going to ask in depositions. For example, if we depose John Younie or Bruce Griswold about what transmission arrangements PacifiCorp ESM is requiring or would find acceptable, then we are likely to ask questions on other issues.**

If it would be useful to talk about these issues in person on Monday, that would work, too.

**Lisa, I am happy to talk with you. I traveling to a hearing in Wyoming on Rocky Mountain Power’s PURPA changes Monday late morning. Depending on when we can get the motion finished, we will file it Monday or Tuesday. If you want to discuss, we should talk this weekend or tonight.**

Many thanks,

Lisa

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**From:** Irion Sanger [<mailto:irion@sanger-law.com>]

**Sent:** Friday, March 25, 2016 11:11 AM

**To:** McVee, Matthew

**Cc:** Hardie, Lisa D.

**Subject:** Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Matt

My understanding was that you had agreed in principle that we could conduct depositions after we filed our testimony. Surprise Valley repeatedly informed PacifiCorp that we intended to conduct depositions after the filing of our testimony on the individuals listed in your data response 1.35 (which includes all employees who worked on this matter). I specifically asked whether you had any objections. On February 18, you stated that you were not going to make a blanket objection, but would have to review the specific deposition notices. Despite knowing that Surprise Valley intended to depose individuals after filing our testimony, you agreed to a new schedule. You did not raise your objections that we may not be able to depose individual that the Company is not sponsoring as witnesses until after we had agreed to a new schedule. You raised the issue of Surprise Valley should not be able to conduct depositions because Surprise Valley had already filed Direct Testimony after Surprise Valley filed Direct Testimony. If you wanted Surprise Valley to conduct depositions before filing our testimony, then you should have informed Surprise Valley before we filed our testimony and we agreed to a schedule. Obviously, we would have sought (or seriously considered seeking) resolution of this issue before we filed our testimony if we understood that you were going to use the filing of our testimony as a bar to deposing PacifiCorp employees.

We intend to file a motion to compel Monday or Tuesday of next week.

**Irion Sanger**

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**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Wednesday, March 23, 2016 at 12:19 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Irion – PacifiCorp intends to provide timely and honest responses to Surprise Valley’s data request. We expect the same from Surprise Valley. We believe the PUC rules limit depositions to testifying witnesses. We also think the appropriate time to take those depositions is after our rebuttal testimony is filed. I do not recall PacifiCorp agreeing to depositions after testimony was filed in relation to the current schedule. If I am in error, please forward me the communication. Surprise Valley requested the abeyance that allowed additional time for Surprise Valley to conduct discovery, and PacifiCorp has let Surprise Valley determine the schedule. Now Surprise Valley has filed its direct case. PacifiCorp’s rebuttal will narrow the issues. PacifiCorp admitted in the answer a number of issues addressed in Surprise Valley’s direct testimony. At this time, we are still conducting discovery and have not determined who those witnesses are or the scope of our testimony.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Tuesday, March 22, 2016 5:20 PM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

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Matt

I want to confirm my understanding of your position. Is it your view that all depositions are “unnecessary and a blatant attempt to interfere with PacifiCorp’s ability to respond” or only depositions of individuals that you are not going to sponsor as witnesses? As you agreed to depositions of witnesses after we filed our testimony, do you have a



list of witnesses that you have agreed that we can depose?

We are not trying to interfere with your testimony. We agreed to the schedule based on the understanding that we would conduct depositions. If you need additional time or a different schedule, then please inform me of that. The schedule should not be an impediment to allowing us to depose individuals with information relevant to the issues in this case.

Finally, I agree reiterate that if you respond to our data requests honestly then we will not conduct depositions on these issues.

**Irion Sanger**

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**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Tuesday, March 22, 2016 at 4:31 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Irion – You are correct, PacifiCorp will require formal notice of depositions. In our discussions, we agreed to depositions of those employees allowed under the OARs, meaning witnesses.

Regarding a motion to compel, PacifiCorp is not willing to put former employee contact information into the public domain unless ordered by the PUC. However, former employees are not witnesses and cannot bind the company, so there is questionable probative value to support a motion to compel.

Furthermore, Surprise Valley has already presented its direct case and PacifiCorp has not yet had a chance to respond and set the scope for Surprise Valley's Reply Testimony. Depositions, at this time, are unnecessary and are a blatant attempt to interfere with PacifiCorp ability to respond to Surprise Valley's Direct Testimony. PacifiCorp only has six weeks to conduct discovery and file its Rebuttal. Surprise Valley has had eight months to conduct discovery and present its case.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Tuesday, March 22, 2016 4:07 PM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

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Matt

Thank you for your response.

We would not object to PacifiCorp calling any witnesses that we depose to the hearing, and we never suggested otherwise. We would be seeking information from individuals that PacifiCorp is not (or may not) be calling upon to testify. We are not opposed to PacifiCorp calling any individuals to testify at the hearing, including those that are deposed.

While you did not directly respond to my question, I assume that you are not agreeing to informally schedule depositions.

We will file a motion to compel to at least obtain the contact information for the former PacifiCorp employees. Under the Oregon rules, we cannot serve a notice of deposition without the contact information, which you are not providing. We also cannot serve a deposition with the information deemed confidential under the protective order. Unless you are willing to informally work out a schedule of depositions, then we need their addresses.

Finally, you agreed to the schedule based on both of our understanding that we would seek to depose PacifiCorp employees. You cannot now use that schedule as a shield to prevent us from deposing individuals. You could have raised these concerns before we set a schedule. If required, we can always modify the schedule.

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**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Tuesday, March 22, 2016 at 3:38 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Irion, PacifiCorp will send non-confidential versions the list of employees that responded to the DRs (Attachment 12.1-1) and PacifiCorp org chart (Attachment 12.2) today. It appears that your request in 12.1(c) is not limited to the DRs identified in the request. PacifiCorp will provide the phone numbers we have for the

employees that have left the company. Please note that two additional employees identified in 1.35 are no longer at the company. Employee and former employee personal contact information is confidential.

Regarding depositions, you may disagree with PacifiCorp's view that depositions are only permitted for testifying witnesses, but it is not clear to us that your interpretation is correct. We base our conclusion on the Commission order stating otherwise.

In any case, assuming the Commission were to agree with you and allow SVEC to depose PacifiCorp employees who are not testifying in response to SVEC's direct testimony, you are correct that hearsay testimony is generally admissible in administrative hearings. The caveat, however, is that that hearsay must be (at a minimum) probative and its admission fundamentally fair.

We would take steps to make sure the fairness principle is honored. Keep in mind that, under Oregon civil procedure, no interrogatories are allowed, so depositions are the only vehicle in Oregon state court for obtaining narrative responses in discovery. That is not true at the Oregon PUC. SVEC is free to obtain narrative responses through data requests. Moreover, Oregon civil courts rely on live testimony at trial. In that instance, a company can freely call any witness it needs to to fully respond to another party's proposed exhibits and offers of proof. Here, if SVEC attempts to introduce the deposition testimony of a non-testifying witness, PacifiCorp may not have filed any testimony from that party, and could not seek clarification from that party at hearing, so PacifiCorp's rights would be abridged. For that reason, if SVEC seeks to depose non-testifying witnesses and use their deposition excerpts at trial, PacifiCorp would take steps to ensure PacifiCorp obtains a full and fair hearing on the evidence at issue. It might do so, for example, by seeking the right to call deponents live to offer redirect testimony in response to any deposition excerpts SVEC might seek to enter into the record. We believe Judge Grant would understand the need for this due process.

Finally, we'd note that the scope of SVEC's rebuttal testimony is limited in scope. SVEC is not permitted to introduce new facts beyond the scope of SVEC's direct unless it is responsive to PacifiCorp's testimony, nor is SVEC entitled to another bite of the apple. SVEC's rebuttal must be responsive to PacifiCorp's testimony. We would therefore object to any requests by SVEC to admit deposition testimony that is outside of that limited scope. SVEC had plenty of time to take depositions before it filed its direct testimony. This limitation on scope is therefore not only traditional and well known, but also fair.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]

**Sent:** Tuesday, March 22, 2016 7:41 AM

**To:** McVee, Matthew

**Cc:** Hardie, Lisa

**Subject:** [INTERNET] Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

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Matt

Once again, you have ignored my request. It has been ten days since you admitted that the material designated as confidential should not be treated as confidential. Surprise Valley intends to file a motion to compel to obtain the contact information for former employees, and to request that you remove the confidentiality designation.

By the close of business today, Tuesday, March 22, please provide: 1) a complete non-confidential response to SVEC's 12th set of data requests, including the contact information for former PacifiCorp employees who worked on the Surprise Valley matter; 2) whether you intend to object to Surprise Valley deposing current and former PacifiCorp employees that PacifiCorp may decide not to sponsor as witnesses; and 3) whether you would like to informally

schedule depositions or will require SVEC to formally serve depositions.

**Irion Sanger**

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**From:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Date:** Wednesday, March 16, 2016 at 11:50 AM  
**To:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Matt

My responses are below in red text.

Please let me know as soon as possible if you are going to provide the information regarding former employees and remove the confidential designation, or if we need to raise this issue to the ALJ.

Also, let me know as soon as possible if you disagree with my analysis below or are otherwise going to seek to limit our ability to depose individuals to only those individuals of your choosing. It will be easier to schedule depositions for everyone if you are not going to try to make this as expensive and time consuming as possible.

You may obviously raise whatever objections you like, but PacifiCorp knew that we intended to conduct depositions, you did not raise these objections until now, and you agreed to the schedule. We have the right to depose any individual on factual issues relevant to this case. This is yet another example of the amazingly creative efforts you have employed to prevent Surprise Valley from obtaining basic factual information in this case.

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**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Monday, March 14, 2016 at 4:13 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

With respect to depositions, the language of ORS 860-014-0065 states that only witnesses can be deposed. We believe this refers only to witnesses offering prefiled testimony and subject to cross-examination at hearing. The Oregon PUC has stated, for example, that “[u]nder OAR 860-014-0070 and 860-014-0065, data requests may only be served on parties to the proceeding and depositions may only be taken of witnesses in the proceeding.” In re PGE, Docket No. UE 196, Order No. 10-051 (Feb. 11, 2010). If anybody who is deposed suddenly becomes a “witness” under this rule simply because they have been deposed, the rule becomes circular and this Oregon PUC holding doesn’t make sense. Do you have authority for a different interpretation?

Yes. The order you reference does not apply because we have the right to subpoena witnesses. ORS 756.543 In addition, ORS 756.538 states that “In any proceeding requiring a hearing, the commission or any party to the proceeding may take the testimony of any person by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the proceeding, or for both purposes.” Accordingly, we have a statutory right to have the PUC issue subpoenas to depose any current or former employee of PacifiCorp with knowledge of the matters at hand – particularly where you have refused to completely explain PacifiCorp’s metering requirements and transmission requirements through interrogatory style data requests. Even if your responses had been complete, we have the right to put a witness with knowledge under oath and test the veracity of your assertions.

Also, would your goal be to use such deposition testimony as evidence at hearing? If so, how would you intend to address the hearsay issue this raises? The OAR’s limitation on prevents the prejudicial hearsay issues that arise in the context of contested case proceedings and their limited opportunities for live testimony. We think this is the reason the limitation on depositions exists in the Commission rule.

First of all, hearsay does not apply in PUC proceedings. Second, even if it did, a statement by PacifiCorp’s employees offered against PacifiCorp is not hearsay in a complaint proceeding against PacifiCorp. Or. Evidence Code 801(4)(b). Further, even if PacifiCorp’s current and former employees’ deposition testimony could be construed as hearsay (which it obviously is not), the hearsay rule would not apply to statements made at a deposition in perpetuation of testimony under ORCP 39I, where PacifiCorp has chosen not to offer the witness itself and may not have taken steps to ensure the witness’s availability at the scheduled hearing date. OEC 801(4)(c).

You have previously suggested you will depose PacifiCorp employees on “numerous” issues after Surprise Valley files its direct testimony. PacifiCorp will take steps to enforce the limitation and/or seek necessary additional process to protect PacifiCorp’s rights and prevent the harassment of employees while PacifiCorp prepares its rebuttal testimony.

You have taken my quote out of context in order to misrepresent its meaning. We are seeking to depose

PacifiCorp employees because you have failed to provide accurate responses to our transmission arrangement and metering questions. There are numerous data responses that you have provided incomplete and likely inaccurate information. If we are going to depose individuals, then I am providing you with notice that our depositions will cover other relevant issues that are in dispute in this proceeding.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]

**Sent:** Monday, March 14, 2016 9:11 AM

**To:** McVee, Matthew

**Cc:** Hardie, Lisa

**Subject:** [INTERNET] Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

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Matt

I am not sure if we intend to introduce the responses as exhibits. I am seeking the information in order to prepare for depositions and cross examination. I want to have Surprise Valley's personnel familiar with the case and my experts review the materials without have to sign the protective order. I am striving hard to limit use of the protective order. Frankly, given what happened with Sierra Club and the protective order, there is a certain amount of concern about reviewing PacifiCorp confidential material especially information that is publicly available in another form.

I disagree with your interpretation of the procedural rules. I can subpoena an individual to appear as a witness, especially a key factual matter in a litigation. After I subpoena the individual, then they become a witness that I can depose. There are key and critical factual issues that only certain PacifiCorp current and former employees have knowledge of. It would be a violation of fundamental due process to not provide Surprise Valley an opportunity to conduct discovery and question individuals on these key factual issues. I believe this would be a reversible procedural error if the commission prevented us from deposing individuals the company has decided not introduce as witnesses. Obviously, if PacifiCorp would stipulate to certain facts or issues, then we would not need to litigate or conduct discovery on these issues.

Let me know if PacifiCorp is planning on objecting to the deposition of current and former employees that the company may not be intending to call as witnesses. I cannot identify which individuals we plan to depose until I can have my team review the information designated as confidential.

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**From:** "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>  
**Date:** Thursday, March 10, 2016 at 4:45 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>  
**Cc:** "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Irion – PacifiCorp has asserted confidentiality to protect its employees. If you anticipate introducing the responses as evidence, we will of course provide public versions. Please let me know if that is your intent and I will have them prepared. If you are simply seeking an understanding of the extent of employees working on responses, is there an issue with maintaining the confidentiality of PacifiCorp's responses? If so, please let me know and we can discuss. Regarding 12.1(c), and depositions, we are willing to discuss any depositions SVEC may wish to take, so long as those depositions (and the related deposition notices) comport with OPUC rules. But we'd note that Oregon Administrative Rules and OPUC precedent limit the taking of depositions to witnesses in a proceeding. For this reason, we are wondering how your request for detailed information on these individuals is likely to lead to the discovery of admissible evidence.

**From:** Irion Sanger [<mailto:irion@sanger-law.com>]  
**Sent:** Wednesday, March 09, 2016 4:33 PM  
**To:** McVee, Matthew  
**Cc:** Hardie, Lisa  
**Subject:** [INTERNET] Re: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

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Matt

I sending this email regarding the 12th set of data requests.

First, I request that you remove the confidentiality from the materials submitted in response to SVEC 12th set of data requests.

There are two groups of documents that are labeled as confidential. First, the list of PacifiCorp employees who helped prepare data responses is listed as confidential. PacifiCorp has already listed the names of these employees in other data responses, and I do not see any reason why they should be considered confidential. Second, the organization chart and list of names of company employees should not be considered confidential. Even if portions are confidential, the majority should not be considered confidential. For example, the fact that Rick Vail is the VP of Transmission is a commonly known fact. The fact that Bruce is the Director of Short Term Origination and QF contracts and is under the Director of Origination is a publicly known fact. If there are portions that you believe are confidential, then it is your responsibility to provide a redacted version of the document.

Second, you appear to misunderstand our data request 12.1(c). We are looking for the contact information listed in 1.35. We may depose these individuals and we need their contact information.

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**From:** "McNay, Kaley" <[Kaley.McNay@pacificorp.com](mailto:Kaley.McNay@pacificorp.com)>  
**Date:** Tuesday, March 1, 2016 at 4:18 PM  
**To:** Irion Sanger <[irion@sanger-law.com](mailto:irion@sanger-law.com)>, Brad Kresge <[bradsvec@frontier.com](mailto:bradsvec@frontier.com)>  
**Cc:** "Stanfill, Dagmar" <[Dagmar.Stanfill@pacificorp.com](mailto:Dagmar.Stanfill@pacificorp.com)>, "Watkins, Betsy" <[Betsy.Watkins@pacificorp.com](mailto:Betsy.Watkins@pacificorp.com)>, C&T Discovery <[ctdiscovery@PacifiCorp.com](mailto:ctdiscovery@PacifiCorp.com)>, "Apperson, Erin" <[Erin.Apperson@pacificorp.com](mailto:Erin.Apperson@pacificorp.com)>, "McVee, Matthew" <[Matthew.McVee@pacificorp.com](mailto:Matthew.McVee@pacificorp.com)>, "Kamman, Sarah" <[Sarah.Kamman@pacificorp.com](mailto:Sarah.Kamman@pacificorp.com)>, "Hardie, Lisa" <[Lisa.Hardie@troutmansanders.com](mailto:Lisa.Hardie@troutmansanders.com)>, "Harkins, Lisa" <[Lisa.Harkins@pacificorp.com](mailto:Lisa.Harkins@pacificorp.com)>, "[karen.kruse@troutmansanders.com](mailto:karen.kruse@troutmansanders.com)" <[karen.kruse@troutmansanders.com](mailto:karen.kruse@troutmansanders.com)>  
**Subject:** RE: OR UM 1742 - PacifiCorp's Responses to SVEC Set 12 (1-16)

Please see attached for PacifiCorp's Responses to SVEC Set 12 (1-16). Please let me know if you have any trouble opening the attached file.

Thank you.

**Kaley McNay**  
PacifiCorp  
Coordinator, Regulatory Operations  
Direct: 503-813-6257

---

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## Attachment 5

### Responses to Relevant Data Requests

**SVEC Data Request 1.35**

Please provide a list of each individual employed or retained by PacifiCorp who has been involved in processing SVEC’s request for interconnected operations allowing the delivery of the QF power and the request for a PURPA PPA. For each individual, please identify the job title, role in the negotiations, and classification as a marketing or transmission function employee under FERC’s standards of conduct.

**1<sup>st</sup> Supplemental Response to SVEC Data Request 1.35**

After conferring with Surprise Valley’s counsel, PacifiCorp provides the following supplemental response:

Below is a list of PacifiCorp employees and individuals retained by PacifiCorp that participated in processing SVEC’s request for a power purchase agreement, including settlement discussions following receipt of Surprise Valley’s April 16, 2015 demand letter, to the best of PacifiCorp’s knowledge.

Name	Title	Role	Function
Bruce Griswold	Director, Short-term Origination and Qualifying Facility (QF) Contracts	Power purchase agreement (PPA) negotiations (commercial)	Marketing
John Younie	Contract Administrator (no longer employed at PacifiCorp)	PPA negotiations (commercial)	Marketing
Doug Meeuwesen	Energy Market Trader	Transmission service for ESM	Marketing
Jim Portouw	Energy Market Trader (no longer employed at PacifiCorp)	Transmission service for ESM	Marketing
Michael Reid	Attorney (no longer employed at PacifiCorp)	PPA negotiations (legal)	Legal
Nathalie Wessling	Credit Manager (no longer employed at PacifiCorp)	PPA negotiations (credit review)	Credit
Randolph Murgio	Credit Specialist	PPA negotiations (credit review)	Credit
Sarah Wallace	General Counsel	Settlement discussions following receipt of Surprise Valley’s April 16, 2015 demand letter.	Legal
Matthew McVee	Assistant General Counsel	Settlement discussions following receipt of Surprise Valley’s April 16, 2015 demand letter.	Legal
Jeff Erb	Assistant General Counsel and Corporate Secretary	Settlement discussions following receipt of Surprise Valley’s April 16, 2015 demand letter.	Legal
Lisa Hardie	Attorney, Troutman Sanders	Settlement discussions following receipt of Surprise Valley’s April 16, 2015 demand letter.	Legal
Karen Kruse	Attorney, Troutman Sanders	Settlement discussions	Legal

		following receipt of Surprise Valley's April 16, 2015 demand letter.	
--	--	--	--

PacifiCorp has also agreed to expand the scope of Surprise Valley's request to include all individuals that, to the best of PacifiCorp's knowledge, have participated on PacifiCorp's behalf regarding Surprise Valley's notification that PacifiCorp is an affected system due to the interconnection of the Paisley Project to Surprise Valley's system and the request by PacifiCorp's merchant function, Energy Supply Management (ESM), to PacifiCorp Transmission to designate the Paisley Project power purchase agreement as a network resource. PacifiCorp agrees to provide this information even though ESM, not Surprise Valley, is the party required to deliver QF power to load once a QF delivers that power to PacifiCorp's system, making Surprise Valley irrelevant to this element of QF power delivery. In that regard, Surprise Valley has not submitted to PacifiCorp Transmission any transmission service request or any request related to delivery of energy other than its notice that PacifiCorp would be an affected system following the interconnection of the Paisley Project to Surprise Valley's system.

<b>Name</b>	<b>Title</b>	<b>Role</b>	<b>Function</b>
Eric Birch	Transmission Services (no longer employed at PacifiCorp)	Relay Setting Report following affected system study requested by Surprise Valley	Transmission
Phil Ricker	Protection & Control (no longer employed at PacifiCorp)	Relay Setting Report following affected system study requested by Surprise Valley	Transmission
Nitu Iyer	Contractor, Protection & Control	Relay Setting Report following affected system study requested by Surprise Valley	Transmission
Veronica Stoffel	Transmission Account Manager	Evaluate transmission request for new designated resource for ESM	Transmission
Paul Tien	Senior Business Analyst	Evaluate transmission request for new designated resource for ESM	Transmission
Howard Farris	Project Manager	Evaluate transmission request for new designated resource for ESM	Transmission
Glenn Fortner	Senior Area/Transmission Planner	Evaluate transmission request for new designated resource for ESM	Transmission
John Aniello	Project Manager	Evaluate transmission request for new designated resource for ESM	Transmission
Justin Krueger	Project Management	Evaluate transmission request for new designated resource for ESM	Transmission
John Mark	Principle Engineer, Metering	Evaluate transmission	Transmission

	Engineering	request for new designated resource for ESM	
Tom Fishback	Project Manager	Evaluate transmission request for new designated resource for ESM	Transmission
Maggie Hodny	Manager, Property, RE Transmission	Evaluate property acquisition requirements for transmission request for new designated resource for ESM	Transmission
Brian King	Manager, Environmental, PP T&D Environmental	Evaluate environmental issues related to property acquisition requirements for transmission request for new designated resource for ESM	Transmission
Jana Mejdell	Director, Real Estate Management, Real Estate Management	Evaluate property acquisition requirements for transmission request for new designated resource for ESM	Property
Laura Raypush	Transmission Account Manager	Transmission Agreement Impacts of Settlement Proposal	Transmission
Brian Fritz	Director, Transmission Development	Evaluate transmission request for new designated resource for ESM	Transmission
Richard Vail	Vice President, Transmission, Transmission Services	Executive review of transmission contracts	Transmission
Patrick Cannon	Senior Counsel	Legal Support for Transmission	Legal

### **SVEC Data Request 12.1**

Please identify separately for each of the following PacifiCorp data responses: 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, 1.9, 1.10, 1.11, 1.12, 1.19, 1.20, 1.21, 1.22, 1.24, 1.25, 1.26, 1.32, 1.36, 1.37, 1.38, 1.39, 1.40, 1.41, 1.42, 1.43, 1.44, 1.45, 1.46, 1.47, 1.48, 2.1, 2.2, 2.4, 2.5, 2.8, 2.9, 2.10, 2.11, 2.12, 2.14, 2.15, 3.2, 3.3, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 7.3, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.13, 8.14, 8.15, 9.1, 9.2, 9.3, 9.8, 9.9, 10.1, 10.2, 10.3, 10.4, 10.5, and 10.6:

- (a) Other than legal staff, please identify all individuals who helped prepare the response.
- (b) Please identify all individuals in the original and supplemental responses to Surprise Valley data response 1.35 that have information regarding the response.
- (c) The most recent contact information for any individuals identified in the original and all the supplemental responses to Surprise Valley data request 1.35 who are not currently employed by PacifiCorp.
- (d) The PacifiCorp employee(s) who is available to be deposed or testify regarding the information in the response.

### **1<sup>st</sup> Supplemental Response to SVEC Data Request 12.1**

- (a) Following discussions with Surprise Valley's legal counsel, PacifiCorp has agreed to remove the confidential designation to Attachment SVEC 12.1. Please refer to Attachment SVEC 12.1-1 1<sup>st</sup> Supplemental.
- (b) Following discussions with Surprise Valley's legal counsel, PacifiCorp has agreed to remove the confidential designation to Attachment SVEC 12.1. Please refer to Attachment SVEC 12.1-1 1<sup>st</sup> Supplemental.
- (c) Following discussions with Surprise Valley's legal counsel, Surprise Valley has clarified that it intended the request for contact information of former employees to be a standalone request rather than in relation to the data requests listed above. Please refer to Confidential Attachment SVEC 12.1-2 1<sup>st</sup> Supplemental.
- (d) OAR 860-001-0520 allows the testimony of a witness to be taken by deposition. PacifiCorp is still reviewing Surprise Valley's direct testimony and has not yet identified the appropriate witnesses in this proceeding.

The confidential attachment is designated as Protected Information under Order No. 15-351 and may only be disclosed to qualified persons as defined in that order.

Attachment SVEC 12.1

Question #	12.1 a	12.1b
1.2	Griswold, Bruce	Griswold, Bruce
1.3	Griswold, Bruce	Griswold, Bruce
1.4	Griswold, Bruce	Griswold, Bruce
1.5	Griswold, Bruce	Griswold, Bruce
1.6	Griswold, Bruce	Griswold, Bruce
1.8	Griswold, Bruce	Griswold, Bruce
1.9	Griswold, Bruce	Griswold, Bruce
1.10	Griswold, Bruce	Griswold, Bruce
1.11	Griswold, Bruce	Griswold, Bruce
1.12	Griswold, Bruce	Griswold, Bruce
1.19	Griswold, Bruce	Griswold, Bruce
1.20	Griswold, Bruce	Griswold, Bruce
1.21	<i>Prepared by Legal</i>	
1.22	Fritz, Brian	Fritz, Brian
1.24	Bremer, Kris / Stofiel, Veronica	Stofiel, Veronica
1.25	Frick, Larry	
1.26	Downey, Kathryn / Cannon, Patrick	
1.32	Paul, Mark	
1.36	Bremer, Kris / Kerchinsky, Patience	
1.37	Frick, Larry	
1.38	Griswold, Bruce	Griswold, Bruce
1.39	Griswold, Bruce	Griswold, Bruce
1.40	Griswold, Bruce	Griswold, Bruce
1.41	Griswold, Bruce	Griswold, Bruce
1.42	Griswold, Bruce	Griswold, Bruce
1.43	Griswold, Bruce	Griswold, Bruce
1.44	Griswold, Bruce	Griswold, Bruce
1.45	Griswold, Bruce	Griswold, Bruce
1.46 (c) 2nd sentence	Griswold, Bruce	Griswold, Bruce

1.47 (a) 2nd sentence	Griswold, Bruce	Griswold, Bruce
1.48	Kerchinsky, Patience / Raypush, Laura / Matheson, Rachel	Raypush, Laura
2.1	Griswold, Bruce	Griswold, Bruce
2.2	Griswold, Bruce	Griswold, Bruce
2.4	Stofiel, Veronica	Stofiel, Veronica
2.5	Bremer, Kris / Stofiel, Veronica	Stofiel, Veronica
2.8	Griswold, Bruce	Griswold, Bruce
2.9	Griswold, Bruce	Griswold, Bruce
2.10	Griswold, Bruce	Griswold, Bruce
2.11	Stofiel, Veronica	Stofiel, Veronica
2.12	Griswold, Bruce	Griswold, Bruce
2.14	Griswold, Bruce	Griswold, Bruce
2.15	Griswold, Bruce	Griswold, Bruce
3.2	<i>Prepared by Legal</i>	
3.3	<i>Prepared by Legal</i>	
4.1	Griswold, Bruce	Griswold, Bruce
4.2	Griswold, Bruce	Griswold, Bruce
4.3	Griswold, Bruce	Griswold, Bruce
4.4	Griswold, Bruce	Griswold, Bruce
4.5	Griswold, Bruce	Griswold, Bruce
4.6	Griswold, Bruce	Griswold, Bruce
4.7	Griswold, Bruce	Griswold, Bruce
4.8	Stofiel, Veronica	Stofiel, Veronica
4.9	Stofiel, Veronica	Stofiel, Veronica
4.10	Stofiel, Veronica	Stofiel, Veronica
4.11	<i>Prepared by Legal</i>	
4.12	Stofiel, Veronica	Stofiel, Veronica
4.13	Stofiel, Veronica	Stofiel, Veronica
4.14	Stofiel, Veronica	Stofiel, Veronica
5.2	Griswold, Bruce / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug
5.3	Stofiel, Veronica	Stofiel, Veronica
5.4	Stofiel, Veronica	Stofiel, Veronica

5.5	Griswold, Bruce / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug	
5.6	Griswold, Bruce / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug	
5.7	Griswold, Bruce / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug	
5.8	Retzlaff, Graham	Griswold, Bruce	
5.9	Retzlaff, Graham		
7.3	Clements, Paul / Cunningham, Melanie / Griswold, Bruce / Sharp, Kristie		
8.1	Knudsen, Ernie / Stofiel, Veronica		Stofiel, Veronica
8.2	Griswold, Bruce / Hoerner, Joe / Meeuwsen, Doug		Griswold, Bruce / Meeuwsen, Doug
8.3	Griswold, Bruce / Hoerner, Joe / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug	
8.4	Griswold, Bruce / Hoerner, Joe / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug	
8.5	Cannon, Patrick / Stofiel, Veronica	Stofiel, Veronica	
8.6	Griswold, Bruce / Hoerner, Joe / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug	
8.7	Stofiel, Veronica	Stofiel, Veronica	
8.8	Griswold, Bruce / Hoerner, Joe / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug	
8.9	Stofiel, Veronica	Stofiel, Veronica	
8.10	Stofiel, Veronica	Stofiel, Veronica	
8.11	Stofiel, Veronica	Stofiel, Veronica	
8.13	Fritz, Brian / Mark, John	Fritz, Brian / Mark, John	
8.14	Fritz, Brian / Mark, John	Fritz, Brian / Mark, John	
8.15	Fritz, Brian / Mark, John	Fritz, Brian / Mark, John	
9.1	Cannon, Patrick / Stofiel, Veronica	Stofiel, Veronica	
9.2	Cannon, Patrick / Stofiel, Veronica	Stofiel, Veronica	
9.3 (a) (b) (c)	Griswold, Bruce / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug	
9.8 (a) (b) (c)	Cunningham, Melanie / Griswold, Bruce / Meeuwsen, Doug / Stofiel, Veronica	Stofiel, Veronica	
9.8 (d)	Cunningham, Melanie / Griswold, Bruce / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug	
9.8 (e)(f)	Cunningham, Melanie / Griswold, Bruce / Meeuwsen, Doug / Stofiel, Veronica	Stofiel, Veronica	
9.8 (g)	Cunningham, Melanie / Griswold, Bruce / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug	



9.8 (h) (i)	Cunningham, Melanie / Griswold, Bruce / Meeuwsen, Doug / Stofiel, Veronica	Griswold, Bruce / Meeuwsen, Doug / Stofiel, Veronica
9.9 (c)	Cunningham, Melanie / Griswold, Bruce / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug
10.1	Stofiel, Veronica	Stofiel, Veronica
10.2	Stofiel, Veronica	Stofiel, Veronica
10.3 (a)	Griswold, Bruce	Griswold, Bruce
10.3 (b)	Griswold, Bruce / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug
10.4	Griswold, Bruce / Meeuwsen, Doug	Griswold, Bruce / Meeuwsen, Doug
10.5	Stofiel, Veronica	Stofiel, Veronica
10.6	Fritz, Brian	Fritz, Brian

## Attachment 6

UM 1734 Hearing Transcript

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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UM 1734

In the Matter of  
PACIFICORP, dba Pacific Power,  
Application to Reduce the Qualifying  
Facility Contract Term and Lower the  
Qualifying Facility Standard Contract  
Eligibility Cap.

TRANSCRIPT OF AUDIO-RECORDED PROCEEDINGS  
Public Utility Commission  
Salem, Oregon  
January 21, 2016

BEFORE: ADMINISTRATIVE LAW JUDGE, ALLAN J. ARLOW

**APPEARANCES:**

- Dustin Till, Attorney at Law, Portland, Oregon, of counsel for Pacificorp;
- Irion Sanger, Attorney at Law, Portland, Oregon, of counsel for REC;
- Travis Ritchie, Attorney at Law, Portland, Oregon, of counsel for Sierra Club;
- Peter Richardson, Attorney at Law, Boise, Idaho, of counsel for CREA;
- Stephanie Andrus, DOJ General Counsel, Salem, Oregon, of counsel for  
Commission Staff.

**Transcript Prepared by:**  
Jean Mueller Transcribing  
PO Box 1049  
Lebanon, OR 97355  
(541)259-1139

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**WITNESS INDEX**

		<u>I.S.</u>	<u>T.R.</u>	<u>P.R.</u>		<u>I.S.</u>	<u>T.R.</u>	<u>P.R.</u>
<u>PACIFICORP'S</u>	<u>D</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>ReD</u>	<u>ReX</u>	<u>ReX</u>	<u>ReX</u>
Bruce Griswold	3	5	32	49	72	--	--	--

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**EXHIBIT INDEX**

<u>PACIFICORP'S</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>REC'D</u>
PAC/100	Bruce Griswold Direct Testimony	4	5
PAC/101	Exhibit from Griswold Direct Testimony	4	5
PAC/102	Exhibit from Griswold Direct Testimony	4	5
PAC/200	Griswold Reply Testimony	4	5
<u>REC's</u>			
REC/401-407	Cross-examination Exhibits	31	32

1 ALJ ARLOW: All right. Let's go on the record then.  
2 Good morning. Today is January 21<sup>st</sup>, 2016, and this is a  
3 hearing before the Public Utility Commission of Oregon,  
4 Docket UM 1734, In the Matter of PacifiCorp, dba Pacific  
5 Power, application to reduce the qualifying facility  
6 contract term and lower the qualifying facility standard  
7 contract eligibility cap.

8 My name is Allan Arlow, and I am the Administrative  
9 Law Judge designated by the Commission to preside in this  
10 matter.

11 I note for the record the following appearances by  
12 counsel on behalf of parties. On behalf of the Community  
13 Renewable Energy Association, Peter J. Richardson; on  
14 behalf of the Sierra Club, Travis Ritchie; on behalf of  
15 Renewable Energy Coalition, Irion Sanger; on behalf of the  
16 Public Utility Commission Staff, Stephanie Andrus; on  
17 behalf of PacifiCorp, Dustin Till; on behalf of Obsidian  
18 Renewables, LLC, David Brown; and on behalf of Renewable  
19 Northwest, Silvia Tanner.

20 Other than PacifiCorp, there are other parties who  
21 have also pre-filed testimony, and I would like to know  
22 whether they would like to offer that into the record at  
23 this time. Pre-filed testimony would then be followed up  
24 by the submission of affidavits from all of the witnesses  
25 who are not present today. But I would ask if there are

1 any objections to this procedure before moving forward and  
2 asking people if they wish to offer pre-filed testimony at  
3 this time?

4 MR. TILL: No objection, Your Honor.

5 ALJ ARLOW: All right.

6 That being the case, we can recite into the record  
7 or we can actually put in later all of the pre-filed  
8 testimony which has been offered into this record, if there  
9 are no questions with respect to that, rather than having  
10 me list each particular party's exhibits.

11 *(No audible response)*

12 ALJ ARLOW: Okay, without objection, we will offer  
13 that. And then what we'll do then is, when we go back on  
14 the record, PacifiCorp will be able to put his witness on  
15 the stand who offered both the direct and reply testimony,  
16 I believe, the first go around, and you can offer it at  
17 that time if you wish.

18 All right, let's go off the record.

19 *(Recess)*

20 ALJ ARLOW: All right, let's go back on the  
21 record. I understand that the parties are ready to  
22 proceed. Would Mr. Till, you like to report about how the  
23 proceedings will go or does anybody else wish to make the  
24 comment? Mr. Till, Mr. Sanger?

25 MR. SANGER: We agreed that Renewable Energy

1 Coalition, myself, would go first, Mr. Ritchie would go  
2 second, and Mr. Richardson would go third in terms of  
3 cross-examination, and Mr. Till will reserve his re-direct  
4 until the completion of the cross-examination.

5 ALJ ARLOW: All right. So, you'll go first, Mr.  
6 Sanger?

7 MR. SANGER: Yes, Your Honor.

8 ALJ ARLOW: Okay. And Mr. Ritchie second? I'm  
9 sorry.

10 MR. RITCHIE: Yes, Your Honor.

11 ALJ ARLOW: And finally it will be Mr. --

12 MR. RICHARDSON: Richardson.

13 ALJ ARLOW: -- Richardson. Ritchie and Richardson.

14 MR. RICHARDSON: It's going to be confusing.

15 ALJ ARLOW: I apologize.

16 All right. Mr. Till, if you'll have your witness  
17 come forward.

18 Good morning, Mr. Griswold.

19 MR. GRISWOLD: Good morning.

20 **BRUCE GRISWOLD,**

21 being called as a witness, was first duly sworn according  
22 to law, was examined and testified as follows:

23 ALJ ARLOW: Thank you. Please proceed.

24 MR. TILL: This is Mr. Till on behalf of  
25 PacifiCorp.



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**DIRECT EXAMINATION**

BY MR. TILL:

**Q.** Good morning, Mr. Griswold. Would you please spell your name for the record?

**A.** It's B-r-u-c-e, Griswold is G-r-i-s-w-o-l-d.

**Q.** Thank you. And would you please describe your current employment?

**A.** I'm a director of short term origination and QF contracts at PacifiCorp located in Portland, Oregon.

**Q.** And was it in that capacity that you prepared the direct testimony designated as PacifiCorp 100 and the accompanying exhibits PacifiCorp 101 and 102?

**A.** Yes.

**Q.** And did you also prepare the reply testimony designated as PacifiCorp 200?

**A.** Yes.

**Q.** Do you have any changes that you'd like to make to that testimony today?

**A.** No.

**Q.** And if I was to ask you the same questions presented in that testimony today, would you provide the same answers?

**A.** I would, yes.

MR. TILL: Your Honor, I move to admit Exhibits PacifiCorp 100, 101, 102 and 200 into the record.

1 ALJ ARLOW: Any objection? Hearing none, they are  
2 admitted into the record.

3 MR TILL: And Mr. Griswold is available for cross-  
4 examination.

5 ALJ ARLOW: Thank you. Mr. Sanger.

6 MR. SANGER: Thank you. This is Irion Sanger for  
7 the record.

8 **CROSS EXAMINATION**

9 BY MR. SANGER:

10 **Q.** Mr. Griswold, can you describe what your specific  
11 responsibilities are in terms of QF contracting?

12 **A.** Yes, I work in PacifiCorp Energy Service management --  
13 energy supply management. Our responsibility is for the  
14 negotiations and contracts with qualifying facilities  
15 throughout our six state territory.

16 **Q.** And what do you do on a day-to-day or a month-to-month  
17 basis in terms of -- what does that entail in terms of  
18 working on QF contracts?

19 **A.** Well, it ranges from -- all the way from responding to  
20 any inquiries from developers who have projects they're  
21 working on, any inquiries from existing QF's, if they're  
22 renegotiating their contract or they want to restart it.  
23 It's all of the -- if there was pricing that needs to be  
24 done, contract negotiations, contract preparations, all the  
25 way through to getting management approval for those

1 agreements.

2 **Q.** And how many years have you been working on QF  
3 contracting matters?

4 **A.** In excess of 20 plus years, yes.

5 **Q.** Okay. And over that period of time, how many QF -- and  
6 QF, for the record, is qualifying facilities -- how many QF  
7 contracts would you estimate that you've worked on? Rough  
8 estimate.

9 **A.** In excess of a couple hundred, yes.

10 **Q.** Okay. And is there anybody else at the company who is  
11 more knowledgeable on qualifying facility matters than  
12 yourself?

13 **A.** I'd hate to say there isn't, but I probably know as  
14 much as most people in our company, yeah.

15 **Q.** Okay. So, I'm going to ask a few cross-examination  
16 questions and I want to get the terminology down, make sure  
17 we're on the same page here. And I'm going to talk about  
18 new qualifying facilities or QFs and existing qualifying  
19 facilities or existing QFs. And in terms of new QFs, would  
20 a reasonable definition of a new QF be a qualifying  
21 facility that is not operating yet and is not selling power  
22 to PacifiCorp or another utility?

23 **A.** I think that's partially right. I would -- the way we  
24 -- the way the company defines them is a new QF is one who  
25 has not been constructed yet, whether it's on another

1 utility's service territory delivering power to us or  
2 attaching to our system.

3 **Q.** So it's the not having yet been constructed which makes  
4 it a new QF?

5 **A.** Yes.

6 **Q.** So an existing QF would be a QF that has been  
7 constructed and is likely selling power to PacifiCorp or  
8 another utility?

9 **A.** Correct.

10 **Q.** Okay. Now, when new QFs approach you, do they  
11 generally ask for long or short term contracts?

12 **A.** Usually the -- when they contact us, the information  
13 they're seeking is just general information about if they  
14 haven't gone to our website or read the actual schedule for  
15 their size of project. They're really interested in --  
16 well, first and foremost they're interested in what the  
17 price is, that they get paid for their power. And then  
18 they generally ask how do they go about securing a contract  
19 with the company. They don't usually, in that first  
20 conversation, unless they've done a lot of work on the  
21 project, is ask or even discuss the term of the contract.

22 **Q.** But when the term of the contract comes up, at some  
23 point they need to select a contract term, correct?

24 **A.** That is correct, yes.

25 **Q.** And when they select a contract term, do they usually

1 select a longer or shorter contract term?

2 **A.** The major percentage usually seek a longer term  
3 contract. They usually look -- by then I've pointed them  
4 to the tariff or the rate schedule and they will review  
5 that and come back and say, this is what I want for the  
6 project.

7 **Q.** And would one of the reasons a new QF select a longer  
8 term contract is because it might help with their obtaining  
9 financing for the project?

10 **A.** I don't know the rationale for what their decisions are  
11 for selecting the term of the contract. They don't -- they  
12 generally don't provide their rationale for the term.

13 **Q.** So you've been working in this over 20 years and you're  
14 the most knowledgeable person in the company and you don't  
15 know if one of the reasons, not the only reason, but one of  
16 the reasons that a QF might select a longer term contract  
17 is for financing purposes?

18 **A.** I would agree that it could be for financing purposes.

19 **Q.** So, if it could be for financing purposes, in your  
20 opinion, why would a longer term contract help a new QF in  
21 terms of financing?

22 **A.** Well, first, I don't know what that individual QF is,  
23 what their financial conditions are, so I can't really  
24 speak to each and every one of them. But from a general  
25 basis, you know, a longer term contract provides more

1 certainty for them to secure outside financing.

2 **Q.** And do existing QFs sometimes need to make capital  
3 improvements to their projects or make investments in  
4 interconnection facilities when their contracts expire?

5 **A.** That could be a possibility, yes.

6 **Q.** Okay. Now, I want to refer you to the Renewable Energy  
7 Coalition cross-examination exhibits. Were you provided  
8 copies of those before?

9 **A.** I was, yes.

10 **Q.** And did you have a chance to review those?

11 **A.** I did, yes.

12 **MR. SANGER:** Does anyone in the room need copies of  
13 the Renewable Energy Coalition's cross-examination  
14 exhibits?

15 *(No audible response)*

16 **MR. SANGER:**

17 **Q.** So, I'd like to refer you to Renewable Energy Coalition  
18 cross-examination Exhibit 400. Now, this asked the company  
19 whether the company could identify any contracts that the  
20 company was aware of which had been able to obtain  
21 financing for construction under three-year contract terms.  
22 And can you read the company's response there?

23 **A.** "PacifiCorp does not track qualifying facility project  
24 financing. Please refer to the company's response to REC  
25 Data Request 2.1, specifically attachment REC 2.1 which

1 provides the original term of PacifiCorp's QF power  
2 purchase agreements."

3 **Q.** Okay. Then I've attached -- or I've provided as cross-  
4 examination Exhibit REC 402, which is an updated version of  
5 2.1 that's referred to in REC cross-examination Exhibit  
6 400. Do you have a copy of that?

7 **A.** I do.

8 **Q.** Okay. So, I reviewed that and I cannot identify any  
9 new qualifying facilities that entered into a contract  
10 under a three-year term. I wanted to check with you to  
11 make sure that that review is correct or that you're aware  
12 of any new qualifying facilities that obtained a -- that  
13 entered into a three-year contract term.

14 **A.** I believe if you look at Exxon Mobil, which is on page  
15 2 and it's about 7 or 8 line items from the bottom of the  
16 page.

17 **Q.** So that was a new facility that obtained a -- that had  
18 a two-year contract term?

19 **A.** Three years.

20 **Q.** Three-year contract term?

21 **A.** Yes.

22 **Q.** And are there any others that you're aware of?

23 **A.** The other one that I can point to is the Kennecott  
24 Refinery which is on page 3, it's the very first --  
25 Kennecott is the first K and the refinery is the first

1 project there.

2 **Q.** And those are waste, heat or natural gas? Are they  
3 associated with other operations for those facilities?

4 **A.** They are, yes.

5 **Q.** Okay. So those were existing industrial facilities  
6 that made investments in waste, heat or co-generation?

7 **A.** Correct.

8 **Q.** Okay. Are there any biomass, wind, hydro, solar,  
9 geothermal projects?

10 ALJ ARLOW: If I may interject here, I think on  
11 page 4, Greenville, about the 7<sup>th</sup> line down, it says a  
12 biomass project that was three years in length. Actual COD  
13 was March 1, 2011.

14 MR. GRISWOLD: There is GroPro, yes there is on  
15 page 3.

16 MR. SANGER:

17 **Q.** Okay. So there's one that you're aware of?

18 **A.** Yes.

19 **Q.** Okay. And how -- and so there's two CHP geothermal and  
20 one biomass or --

21 ALJ ARLOW: I see -- sorry to interject, but I do  
22 see others. The Roseburg Forest Products, Dillard, was a  
23 two year.

24 MR. GRISWOLD: Although I would -- yeah, I see that  
25 one, Your Honor. That one is actually an existing co-



1 generation that just started a new contract with us at that  
2 time.

3 ALJ ARLOW: I see. And the Tesoro one?

4 MR. GRISWOLD: Tesoro is another one, yes. Tesoro  
5 is another brand new co-generation project.

6 ALJ ARLOW: All right. I just wanted to make sure  
7 everybody was on the same page with respect to all of  
8 those.

9 MR. SANGER:

10 **Q.** Okay, so there -- let's say there's a handful of co-  
11 generation, natural gas and one, maybe another, biomass,  
12 non co-generation facilities?

13 **A.** Correct.

14 **Q.** Okay. So there's a handful in total?

15 **A.** Yes.

16 **Q.** Okay. Now, are you aware or has the company provided  
17 any evidence regarding whether the three-year contract term  
18 would provide an opportunity for most qualifying facilities  
19 to obtain financing?

20 **A.** Again, the simple answer is no. The longer answer is  
21 we've not -- as I've stated before -- involved ourselves  
22 with project financing.

23 **Q.** Okay. So, your testimony I believe at some point --  
24 and I could give you a citation, but I think you can answer  
25 the question. How long is the fixed price portion of

1 PacifiCorp's QF contracts in Washington?

2 **A.** Five years.

3 **Q.** And how many Washington QFs are currently selling power  
4 to PacifiCorp in Washington?

5 **A.** We have three.

6 **Q.** And do you know what those three are?

7 **A.** Yes. One is methane dairy digester, Deruyter Farms and  
8 the other two are up in Yakima, they're on the irrigation  
9 district hydro projects.

10 **Q.** And what are the sizes of those facilities,  
11 approximately?

12 **A.** The Deruyter one is, I think, less than two megawatts.  
13 The Yakima ones are each less than two megawatts.

14 **Q.** Okay. So you've got three projects less than six  
15 megawatts of installed capacity in Washington?

16 **A.** That is correct.

17 **Q.** And do you know how long the original contract terms  
18 for the two Yakima Tieton hydro projects were?

19 **A.** I believe they were 20 years or -- they were longer in  
20 nature than -- I can look at my --

21 **Q.** Yeah, Exhibit 402 says that they were 25 years. Does  
22 that sound about right?

23 **A.** Yeah, that sounds about right.

24 **Q.** Okay. So, is it correct that in Washington there is  
25 one currently existing project that is selling power to the

1 company that was able to obtain financing or get developed  
2 with five-year contract terms?

3 **A.** Yes, that -- per this, the Deruyter Farm had a five-  
4 year contract.

5 **Q.** Okay. And how many megawatts of QF projects are on-  
6 line in the state of Oregon?

7 **A.** Operating?

8 **Q.** Yeah, or approximate.

9 **A.** I'm thinking about 300, somewhere in that range.

10 **Q.** Okay. If you refer to your testimony, your direct  
11 testimony, at page 10, lines 12 through 13 -- I'm not sure  
12 if this is currently operating or not, but you refer to 338  
13 megawatts of PURPA contracts in Oregon, under contract in  
14 Oregon?

15 **A.** Yes, those are under contract.

16 **Q.** And are those currently operating or are those --

17 **A.** Not all of them are operating.

18 **Q.** Okay.

19 **A.** But that referred to having executed a contract with  
20 us.

21 **Q.** Okay. So, in Washington, has the company entered into  
22 that many new QF contracts over the last few years? Have  
23 you entered into any new QF contracts?

24 **A.** No.

25 **Q.** And one of the reasons -- is one of the reasons we're

1 here today is the fact that the company has entered into a  
2 large number of new wind and solar QF contracts in the  
3 state of Oregon?

4 **A.** Let me make sure I understand your question. You're  
5 asking me if the reason there's none in Washington is  
6 because they all came into Oregon?

7 **Q.** No, just a basic foundational question. The company  
8 filed this application. Is one of the reasons you filed  
9 the application the fact that the company has entered into  
10 a large number of new wind and solar QF contracts?

11 **A.** Yes.

12 **Q.** Okay. And, however, in Washington the company has not  
13 entered into any new wind and solar contracts?

14 **A.** No.

15 **Q.** Now, is there something -- well, let me take that back.  
16 Is Washington particularly ill-suited for wind development  
17 as compared to Oregon?

18 **A.** I don't work in the development side, but having looked  
19 at the map of Washington and Oregon, you can see that kind  
20 of development of wind out through the Gorge on either side  
21 of the border seems to be equal. So I can't really speak  
22 to -- but I can't speak to whether one state's better than  
23 the other.

24 **Q.** But you're not aware of anything in Washington that  
25 would make, you know, wind development much worse than the

1 state of Oregon?

2 **A.** I personally am not aware of any differences.

3 **Q.** So, why would you -- what would your explanation be for  
4 the fact that there are no wind projects selling power to  
5 PacifiCorp in Washington as compared to Oregon?

6 **A.** I don't have a reason to understand what drives  
7 developers. I mean, they're -- they're the ones looking at  
8 the sites for wind and, you know, the best areas for wind  
9 development, the best areas for transmission. So I can't  
10 really speak to that.

11 **Q.** Does PacifiCorp serve the Walla Walla region in  
12 Washington?

13 **A.** We do, yes.

14 **Q.** Have you heard of the Tucannon 266 megawatt wind  
15 project in the state of Washington?

16 **A.** No, not really.

17 **Q.** Okay. I'd like to refer you to Renewable Energy  
18 Coalition cross-examination Exhibit 401. Do you have that  
19 in front of you?

20 **A.** Yes.

21 **Q.** So this question asked you, or asked the company, to  
22 identify for each state regulatory jurisdiction the company  
23 operates in, to identify the maximum contract term allowed  
24 by the state regulatory agency for each year since PURPA  
25 passed. And the company did not -- the company objected

1 and did not provide this information, is that correct?

2 **A.** That is correct.

3 **Q.** So I'm going to ask a few questions about contract  
4 terms starting in the state of Oregon. Did you read the  
5 testimony of staff witness Brittany Andrus?

6 **A.** I did, yes.

7 **Q.** So, I can go over the -- I can give you a copy of the  
8 testimony if you'd like, but I wanted to just -- I can ask  
9 some general questions and then see if you need to see a  
10 copy of her testimony. She testified that when PURPA was  
11 passed in the State of Oregon, that there were 20-year  
12 contract terms for non-standard contracts. Now, do you  
13 have any reason to dispute that original contract terms in  
14 the State of Oregon were 20 years for non-standard  
15 contracts?

16 **A.** I have no reason.

17 **Q.** Okay. And is that your general understanding?

18 **A.** Yeah, subject to check, I wouldn't disagree with it.  
19 Twenty years is what it was at that time.

20 **Q.** And for non-standard contract terms, is your general  
21 understanding that most QFs requested and obtained contract  
22 terms of, say 25 to 30 years, more than 20 years?

23 **A.** Yes, there were some longer than 20-year term  
24 contracts.

25 **Q.** Now, has the company conducted any -- well, then -- I

1 retract that. In 2005, the -- are you familiar with the  
2 docket, UM 1129?

3 **A.** Yes.

4 **Q.** And were you a witness in that proceeding?

5 **A.** I was.

6 **Q.** What was the contract term that the Commission adopted  
7 in that proceeding?

8 **A.** In that they adopted a 15-year fixed and if the  
9 qualifying facility wanted a full 20-year term, they could  
10 have five years (*inaudible*).

11 **Q.** And are you aware that in the mid 1990's that PGE  
12 obtained 5-year contract terms?

13 **A.** I am aware of that.

14 **Q.** Okay. Has the company conducted any analysis of the  
15 impact of contract terms on the number of QFs that were  
16 able to obtain financing in the state of Oregon?

17 **A.** No.

18 **Q.** In terms of QF contract negotiations, what are your  
19 areas of responsibility in terms of which states?

20 **A.** Up until 2014, or mid '15, I was responsible for all  
21 six states, and then we -- between Pacific Power and Rocky  
22 Mountain Power, we've split that responsibility between  
23 myself and somebody in Rocky Mountain Power.

24 **Q.** And do you sometimes occasionally assist out on  
25 contract -- PURPA contract issues for what's going on at

1 Rocky Mountain Power?

2 **A.** Correct. The overall management of qualifying facility  
3 contracts in PacifiCorp as a whole is managed within the  
4 department that I am in.

5 **Q.** And are you familiar with what the current contract  
6 terms are in the State of Idaho for the company?

7 **A.** As it currently stands it's two years for, I believe,  
8 solar and wind and then up to 20 years for the, I think  
9 it's the hydro -- base load hydro projects, yeah.

10 **Q.** Okay.

11 **A.** Subject to check, I believe.

12 **Q.** Subject to check, would you agree that it's 20 years  
13 for base load, hydro, or biomass 10 megawatts and under?

14 **A.** Yes.

15 **Q.** And was there a period of time in the past when the  
16 contract terms were shorter in Idaho?

17 **A.** I didn't really know the history of them.

18 **Q.** Okay.

19 **A.** It could be, but I'm not aware yes or no.

20 **Q.** Okay. Then I'll move on from that. So I'd like you to  
21 refer to your testimony on PacifiCorp 100, page 16. Let me  
22 know when you're there, Mr. Griswold.

23 **A.** I am.

24 **Q.** So at the top of your testimony there, you're citing an  
25 order number 05-584. Was that the order we were talking



1 about earlier from UM 1129 where they adopted the 15-year  
2 fixed price contract term?

3 **A.** Yes.

4 **Q.** Can you read to me what your testimony says there in  
5 terms of the quotation of the Commission's order?

6 **A.** It's cited as, "We conclude that the contract term  
7 length minimally necessary to ensure that most QF projects  
8 can be financed should be the maximum term for standard  
9 contracts."

10 **Q.** And do you agree with that statement?

11 **A.** No, I don't necessarily agree with it.

12 **Q.** And have you -- has PacifiCorp submitted evidence that  
13 a three-year contract term will ensure that most QF  
14 projects can be financed?

15 **A.** We have not.

16 **Q.** Okay. I'd like to move on to some of the company's  
17 justifications for lowering the contract term to three  
18 years. Is one of the company's justifications for  
19 proposing, I guess, both lower sized thresholds for wind  
20 and solar and shorter contract terms, the large number of  
21 QF contracts that have either entered into contracts or are  
22 seeking contracts?

23 **A.** Yes, that is one of the reasons.

24 **Q.** How many non-wind or non-solar contract requests does  
25 the company have right now? I could refer you to your

1 testimony and your direct testimony on page 11.

2 **A.** We have one and that's still active, so...

3 **Q.** So, is it safe to say that if there were no new wind or  
4 no new solar contract requests or new contracts over the  
5 last few years, is it safe to say that the company would  
6 not have made this application filing?

7 **A.** No, it's not safe to say that. We -- as you see with  
8 other reasons that have been included in my direct  
9 testimony, it was not just about wind and solar. It had to  
10 do more with the fixed price risk and the exposure of our  
11 customers.

12 **Q.** So, the company would have filed an application for the  
13 -- okay, I'll strike that, you've answered the question.  
14 So, previously we discussed a recent Idaho PUC order  
15 regarding contract terms, and is it your position that the  
16 Idaho Public Utility Commission made its findings in part  
17 on the same evidence in this proceeding?

18 **A.** It was -- no, it was not entirely the same. I mean, it  
19 -- there was evidence pertaining to the company as a whole,  
20 but there was also evidence provided specific to Idaho.

21 **Q.** Correct, but I said in part on the same evidence  
22 presented by the company.

23 **A.** So, yes, then I would agree.

24 **Q.** Okay. And in that proceeding, the Idaho Commission did  
25 not lower the contract term for non-wind and non-solar QFs

1 up to 10 megawatts. Do you know why the Commission did  
2 that, the Idaho Commission?

3 **A.** I do not. I was not party -- I was not one of the  
4 companies represented in that docket.

5 **Q.** Now, did the company -- did PacifiCorp propose to lower  
6 the contract term for new and existing QFs in Utah to three  
7 years?

8 **A.** Yes, they did.

9 **Q.** And are you aware of what the Utah Public Service  
10 Commission -- how the Utah Public Service Commission  
11 resolved that case?

12 **A.** Yes, they recently issued an order reducing it from 20-  
13 year fixed price to 15-year fixed price.

14 **Q.** Now, would you agree that there's a -- some range of  
15 reasonable options for the Commission to resolve issues in  
16 this case, that it's something short of what the company  
17 has asked for?

18 **A.** Well, the company's presented their position, which we  
19 fully believe is the right length. What the Commission's  
20 decision is, is ultimately their decision, but I think  
21 we've presented a strong case of why it should be reduced  
22 to three years. I can't speak to how the Commissions will  
23 make their decision.

24 **Q.** No, but I'm asking from your perspective in terms of  
25 achieving the company's goals, one of which is the

1 magnitude of the new projects, does it have to be the  
2 company's recommendation or could there be other reasonable  
3 resolutions that solve your problem, but are not exactly  
4 what the company has requested?

5 **A.** There could be. I think the key for us really is that  
6 it boils down to the right -- the customer indifference  
7 standard that's established within PURPA. That doesn't  
8 mean you can't get to the same endpoint, but it has to have  
9 that rate pay or that customer indifference and, you know,  
10 with a long term power purchase agreement that's fixed  
11 price, you just have significant price risks to our  
12 customers.

13 **Q.** And the company has only proposed to lower the size  
14 threshold for wind and solar projects. Why did the company  
15 limit it only to wind and solar projects?

16 **A.** I think that generally those were -- had been the  
17 highest population of projects proposed to us. A hundred  
18 KW is -- we still think is -- it continues to have a must-  
19 purchase obligation where we are not looking to get out of  
20 our PURPA obligation. We simply look at it from the best  
21 way to have avoided cost is modeling those costs, and to  
22 have the most accurate and least customer impact is shorter  
23 term and smaller size or modeled -- modeled, and that's for  
24 standard contracts. Or you modeled the project with a  
25 shorter term and that should be very close to -- remain

1 very close to what the costs are.

2 **Q.** Right. But why did the company not include wind and  
3 solar in the reduction of the size threshold?

4 **A.** I think we included wind and solar.

5 **Q.** I'm sorry. Why did you not -- why did you only include  
6 wind and solar in the reduction of the size threshold?

7 **A.** I think the simple answer was that's the largest volume  
8 of project requests that have come in to us in recent  
9 times.

10 **Q.** So, if it's the largest volume -- and you previously  
11 said there was one Oregon non-wind or non-solar project --  
12 could that rationale also apply to the three-year contract  
13 term limitation?

14 **A.** No, I think that you still have the price exposure of a  
15 long-term contract whether it's wind, solar, biomass,  
16 etcetera.

17 **Q.** Now -- strike that. I'm going to move on to -- you  
18 just mentioned that you don't believe that the company's  
19 proposal in this case is intended to eliminate its PURPA  
20 must-purchase obligation, is that correct?

21 **A.** That's correct.

22 **Q.** Now, does PacifiCorp want to eliminate the PURPA must-  
23 purchase obligation?

24 **A.** I'm personally not aware of that. Nothing in my record  
25 says that. In fact, my record states that we continue to

1 meet our PURPA obligation.

2 **Q.** I'd like to refer you to Renewable Energy Coalition,  
3 cross-examination Exhibit 407.

4 MR. TILL: PacifiCorp objects to questioning on this  
5 exhibit. This is a summary of testimony presented by a  
6 Berkshire Hathaway Energy representative in Congress back  
7 in June. This summary, not only is it not Mr. Weisgall's  
8 statement, Mr. Weisgall's statement was not part of Mr.  
9 Griswold's testimony. Mr. Weisgall, who appeared on behalf  
10 of Berkshire Hathaway Energy, is not available for cross-  
11 examination or re-direct, and we think questioning on Mr.  
12 Weisgall's statements are inappropriate.

13 MR. SANGER: Your Honor, I believe they are highly  
14 relevant because they address PacifiCorp's parent company's  
15 intentions in terms of what it wants to do in terms of  
16 PURPA. I'd also note that PacifiCorp provided this in  
17 response to a Sierra Club data request and under the  
18 Commission's rules, OAR 860-001-0540, "A party may offer  
19 into evidence data requests and the answers to data  
20 requests. Any objection to the substance or form of a data  
21 request or answer must be attached to the submitted data  
22 request or answer with specific reference and grounds."  
23 And the company did not object at that time, and if they  
24 had objected at that time, then we would have been provided  
25 an opportunity to address those objections before the

1 hearing and not have to raise them now.

2 So, I think under the rules we have the right to  
3 introduce this and ask questions about it.

4 MR. TILL: Your Honor, if I may?

5 ALJ ARLOW: Yes.

6 MR. TILL: REC has -- this is Dustin Till for  
7 PacifiCorp. REC has the right to introduce that data  
8 response into the record based on the OAR provision that  
9 Mr. Sanger cited. We object not to the relevance of the  
10 document, but to questioning Mr. Griswold on the statements  
11 made by a third party who isn't present here. This is not  
12 part of Mr. Griswold's testimony.

13 MR. SANGER: Your Honor, this is a statement, as I  
14 said, by Berkshire Hathaway that's a public record that Mr.  
15 Griswold is the only witness that the company has put on on  
16 this issue. It addresses the very same issues that are in  
17 this proceeding. We'd be happy to cross-examine the  
18 individual who made these statements if the company wants  
19 to make him available. The only witness the company has  
20 made available is Mr. Griswold, so we'd like to cross-  
21 examine him about his company's position on this issue  
22 that's in this proceeding.

23 ALJ ARLOW: Well, I've got a problem with this,  
24 Mr. Sanger. It's several-fold. First of all, the actual  
25 testimony as a data request being offered for this

1 proceeding right now was provided just yesterday in the  
2 afternoon by Sierra Club. I'm not talking about the  
3 summary that was provided, but I'm talking about the  
4 original response to the data request. So, this should  
5 have been provided, first of all, quite a bit of time  
6 before when the exhibits which were going to be offered at  
7 this proceeding were to be filed by a particular day.  
8 That's one.

9           Secondly, once you had the document in your hands,  
10 you had an opportunity at that time to raise any questions  
11 with respect to the author of the document and to any other  
12 materials that might be provided from PacifiCorp. So that  
13 while you may offer this into the record as an example of  
14 what you believe PacifiCorp's policies may be, as they were  
15 I guess about nine months ago with respect to testifying  
16 before a federal agency, I don't think it is appropriate  
17 for you to examine Mr. Griswold, who I have no knowledge  
18 and I think has not been shown to have had any discussions  
19 with either the witness before the federal agency or with  
20 any of those involved in preparing that testimony. So he  
21 would have no insights to offer, reasonably could be  
22 expected in this proceeding.

23           So, I'm going to allow you to offer it into evidence  
24 as a document without the objection of Mr. Till, I would  
25 assume.



1 MR. TILL: Correct.

2 ALJ ARLOW: But it is not useful for the purposes  
3 of cross-examining the witness. You may take exception if  
4 you wish.

5 MR. SANGER: Your Honor, may I ask questions  
6 generally about the witness's knowledge of his company's  
7 position?

8 ALJ ARLOW: You can ask the witness about his  
9 understanding, what he's been told about the policies that  
10 he is to pursue with respect to the company's interests. I  
11 think to ask anything broader than that, you have to  
12 establish a foundation that he had particular knowledge in  
13 that respect.

14 MR. SANGER:

15 **Q.** Mr. Griswold, are you aware of PacifiCorp or its parent  
16 companies taking a position that PURPA's must-purchase  
17 obligation should be repealed?

18 **A.** I am aware based on this document that you've  
19 presented.

20 **Q.** Were you aware of this before this document came out?

21 **A.** No.

22 **Q.** So, you were not aware that Berkshire Hathaway  
23 submitted a bill to try to -- or wanted to repeal the PURPA  
24 must-purchase obligation?

25 **A.** I was aware of it after it had been presented -- Mr.

1 Weisgall had presented it. I was aware it had been done.

2 I did not see the document itself.

3 **Q.** Okay. So you were aware generally that it happened  
4 before you were provided this cross-examination exhibit?

5 **A.** Correct.

6 **Q.** Okay. So, if PURPA is repealed, would that  
7 economically benefit the company?

8 **A.** I have no way to determine that.

9 **Q.** So if the company builds its own resources, can it  
10 include those resources and rate base?

11 **A.** I'm not the expert on regulatory treatment, but  
12 generally that's my understanding.

13 **Q.** And does the company include in rate base, PURPA  
14 contracts?

15 **A.** Not in rate base, they're included in net power costs.

16 **Q.** Okay. So, does that provide an economic incentive or  
17 economic disincentive for the company to purchase power  
18 from PURPA projects?

19 **A.** Not necessarily. I think, as I've pointed out in my  
20 direct testimony, it's really about minimizing the risks to  
21 our customers and a long term fixed price contract.

22 **Q.** So, Mr. Griswold, I know the justifications that you  
23 put in your testimony, I'm just asking -- and I think you  
24 answered no, but I just want to confirm that you don't  
25 believe that there is an economic disincentive to purchase

1 power from PURPA projects rather than build it -- rather  
2 than the company build it itself?

3 **A.** I -- I -- no, I don't know the answer to that, whether  
4 there's, from a regulatory standpoint, it's better or  
5 worse.

6 **Q.** Okay. So, you're the most knowledgeable person at the  
7 company on this and you don't -- you don't know?

8 **A.** I'm not the most knowledgeable on regulatory treatment.  
9 I am more knowledgeable on QF contracts.

10 **Q.** Okay. I would like to refer to your testimony on page  
11 200, Griswold 7, lines 9 through 13. Can you read that  
12 starting with the word, "The company's request in this  
13 docket..."?

14 **A.** You said page 7?

15 **Q.** Yes. PacifiCorp 200, page 7, line 9 through 13.

16 **A.** And this is in my reply testimony, correct?

17 **Q.** Yes, your reply testimony, your reply's 200. I'm  
18 sorry.

19 **A.** "The foundation of PURPA are: 1) the must-take  
20 obligation; and 2) the rate payer in different standard.  
21 The company's request in this docket does not alter the  
22 must-purchase obligation. The company will continue to  
23 purchase energy from QFs in compliance with the letter and  
24 intent of PURPA for as long as the QF seeks to sell the  
25 power to the company as a QF for the duration of a QF's

1 useful life. The company's application is more directly  
2 concerned with the second."

3 **Q.** Okay. Thank you. So, under the Commission's current  
4 policy of 20-year total contracts, if a QF enters into a  
5 20-year contract today and PURPA is repealed tomorrow, then  
6 the QF will be able to continue selling power to the  
7 company for the remainder of its contract, is that correct?

8 **A.** That is correct.

9 **Q.** Now, if there are three-year contract terms and PURPA  
10 is repealed tomorrow, at the end of that three-year  
11 contract term, then the company will not have an obligation  
12 to purchase the QF's power for the duration of the QF's  
13 entire useful life, is that correct?

14 **A.** That would be one assumption, yes.

15 **Q.** Okay.

16 **MR. SANGER:** Okay. I'd like to take a short 30-  
17 second recess to ask Mr. Till a question.

18 **ALJ ARLOW:** All right. We can go off the record  
19 then.

20 *(Pause)*

21 **MR. SANGER:** Thank you, Your Honor. I'm going to  
22 cut my cross-examination short and move for the admission  
23 of the REC cross-examination exhibits, REC 400 through REC  
24 407. However, I do note that Sierra Club has proposed a  
25 longer version of REC 407, as you noted, the entire piece

1 of testimony, so if Sierra Club moves for the admission of  
2 that one then we don't need to have duplicative ones in the  
3 record. So I just wanted to flag that for you.

4 ALJ ARLOW: All right. Well, you know, we cannot  
5 contingently accept something at this stage. I think it's  
6 a little messy. Why don't you just offer what you have  
7 into the record and you can offer to strike the exhibit  
8 once we're finished, depending with how things go.

9 MR. SANGER: Thank you, Your Honor.

10 ALJ ARLOW: All right. Without objection?

11 MR. TILL: No objection, Your Honor.

12 ALJ ARLOW: Okay. It's entered into the record.  
13 Do you need to take a break, Mr. Griswold, or are you okay?

14 MR. GRISWOLD: No, I'm fine. Thank you.

15 ALJ ARLOW: All right. Mr. Ritchie?

16 MR. RITCHIE: Thank you, Your Honor.

17 **CROSS EXAMINATION**

18 BY MR. RITCHIE:

19 **Q.** Travis Ritchie for the Sierra Club.

20 Good morning, Mr. Griswold, how are you?

21 **A.** Good. Thank you.

22 **Q.** Mr. Griswold, I'd like to start out by asking a few  
23 questions related to the long term exposure that I believe  
24 you addressed as part of your concerns with the QF  
25 contracts. Mr. Griswold, you testified in your rebuttal

1 that company owned resources are preferable to long term  
2 QFs in part because of PacifiCorp's ability to back down  
3 those company owned resources when a more economic  
4 alternative --

5 ALJ ARLOW: Can you provide the page and line  
6 citation for me? I'm sorry.

7 MR. RITCHIE: Yes, Your Honor, I'm getting -- I'm  
8 getting to that.

9 MR. RITCHIE:

10 **Q.** -- and as a -- first if I could say, as a  
11 characterization, is that a general -- is that a generally  
12 correct characterization of your position?

13 **A.** Yes.

14 **Q.** And specifically for -- in your rebuttal testimony,  
15 page 14, lines 17 through 20, you state, "For example, if  
16 the marginal costs of a company gas plant is \$40 per  
17 megawatt hour but another alternative, such as a short term  
18 firm market purchase, costs only \$30 per megawatt hour, the  
19 company would dispatch down the gas plant and buy from the  
20 market saving customers \$10 per megawatt hour." First, did  
21 I read that correctly?

22 **A.** Could you state the page again?

23 **Q.** Sorry, I may have gotten ahead of you. I should have  
24 let you get there first. So it's your rebuttal  
25 testimony --

1 **A.** Mmm-hmm.

2 **Q.** -- page 14, lines 17 through 20.

3 **A.** Yes.

4 **Q.** And so that point you were making there, in that  
5 example you were giving, that's an illustration of your  
6 concern about how long term QFs are less preferable to  
7 company resources because of the long term exposure of a  
8 long term QF, is that correct?

9 **A.** That's correct.

10 **Q.** Now, in your example, you specifically state that the  
11 company could back down the gas plant when the marginal  
12 cost -- and I stress "marginal" there -- of the plant is  
13 higher than other alternatives. Is that correct?

14 **A.** Yes.

15 **Q.** And those marginal costs include things like fuel,  
16 variable O&M, chemicals, and things of that nature,  
17 correct?

18 **A.** That is correct.

19 **Q.** But for the gas plant, the hypothetical gas plant that  
20 you cited in your example, the all-in costs for that gas  
21 plant, those would be higher than just the marginal cost,  
22 correct?

23 **A.** Yes, you still have the fixed costs.

24 **Q.** And so, even if you back down a gas plant, the  
25 companies cannot avoid those fixed costs, is that correct?

1 **A.** That is correct.

2 **Q.** And what type of fixed costs are those that are  
3 unavoidable on that type of resource?

4 **A.** Well, generally it's the steel in the ground costs of  
5 the project itself. That's the biggest example.

6 **Q.** Are you aware of whether or not the company has any  
7 currently operative long-term coal supply fuel agreements  
8 that include minimum take provisions?

9 **A.** I'm not familiar with the coal side of our business, so  
10 I -- no, I'm not aware or knowledgeable about that.

11 **Q.** So sitting here today, you don't know whether the  
12 company has any 15-year term agreements for any of its coal  
13 fuel supplies?

14 **A.** I do not know that personally.

15 **Q.** Based on your experience in the industry, would it  
16 surprise you if there were long-term fuel arrangements that  
17 the company entered into to supply power plants?

18 **A.** No, it would not surprise me.

19 **Q.** And so if the company did enter into that type of long-  
20 term fuel arrangement, would that be another example, if  
21 there was a minimum take provision, where the company would  
22 be unable to avoid those costs if they back down the  
23 resource below that minimum take?

24 **A.** That would be another example, yes, it would.

25 **Q.** And so going back to the steel in the ground that you



1 had mentioned before as an example of the fixed costs, so,  
2 isn't it true that rate pairs still have to pay for the  
3 depreciation and the cost of capital for the capital  
4 expenditures at those generating plants for that steel in  
5 the ground?

6 **A.** That's included in the fixed cost, yes.

7 **Q.** Are you generally familiar with the company's Lakeside  
8 natural gas plant?

9 **A.** Generally familiar.

10 **Q.** Do you know ballpark what the all-in estimated cost per  
11 megawatt hour was for the Lakeside plant?

12 **A.** I don't know, no, I don't have a number for that.

13 **Q.** Not even an estimate of \$60 per megawatt hour, 70, 80?

14 **A.** No, I'd be guessing.

15 **Q.** So, you reviewed Mr. McGuire's testimony submitted on  
16 behalf of the Sierra Club, correct?

17 **A.** Yes, I did.

18 **Q.** And do you recall -- and I have a cite here, although  
19 you don't need to reference it -- on page 8, line 20 of his  
20 testimony, he stated that the indicative pricing for QFs  
21 greater than 10 megawatts is currently about \$45 per  
22 megawatt hour for a 15-year levelized contract. Does that  
23 figure of \$45 per megawatt hour for indicative pricing  
24 sound about right to you?

25 **A.** Could I look at that testimony? What page was that?

1 Q. It was page 8, line 20, of Mr. McGuire's testimony.

2 A. So, in his testimony, he's referring to, I'm assuming,  
3 Oregon Schedule 38 solar QFs. That's reasonable, yes.

4 Q. That sounds about right --

5 A. Yes.

6 Q. -- the \$45 per megawatt hour? So, just as a point of  
7 reference, going back to the all-in cost of generating --  
8 natural gas generating plant like Lakeside, would the all-  
9 in costs, do you think, be higher than \$45 per megawatt  
10 hour?

11 A. I would believe it would be, yes.

12 Q. Do you know how that would split up between the  
13 marginal costs, like you cited in your example, and the  
14 fixed unavoidable costs for the all-in costs for something  
15 like the Lakeside generating plant?

16 A. I don't have an estimate of the breakdown.

17 Q. When you cited in your example that I quoted earlier,  
18 where you said, "For example, if the marginal costs of a  
19 company gas plant is \$40 per megawatt hour", was that \$40  
20 just illustrative or was that based on a generally accurate  
21 number of what the marginal costs for a gas plant would be?

22 A. It was just illustrative.

23 Q. So, in your role with the company, are you generally  
24 familiar with the company's process during a general rate  
25 case, when it requests authority to put assets into rate

1 base?

2 **A.** I -- no, not really. I don't -- I really don't get  
3 involved in the regulatory general rate case aspect of the  
4 company.

5 **Q.** From a general level, are you aware of the concept that  
6 the company has to show that an asset is prudent before  
7 it's allowed to go under rate base?

8 **A.** Yes, I am.

9 **Q.** And in justifying the prudence of a capital asset, like  
10 a natural gas plant, the company generally relies on the  
11 best estimates it has available to it at the time in order  
12 to make the case that that was a prudent investment,  
13 correct?

14 **A.** That is correct.

15 **Q.** So, for example, if the company made a decision to  
16 invest in a natural gas plant but then -- and at the time  
17 they invested in that natural gas plant, they looked at the  
18 forward price curves and the price estimates and it looked  
19 like a good deal and they spent the money, but then five  
20 years down the road let's say natural gas prices shoot up,  
21 you would expect the company to be judged on the prudence  
22 of that natural gas plant at the time it made the decision,  
23 correct?

24 **A.** Yes, for being able to put it into rate base, yes.

25 **Q.** In other words, the company's not expected to have the

1 foresight to know that -- assuming it's using the best  
2 information available to it -- that something could happen  
3 to make natural gas prices shoot up in five years that we  
4 don't know about?

5 **A.** Yes.

6 **Q.** Now, for a utility scale solar or wind QF project,  
7 isn't it also true that the developer's decision to spend  
8 the capital on that type of project must be made up front?

9 **A.** Yes, it would be true.

10 **Q.** And when the QF developer's considering whether or not  
11 to build the project, he or she would have to look at the  
12 utility's current avoided costs and indicative pricing to  
13 determine whether or not the project pencils out at a given  
14 price, correct?

15 **A.** Yes.

16 **Q.** So, isn't that similar to a utility's decision to  
17 deploy capital, where the utility uses the best information  
18 at the time that it's making the decision to deploy that  
19 capital?

20 **A.** That's correct.

21 **Q.** And so, if you reduce the certainty of what that cost  
22 recovery is going to be or what that pricing is going to be  
23 for that QF developer, do you think that would add  
24 uncertainty to the QF developer's decision whether or not  
25 to deploy that capital to build that project?

1 **A.** Well, it would certainly be one of many inputs that the  
2 developer has to take into account.

3 **Q.** So, was that a yes --

4 **A.** Yes.

5 **Q.** -- it would increase the uncertainty?

6 **A.** Yes, it would. It would.

7 **Q.** If I could direct you, please, to your rebuttal  
8 testimony, page 19. Let me know when you're there, please.

9 **A.** I'm there.

10 **Q.** So at lines 19, the sentence beginning, "Limiting the  
11 term of the contract to three years simply means that the  
12 price the company and its customers will be required to pay  
13 to the QF will be subject to adjustment every three years  
14 and will be more closely aligned with the company's current  
15 avoided costs." Did I read that correctly?

16 ALJ ARLOW: Line 11, not line 19.

17 MR. RITCHIE: Sorry, page 19, line 11, did I say  
18 that wrong?

19 ALJ ARLOW: You said page 19, then you said line  
20 19.

21 MR. RITCHIE: I apologize.

22 MR. RITCHIE:

23 **Q.** Line 11 through 14.

24 **A.** Okay. So, I'm there now.

25 **Q.** And so, the statement again -- well, so I don't mess it

1 up, could you please read the sentence starting with the  
2 word, "Limiting the term"?

3 **A.** "Limiting the term of the contract to three years  
4 simply means that the price the company and its customers  
5 will be required to pay to the QF will be subject to  
6 adjustment every three years and will be more closely  
7 aligned with the company's current avoided cost."

8 **Q.** Now, comparing that statement to the company owned  
9 assets, for large capital projects like the Lakeside plant  
10 that we were discussing earlier, would the company accept a  
11 requirement to come back to the Commission every three  
12 years to prove that those capital expenditures were still  
13 the least cost, least risk option based on updated power  
14 and fuel price forecasts?

15 **A.** Well, so let me make sure I answer your question  
16 correctly. Are you asking if we come back -- should be  
17 required to come back every three years for our own assets?

18 **Q.** Correct, and just re-run the prudence determination for  
19 something like Lakeside Natural Gas based on today's  
20 current forecast and fuel price forecasts?

21 **A.** I don't believe that's necessary because the company  
22 currently has a three-year hedging policy for its natural  
23 gas purchases. So, in effect, we cannot acquire the fuel  
24 for this on a fixed basis longer than three years for that  
25 asset.

1 Q. Well, and I asked if the company would accept that  
2 requirement, not whether it was necessary.

3 A. I can't speak to whether the company would accept that  
4 or not.

5 Q. Generally speaking, aside from the natural gas plant,  
6 but for any large capital decisions -- strike that, I'll  
7 move on.

8 So, one quick point. If I could direct you to your  
9 rebuttal, page 13, please.

10 A. I'm there.

11 Q. In lines 5 through 7, you state that, "If recent QF  
12 projects are priced higher than the market alternative by  
13 just ten percent, it would create a 4.3 million dollar  
14 impact in 2015 for Oregon customers." Did I read that  
15 correctly?

16 A. Yes, you did.

17 Q. And, I just want to clarify that the reverse of that  
18 statement is also true. And what I mean is, if recent QF  
19 projects are priced lower than the market alternative, then  
20 it would create a benefit for Oregon customers in the other  
21 direction. Is that also correct?

22 A. That would also be correct.

23 Q. Now, Mr. Griswold, I'd like to go back to a point that  
24 Mr. Sanger made earlier, and if you could -- I believe he  
25 asked this question, but I'd like to just ask it again. Is

1 it your understanding -- does your company want to  
2 eliminate the must-purchase obligation under PURPA?

3 **A.** Not that I'm aware of. We -- we know what the rules  
4 are and we abide by the PURPA rules. You know, I can't  
5 speak to the parent companies, I can just simply speak to  
6 what my directives are for my work.

7 **Q.** And how did you get those directives to file this case  
8 here or to prepare this case? Who in the company directed  
9 you to limit -- to submit an application requesting to  
10 limit the QF contract term?

11 **A.** I think it began just as a general discussion about the  
12 volume of projects that were coming in and how do we  
13 address the price risk for these long term contracts.

14 **Q.** And that discussion was not just limited to Oregon, was  
15 it?

16 **A.** No.

17 **Q.** And isn't it true that the company has filed similar  
18 requests in Idaho, Utah and Wyoming, asking to reduce the  
19 PURPA QF contract terms in those states as well?

20 **A.** That's correct.

21 **Q.** And I believe we already discussed Idaho and Utah. The  
22 Wyoming case is still pending, is that correct?

23 **A.** That is correct.

24 **Q.** Now, did you have discussions with other people in the  
25 company about those applications as well in preparing and



1 submitting those applications?

2 **A.** Yes, there were discussions with legal regulatory,  
3 other commercial folks in our business.

4 **Q.** And did you -- did you draft the testimony in this  
5 proceeding yourself or was it done collaboratively and then  
6 submitted with your approval?

7 **A.** Both. It was collaborated on for the, kind of the  
8 company level where it covered the QF impact across the six  
9 states and then addressed individually for each state.

10 **Q.** Now, in these discussions that you were having about  
11 submitting this application in all of these different  
12 states, were you ever aware of representatives from  
13 Berkshire Hathaway Energy being involved in those meetings  
14 or those discussions?

15 **A.** I was aware after the meetings occurred and I read it  
16 in a public blurb, one of the normal energy industry  
17 newsletters.

18 **Q.** When you say "it" you mean, you're referring to Mr.  
19 Weisgall's testimony then before Congress?

20 **A.** His appearance, I read his appearance. I had not seen  
21 his testimony.

22 **Q.** Have you read the comments that Mr. Weisgall submitted  
23 before Congress?

24 **A.** I've read parts of them, I haven't read the full thing.

25 **Q.** Have you read the parts that relate to the requirements

1 under Section 210(m) of PURPA and the must-purchase  
2 obligation?

3 **A.** I can't recall that.

4 **Q.** Were you generally aware of what Mr. Weisgall was  
5 asking Congress to do with respect --

6 **MR. TILL:** Objection, Your Honor. I'd like to raise  
7 the same objection we raised with the admission offer by  
8 Mr. Sanger to introduce Mr. Weisgall's testimony. It's not  
9 Mr. Griswold's testimony.

10 **ALJ ARLOW:** I also believe he answered that  
11 question, and there's no foundation established that he had  
12 any advanced knowledge with respect to it.

13 **MR. RITCHIE:** Sorry, is that -- so your ruling is?

14 **ALJ ARLOW:** I'm ruling contrary to that line of  
15 questioning.

16 **MR. RITCHIE:**

17 **Q.** Mr. Griswold, I believe in your testimony you discussed  
18 -- you responded to Mr. McGuire's discussion that -- where  
19 he had laid out a process whereby applying PURPA -- under  
20 section 210(m) of PURPA, there are procedures available.  
21 For example, where an expanded renewable portfolio standard  
22 could be used as the basis to eliminate the must-take  
23 obligation. Do you generally recall that part of Mr.  
24 McGuire's testimony?

25 **A.** Generally, yes.

1 Q. And for reference, you responded at page 8 of your  
2 reply testimony to his statements there. Now, are you  
3 familiar with the exception to the must-take obligations  
4 that Mr. McGuire was referring to there under PURPA?

5 A. I am aware. I believe that is the section which talks  
6 if they're -- if they have access to market hubs, the  
7 projects larger than 20 megawatts. I believe that's what  
8 that refers to.

9 Q. And in forming your response to Mr. McGuire's  
10 testimony, it was your general understanding that he was  
11 laying out a process whereby if it's determined that QFs  
12 have equal access into the market, or competitive access  
13 into the market, then the utility could be relieved of its  
14 must-purchase obligation, correct?

15 A. They can petition to be relieved, yes. They can  
16 petition for it to be -- for that relief.

17 Q. Now, PacifiCorp participates in the Energy Imbalance  
18 Market with the California ISO, is that correct?

19 A. That is correct.

20 Q. Now, does that constitute an adequate basis to petition  
21 for relief, in your view, of the must-purchase obligation?

22 MR. TILL: Objection, relevance.

23 ALJ ARLOW: I don't know if there's been any  
24 discussion with respect to the Cal ISO in relationship with  
25 PacifiCorp in this docket, has there?

1 MR. RITCHIE: Actually, Mr. McGuire introduced an  
2 exhibit to his testimony discussing the Energy Imbalance  
3 Market and PacifiCorp's participation in the Energy  
4 Imbalance Market as another area that has been discussed  
5 for pursuing relief of the must-purchase requirement.

6 ALJ ARLOW: I don't know how this -- can you explain  
7 how this relates to the testimony of this particular  
8 witness on QFs, anything that he has said in his reply or  
9 rebuttal comments with respect -- has he mentioned the Cal  
10 ISO in his reply comments?

11 MR. RITCHIE: He has responded to Mr. McGuire's  
12 critique of the -- Mr. McGuire's testimony in this case has  
13 been that the company is seeking to eliminate the must-  
14 purchase obligation, and this witness has said that that's  
15 not their intent. And I'm trying to rebut that point by  
16 showing other evidence where they are, in fact, trying to  
17 relieve themselves of the must-purchase obligation, and  
18 this is related to that. So this is to count -- this is to  
19 rebut his point that the company is not interested and does  
20 not want to relieve themselves of the must-purchase  
21 obligation.

22 ALJ ARLOW: I know you're referring to Mr. McGuire's  
23 testimony on this and I don't know if he's -- if he  
24 mentioned anything about the Cal ISO in his critique, did  
25 he?

1 MR. RITCHIE: Whether Mr. Griswold --

2 ALJ ARLOW: Mr. Griswold, in his critique of why he  
3 was responding to Mr. McGuire's direct testimony in his  
4 rebuttal testimony, was there any mention of the Cal ISO/  
5 PacifiCorp arrangements in his critique, either directly or  
6 obliquely?

7 MR. RITCHIE: Mr. Griswold did not specifically  
8 reference the ISO. The portion of Mr. McGuire's testimony  
9 where he discussed the ISO --

10 ALJ ARLOW: Okay. Mr. Till, can I hear your  
11 comments as to with respect to relevance and why you find  
12 that discussing PacifiCorp's Cal ISO relationship shouldn't  
13 be considered here?

14 MR. TILL: It's slightly broader than that, Your  
15 Honor. In response to Mr. McGuire's testimony, Mr.  
16 Griswold on particularly Mr. McGuire's testimony around  
17 section 210(m) of PURPA, Mr. Griswold testified that those  
18 topics aren't relevant to the proceeding and responded to  
19 some general points that Mr. McGuire made. And so Mr.  
20 Griswold does not have any testimony in this proceeding  
21 around section 210(m), around PacifiCorp's participation in  
22 the Energy Imbalance Market.

23 ALJ ARLOW: Can you cite me to Mr. Griswold's  
24 testimony where he says that?

25 MR. TILL: It's at PAC 200, Griswold 8, and it's at

1 the beginning of line 4. Those topics are not relevant to  
2 this proceeding so I will not address those issues in  
3 detail.

4 ALJ ARLOW: Except to note that Mr. McGuire  
5 himself advocates limiting the PURPA must-take obligation.  
6 I'm sorry, I think it's too much of a stretch and I don't  
7 think there's anything probative that can be offered by Mr.  
8 Griswold in response to this and it's outside the scope of  
9 the testimony. So I'll overrule that line of questioning.

10 MR. RITCHIE: No further questions, Your Honor.

11 ALJ ARLOW: Mr. Griswold, do you need a break at  
12 this time?

13 MR. GRISWOLD: No, I'm fine.

14 ALJ ARLOW: All right. Mr. Richardson.

15 MR. RICHARDSON: Thank you, Your Honor. For the  
16 record, Peter Richardson with Community Renewable Energy  
17 Association.

18 ALJ ARLOW: Thank you.

19 **CROSS EXAMINATION**

20 BY MR. RICHARDSON:

21 **Q.** Good morning, Mr. Griswold.

22 **A.** Good morning.

23 **Q.** You stated earlier to a response to a question by Mr.  
24 Ritchie that --

25 ALJ ARLOW: Excuse me, my apologies Mr. Richardson.

1 Before we start, a little housekeeping matter. Are you  
2 going to offer into evidence the exhibits that you had  
3 accompany your cross-examination today?

4 MR. RITCHIE: No, Your Honor.

5 ALJ ARLOW: Okay, thank you. Mr. Richardson, I  
6 apologize, go ahead.

7 MR. RICHARDSON: Thank you, Your Honor, I  
8 appreciate it.

9 MR. RICHARDSON:

10 Q. You stated earlier in response to a question by Mr.  
11 Ritchie from the Sierra Club that PacifiCorp abides by the  
12 PURPA rules. Isn't it true that in this proceeding you're  
13 trying to change the PURPA rules?

14 A. Yes, we're asking for a reduction in the contract term.

15 Q. So you abide by them until you get them changed?

16 A. We abide by whatever is the final Commission ruling.

17 Q. And you stated in response to a question by Mr. Sanger  
18 that you are perhaps the single most knowledgeable person  
19 in PacifiCorp on QF issues?

20 A. Yes.

21 Q. And you stated also in response to a question by Mr.  
22 Sanger that, I'll paraphrase, "I don't have a reason to  
23 understand what drives developers"?

24 A. That's correct.

25 Q. And have you read and do you understand the testimony

1 filed by the Intervenor in this case?

2 **A.** I have read them and I understand and -- I understand  
3 their positions.

4 **Q.** And is it your testimony then that the Intervenor have  
5 not given you a reason to understand what drives  
6 developers?

7 **A.** From my reading of the Intervenor's testimony, they  
8 have not provided enough evidence on why they can't  
9 secure financing or why a three-year contract term is  
10 inadequate.

11 **Q.** And that's not your role in this proceeding, is it?  
12 That's the Commission's role to make that determination?

13 **A.** That is the Commission's role.

14 **Q.** And isn't it true that just because a developer  
15 contacts the company about a potential QF project, that his  
16 or her project may never be built?

17 **A.** That would be true.

18 **Q.** And isn't it also true that just because a developer  
19 signs a contract to build a QF project that his or her  
20 project may never be built?

21 **A.** That is correct.

22 **Q.** And isn't it also true that QF contracts are not  
23 necessarily must-buy on the part of PacifiCorp?

24 **A.** I'm not aware of any situations where it's not a must-  
25 take obligation.



1 Q. So, you're not aware that the company currently, as we  
2 sit here today, currently has the legal ability to curtail  
3 QF contracts?

4 A. We have -- you are correct from a curtailment as  
5 directed by transmission which is for the protection of  
6 system reliability, which is driven by NERC -- I've got to  
7 try to say what NERC stands for, National Electric  
8 Reliability Council, something of that nature.

9 Q. I think it's North American Reliability.

10 A. North American, yeah.

11 Q. So, you're not aware of any other circumstances where  
12 PacifiCorp has the legal ability to curtail a QF? And  
13 you're the most knowledgeable person in the company?

14 A. I can't without being -- identifying any, I can't -- I  
15 don't have an answer for you on that.

16 MR. RICHARDSON: So, I hate to cross-examine you on  
17 legal issues, but I would note, Your Honor, that Mr.  
18 Griswold's testimony is replete with legal citations,  
19 cases, statutes, rules, regulations. So I will take a step  
20 off the cliff and see if I get through it.

21 ALJ ARLOW: I think asking a witness what his legal  
22 conclusions or interpretations are with respect to legal  
23 matters is very different from citing language in cases  
24 which directly effect managerial decisions.

25 MR. RICHARDSON: Thank you, Your Honor.

1 MR. RICHARDSON:

2 Q. Are you familiar with 18 CFR Section 292.304?

3 A. I couldn't tell it to you unless I looked at it.

4 Q. All right, thank you. Isn't one way to address the  
5 company's alleged problem of too many QF contracts that are  
6 knocking on your door, is to simply lower the price of the  
7 avoided cost rate?

8 A. Well, the avoided -- I would agree that that will  
9 effect the QFs decision.

10 Q. I'm sorry, say that again.

11 A. I said that -- I do agree that price is one of the  
12 inputs that a developer uses to make a decision on whether  
13 they build a project. However, avoided costs are not set  
14 by the company, they're -- they may be calculated, but  
15 they are approved by the Commission as the -- as the  
16 avoided costs that would be paid to the qualifying  
17 facility.

18 Q. Okay, so maybe you can answer my question directly.  
19 Isn't one way to address the company's alleged problem of  
20 too many QFs knocking on your door, to simply lower the  
21 avoided cost rate?

22 A. That is one way.

23 Q. So that's a yes?

24 A. That's a yes.

25 Q. And would you agree then that at some point if the

1 avoided cost rates are so low that a QF would find it  
2 uneconomic to develop a project?

3 **A.** Yes.

4 **Q.** And if the avoided cost rates were, say, take an  
5 extreme example, zero, do you think there would be any new  
6 QF development on your system?

7 **A.** I couldn't speculate on that.

8 **Q.** You can't speculate --

9 **A.** I couldn't.

10 **Q.** -- that a QF would still develop a project if it got  
11 paid nothing? That's beyond your expertise?

12 **A.** That's beyond my expertise.

13 **Q.** And you're the most knowledgeable person in the  
14 company?

15 **A.** I said I was one of them.

16 **Q.** Is there anyone in the company who could respond to  
17 that question?

18 ALJ ARLOW: Mr. Richardson, I don't believe that  
19 there's any probative value in the line of questioning  
20 here.

21 MR. RICHARDSON: Thank you.

22 ALJ ARLOW: I don't think sarcasm has an appropriate  
23 place here.

24 MR. RICHARDSON: Thank you, Your Honor. I'll move  
25 on.

1 MR. RICHARDSON:

2 **Q.** At page 3 of your direct testimony, Mr. Griswold,  
3 beginning on line 14, you state that 925 megawatts of  
4 proposed and existing QF contracts at the main plate  
5 capacity would be enough to supply 56% of the company's  
6 average Oregon retail load, do you see that?

7 MR. TILL: Excuse me, Mr. Richardson, can you give  
8 us all a chance to get there and --

9 MR. RICHARDSON: Certainly.

10 MR. TILL: -- repeat the citation?

11 MR. RICHARDSON: Page 3, line -- beginning on line  
12 14.

13 MR. TILL: Is that PAC 100?

14 MR. RICHARDSON: Of your direct testimony, PAC  
15 100.

16 ALJ ARLOW: PAC 100, page 3, line 14, you said?

17 MR. RICHARDSON: Page 3, line 14.

18 ALJ ARLOW: Could you repeat your question again,  
19 Mr. Richardson, with respect to that testimony?

20 MR. RICHARDSON: Yes, Your Honor.

21 MR. RICHARDSON:

22 **Q.** Do you have that citation?

23 **A.** I do, yes.

24 **Q.** And you state that -- actually, I didn't get to my  
25 question, I was just trying to set up the -- where you were

1 at in your testimony. Page 3, line 14, you state that 925  
2 megawatts of proposed and existing QF contracts, quote, "at  
3 their name plate capacity," closed quote, would be enough  
4 to supply 56% of the company's average Oregon retail load.

5 Do you see that?

6 **A.** I do, yes.

7 **Q.** And those numbers don't have comparable capacity  
8 factors, do they? That is the 925 QF number is a name  
9 plate capacity while the 56% number is actually 56% of the  
10 company's average load, correct?

11 **A.** That's correct.

12 **Q.** And do you not find that at least a little bit  
13 misleading?

14 **A.** I think it's just -- I do not. I think it's just to  
15 show from a reference basis that -- that the amount of QFs  
16 that request that were in the queue were that -- or must-  
17 take, were a high percentage of our retail load, as well as  
18 our minimum load.

19 **Q.** So, it's not your testimony then that 925 megawatts of  
20 proposed and existing QF contracts can actually serve 56%  
21 of the company's average Oregon retail load?

22 **A.** My testimony is, as it says there, 925 at the name  
23 plate capacity would be compared to the company's average  
24 retail load based on what that megawatt number was. It was  
25 just to show the magnitude of it.

1 Q. So, I'll repeat the question. It's not a comparison.  
2 You state that it's sufficient to supply 56% of the  
3 company's average Oregon retail load?

4 MR. TILL: Objection, mischaracterizes the  
5 testimony.

6 MR. GRISWOLD: Well, on line 15, just to carry this  
7 forward, the average retail load is stated as 1,661  
8 megawatts and the 925 is -- at name plate capacity is in  
9 megawatts also.

10 MR. RICHARDSON:

11 Q. And you state in your testimony, line 18, that it's  
12 sufficient to supply, correct?

13 MR. TILL: Objection, mischaracterizes testimony.

14 MR. RICHARDSON: I will quote it, Your Honor, if  
15 you'd like. Quote, "Would be enough to supply 56% of the  
16 company's average Oregon retail load," closed quote, page  
17 3, line 18.

18 MR. GRISWOLD: Yes, that is what it says.

19 MR. RICHARDSON:

20 Q. My question is, is 925 megawatts of proposed existing  
21 QFs actually sufficient to supply 56% of the company's  
22 average Oregon retail load?

23 A. On a megawatt basis, that's -- that was -- because  
24 above I establish the average total Oregon retail load as  
25 1,661 megawatts. So 925 divided by 1,661 is 56%.

1 Q. And then you also state that the 925 megawatts of  
2 proposed and existing QFs would be enough to supply 90% of  
3 the company's minimum Oregon load. Do you see that?

4 A. Yes, I do.

5 Q. And isn't the only way that statement could possibly be  
6 true is if the QFs have a 100% load factor?

7 A. Again, my point was --

8 Q. No, the question is, isn't that the only way that  
9 statement could possibly be true is if that 925 megawatts  
10 of QF had a 100% load factor?

11 A. That's not correct. Nine hundred and 25 is the name  
12 plate capacity. And as I state here, the minimum retail  
13 load, as taken from our load forecast folks, was 1,027.  
14 So, simple math, it's 925 divided by 1,027 on a megawatt  
15 basis.

16 Q. On page 1 of your testimony, you note your education  
17 and business background, correct?

18 A. Yes.

19 Q. And if I read that correctly, you have an advanced  
20 degree in agricultural engineering, correct?

21 A. I do, yes.

22 Q. And since you don't otherwise allude to it, may we  
23 assume that you're not an attorney, Mr. Griswold?

24 A. I am not.

25 Q. So you are not testifying as a legal expert, correct?

1 **A.** That is correct.

2 **Q.** You do, however, refer to a number of statutes,  
3 regulations, rules, cases and the like in your testimony  
4 though, do you not?

5 **A.** I do.

6 **Q.** Well, let's turn to the very first case citation which  
7 is in your direct testimony at page 7 and it appears at  
8 footnote 8, do you see that?

9 **A.** I see that.

10 **Q.** And looking at that case citation, what court are we to  
11 assume you're referring to?

12 **MS. ANDRUS:** Can you repeat the page?

13 **MR. RICHARDSON:** That would be page 7 of Mr.  
14 Griswold's Exhibit 100 at footnote 8.

15 **MS. ANDRUS:** Thank you.

16 **ALJ ARLOW:** The citation is 535 Pennsylvania 108,  
17 634 Atlantic 2d 207.

18 **MR. RICHARDSON:** That's correct, Your Honor.

19 **MR. GRISWOLD:** So, what was your -- your question  
20 was?

21 **MR. RICHARDSON:**

22 **Q.** What court are you referring to in that citation?

23 **MR. TILL:** Objection, relevance.

24 **ALJ ARLOW:** What's the probative value of having  
25 him know the proper name of a court in Pennsylvania?



1 MR. RICHARDSON: Well, the probative value is to  
2 suggest whether or not Mr. Griswold has read the case that  
3 supports his testimony beginning on line 4 on page 7, which  
4 is the reference, Your Honor.

5 ALJ ARLOW: I think you've made your point. I  
6 don't know if there's anything further that you need to say  
7 with respect to the fact.

8 MR. RICHARDSON: I'll move on on the citation.  
9 Apparently the witness doesn't know the name of the court  
10 he's referring to.

11 MR. RICHARDSON:

12 Q. Have you read the decision you cited there?

13 A. I have not read the full decision, I read the summary  
14 of it. I was provided it and I read the summary.

15 Q. Who provided you the summary?

16 A. Our legal team.

17 Q. And your legal team's not here on the stand today?

18 A. No.

19 Q. So, do you know for a fact whether or not the -- and  
20 I'll note that it's the Pennsylvania Supreme Court,  
21 actually wrote an opinion that's cited in that case?

22 A. I'm not aware, so...

23 Q. So you wouldn't know whether you're citing this  
24 Commission to a dissent rather than a majority opinion of  
25 the Pennsylvania Supreme Court?

1 **A.** I would not.

2 **Q.** But you're relying on that summary for the foundation  
3 of your conclusion on page 7, line 4?

4 ALJ ARLOW: Excuse me, are you saying that the  
5 cited paragraph was from a dissent as opposed to a majority  
6 opinion?

7 MR. RICHARDSON: One would have to read the opinion  
8 to understand that. Yes, Your Honor.

9 ALJ ARLOW: Are you saying that it's a dissent,  
10 sir?

11 MR. RICHARDSON: Yes, Your Honor, it's a dissent  
12 and a concurrence, it's not a majority opinion. It's a per  
13 curiam, what's called a per curiam opinion, six words long.  
14 The Supreme Court of Pennsylvania simply said, "Per curiam  
15 order affirmed." There's no opinion from the Supreme  
16 Court. It's a dissent and a concurrence. So I'll let that  
17 stand for --

18 MR. TILL: Objection to the probative value of this  
19 line of questioning. That's a Supreme Court case affirming  
20 a Public Utility Commission of Pennsylvania decision  
21 setting down what I think is an undisputable bedrock  
22 principle of PURPA law. So, I don't understand why we're  
23 spending time discussing this.

24 ALJ ARLOW: Okay, regardless of what happened at the  
25 appellate process, I'm not going to strike it because we

1 generally keep a record that's full and we, you know, weigh  
2 the value of the evidence later, the Commission does that.  
3 But for the time being, I don't see any further purpose in  
4 pursuing this line of questioning.

5 MR. RICHARDSON: Thank you, Your Honor. Since you  
6 noted that you're not going to strike it, I will hold my  
7 tongue on moving to strike his testimony at that point.

8 So that, actually, Your Honor, short circuits a  
9 couple of my questions relating to the conclusion reached  
10 in that opinion, and I will just note that for the record.

11 MR. RICHARDSON:

12 Q. Your application -- the company's application at page  
13 2, the company states that over the next decade,  
14 PacifiCorp's expected systemwide payments to QFs with  
15 executed PPAs is 2.9 billion dollars.

16 MR. TILL: Objection to references to cross-  
17 examining Mr. Griswold on the application itself, his  
18 testimony is Exhibit PacfiCorp 100.

19 MR. RICHARDSON: Thank you, Your Honor.

20 MR. RICHARDSON:

21 Q. You also cite this number at page 13 of your direct  
22 testimony at Line 18, correct?

23 MR. RITCHIE: Page 13?

24 MR. RICHARDSON: Correct, Line 18.

25 MR. GRISWOLD: Yes, I do.

1 MR. RITCHIE: 2.9 billion?

2 MR. RICHARDS: 2.9 billion.

3 MR. RICHARDSON:

4 Q. And you would agree that it's in your company's  
5 application?

6 A. Yes. Yes.

7 Q. And the reason you cite the number 2.9 billion dollars  
8 is, I assume, because it's a large amount of money,  
9 correct?

10 A. It's an accurate reflection of the QF payments over a  
11 ten year period.

12 Q. And the magnitude of that -- what frame of reference do  
13 we have to compare that, is it a big bread box or a little  
14 bread box?

15 A. It's a large amount of money.

16 Q. And wouldn't you agree that the term "large" is  
17 relative and that a large amount of money to you or me may  
18 not necessarily be a large amount of money to PacifiCorp?

19 A. It's a reference, yes.

20 Q. It's a relative term, correct, "large"?

21 A. It's a relative term to what is being spent on QF  
22 contracts over the next ten years.

23 Q. And I could say with confidence that 2.9 billion  
24 dollars would be a lot of money to go through my personal  
25 checking account, and I guess you could say the same would

1 be true for you, correct?

2 **A.** Yes.

3 MR. TILL: Objection, Your Honor. Mr. Griswold  
4 doesn't testify to the magnitude. He doesn't characterize  
5 whether the amount is large or small, he testifies to a  
6 dollar amount of 2.9 billion dollars, so I question the  
7 relevance of these questions. Once again, they appear  
8 argumentative and they appear to be badgering the witness.

9 ALJ ARLOW: We don't have a jury here.

10 MR. RICHARDSON: Mr. Chair -- Mr. -- Your Honor,  
11 the witness just did characterize the relative nature of  
12 that number as the reason for him putting it in his  
13 testimony. It would be appropriate for me to be able to  
14 explore what that means.

15 ALJ ARLOW: I think you asked him whether he  
16 thought 2.9 billion dollars was a lot of money. I don't  
17 know how one answers that question other than in the  
18 affirmative.

19 MR. RICHARDSON: Thank you, Your Honor. I'll move  
20 on.

21 MR. RICHARDSON:

22 **Q.** Mr. Griswold, do you know how much -- do you have any  
23 idea how much operating revenue PacifiCorp has in a typical  
24 three-month quarter?

25 **A.** I do not.

1 Q. Well, would you accept, subject to check, that  
2 PacifiCorp's most recent 10Q filing with the Securities  
3 Exchange Commission for the three months ending September  
4 2015, suggests that PacifiCorp's operating revenue for  
5 those three months alone was almost one and a half billion  
6 dollars?

7 MR. TILL: Objection. PacifiCorp's SEC filings  
8 are a part of the record and Mr. Griswold hasn't testified  
9 as to PacifiCorp's revenues.

10 MR. RICHARDSON: Your Honor, this 2.9 billion  
11 dollar number standing naked in the transcript has no  
12 relevance without some context. And that's what I'm trying  
13 to do is put some context around that number which, as you  
14 said yourself, by itself is a pretty scarily large number.  
15 And I'm trying to put it in context for this very large  
16 corporation's revenue.

17 ALJ ARLow: I'm trying to give you a great deal of  
18 latitude here. You've started using the word "scarily" and  
19 I don't believe that has appeared before in this discussion  
20 and, as I said, we do not have a jury here. I think what  
21 you're trying to say is something that is obvious, that 2.9  
22 billion is a particular percentage of overall revenues or  
23 whatever. That point has, I think, obviously been made and  
24 the Commission is aware of such things. As you said, the  
25 10Q filings are part of the public record, but they are not

1 part of this case. So I cannot see how this has any value  
2 with respect to this particular witness by characterizing  
3 how large an amount of money 2.9 billion is in the universe  
4 of things.

5 So if you can please tie this in to the specific  
6 matters we need to discuss here today, I would appreciate  
7 it.

8 MR. RICHARDSON: Thank you, Your Honor, I will  
9 move on.

10 MR. RICHARDSON:

11 **Q.** Mr. Griswold, you spend several pages of your direct  
12 testimony reviewing the decisions of the Idaho PUC  
13 beginning on page 16. Do you recall that?

14 ALJ ARLOW: Is this page 16 of his direct or reply  
15 testimony?

16 MR. RICHARDSON: His direct, Your Honor.

17 MR. GRISWOLD: Yes, I did provide that.

18 MR. RICHARDSON:

19 **Q.** And I believe that you note in your testimony that the  
20 Idaho Commission, in 1996, shortened the contract term for  
21 QF projects to five years from 20 years, correct?

22 **A.** That is correct.

23 **Q.** And then again in 2002, that same Commission went back  
24 to 20-year contract terms, correct?

25 **A.** That's correct.

1 Q. Does it strike you as coincidence that the Idaho  
2 Commission returned to 20-year contracts just one year  
3 after the California Energy Crisis of 2000-2001?

4 A. I have no basis for determining whether it was a  
5 coincidence or not.

6 Q. And do you recall from -- I assume you've read the  
7 Idaho Commission orders you've cited the Commission to?

8 A. I have read those.

9 Q. Do you recall from reading the Idaho Commission orders  
10 that in the six year time period, that the Idaho Commission  
11 limited QF contracts to five years, that only one such  
12 contract was ever signed?

13 A. I can't recall that specifically, but subject to check,  
14 I would acknowledge that.

15 Q. And do you recall that the Idaho Commission found that  
16 there was a direct correlation between contract length and  
17 QF activity?

18 A. I don't recall that specifically, but I would accept it  
19 subject to check.

20 Q. And you also note that the Idaho Commission recently  
21 went to a three-year contract term for solar and wind QF  
22 contracts? Excuse me, a two-year contract term. I mis-  
23 spoke.

24 A. I think at the time of my direct testimony, as pointed  
25 out at the top of page 18, it was set at five years on an



1 interim basis because that proceeding was still going on.

2 **Q.** And to your knowledge, is that proceeding concluded?

3 **A.** Yes.

4 **Q.** And what was the result in terms of contract term that  
5 the Idaho Commission adopted?

6 **A.** They adopted a two-year for wind and solar.

7 **Q.** And do you recall that only a few years back that the  
8 Federal Energy Regulatory Commission, FERC, actually sued  
9 the Idaho Commission in federal court for failure to  
10 properly implement PURPA?

11 **A.** I do recall that.

12 **Q.** And given that the Idaho Commission is the only PUC to  
13 ever be sued by FERC --

14 **MR. TILL:** Objection, relevance. I think counsel  
15 is suggesting -- is opining indirectly on the lawfulness of  
16 the Idaho Commission's recent order. That's for a court to  
17 determine, not my witness.

18 **ALJ ARLOW:** I'm going to allow it for the time  
19 being.

20 **MR. RICHARDSON:** Thank you, Your Honor.

21 **MR. RICHARDSON:**

22 **Q.** Given that the Idaho Commission is the only PUC to ever  
23 be sued by FERC for its failure to properly implement  
24 PURPA, do you really think that the Idaho Commission is a  
25 good role model for the Oregon Commission?

1 **A.** I don't necessarily, no, I don't necessarily believe  
2 that the Oregon Commission will use Idaho as an example. I  
3 placed that in there to establish that commissions had made  
4 changes to contract terms, but not necessarily for -- as an  
5 example that the Oregon Commission should follow. They  
6 make their own decisions on what the contract term should  
7 be.

8 **Q.** So what's the --

9 MR. RICHARDSON: Excuse me, Your Honor, I don't  
10 want to be asked and answered, but...

11 MR. RICHARDSON:

12 **Q.** What is the relevance of your reference again then to  
13 the Idaho Commission's decision?

14 **A.** It's an example of what commissions have done.

15 **Q.** But not an example of what this Commission should do?

16 **A.** Not necessarily. The Oregon Commission has their own  
17 decision making.

18 **Q.** You generally talk a lot about the company's hedging  
19 program as a rationale for limiting QF contracts, correct?

20 **A.** That is correct.

21 **Q.** And I was wondering if in any of your citations to  
22 legal authorities in your testimony, if you could point to  
23 me where, in any PURPA or FERC implementing rule, that  
24 provides that PURPA contract terms are to be tied to a  
25 utility's hedging policies?

1 **A.** I can't cite any.

2 **Q.** Did you look for any?

3 **A.** Well, if I did a search on it, I didn't find any.

4 MR. RICHARDSON: And just, finally, Your Honor,  
5 thank you for your indulgence this morning.

6 MR. RICHARDSON:

7 **Q.** You state on page 36 of your direct testimony, Exhibit  
8 100, that the vast majority of QF development is being  
9 driven --

10 MR. TILL: I'm sorry, what line are we on?

11 MR. RITCHIE: Page 36, he didn't give a line.

12 MR. RICHARDSON: I'll get it for you, Your Honor.  
13 That would be line 3.

14 MR. RICHARDSON:

15 **Q.** You state, line 3, page 36, PAC 100, that the vast  
16 majority of development is being driven by large  
17 sophisticated out-of-state developers. Do you see that?

18 **A.** Yes.

19 **Q.** Wouldn't you also agree that PacifiCorp's PURPA  
20 policies are being driven by sophisticated out-of-state  
21 owners?

22 **A.** No, I wouldn't agree with that. Our -- we follow the  
23 rules and regulations that the commissions in each of our  
24 states have placed upon us. We participate in the dockets  
25 to ensure that our customers are treated fairly and that

1 they're not exposed to unnecessary risk. So, I don't -- I  
2 do not agree that it's driven by out-of-state owners.

3 **Q.** Well, I didn't ask you if PacifiCorp's decision to  
4 follow the rules are driven by out-of-state owners, I asked  
5 you if the policies are driven by sophisticated out-of-  
6 state owners. And we established earlier that PacifiCorp  
7 is, in fact, here trying to change the rules of the game  
8 that it operates under, correct?

9 **A.** Yes, we've asked for modifications.

10 **Q.** And isn't this part of a coordinated attempt -- I don't  
11 want to be pejorative, but rather than saying attack -- but  
12 it's a coordinated attempt to cross many different states,  
13 making the same arguments in terms of contract length?

14 **A.** We are in four states asking for contract terms,  
15 contract term length changes, and I think that really  
16 points to our concern to protect our customers from an  
17 indifferent standpoint to have contract terms that do not  
18 put them on a long term fixed price risk.

19 **Q.** And the Utah Commission just rejected your proposal  
20 there, correct?

21 **A.** They rejected our three year request, that's correct.

22 **MR. RICHARDSON:** Thank you, Mr. Griswold. Thank  
23 you, Your Honor, that's all I have.

24 **ALJ ARLOW:** All right. Thank you. Before we have  
25 re-direct by Mr. Till, I'd like to know whether or not

1 David Brown, Silvia Tanner or Stephanie Andrus would like  
2 to ask any questions of the witness.

3 MS. ANDRUS: I have no questions. Stephanie  
4 Andrus.

5 MS. TANNER: I don't have any questions, either.

6 MR. BROWN: No questions, Your Honor.

7 ALJ ARLOW: Thank you. In that case, Mr. Till, do  
8 you wish to re-direct your witness?

9 MR. TILL: I do, Your Honor. Do you mind if we  
10 take ten minutes, a short break.

11 ALJ ARLOW: Sure, go ahead. All right. Ten  
12 minute recess.

13 *(Recess)*

14 ALJ ARLOW: Let's get started again, please.

15 All right, let's go back on the record. Mr. Till,  
16 you were about to direct -- re-direct your witness.

17 MR. TILL: Thank you, Your Honor.

18 **RE-DIRECT EXAMINATION**

19 BY MR. TILL:

20 Q. Thank you, Mr. Griswold for your patience this morning.  
21 I have just a few questions to re-direct you on.

22 During Mr. Sanger's cross-examination, you spent some  
23 time discussing the contract term selection, you know, the  
24 pricing term that QF developers elect to take. And is it  
25 generally your understanding that with the recent wave of

1 solar PPA requests, that developers have been choosing,  
2 here in Oregon, 15-year fixed price terms?

3 **A.** Yes, that's correct.

4 **Q.** And that's the maximum fixed price term that's  
5 currently allowed in Oregon, isn't it?

6 **A.** Yes.

7 **Q.** And are you familiar with PacifiCorp's Schedule 37  
8 avoided cost pricing here in Oregon?

9 **A.** Yes, I am.

10 **Q.** Is it your understanding that over the past few years  
11 that PacifiCorp's or Pacific Power's Schedule 37 prices  
12 have been declining?

13 **A.** Yes, they have.

14 **Q.** And so is it reasonable to conclude that a QF developer  
15 could take a look at the trend of avoided cost pricing in  
16 Oregon and choose a maximum 15-year fixed price term as a  
17 hedge against lowering prices?

18 **A.** They could do that, yes.

19 **Q.** So, it's safe to say that they're --

20 MS. ANDRUS: Judge, I object to the leading nature  
21 of this cross-examination -- or this re-direct. Isn't  
22 direct supposed to be a little bit more open-ended than --

23 ALJ ARLOW: If you wish to state the question in a  
24 way that might give the witness more latitude in which to  
25 respond to you.

1 MR. TILL: Understood, Your Honor. I'll move on.

2 ALJ ARLOW: All right.

3 MR. TILL:

4 **Q.** Mr. Griswold, are there reasons other than  
5 financability that a QF would choose a 15-year fixed price  
6 term?

7 **A.** Yes. I think --

8 MR. RICHARDSON: Your Honor, I'm going to object.  
9 This witness stated several times that he has no reason to  
10 understand what drives QF developers.

11 ALJ ARLOW: I believe...

12 MR. RICHARDSON: That's his direct testimony.

13 ALJ ARLOW: I believe that under cross-examination  
14 he was asked if he had read QF developers' testimony and he  
15 had said that he had gleaned from the QF developers'  
16 testimony what their motivations were.

17 MR. RICHARDSON: Thank you, Your Honor.

18 MR. GRISWOLD: Could you restate the question for  
19 me?

20 MR. TILL:

21 **Q.** Are there reasons, based on your experience in the  
22 industry, are there reasons other than financing that a QF  
23 would elect a 15-year fixed price term?

24 **A.** From what I understand, from what I've read in the  
25 other testimony, as well as information from the industry

1 itself, just reading information, discussions with  
2 developers, my understanding is they are looking for two  
3 things, one is certain -- certainty for their project and  
4 they would -- and if that certainty is in Oregon, then  
5 they'll be in Oregon as opposed to going to Idaho, or  
6 they're looking for the best development situation for  
7 their project.

8 **Q.** And you agreed that we're in a period of declining  
9 avoided cost prices, is that correct?

10 **A.** That is correct.

11 **Q.** Have you reviewed the Oregon Department of Energy's  
12 testimony in this proceeding?

13 **A.** I have.

14 **Q.** And does that testimony indicate that --

15 **MR. SANGER:** Your Honor, objection. No party asked  
16 questions about Mr. Griswold's understanding or reading of  
17 the Oregon Department of Energy's testimony.

18 **ALJ ARLOW:** That's correct.

19 **MR. TILL:** This is getting to availability of  
20 financing, Your Honor, which was the subject of robust  
21 cross-examination.

22 **ALJ ARLOW:** Mr. Sanger?

23 **MR. TILL:** I can rephrase.

24 **ALJ ARLOW:** All right. Go ahead.

25 **MR. TILL:**



1 Q. Mr. Griswold, are you familiar with any evidence --  
2 testimony presented in this proceeding that indicates that  
3 financing is available for QF projects for consecutive  
4 three-year terms?

5 A. Yes. One of the parties in the case talked about being  
6 able -- the commercial financing of sequential three-year  
7 terms. They did point out that it was not impossible to  
8 get those kind of arrangements, and they also pointed out  
9 they would be more expensive, but he did point out that  
10 they were available in the marketplace.

11 I also would point out that there are new financing  
12 mechanisms that, as I pointed out in my direct testimony,  
13 that are being promoted within the industry and being  
14 utilized effectively to reduce the term length necessary  
15 for those projects to get built. So, I -- I -- you know,  
16 for example, we've had projects in -- now in Utah that are  
17 solar projects that are getting balance sheet financed by  
18 developers. We've had a number of these what they call  
19 "Yield Co.'s" that have been developed for moving  
20 constructed projects in and operating them where the  
21 investors in the "Yield Co." will take a lower return in  
22 exchange for some certainty on their payment. So, I think  
23 my point in all of this was that with the direct testimony,  
24 is that there are other mechanisms, and other parties in  
25 this case acknowledge that it is -- you can secure

1 financing on a shorter term, it's not impossible.

2 **Q.** Thank you. I'd like to move on to follow-up on some of  
3 the questions that the Sierra Club asked. It's my  
4 understanding that you testified in response to Mr.  
5 Ritchie's questioning that the company before can seek  
6 regulatory recovery of resource acquisitions outside of  
7 PURPA, that it has to make a prudency determination. Was  
8 that a correct characterization?

9 **A.** That is correct.

10 **Q.** Is it your understanding -- do you understand whether  
11 the company has to make a similar prudency determination  
12 with respect to its PURPA purchases?

13 **A.** My understanding is we don't, but that's just my  
14 general understanding of it.

15 **Q.** Okay. And is it -- do you have -- strike that. Do  
16 you know if QF developers have to make some sort of  
17 prudency determination in a regulatory forum before they  
18 can deploy capital?

19 **A.** No. That's their -- they're in the market, market  
20 developers, and they themselves have to make that decision.

21 **Q.** So, do you understand that a QF developer could proceed  
22 to deploy capital even if it was imprudent?

23 **A.** Yes, that would be the developer's decision.

24 **Q.** And is it your understanding that QF developers have  
25 any requirement to consider cost to customers, to utility

1 customers, when deciding whether or not to develop a  
2 project?

3 **A.** No, I'm not aware of that.

4 **Q.** And would you agree that market -- that QF developers  
5 are market participants who just assume financial risk by  
6 participating in the market?

7 **A.** Yes. They assume financial risk, they assume  
8 performance risk. You know, it is their project, they make  
9 the decision to move forward.

10 **Q.** Thank you. And you also testified in response to the  
11 Sierra Club that -- I think you agreed, and let me know if  
12 I'm correct here, you agreed with the statement that in a  
13 time of rising avoided cost prices that a long term fixed  
14 price contract would benefit customers. Would you agree  
15 that that was your statement?

16 **A.** Yes, it could.

17 **Q.** But wouldn't it also result in prices that were  
18 inconsistent with avoided cost principles?

19 MS. ANDRUS: Objection, Judge. This is a direct  
20 examination and I think the examination is more like a  
21 cross-examination.

22 MR. TILL: I can rephrase, Your Honor.

23 ALJ ARLOW: You may be going beyond the scope of  
24 cross in this case.

25 MR. TILL: Oh, Your Honor, the questions were

1 raised about whether a long term fixed price contract would  
2 benefit customers in times of rising avoided cost prices.  
3 I'm trying to get to the point here that the purpose of  
4 PacifiCorp's filing is to make sure that avoided costs --  
5 that customers pay avoided costs, no more, no less.

6 ALJ ARLOW: So, it's to show that it's a double  
7 edged sword essentially, that in declining costs it would  
8 be a risk to have a fixed contract, but in rising costs it  
9 would be detrimental, is that what you're trying to say?

10 MR. TILL: And in both cases the utility would be  
11 purchasing power not at avoided cost prices.

12 ALJ ARLOW: I think I'm going to allow it. Go  
13 ahead.

14 MR. TILL: Okay. Can you read back the last  
15 question? Or do we have that -- oh, we don't have a court  
16 reporter here. Okay.

17 ALJ ARLOW: We don't have any means to do that,  
18 unfortunately. I think you want to ask about in the case  
19 of rising prices, what that was on the market.

20 MR. TILL:

21 Q. So, in the case of rising prices with a fixed price  
22 term, customers would be -- would customers be paying more  
23 for power from a QF than avoided cost prices?

24 A. In a rising -- rising market? In a rising market --

25 Q. I said that backwards. Yeah. Right.

1 **A.** In a rising market they're paying less than avoided  
2 costs, so there is a benefit. In a falling market, like  
3 currently now, you're paying over.

4 **Q.** And in both cases --

5 **A.** In both cases you're not paying the avoided cost.

6 **Q.** Thank you. And to move on, a few questions in  
7 response to Mr. Richardson. There was a line of  
8 questioning around this concept that just because a QF  
9 requests a power purchase agreement from the utility, it  
10 doesn't necessarily mean that the QF will ever be built.  
11 Was that kind of a correct characterization of your  
12 testimony?

13 **A.** Yes.

14 **Q.** And could you -- have you observed any trends with the  
15 status of projects that have requested PPAs from PacifiCorp  
16 over the last number of years?

17 **A.** Yeah. I can -- let me provide a little color to that.  
18 Most of -- so, for -- and I'll use solar as the example,  
19 because that's kind of the dominant player at this point in  
20 the QF world. The majority of QF contracts started  
21 showing up in Utah, and they were -- a lot of those were  
22 executed back in the 2013, mid-2014 time frame. Those  
23 projects are now under construction, probably one-third of  
24 them are operating and we expect to get the remainder of  
25 those projects operational by the end of 2016, maybe first

1 quarter of '17. We've only had one of those projects  
2 terminate and that was because of a interconnection issue  
3 and it was a very small project, three megawatts.

4 The Oregon came along after that and Oregon's trend  
5 followed that same -- same path. They were all executed,  
6 in this case, about a year or so later. So, we're now  
7 starting to see that the interconnection agreements are  
8 being executed. There are 28 solar PPAs in the state, out  
9 of those 28 there are 14 of them that have been executed,  
10 and fully expect that a large number of the remaining ones  
11 to get executed. What follows after that -- and then this  
12 is the beginning of the commitment to -- of a large  
13 commitment from the QF for money for those projects to get  
14 constructed. We fully expect to see those projects begin  
15 to come online at the end of '16 through '17 and there may  
16 be some that straggle over into '18. I think that with the  
17 extension of the ITC, which in the federal investment tax  
18 credit, what that did was it gave people a more certainty -  
19 - the developers more certainty on their projects. And  
20 certainly what that's done is carried that forward.

21 It's also, I think, the trend that we're seeing now,  
22 and when we look at this, is that we're starting to get  
23 more requests now coming into Oregon and Utah which are the  
24 main developing states for solar, and those are still  
25 larger projects, but we fully expect to move it through the

1 process with them.

2 **Q.** Thank you. And I'd like to move on to your discussion  
3 with Mr. Richardson around a utility's ability to curtail  
4 QF output. And was it your testimony that you were aware  
5 of certain narrow circumstances when a utility could QF --  
6 or curtail QF output?

7 **A.** Correct.

8 **Q.** In Oregon do you know whether a utility can curtail QF  
9 output based on economic considerations such as it thinks  
10 it's paying too much?

11 **A.** It cannot.

12 **Q.** Thank you. And the last few --

13 **MR. RICHARDSON:** Your Honor, the code section I  
14 cited for the Code of Federal Regulations speaks for itself  
15 in terms of the circumstances under which the utility can  
16 curtail a QF, and I would suggest that that should be what  
17 stands in the record in terms of the law, because this  
18 witness was unable to respond to those questions when I  
19 asked them.

20 **ALJ ARLOW:** Very well. Would you like to submit a  
21 copy of it right now?

22 **MR. RICHARDSON:** I have the citation for you, I  
23 don't have a copy of the CFR with me, Your Honor.

24 **ALJ ARLOW:** Would you allow Mr. Till to  
25 characterize the CFR if his witness cannot? Can you pull

1 it up on your screen, Mr. Sanger?

2 MR. TILL: Your Honor, I was just asking Mr.  
3 Griswold whether he understood if the utility could curtail  
4 for economic reasons. I'm not asking him what the CFRs  
5 state.

6 ALJ ARLOW: Okay. He was just talking about his  
7 understanding of the law, not what the law says.

8 MR. RICHARDSON: Thank you, Your Honor.

9 ALJ ARLOW: All right.

10 MR. TILL:

11 Q. And so finally, the last few questions here. Are you  
12 familiar with how the company establishes Schedule 37,  
13 avoided cost pricing, in Oregon?

14 A. Yes.

15 Q. Does the Oregon Commission have a schedule for avoided  
16 cost updates?

17 A. They do.

18 Q. Okay. And can the -- can the company unilaterally  
19 adjust its avoided cost prices in Oregon?

20 A. Not that I'm aware of. The Commission has, as you  
21 pointed out and I agreed, that there is a formal procedure  
22 for updating avoided costs.

23 Q. So the company can't just sit and say, "Well, I don't  
24 like these avoided cost prices. Let's change them"?

25 A. That is correct.



1 Q. Okay.

2 MR. TILL: Those are all my questions, Your Honor.

3 ALJ ARLOW: All right. Before we go to re-cross by  
4 the other counsel, I wanted to know whether staff would  
5 raise some questions whether you wished to cross this  
6 witness in light of the re-direct?

7 MS. ANDRUS: No. Thank you, Judge.

8 ALJ ARLOW: All right. Any further re-cross then  
9 by any of the parties?

10 MR. RICHARDSON: No, Your Honor.

11 ALJ ARLOW: All right. I note for the record that  
12 in that case, there are no other further questions of this  
13 witness. Mr. Griswold, thank you very much, you may stand  
14 down.

15 MR. GRISWOLD: You're welcome.

16 ALJ ARLOW: I would note for the record that the  
17 only evidence we have admitted in addition to prefiled  
18 testimony today is Renewable Energy Coalition's Exhibits  
19 400 through 407. I understand that there were no other  
20 exhibits offered into the record at this time, is that  
21 correct from today's proceedings? Sierra Club chose not  
22 to offer its exhibits into the record?

23 MR. RITCHIE: That's correct, Your Honor.

24 ALJ ARLOW: All right. Thank you.

25 Is there any further comment or question here before

1 we adjourn the proceedings today?

2 MR. TILL: No, Your Honor.

3 ALJ ARLOW: Hearing none. Thank you all. We are  
4 adjourned.

5 MR. TILL: Thank you.

6 **(End of Proceedings)**

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STATE OF OREGON            )  
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I, Jean Mueller, a Court Transcriber for the State of Oregon, do hereby certify that I transcribed the audio proceedings had upon the hearing of this cause, previously captioned herein; that I thereafter had reduced by typewriting the foregoing transcript; and that the foregoing transcript constitutes a full, true, and accurate record of the proceedings had upon the hearing of said cause, and of the whole thereof.

Dated: January 29, 2016.

  
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Jean Mueller  
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