

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1742**

Surprise Valley Electrification Corp.,	)	
Complainant,	)	
	)	
v.	)	MOTION TO STRIKE OR CLARIFY
	)	SCOPE OF PROCEEDING, AND
	)	HOLD PROCEEDINGS IN
PacifiCorp, dba Pacific Power,	)	ABEYANCE PENDING OUTCOME OF
Defendant.	)	MOTION
	)	
	)	
	)	

**I. INTRODUCTION**

Surprise Valley Electrification Corp. (“Surprise Valley”) files this motion requesting that the Oregon Public Utility Commission (the “Commission” or “OPUC”) Administrative Law Judge (“ALJ”) Michael Grant strike portions of PacifiCorp’s answer (“Answer”) to Surprise Valley’s complaint (“Complaint”). Specifically, Surprise Valley requests that the ALJ strike PacifiCorp’s arguments that the PacifiCorp and Bonneville Power Administration’s (“BPA”) general transfer agreement (“GTA”) bars or otherwise limits Surprise Valley’s ability to sell the net output of the Paisley geothermal project (“Paisley Project”) to PacifiCorp. These arguments should be stricken from this proceeding because the Federal Power Act (“FPA”) and the Federal Energy Regulatory Commission’s (“FERC”) regulations preempt these arguments. Attachment A to this motion includes a redline revision to PacifiCorp’s Answer detailing information that should be stricken.<sup>1</sup>

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<sup>1</sup> Surprise Valley is not seeking to strike references to the existence of the GTA as a factual matter, but only PacifiCorp’s reference to and use of the GTA as an argument against entering into a PURPA PPA with Surprise Valley.

Alternatively, if PacifiCorp's Answer is not stricken, then Surprise Valley requests that the scope of this proceeding be clarified to exclude PacifiCorp's attempt to use the GTA as a defense against its statutory obligation to purchase the net output of the Paisley Project.

## **II. MOTION TO HOLD SCHEDULE IN ABEYANCE**

Surprise Valley also moves to hold the current procedural schedule in abeyance pending the resolution of this motion to strike/clarify. Surprise Valley cannot respond in testimony on the issue of the GTA until the issue of whether (or how) the GTA is relevant to the issues in this proceeding is resolved. Surprise Valley has contacted PacifiCorp, which does not oppose holding the schedule in abeyance pending resolution of the motion to strike/clarification. Surprise Valley and PacifiCorp have informally agreed to continue, but slow down, discovery during the time in which the schedule is in abeyance.

## **III. BACKGROUND**

Surprise Valley filed its complaint on June 22, 2015, requesting that the Commission: 1) find PacifiCorp in violation of the mandatory purchase obligations of the Oregon and federal Public Utility Regulatory Policies Acts ("PURPA") and related state and federal regulations, policies, and orders; 2) order PacifiCorp to enter into a power purchase agreement ("PPA") or legally enforceable obligation with Surprise Valley to purchase the entire net output of the Paisley Project at the Schedule 37 rates in effect prior to August 20, 2014; and 3) impose any other relief the Commission deems necessary. PacifiCorp filed its Answer on July 29, 2015. PacifiCorp's Answer raised issues, *inter alia*, regarding how BPA schedules power under the GTA for retail end use

by Surprise Valley. The GTA is the agreement under which PacifiCorp provides transmission services to BPA for delivery of federal power to many of BPA's preference power customers, including Surprise Valley. Surprise Valley is not a party to the GTA.

While not clearly articulated, PacifiCorp appears to rely on the GTA to dispute Surprise Valley's allegation that PURPA provides no basis for PacifiCorp to refuse to purchase the electrical output from the Paisley Project through power displacements. The allegations of the Complaint regarding displacement deliveries merely explained the physical fact that utilities regularly make deliveries of electricity in the opposite direction of the flow of electricity on the grid at the point of delivery, and that PURPA allows, as do ordinary power sales, deliveries to occur through displacement. This would be the case with Surprise Valley's deliveries to PacifiCorp.

Nonetheless, PacifiCorp points to its dissatisfaction with the GTA as a reason to disregard its mandatory purchase obligation under PURPA. Specifically, PacifiCorp avers that the GTA will fail to properly account for the sale of the Paisley Project's output to PacifiCorp:

If Bonneville under-schedules its deliveries to Surprise Valley, in relation to Surprise Valley's actual load, the net output from the Paisley Project would offset Surprise Valley's load requirements and not be available to PacifiCorp. Surprise Valley, however, has demanded that PacifiCorp pay for the full net output of the Paisley Project.

If Bonneville over-schedules to Surprise Valley, under the General Transfer Agreement (GTA) between Bonneville and PacifiCorp, PacifiCorp would have to compensate Bonneville for any deliveries above the metered Surprise Valley load. Under the GTA, Bonneville is only obligated to schedule for delivery energy required to meet the load metered at specific locations identified in the contract. The Paisley Project is not identified in the GTA, so its output would merely reduce the load metered at the points identified in the GTA.

PacifiCorp Answer at 7-8.

PacifiCorp argues that the GTA with BPA is an obstacle to the company entering into a PPA with Surprise Valley because, if left unrevised, the GTA may cause increases in costs to PacifiCorp's retail customers. PacifiCorp Answer at 8, ¶ 14, ¶ 98 n.25. PacifiCorp takes issue with the fact that "PacifiCorp, as the 'Transferor' under the GTA, supplies the imbalance energy to serve the load in the event of under-deliveries and compensates Bonneville in the event of over-deliveries." Id. at ¶ 98 n.25. PacifiCorp further alleges, as an affirmative defense, that "if Bonneville over-schedules its transmission service to Surprise Valley, PacifiCorp's customers would pay twice for the net output of the Paisley Project: first under the QF PPA with Paisley, and second to compensate Bonneville for the over-delivery through imbalance true-ups under the GTA." Id.

As alleged in the complaint, Surprise Valley has been in contact with PacifiCorp Transmission personnel since August 2012, regarding the metering and other requirements to allow for Surprise Valley to deliver the Paisley Project's entire net output. Complaint at ¶¶ 24-60. Surprise Valley formally requested a PURPA PPA with PacifiCorp's merchant operations, now known as Energy Services Management ("ESM"), in August 2013. Id. at ¶ 63. Most recently, as alleged in the Complaint, PacifiCorp Transmission informed Surprise Valley that the existing metering is sufficient to allow for PacifiCorp to accept and purchase the Paisley Project's entire net output on an interim basis, pending completions of the metering upgrades deemed necessary by PacifiCorp Transmission to designate the Paisley Project as a network resource serving PacifiCorp loads. Id. at ¶ 60. PacifiCorp appears to be backtracking on this commitment and now

denies that the existing or interim metering is sufficient to allow Surprise Valley to sell power to PacifiCorp. Answer at ¶ 38

Not until late in this long course of communications did PacifiCorp raise concerns that the GTA might prove to be an impediment to the acceptance of the Paisley Project's entire net output. Nonetheless, in its Answer, PacifiCorp claims that the GTA absolves it of its statutory obligation to purchase the entire net output of the Paisley Project. In other words, even though the Paisley Project will generate electricity, convey title to power, and result in PacifiCorp having more electricity on its system, the GTA somehow will prevent PacifiCorp from being able to own or use this additional power.

Rather than elect to immediately file to strike these allegations from the Answer, Surprise Valley attempted to discuss the issue with PacifiCorp and conduct discovery on the GTA to better understand PacifiCorp's position. However, PacifiCorp's discovery responses lay bare the fact that PacifiCorp lacks information to support its allegations regarding the manner by which BPA schedules power under the GTA. Attachment B (PacifiCorp responses to Surprise Valley data requests 1.15, 1.16, 1.17, and 1.18). Despite the fact that PacifiCorp's Answer raises the issue of its transmission service to BPA as *an affirmative defense*, PacifiCorp refused to provide information supporting its defense because "PacifiCorp's transmission service to the Bonneville Power Administration (BPA) is not at issue in the complaint." *Id.* (PacifiCorp responses to Surprise Valley data requests 1.16, 1.17, 1.18).

#### IV. ARGUMENT

In defense of its refusal to purchase the Paisley Project's entire net output as required under PURPA, PacifiCorp argues that purchase will exacerbate PacifiCorp's

dissatisfaction with the GTA, an entirely separate agreement under which PacifiCorp provides interstate transmission service to BPA. But the GTA is a wholesale transmission agreement that is outside of the Commission's regulatory authority and is therefore irrelevant to the issues in this proceeding. The Commission cannot lawfully resolve PacifiCorp's concerns regarding the GTA because that agreement is within FERC's exclusive jurisdiction. Nor can PacifiCorp hold Surprise Valley's PURPA rights hostage based on a GTA that PacifiCorp has unilaterally elected not to seek to revise. Any Commission order accepting PacifiCorp's argument would conflict with, and therefore be preempted by, FERC's declaration that the PURPA purchase obligation is not subordinate to contracts like the GTA. The two contractual arrangements are entirely separate – one (the mandatory purchase of QF output) is within the Commission's jurisdiction, and the other (PacifiCorp's dissatisfaction with the GTA) is within FERC's jurisdiction. PacifiCorp acknowledges as much in its discovery responses. Therefore, the Commission should strike from PacifiCorp's Answer all allegations and defenses arising from the GTA, or otherwise exclude consideration of the GTA's impact on PacifiCorp's PURPA obligations from this proceeding.

**1. PacifiCorp's Allegations and Affirmative Defense Arising From the GTA Should Be Stricken Because PacifiCorp's GTA Defense Is Preempted**

Under the Supremacy Clause, preemption occurs: 1) when federal law expressly preempts state law; 2) when "Congress intends federal law to occupy the field"; or 3) when there is "any conflict with a federal statute." Crosby v. Natl. For. Trade Council, 530 U.S. 363, 372 (2000) (internal quotation omitted); U.S. Const., art. VI, cl. 2. In this case, PacifiCorp's GTA defense is preempted by both field and conflict preemption.

**A. Under the Doctrine of Field Preemption, FERC’s Exclusive Jurisdiction over Interstate Transmission Requires that PacifiCorp’s Allegations and Defense Arising From the GTA Be Stricken**

Field preemption occurs when Congress has adopted a comprehensive federal statutory scheme, and it can be inferred “that Congress left no room for supplementary regulation by the states.” Gadda v. Ashcroft, 363 F.3d 861, 869 (9th Cir. 2004). FPA applies to “the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce.” 16 U.S.C. § 824(b). The FPA delegates to FERC ““*exclusive* authority to regulate the transmission and sale at wholesale of electric energy in interstate commerce.”” Transmission Agency of N. Cal. v. Sierra Pacific Power Co., 295 F.3d 918, 928 (9th Cir. 2002)(emphasis in original; citations omitted). Congress created a “bright-line rule” that matters related to interstate transmission are *exclusively* within FERC’s jurisdiction. See California ex rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 850 (9th Cir. 2004) opinion amended on denial of reh’g, 387 F.3d 966 (9th Cir. 2004). Except for matters Congress has explicitly made subject to state regulation, such as the PURPA requirement that utilities buy the entire net output of a qualifying facility, FERC possesses exclusive authority to regulate electric transmission and wholesale sales of power. Nantahala Power & Light Co. v. Thornburg, 476 U.S. 953, 966 (1986); Federal Power Comm’n v. S. Cal. Edison Co., 376 U.S. 205, 215-16 (1964).

This bright-line rule prohibits a state from taking any action designed to modify or undermine a FERC-jurisdictional contract. For example, the Ninth Circuit rejected the Governor of California’s executive order “commandeering” several FERC-jurisdictional wholesale power contracts during the California Energy Crisis. Duke Energy Trading & Mktg., L.L.C. v. Davis, 267 F.3d 1042 (9th Cir. 2001). The Governor’s commandeering order sought to prevent the liquidation of the low-cost power that was threatened after

California utilities defaulted on certain power supply contracts. Id. at 1047-48. The Ninth Circuit, however, held that California’s actions were preempted because they had “encroached upon FERC’s exclusive authority” by attempting to alter the FERC-jurisdictional agreements. Id. at 1056-58. The “commandeering orders directly nullif[ied] the security and default mitigation provisions of the FERC-approved CTS rate schedule, and hence cross[ed] the ‘bright line’ between state and federal jurisdiction established by the FPA.” Id. at 1056.

In fact, the Commission itself has recently recognized and applied this well-established precedent in a recent PURPA dispute. See PaTu Wind Farm v. PGE, Docket No. UM 1566, Order No. 12-316 at 8-9 (Aug. 21, 2012). In PaTu, a QF argued that a utility had unlawfully refused to accept transmission via dynamic deliveries of its output. The Commission concluded that it does not “have the jurisdiction—nor possibly the expertise—to fully evaluate the impact of a dynamic transfer.” Id. at 9. Later in the same case, the Commission even refused to address any factual matters related to dynamic deliveries. PaTu Wind Farm v. PGE, Docket No. UM 1566, Order No. 14-287 at 2 (Aug. 13, 2014). The Commission reasoned, “we do not have the jurisdiction to address issues, whether directly or indirectly, that are associated with the transmission of a QF’s output to a utility.” Id. at 14.

The GTA governs interstate transmission arrangements between PacifiCorp and BPA, and is therefore subject to FERC’s exclusive jurisdiction. In its Answer, PacifiCorp admits as much (albeit in a footnote), conceding that the “GTA is a PacifiCorp rate schedule on file with FERC . . . .” PacifiCorp’s Answer at ¶ 98 n.25. FERC has indeed accepted the GTA for filing as a FERC-jurisdictional contract.



PacifiCorp, Docket No. ER15-354-000, Letter Order (Dec. 30, 2014); PacifiCorp, 125 FERC ¶ 61,034, at Appendix at 41, 43 (Oct. 14, 2008).

Accordingly, the Commission has no authority to address PacifiCorp's dissatisfaction with the GTA. The Commission may not "cross the 'bright line' between state and federal jurisdiction established by the FPA" to "nullify" or re-write any terms of the GTA as a precondition to Surprise Valley's exercise of its entirely separate rights to sell under PURPA. See Duke Energy Trading & Mktg., 267 F.3d at 1056-57.

PacifiCorp's dissatisfaction with the scheduling terms of the GTA, or BPA's performance under that contract, is a matter that is within FERC's exclusive jurisdiction. "It is common ground that if FERC has jurisdiction over a subject, the States cannot have jurisdiction over the same subject." Id. at 1057 (quoting Miss. Power & Light Co. v. Miss. ex rel. Moore, 487 U.S. 354, 377 (1988) (Scalia, J., concurring)). As in PaTu, the Commission lacks the expertise and authority to address matters, whether directly or indirectly, related to the GTA. The Commission should therefore strike the allegations and defenses regarding the GTA from PacifiCorp's Answer.

**B. Conflict Preemption Requires the Commission to Strike PacifiCorp's Defense Regarding the GTA.**

In addition to field preemption, conflict preemption provides an additional basis to strike the allegations and defenses related to the GTA from the Answer. Conflict preemption occurs when "there is an actual conflict between federal and state law, or where compliance with both is impossible." Gadda, 363 F.3d at 871. Conflict arises when "it is impossible for a private party to comply with both state and federal law," or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Crosby, 530 U.S. at 373. Federal law includes

federal regulations, which have no less preemptive effect than federal statutes. See Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 699 (1984). And federal courts “give ‘great weight’ to any reasonable construction of a regulatory statute adopted by the agency charged with its enforcement.” Bank of Am. v. City & County of S.F., 309 F.3d 551, 563 (9th Cir. 2002) (internal quotation omitted).

PURPA conflicts with, and would preempt, any Commission order adopting PacifiCorp’s GTA defense. “Section 210 of PURPA specifies the benefits to which QFs are entitled.” Ind. Energy Prod. Ass’n, Inc. v. Cal. Pub. Util. Comm’n, 36 F.3d 848, 850 (9th Cir. 1994). Section 210(b) requires FERC to adopt regulations for the purchase of QF output. Id. (citing 16 U.S.C. § 824a-3(b)). Under FERC’s regulations, “[u]tilities have an *absolute obligation to purchase* a QF’s output, unless [FERC] expressly grants relief from that purchase obligation.” Southwest Power Pool, Inc., 143 FERC ¶ 61,018, at ¶ 17 (2013) (emphasis added).

Throughout the decades since PURPA was adopted in 1978, FERC has consistently held that utilities cannot rely on contracts to nullify PURPA’s obligation that they purchase all output from QFs. In Order No. 69, when FERC adopted the first set of regulations implementing PURPA, FERC rejected the argument that the PURPA purchase obligation should be curtailed if it conflicted with full requirements contracts entered into by the purchasing utility, holding that if it “permitted such contractual obligations to override the [PURPA] obligation to purchase from qualifying facilities, these contractual devices might be used to hinder the development of cogeneration and small power production.” Order No. 69, Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory

Policies Act of 1978, FERC Stats. & Regs. ¶ 30,128 at 30,870, 45 Fed. Reg. 12,214 order on reh’g, Order No. 69-A, FERC Stats. & Regs. ¶ 30,160 (1980). Accordingly, the PURPA mandatory purchase obligation “supercede[s] contractual restrictions on a utility’s ability to obtain energy or capacity from a qualifying facility.” Id.

In the ensuing decades, FERC has consistently maintained this course, and has rejected assertions that its wholesale supply contract trumped a QF’s right to sell to an indirectly connected utility of its choosing under PURPA. E.g., Pub. Serv. Co. of N.H. v. N.H. Elec. Coop., Inc., 83 FERC ¶ 61,224, at 61,998-62,000, reh’g denied, 85 FERC ¶ 61,044 (May 29, 1998) (“PSNH”). In PSNH, FERC explained that utilities “cannot lawfully bargain away any portion of the rights QFs enjoy under PURPA or [the purchasing utility’s] statutory purchase obligation under PURPA, [or] our implementing regulations.” Id. at 61,998-61,999.

Very recently, FERC confirmed that contracts do not supercede the statutory obligation PURPA imposes on utilities to purchase the output of QFs. Delta-Montrose Electric Association, 151 FERC ¶ 61,238 (June 18, 2015). The case centers on Delta-Montrose, a small rural electric cooperative, which is a member of the Tri-State Generation and Transmission Association and purchases most of its power supply under a contract with Tri-State. A QF sought to sell power to Delta-Montrose, but if Delta-Montrose purchased the QF’s power, it would exceed a contractual limit its purchases from outside generators to no more than 5% of Delta-Montrose’s total portfolio.

FERC concluded that Delta-Montrose is obligated under PURPA and FERC’s regulations to “purchase power from *any* QF that can deliver its power to Delta-Montrose, regardless of the terms of Delta-Montrose’s contract with Tri-State.” 151 FERC ¶ 61,238

at P 54 (emphasis in original). Relying on its prior holdings in Order No. 69 and PSNH, FERC concluded that “the terms of the contract cannot control the rights of a third party QF to sell power to any electric utility that it can deliver its electric energy to.” Id. In its rehearing order, issued on October 15, 2015, FERC confirmed that “Delta-Montrose was obligated to purchase power from any QF that can deliver its power to Delta-Montrose *regardless of conflicting contract terms* found in the PPA between Delta-Montrose and Tri-State. Delta-Montrose Electric Association, 153 FERC ¶ 61,028 at P 18 (2015)(emphasis added).

In this case, therefore, it follows that the GTA cannot be used as the basis for PacifiCorp to refuse to complete the metering and interconnected operations necessary to accept and purchase the entire net output of the Paisley Project. Any Commission order relying on the GTA for this purpose would conflict with, and be preempted by, PURPA and FERC’s PURPA regulations. See PSNH 83 FERC ¶ 61,224, at 61,998-62,000. Accordingly, the allegations regarding the GTA are irrelevant to this proceeding and should be stricken from the Answer to narrow the issues for the Commission’s resolution.<sup>2</sup>

**2. PacifiCorp’s Refusal or Inability to Respond to Discovery on the GTA Provides An Independent Basis to Strike the GTA Defense From the Answer and Conclude that the GTA Is Beyond the Scope of the Commission’s Jurisdiction**

PacifiCorp’s own discovery responses provide an independent basis to dismiss its GTA defense. In fact, PacifiCorp’s discovery responses confirm that the GTA is

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<sup>2</sup> FERC’s Delta-Montrose orders make clear that PacifiCorp’s purchase obligation remains whether or not it seeks waiver or amendment of the GTA, and, to the extent PacifiCorp believes it necessary to amend the GTA to accommodate the purchase from the Paisley Project, it can amend the agreement and seek appropriate approvals for the amendment from FERC. See Delta-Montrose, 151 FERC ¶ 61,238 at P 55.

irrelevant to this proceeding. Accordingly, matters related to the GTA should be stricken or otherwise barred from this proceeding as irrelevant and PacifiCorp should not be permitted to argue that the GTA somehow operates as a shield against accepting and purchasing the entire net output of the Paisley Project.

PacifiCorp did not raise these GTA related concerns now set forth in its Answer until nearly two years after Surprise Valley initially sought a PPA from PacifiCorp. It is surprising that PacifiCorp withheld (or was not aware) of problems with the GTA that might interfere with its obligation to accept and purchase the Paisley Project's entire net output. In order to better understand these new issues, Surprise Valley informally and formally requested information and documents supporting PacifiCorp's assertion that BPA's over-scheduled deliveries occur and will result in unnecessary costs to PacifiCorp. Attachment B (PacifiCorp responses to Surprise Valley data requests 1.15, 1.16, 1.17, and 1.18). Surprise Valley formally asked, *inter alia*, that PacifiCorp provide documents and information regarding how BPA schedules power to meet Surprise Valley's load in every hour and the amount BPA has under or over scheduled to Surprise Valley for the past twelve months.

However, PacifiCorp refused to provide relevant information regarding the GTA to support its claims. Despite raising the issue in its Answer, PacifiCorp objected to certain data requests regarding the GTA on the basis that the requests were "overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence." Attachment B (PacifiCorp response to Surprise Valley data requests 1.15, 1.16, 1.17, and 1.18). PacifiCorp further explained that PacifiCorp's transmission service

to BPA is not at issue in the Complaint. See Attachment B (PacifiCorp's response to Surprise Valley data requests 1.16, 1.17, and 1.18).

To the extent PacifiCorp provided any information, PacifiCorp admitted that it has no idea how BPA schedules its power or how to even ascertain if BPA under or over schedules power deliveries under its own transmission agreement. Surprise Valley cannot respond to PacifiCorp's assertions because PacifiCorp cannot identify even basic factual information to support those assertions. Specifically, PacifiCorp admitted:

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

Attachment B (PacifiCorp's response to Surprise Valley data request 1.15). Similarly, PacifiCorp admitted:

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

Id. (PacifiCorp's response to Surprise Valley data requests 1.16, 1.17, 1.18).

PacifiCorp's statements in discovery cannot be squared with PacifiCorp's allegations in the Answer that BPA engages in under or over scheduling of power under the GTA, and that such inaccurate scheduling by BPA precludes Surprise Valley's PURPA sale. It is difficult to understand why PacifiCorp presented allegations regarding BPA's scheduling in its Answer if it now lacks any knowledge of the matter. Even without reaching the issue of whether federal law preempts PacifiCorp's GTA defense, PacifiCorp's discovery responses demonstrate that its defense regarding BPA schedules under the GTA should be stricken for lack of foundation or relevance.

## V. CONCLUSION

PacifiCorp argues that the GTA is a legitimate ground to refuse to enter into a PPA with Surprise Valley. However, PacifiCorp cannot hide behind its transmission agreement with a third party to circumvent its statutory obligation to enter into a PURPA PPA with Surprise Valley. More importantly, PacifiCorp's use of the GTA in this manner raises issues within FERC's exclusive jurisdiction. Transmission arrangements, including PacifiCorp's GTA, are subject to FERC's jurisdiction, and the Commission does not have the legal authority or expertise to interpret the GTA or determine how it applies to the issues in this proceeding. Simply put, any concerns regarding the GTA should be raised with FERC, not this Commission. Therefore, the Commission should strike the allegations regarding the GTA from the Answer or otherwise prevent PacifiCorp from raising arguments regarding the GTA in this proceeding.

Dated this 6th day of November, 2015.

Respectfully submitted,

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

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Of Attorneys for Surprise Valley Electrification  
Corp.



# **Attachment A**



825 NE Multnomah, Suite 2000  
Portland, Oregon 97232

July 29, 2015

***VIA ELECTRONIC FILING***

Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301-1166

Attn: Filing Center

**RE: UM 1742—PacifiCorp's Answer**

PacifiCorp d/b/a Pacific Power encloses for filing its Answer in the above-referenced docket.

If you have questions about this filing, please contact Erin Apperson, Manager Regulatory Affairs, at (503) 813-6642.

Sincerely,

A handwritten signature in cursive script that reads "R. Bryce Dalley/Crow".

R. Bryce Dalley  
Vice President, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1742**

SURPRISE VALLEY  
ELECTRIFICATION CORP.,

Complainant

v.

PACIFICORP d/b/a PACIFIC POWER,

Respondent.

PACIFICORP'S ANSWER

1           Under Oregon Revised Statute (ORS) 756.512 and in accordance with Oregon  
2   Administrative Rules (OAR) 860-001-0400, PacifiCorp d/b/a Pacific Power (PacifiCorp)  
3   files this answer to the complaint filed on June 22, 2015 (Complaint), by Surprise Valley  
4   Electrification Corporation (Surprise Valley) against PacifiCorp alleging violations of  
5   various statutory provisions administered by the Public Utility Commission of Oregon  
6   (Commission) under the Public Utility Regulatory Policies Act of 1978 (PURPA) and the  
7   regulations of the Federal Energy Regulatory Commission (FERC).

**INTRODUCTION**

9           In its complaint, Surprise Valley asks this Commission to order PacifiCorp to enter  
10   into a power purchase agreement (PPA) to purchase the full net output of the Paisley  
11   Project—an off-system Qualifying Facility (QF) that has not provided PacifiCorp with any  
12   legitimate wheeling arrangement to deliver QF power to PacifiCorp. Despite extensive  
13   negotiations, Surprise Valley has made no transmission arrangements that would entitle it to  
14   a PURPA contract for sale of the net output of the off-system Paisley Project to PacifiCorp.  
15   Neither has it articulated any other means by which it could verifiably deliver the Paisley

1 Project’s net output to PacifiCorp. Instead, Surprise Valley relies on a misapplication of  
2 language in FERC Order No. 69<sup>1</sup> that would inappropriately burden PacifiCorp and its  
3 customers with additional costs. For that reason, Surprise Valley’s complaint should be  
4 dismissed.

5 PacifiCorp has been, and continues to be, willing to purchase all QF power that  
6 Surprise Valley can deliver to PacifiCorp’s system in a manner that PacifiCorp can verify.  
7 PacifiCorp, however, is not willing to sign a long-term QF PPA at avoided cost prices for  
8 (1) QF power used to serve Surprise Valley’s load, or (2) where PacifiCorp cannot verify the  
9 amount of QF power delivered to its system from an off-system QF. PacifiCorp has  
10 participated in extensive negotiations in an effort to reach an agreement that addresses the  
11 concerns above, but the fundamental issues remain.

12 Generally speaking, PURPA requires a utility to purchase any QF power made  
13 available either (1) directly to the utility, or (2) indirectly to the utility, in which case the QF  
14 power is transmitted across the intervening system to the purchasing utility’s system.<sup>2</sup> The  
15 Paisley Project is an off-system QF that is interconnected to Surprise Valley’s system, and  
16 thus is an indirectly connected, off-system QF.<sup>3</sup> This Commission has approved a  
17 Schedule 37 PPA that applies to off-system QFs like the Paisley Project. This off-system

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<sup>1</sup> *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, 45 Fed. Reg. 12214, 12222 (1980).

<sup>2</sup> *See, e.g.*, 18 CFR § 292.303 (2014); OAR 860-0029-0030.

<sup>3</sup> Surprise Valley could have directly interconnected the Paisley Project to PacifiCorp’s system, but chose not to.

1 PPA—consistent with PURPA and Commission precedent—requires an off-system QF to  
2 make delivery arrangements for its power.<sup>4</sup>

3 Off-system QFs are required to enter into a transmission arrangement with the  
4 interconnected utility whereby the interconnected utility agrees to provide transmission  
5 service to transfer the QF power to the purchasing utility. This is also known as a wheeling  
6 arrangement. Surprise Valley, however, is unable to transmit the Paisley Project’s net output  
7 to PacifiCorp’s transmission facilities. Surprise Valley does not have an open access  
8 transmission tariff, wholesale distribution tariff, or any other method of tracking and  
9 transferring energy across its own distribution system.<sup>5</sup> Without verifiable schedules,  
10 PacifiCorp has no way of determining the actual amount of QF energy received from an off-  
11 system resource like the Paisley Project.

12 Aside from the clear Commission precedent requiring a QF to make wheeling  
13 arrangements for indirect sales of power, Surprise Valley’s lack of transmission  
14 arrangements is a serious problem from a customer protection perspective. If PacifiCorp  
15 were to sign a PPA with Surprise Valley to buy the full net output of the Paisley Project, the  
16 lack of verifiable delivery arrangements would make it impossible for PacifiCorp to

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<sup>4</sup> See OAR 860-0029-0030(4) (allowing off-system QF to sell power indirectly to a utility so long as it makes wheeling arrangements to deliver that power to the indirectly connected utility); see also, e.g., *Portland General Elec. Co. v. Oregon Energy Co.*, Docket No. UC 315, Order No. 98-238 (June 12, 1998) (confirming that a QF must obtain a wheeling agreement as a precondition to a utility’s obligation to purchase power indirectly from a QF). (“OEC”). See also, *Portland General Elec. Co. v. Oregon Energy Co.*, Docket No. UC 315, Order No. 98-055 (Feb. 17, 1998) (without a binding wheeling arrangement to make power available to a utility, an off-system QF is not considered ready, willing, or able to deliver that power to a utility).

<sup>5</sup> Under the delivery arrangements required by PURPA, the QF and the transmitting utility handle all delivery issues, such as scheduling, outages, curtailments and imbalance. PacifiCorp simply verifies that the QF has generated a certain amount of power, and receives that power from the transmission provider at the specified point of delivery. The delivery of that power is verifiable under the transmitting utility’s transmission tariff. Surprise Valley has not demonstrated that it can make such transmission arrangements. Surprise Valley cannot, for example, schedule transfer of the Paisley Project’s net output using industry standard eTags, which would identify critical information, such as actual delivery amounts, as well as any curtailments or outages affecting the delivery of the off system generation.

1 determine precisely how much power its customers receive from Surprise Valley in each  
2 hour.

3 Despite these complications, PacifiCorp has been willing to purchase any amount of  
4 power from the Paisley Project that can be verifiably transmitted and delivered to  
5 PacifiCorp's system. Even though the Paisley Project is an off-system QF, PacifiCorp is  
6 willing, for example, to install a meter that would allow it to measure any physical flow of  
7 power from Surprise Valley's system to PacifiCorp's system, essentially treating the Paisley  
8 Project as a type of on-system QF.<sup>6</sup> PacifiCorp would then purchase the amount of power  
9 that crosses the meter and is thereby delivered to PacifiCorp's system, up to the net output of  
10 the Paisley Project.<sup>7</sup>

11 PacifiCorp believes this type of accommodation, though non-standard, would help the  
12 Paisley Project address its transmission delivery issues while at the same time protect  
13 PacifiCorp and its customers from paying for QF power that is used to serve Surprise Valley  
14 load. But this accommodation does not appear acceptable to Surprise Valley. As Surprise  
15 Valley explains in its complaint, it needs to sell the *full net output* of the Paisley Project to  
16 protect its Tier 1 status with the Bonneville Power Administration (Bonneville).

17 As a result, the delay in negotiations has been driven primarily by: (1) Surprise  
18 Valley's choice to interconnect the Paisley Project to its own system, making it an off-system  
19 QF; (2) Surprise Valley's failure to provide clear transmission arrangements to provide  
20 verifiable delivery of the Paisley Project's net output to PacifiCorp's system; (3) Surprise

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<sup>6</sup> While PacifiCorp is not certain this would strictly conform to the assumptions in the Commission's approved on-system Schedule 37 PPA (since the Paisley Project is actually an off-system QF), PacifiCorp suggested the "metered flow" method of measuring delivery—which treats the Paisley Project more like an on-system QF—in an effort to accommodate Surprise Valley's inability to make verifiable transmission arrangements for the Paisley Project's generation.

<sup>7</sup> As noted above, however, power would likely flow to PacifiCorp's system only if Paisley generated more than Surprise Valley's load amount, because Surprise Valley's load would appear to devour nearly all of the resources available to Surprise Valley.

1 Valley's interpretation of language in FERC Order No. 69, which specifically allows  
2 Surprise Valley to sell QF power to Bonneville without affecting Surprise Valley's all-  
3 requirements contract with Bonneville; (4) misapplication of that same language to  
4 PacifiCorp, which merely transfers energy across its system under a FERC-approved  
5 transmission rate schedule; and (5) Surprise Valley's refusal to accept a template QF PPA for  
6 the amount of power it can deliver directly to PacifiCorp's system.

7 Surprise Valley's failure to disclose these relevant facts to the Commission is telling  
8 and reflects the difficulty PacifiCorp has experienced in the negotiations. While Surprise  
9 Valley admits that the Paisley Project is an off-system geothermal QF that is not directly  
10 interconnected to PacifiCorp's system, Surprise Valley fails to acknowledge that it has no  
11 viable method (*e.g.*, a wholesale distribution tariff) for verifiably transmitting the Paisley  
12 Project's generation to PacifiCorp. Similarly, Surprise Valley admits that as an all-  
13 requirements customer of Bonneville, Surprise Valley needs to sell *all* of the Paisley  
14 Project's net output to a purchaser or risk its Tier 1 pricing status with Bonneville. Surprise  
15 Valley, however, fails to disclose that it could require Bonneville to purchase the Paisley  
16 Project net output under PURPA, thereby maintaining Surprise Valley's Tier 1 pricing status  
17 in accord with the language in FERC Order No. 69.

18 FERC's Order No. 69 adopted the regulations in 18 Code of Federal Regulations  
19 (CFR) section 292.303(d). In the order, FERC recognized that certain situations require the  
20 flexibility to move QF power in order to sell to another utility. FERC discussed two related  
21 examples. First, a QF may interconnect to a utility that owns no generation and is an all-  
22 requirements wholesale customer of another utility (the Energy Supplying Utility). In that  
23 situation, the QF purchase may conflict with the all-requirements contractual commitments

1 between the utility and its Energy Supplying Utility. FERC responded to this concern by  
2 finding that the utility, with the agreement of the QF, could wheel the QF power to the  
3 utility's Energy Supplying Utility. FERC acknowledged that in most instances, the  
4 transaction would take the form of the displacement of energy or capacity that would have  
5 been provided under the all-requirements contract between the utility and Energy Supplying  
6 Utility. In essence, the Energy Supplying Utility would displace (i.e., reduce) its energy  
7 deliveries to the utility in an amount equal to the net output purchased from the QF.

8         The second example involved the inverse situation. There may be times when a QF  
9 might not want the utility to which it interconnects to purchase the QF's power. One  
10 example is when the interconnected utility is a non-generating utility, purchasing its full  
11 requirements from another utility. In such situations, the QF can request that the utility (the  
12 Transmitting Utility) transmit the QF power to another utility. If the utility to which the QF  
13 power is transmitted is also the Energy Supplying Utility for the Transmitting Utility, the  
14 purchase of QF power would again displace the power otherwise delivered to the  
15 Transmitting Utility under its all-requirements contract.

16         Neither of these situations applies to PacifiCorp. The language in FERC Order No.  
17 69 explicitly discusses *energy* suppliers, not transmission or delivery providers. Surprise  
18 Valley's proposed application of the language is contrary to the entire discussion in the order  
19 and relies on the insertion of the term "delivery" in place of the term "supply." This was  
20 clearly not FERC's intent. The language in FERC Order No. 69 directly applies to the  
21 relationship between Surprise Valley and Bonneville, not PacifiCorp.

22         Ignoring the fact the Surprise Valley is both the QF and Transmitting Utility in the  
23 current situation, FERC's Order No. 69 states that an all-requirements utility ( – like Surprise



1 Valley) – can use QF power to serve its own load, displacing the energy that would have  
2 been supplied by its all-requirements supplier ( – like Bonneville). That all-requirements  
3 supplier will be deemed to have purchased the QF power without receiving actual physical  
4 delivery of QF power. In other words, applied here, FERC Order No. 69 means that Surprise  
5 Valley can sell the Paisley Project’s net output to Bonneville, thereby offsetting Bonneville’s  
6 power supply obligation to Surprise Valley; and Surprise Valley’s requirements contract and  
7 its Tier 1 status will remain unimpaired.

8 Surprise Valley’s attempt to apply the language in FERC Order No. 69 to *PacifiCorp*  
9 instead of Bonneville is not addressed in the order ~~and would result in increased costs for~~  
10 ~~PacifiCorp and its customers.~~ As a transmission provider, PacifiCorp does not supply energy  
11 to Surprise Valley; PacifiCorp merely transmits energy supplied by Bonneville. So there is  
12 no “energy to offset with the QF power.” PacifiCorp merely delivers energy on behalf of  
13 Bonneville, Surprise Valley’s full requirements energy supplier. Bonneville schedules the  
14 deliveries and either generates or purchases power to meet Surprise Valley’s load every hour.  
15 ~~Because PacifiCorp is merely the method of delivery, Surprise Valley’s requested relief~~  
16 ~~would expose PacifiCorp to unnecessary costs, including:~~

- 17 ~~▪ If Bonneville under schedules its deliveries to Surprise Valley, in relation to~~  
18 ~~Surprise Valley’s actual load, the net output from the Paisley Project would offset~~  
19 ~~Surprise Valley’s load requirements and not be available to PacifiCorp. Surprise~~  
20 ~~Valley, however, has demanded that PacifiCorp pay for the full net output of the~~  
21 ~~Paisley Project.~~



By email (preferred): [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com)

By regular mail: Data Request Response Center  
PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, OR 97232

1 Informal questions may be directed to Erin Apperson, Manager, State Regulatory  
2 Affairs at 503-813-6642.

3 PacifiCorp admits, denies, alleges, and affirmatively defends as follows:

#### 4 **IDENTITY OF THE PARTIES**

- 5 1. PacifiCorp admits the allegations in paragraph 1 of the Complaint.
- 6 2. PacifiCorp does not have sufficient information to admit or deny the factual  
7 allegations contained in paragraph 2 of the Complaint, but will stipulate to the assertion made  
8 by Surprise Valley.

#### 9 **APPLICABLE STATUTES AND RULES**

- 10 3. The allegations in paragraphs 3-4 of the Complaint contain legal conclusions  
11 and no answer is required. PacifiCorp denies the allegations on this basis.

#### 12 **JURISDICTION**

- 13 4. The allegations in paragraphs 5-6 of the Complaint contain legal conclusions  
14 and no answer is required. PacifiCorp denies the allegations on this basis.

#### 15 **FACTUAL BACKGROUND**

##### 16 **Surprise Valley's Electrical Requirements**

- 17 5. PacifiCorp does not have sufficient information to admit or deny the factual  
18 allegation contained in paragraph 7 of the Complaint, however PacifiCorp will stipulate to  
19 the allegation. PacifiCorp does not sell any energy, either on a wholesale or retail basis, to  
20 Surprise Valley.

1           6.       PacifiCorp does not have sufficient information to admit or deny the factual  
2 allegation contained in paragraph 8 of the Complaint, however PacifiCorp will stipulate to  
3 the allegation.

4           7.       PacifiCorp admits to the allegations in paragraph 9 of the Complaint, but  
5 notes that Surprise Valley provided an incomplete list of substations to which PacifiCorp  
6 delivers Bonneville power to Surprise Valley under the GTA between Bonneville and  
7 PacifiCorp. The complete list of Surprise Valley points of delivery under the GTA includes  
8 the Malin, Alturas, Austin, Cedarville Junction, Davis Creek, and Lakeview substations. The  
9 Lakeview substation, which Surprise Valley does not list in its Complaint, is the relevant  
10 point of delivery for the area of Surprise Valley's system where Paisley chose to site its  
11 plant.

## 12 **Paisley Project**

13           8.       PacifiCorp does not have sufficient information to admit or deny the factual  
14 allegation contained in paragraph 10 of the Complaint.

15           9.       PacifiCorp admits to the allegation in paragraphs 11-12 of the Complaint.

16           10.      PacifiCorp does not have sufficient information to admit or deny the factual  
17 allegation contained in paragraph 13 of the Complaint.

18           11.      PacifiCorp admits to the allegation in paragraphs 14-15 of the Complaint.

19           12.      PacifiCorp denies that PacifiCorp is willing and able to transmit the Paisley  
20 Project's "load" to PacifiCorp's transmission facilities. PacifiCorp believes that Surprise  
21 Valley meant to allege that Surprise Valley is "willing and able to transmit the Paisley  
22 Project's net output to PacifiCorp's transmission facilities." However, if that was the intent  
23 of Surprise Valley, PacifiCorp admits that Surprise Valley is willing, but denies it is able to

1 transmit the Paisley Project's net output to PacifiCorp's transmission facilities. Surprise  
2 Valley does not have an open access transmission tariff, a wholesale distribution tariff, or any  
3 other method of tracking and transferring energy across its own distribution system. It also  
4 does not appear that Surprise Valley has the facilities available to ensure firm deliveries to  
5 PacifiCorp. Without clear transmission arrangement with verifiable schedules, PacifiCorp  
6 has no way of determining the actual amount of energy received from an off-system resource  
7 such as the Paisley Project.

8 13. PacifiCorp admits the allegation in paragraph 17 of the Complaint. It is  
9 important to note, however, the distinction between a Balancing Authority's operations and  
10 the provision of transmission service. A Balancing Authority's scope of operations relates  
11 solely to reliability of transmission services for the benefit of transmission customers and not  
12 to the provision of energy or transmission services to retail or wholesale electricity customers  
13 on a commercial basis.<sup>9</sup>

14 14. PacifiCorp admits that the Paisley Project's net output, if put onto Surprise  
15 Valley's system as intended, would displace electricity that Surprise Valley would otherwise  
16 purchase from Bonneville under Surprise Valley's all-requirements contract with Bonneville,  
17 ~~thereby reducing Bonneville's schedules for delivery of energy across PacifiCorp's~~  
18 ~~transmission or distribution facilities to Surprise Valley under the GTA between Bonneville~~  
19 ~~and PacifiCorp. As noted above, Surprise Valley is not a party to the GTA, which is simply~~  
20 ~~a transmission agreement between Bonneville and PacifiCorp. The GTA provides for,~~  
21 ~~among other things, the transfer of energy across PacifiCorp's transmission or distribution~~

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<sup>9</sup> See North American Electric Reliability Corporation Rules of Procedure Appendix 5B, Revision 5.2, available at [http://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix\\_5B\\_RegistrationCriteria\\_20150319.pdf](http://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix_5B_RegistrationCriteria_20150319.pdf) (defining Balancing Authority as the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and support interconnection frequency in real-time).

1 ~~facilities to Bonneville’s wholesale energy customers.~~ Any “displacement” of Surprise  
2 Valley’s load by the Paisley Project would displace Surprise Valley’s own load needs and  
3 reduce Bonneville’s obligation to supply energy to meet Surprise Valley’s load requirements.  
4 ~~The only benefit to PacifiCorp is the potential additional availability of transmission capacity~~  
5 ~~due to reduced Bonneville transfers, at the expense of associated transmission revenue under~~  
6 ~~the GTA.~~ Any “displacement” of Bonneville power by the Paisley Project’s generation  
7 would not, however, otherwise impact PacifiCorp’s wholesale power sales, as PacifiCorp  
8 does not sell power to Surprise Valley.

9 15. PacifiCorp admits the allegations in paragraphs 19-21 of the Complaint.

10 16. PacifiCorp does not have sufficient information to admit or deny the factual  
11 allegations contained in paragraphs 22-23 of the Complaint.

## 12 **Transmission Service Request**

13 17. PacifiCorp admits the allegations in paragraphs 24-25 of the Complaint.

14 18. PacifiCorp admits the allegations in paragraph 26 of the Complaint. OAR  
15 860-082-0015(2) defines “Affected System” as “a transmission or distribution system, not  
16 owned or operated by the interconnecting public utility, which may experience an adverse  
17 system impact from the interconnection of a small generator facility.” Thus, PacifiCorp’s  
18 Affected System classification is consistent with the fact that the Paisley Project is directly  
19 interconnected to Surprise Valley’s system and an indirectly connected, off-system QF for  
20 PacifiCorp.<sup>10</sup>

21 19. PacifiCorp admits the allegation in paragraph 27 of the Complaint.

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<sup>10</sup> See Complaint at paragraph 14 (“The Paisley Project is interconnected with, and within, the service territory of Surprise Valley.”).

1           20.     PacifiCorp denies the allegation in paragraph 28 of the Complaint as the term  
2 Interconnection Notification is not defined. PacifiCorp admits that Surprise Valley sent a  
3 letter to PacifiCorp Transmission notifying PacifiCorp as an affected system of the Paisley  
4 Project interconnection to Surprise Valley's system.

5           21.     PacifiCorp denies the allegation in paragraph 29 of the Complaint as the term  
6 Interconnection Notification is not defined. PacifiCorp admits that PacifiCorp Transmission  
7 confirmed receipt of Surprise Valley's letter to PacifiCorp Transmission notifying PacifiCorp  
8 as an affected system of the Paisley Project interconnection to Surprise Valley's system.

9           22.     PacifiCorp admits the allegations in paragraphs 30-31 of the Complaint, with  
10 the clarification that it was not a generator interconnection request, but a request to study the  
11 impacts of the Paisley Project's interconnection to Surprise Valley's system on PacifiCorp as  
12 a neighboring, interconnected system.

13           23.     PacifiCorp admits the allegations in paragraphs 32-40 of the Complaint.

14           24.     PacifiCorp admits the allegations in paragraph 41 of the Complaint. This is  
15 consistent with PacifiCorp's obligation under PURPA to make firm transmission  
16 arrangements to deliver a QF's power. PacifiCorp typically makes these firm transmission  
17 arrangements by designating the QF PPA as a network resource under the network  
18 transmission service agreement between PacifiCorp ESM and PacifiCorp Transmission.

19           25.     PacifiCorp admits the allegations in paragraph 42 of the Complaint.

20           26.     PacifiCorp admits the allegation in paragraph 43 of the Complaint. This  
21 request was required to determine the costs associated with designating a Paisley Project  
22 PPA as a network resource to serve PacifiCorp's load on PacifiCorp's system.

1           27.     PacifiCorp admits the allegations in paragraph 44 of the Complaint, with the  
2 clarification that the request submitted to PacifiCorp Transmission was to designate the  
3 Paisley Project PPA as a network resource under PacifiCorp’s FERC-approved Open Access  
4 Transmission Tariff to serve PacifiCorp’s load on PacifiCorp’s system.

5           28.     PacifiCorp admits the allegation in paragraph 45 of the Complaint, with the  
6 clarification that the request submitted to PacifiCorp Transmission was to designate the  
7 Paisley Project PPA to integrate the energy to serve PacifiCorp’s load on PacifiCorp’s  
8 system. Neither the request to designate the Paisley Project PPA as a network resource nor  
9 the system impact study addressed delivery of the net output of the Paisley Project to  
10 PacifiCorp’s system.

11          29.     PacifiCorp admits the allegation in paragraph 46 of the Complaint. However,  
12 the initial request to designate the Paisley Project PPA as a network resource was withdrawn  
13 at the direction of PacifiCorp Transmission because PacifiCorp ESM mistakenly identified  
14 the PPA as an on-system resource.

15          30.     PacifiCorp admits the allegation in paragraph 47 of the Complaint, PacifiCorp  
16 ESM resubmitted its request to designate the Paisley Project PPA as an off-system network  
17 resource located approximately 45 miles from PacifiCorp’s Mile Hi substation, but metered  
18 for delivery as an on-system resource in an attempt to accommodate Surprise Valley’s  
19 proposal to sell the Paisley Project’s net output to PacifiCorp without a transmission  
20 arrangement.

21          31.     PacifiCorp admits the allegation in paragraph 48 of the Complaint.

22          32.     PacifiCorp admits the allegations in paragraph 49 of the Complaint, with the  
23 clarification that this analysis addressed system constraints on PacifiCorp’s facilities to



1 transfer energy after it is delivered to PacifiCorp’s system for transfer to PacifiCorp’s retail  
2 load.

3 33. PacifiCorp admits the allegations in paragraph 50 of the Complaint.

4 34. PacifiCorp admits the allegations in paragraph 51 of the Complaint, with the  
5 clarification that this analysis addressed main grid, distribution, and sub-transmission  
6 upgrades to PacifiCorp’s facilities to transfer energy delivered to PacifiCorp’s system for  
7 transfer to PacifiCorp’s load. When PacifiCorp purchases QF power under a PPA, it is  
8 required to ensure that its system will allow PacifiCorp to actually deliver that power to its  
9 retail customers.

10 35. PacifiCorp admits the allegations in paragraphs 52-56 of the Complaint, as  
11 they relate to PacifiCorp ESM’s transmission service on PacifiCorp’s system.

12 36. PacifiCorp admits the allegations in paragraph 57 of the Complaint, but  
13 clarifies that by “interconnection agreement” Surprise Valley is referring to a generator  
14 interconnection agreement. A generator interconnection agreement governs the  
15 interconnection of a generator with PacifiCorp’s system. Here, a generator interconnection  
16 agreement would not be required because the Paisley Project is interconnected to the Surprise  
17 Valley system, not PacifiCorp’s.<sup>11</sup>

18 37. PacifiCorp admits the allegations in paragraphs 58-59 of the Complaint.

19 38. PacifiCorp admits the allegation in paragraph 60 of the Complaint that  
20 PacifiCorp Transmission agreed that existing or interim metering is sufficient to allow the  
21 Paisley Project to generate power until the completion of the transmission upgrades identified  
22 in the Facilities Study are completed. PacifiCorp also admits that the existing or interim

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<sup>11</sup> See Complaint at paragraph 14 (“The Paisley Project is interconnected with, and within, the service territory of Surprise Valley.”).

1 metering is sufficient to allow Surprise Valley to use the Paisley Project's net output to serve  
2 Surprise Valley's retail load. PacifiCorp denies that the existing or interim metering is  
3 sufficient to allow Surprise Valley to sell the Paisley Project's net output to PacifiCorp. The  
4 treatment of the Paisley Project as a pseudo on-system resource was a settlement position  
5 offered by PacifiCorp whereby PacifiCorp would meter physical flow of power from  
6 Surprise Valley's system to PacifiCorp's system, essentially treating the Paisley Project as a  
7 type of on-system QF providing direct delivery. Such physical flow, however, would require  
8 the net output of the Paisley Project to exceed the retail load of Surprise Valley.

9 **Power Purchase Agreement**

10 39. PacifiCorp admits the allegations in paragraph 61 of the Complaint.

11 40. PacifiCorp admits the allegation in paragraph 62 of the Complaint regarding  
12 the filing and approval of a revised Schedule 37. PacifiCorp denies the allegation in  
13 paragraph 62 of the Complaint that the Schedule 37 effective on April 11, 2012, was the  
14 Commission-approved rate schedule during most of the negotiations regarding a PURPA  
15 PPA for the net output of the Paisley Project. Negotiations for a PURPA PPA for the net  
16 output of the Paisley Project are ongoing.

17 41. PacifiCorp admits the allegations in paragraph 63 of the Complaint.

18 42. The allegations in paragraph 64 of the Complaint contain legal conclusions  
19 and no answer is required. PacifiCorp denies the allegations on this basis.

20 43. PacifiCorp denies the allegation in paragraph 65 of the Complaint. PacifiCorp  
21 provided informational documents and Schedule 37 to Surprise Valley.

22 44. PacifiCorp admits the allegations in paragraph 66 of the Complaint.

1           45.     PacifiCorp denies the allegation in paragraph 67 of the Complaint. PacifiCorp  
2     ESM provided Schedule 37 with the information documents provided to Surprise Valley.  
3     Schedule 37 specifically states the avoided cost rates are not final until a PPA is executed.

4           46.     PacifiCorp denies the allegations in paragraph 68 of the Complaint.  
5     PacifiCorp ESM provided Schedule 37 with the information documents provided to Surprise  
6     Valley. Schedule 37 specifically identifies a procedure for comments and edit to the  
7     template PPA.

8           47.     PacifiCorp admits the allegations in paragraph 69 of the Complaint. Any  
9     power used by Surprise Valley to offset energy supplied by Bonneville to Surprise Valley  
10    would be used to serve Surprise Valley load. Bonneville would reduce its all-requirements  
11    deliveries to Surprise Valley in an amount equal to the Paisley Project's net output, and there  
12    would be no power available for delivery to and purchase by any third party, such as  
13    PacifiCorp, unless the Paisley Project's net output exceeded Surprise Valley's load.  
14    PacifiCorp was under no obligation to provide a legal citation regarding this fact, which is  
15    supported by a basic mathematical analysis of Surprise Valley's loads and resources and the  
16    commonly understood construct of an all-requirements contract. A utility has no obligation  
17    to enter into a PPA for power that is unavailable for delivery to or purchase by the utility.

18          48.     PacifiCorp admits that, in the context of attempting to find a method of  
19    verifying the Paisley Project's net output, it explored the possibility of treating Paisley as an  
20    on-system QF. The Paisley Project is an off-system QF. The remaining allegations in  
21    paragraph 70 of the Complaint contain legal conclusions and no answer is required.

22    PacifiCorp denies the allegations on this basis and the significant legal relevance to the

1 additional requirements for an off-system QF to establishing a mandatory purchase  
2 obligation.<sup>12</sup>

3 49. PacifiCorp admits the allegations in paragraph 71 of the Complaint and notes  
4 that Surprise Valley’s failure to understand whether it is an on-system or off-system QF  
5 contradicts paragraph 37 of the Complaint.

6 50. PacifiCorp admits the allegations in paragraphs 72-74 of the Complaint.

7 51. PacifiCorp denies the allegation in paragraph 75 of the Complaint. Because  
8 the Paisley Project is an off-system resource, PacifiCorp did not have accurate information  
9 regarding the net amount of power to be delivered to PacifiCorp’s electric system under any  
10 transmission arrangement or the status of any such requisite transmission arrangements, as  
11 required under Section I.B.2 of Schedule 37<sup>13</sup>.

12 52. The allegations in paragraph 76 of the Complaint contain legal conclusions  
13 and no answer is required. PacifiCorp denies the allegations on this basis.

14 53. PacifiCorp admits the allegation in paragraph 77 of the Complaint that  
15 PacifiCorp provided a modified “on-system” PPA to Surprise Valley on February 10, 2014,  
16 based on PacifiCorp’s proposal to accommodate Surprise Valley’s request despite Surprise  
17 Valley’s failure to provide a transmission agreement to deliver the net output from an off-  
18 system QF. PacifiCorp denies the allegation that the draft PPA was provided twenty-one  
19 business days after Surprise Valley provided all of the information required in Section I.B.2  
20 of Schedule 37 because Surprise Valley had not provided status of any requisite transmission  
21 arrangements for delivery of the Paisley Project’s net output to PacifiCorp facilities.

22 54. PacifiCorp admits the allegations in paragraph 78 of the Complaint.

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<sup>12</sup> FERC Order No. 69; 18 CFR § 292.303; PacifiCorp Schedule 37; and *OEC*.

<sup>13</sup> Schedule 37, page 8.

1           55.     PacifiCorp admits the allegations in paragraph 79 of the Complaint that  
2 PacifiCorp did not provide the standard avoided cost prices or other optional pricing  
3 mechanisms. PacifiCorp denies the allegation that it was required to provide the standard  
4 avoided cost prices or other optional pricing mechanisms under Section I.B.2 of Schedule 37.  
5 PacifiCorp also denies that is was required to provide such pricing information under Section  
6 I.B.3 of Scheduled 37<sup>14</sup> because Surprise Valley had not provided the status of its  
7 transmission arrangements as required under Section I.B.2(j) of Schedule 37.

8           56.     The allegations in paragraph 80 of the Complaint contain legal conclusions  
9 and no answer is required. PacifiCorp denies the allegations on this basis.

10          57.     PacifiCorp admits the allegations in paragraphs 81-82 of the Complaint.

11          58.     The allegations in paragraph 83 of the Complaint contain legal conclusions  
12 and no answer is required. PacifiCorp denies the allegations on this basis.

13          59.     PacifiCorp admits the allegations in paragraph 84 of the Complaint.

14          60.     PacifiCorp denies the allegations in paragraph 85 of the Complaint. The  
15 information is necessary for PacifiCorp to evaluate whether there is a legitimate offer from  
16 the QF.

17          61.     PacifiCorp admits the allegations in paragraph 86 of the Complaint.

18          62.     The allegations in paragraph 87 of the Complaint contain legal conclusions  
19 and no answer is required. PacifiCorp denies the allegations on this basis.

20          63.     PacifiCorp denies the allegations in paragraph 88 of the Complaint. Surprise  
21 Valley has not, to date, provided the requisite transmission arrangements for delivery of the  
22 net output from the Paisley Project, an off-system resource, to PacifiCorp transmission

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<sup>14</sup> Schedule 37, page 8.

1 facilities in compliance with the requirements under PURPA, FERC regulations, FERC  
2 Order 69, the Commission's regulations, and Schedule 37.

3           64.     PacifiCorp denies the allegations in paragraph 89 of the Complaint.  
4 PacifiCorp has repeatedly discussed the issue of delivery with Surprise Valley. Whether  
5 those discussions were public or private is not legally relevant. PacifiCorp admits that it  
6 stated that PacifiCorp is under no obligation to accept Surprise Valley's argument that energy  
7 sourced from Bonneville power resources and transferred by Bonneville across PacifiCorp's  
8 transmission facilities can be deemed to be the net output from the Paisley Project. This is a  
9 separate issue from transmission service across PacifiCorp's facilities to service PacifiCorp  
10 load. The issue is whether Surprise Valley can transfer the Paisley Project's net output  
11 across Surprise Valley's facilities to deliver the net output of the QF to PacifiCorp.

12           65.     PacifiCorp admits the allegation in paragraph 90 of the Complaint in that  
13 Surprise Valley sent a draft PPA to PacifiCorp on May 20, 2014. PacifiCorp, however,  
14 denies that that draft was complete in that it did not address deliverability or transmission to  
15 the PacifiCorp system.

16           66.     PacifiCorp denies the allegation in paragraph 91 of the Complaint. Surprise  
17 Valley expressed an unequivocal desire to sell the energy and capacity of the Paisley Project  
18 to PacifiCorp, but was not able to provide the means for delivery of the net output to  
19 PacifiCorp.

20           67.     PacifiCorp admits the allegations in paragraphs 92-93 of the Complaint.

21           68.     The allegations in paragraph 94 of the Complaint contain legal conclusions  
22 and no answer is required. PacifiCorp denies the allegations on this basis, and the underlying

1 premise in the allegation that Surprise Valley had provided all of the information required by  
2 Section I.B.2 of Schedule 37.

3 69. PacifiCorp admits the allegations in paragraphs 95-96 of the Complaint.

4 70. PacifiCorp admits the allegations in paragraph 97 of the Complaint, but the  
5 alleged statements were made based on the parties' ability to reach agreement on the terms of  
6 a PPA and adequate delivery arrangements.

7 71. PacifiCorp admits the allegations in paragraph 98 of the Complaint regarding  
8 the meeting, but the discussion addressed fundamental issues related to Surprise Valley's  
9 ability to deliver the net output of the Paisley Project to PacifiCorp's system.

10 72. PacifiCorp denies the allegation in paragraph 99 of the Complaint. Surprise  
11 Valley expressed an unequivocal desire to sell the energy and capacity of the Paisley Project  
12 to PacifiCorp, but was not able to provide the means for delivery of the net output to  
13 PacifiCorp.

14 73. PacifiCorp admits the allegations in paragraphs 100-102 of the Complaint.

15 74. PacifiCorp admits the allegations in paragraph 103 of the Complaint. On  
16 July 22, 2014, Surprise Valley provided PacifiCorp ESM with a revised on-system draft PPA  
17 following the July 11, 2014 meeting. During the July 11, 2014 meeting, however, PacifiCorp  
18 raised fundamental issues related to Surprise Valley's ability to deliver the net output of the  
19 Paisley Project to PacifiCorp's system.

20 75. PacifiCorp denies the allegation in paragraph 104 of the Complaint. Surprise  
21 Valley expressed an unequivocal desire to sell the energy and capacity of the Paisley Project  
22 to PacifiCorp, but was not able to provide the means for delivery of the net output to  
23 PacifiCorp.

1           76.     PacifiCorp admits the allegations in paragraphs 105-111 of the Complaint.

2           77.     PacifiCorp admits the allegations in paragraph 112 of the Complaint, but  
3 PacifiCorp ESM also informed Surprise Valley that PacifiCorp had not agreed to the form of  
4 delivery to PacifiCorp's system.

5           78.     PacifiCorp denies the allegation in paragraph 113 of the Complaint. On  
6 August 26, 2014, PacifiCorp ESM stated that as currently proposed by Surprise Valley, the  
7 Paisley Project's generation will be used by Surprise Valley load and will not physically  
8 reach PacifiCorp's system during the majority of hours of the year and does not qualify as a  
9 PURPA QF.

10          79.     PacifiCorp admits the allegation in paragraph 114 of the Complaint.

11          80.     PacifiCorp denies the allegation in paragraph 115 of the Complaint that the  
12 issue of physical delivery of power had been resolved because PacifiCorp Transmission  
13 worked out the metering issues. Metering is one aspect of the requirements to validate the  
14 delivery of net output to PacifiCorp's transmission facilities. The metering merely allowed  
15 PacifiCorp to measure actual power flows from Surprise Valley's system onto PacifiCorp's  
16 system. This, however, would only occur when Paisley Project net output was greater than  
17 Surprise Valley's retail load. It did not otherwise address the need for transmission  
18 arrangements to deliver the entire net output of the Paisley Project to PacifiCorp, as  
19 requested by Surprise Valley.

20          81.     PacifiCorp admits the allegations in paragraphs 116-117 of the Complaint.

21          82.     PacifiCorp admits the allegation in paragraph 118 of the Complaint, but  
22 clarifies that a sale under Schedule 38 would be at Schedule 38 rates.

23          83.     PacifiCorp admits the allegations in paragraphs 119-123 of the Complaint.



1           84.     PacifiCorp admits the allegations in paragraph 124 of the Complaint that on  
2 April 16, 2015, PacifiCorp ESM informed Surprise Valley that the transmission upgrades  
3 would allow Surprise Valley to offset its own load. However, the transmission upgrades  
4 would only allow Surprise Valley to sell the net output in excess of Surprise Valley’s retail  
5 load to PacifiCorp as an Oregon Schedule 37 QF.

6           85.     PacifiCorp admits the allegations in paragraphs 125-127 of the Complaint.

7           86.     PacifiCorp admits the allegations in paragraph 128 of the Complaint;  
8 however, that discussion was conducted during the course of settlement negotiations that  
9 (1) assumed the parties would reach agreement on a PPA, and (2) that the parties mutually  
10 agreed would be remain confidential, as Surprise Valley admits in paragraph 126 of the  
11 Complaint. Furthermore, the discussion on May 15, 2015, occurred after Surprise Valley’s  
12 recognition that Bonneville was critical to any resolution.

13          87.     PacifiCorp admits the allegations in paragraph 129 of the Complaint.

14          88.     PacifiCorp denies the allegation in paragraph 130 of the Complaint. While  
15 the specific discussions regarding assurances were part of confidential settlement  
16 negotiations, Surprise Valley admits that PacifiCorp was willing to provide assurances.<sup>15</sup>

17          89.     PacifiCorp admits the allegations in paragraph 131 of the Complaint.

18          90.     PacifiCorp admits the allegations in paragraph 132 of the Complaint.  
19 PacifiCorp notes, however, that the PPA was based on PacifiCorp’s off-system QF template  
20 agreement, but Surprise Valley had not provided evidence of a transmission arrangement,  
21 instead stating it would provide such evidence after execution of the PPA.

22          91.     PacifiCorp does not have sufficient information to admit or deny the factual  
23 allegations contained in paragraph 133 of the Complaint because, as noted, PacifiCorp is not

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<sup>15</sup> Complaint, ¶ 128.

1 a party to the all-requirements contract between Bonneville and Surprise Valley and has not  
2 been a party to any discussions regarding amendment of the same. PacifiCorp will  
3 nevertheless stipulate to the assertion made by Surprise Valley.

4 92. PacifiCorp does not have sufficient information to admit or deny the factual  
5 allegations contained in paragraph 134 of the Complaint, but will stipulate to Surprise  
6 Valley's assertion.

## 7 LEGAL CLAIMS

### 8 Answer to Complainant's First Claim for Relief

9 93. PacifiCorp incorporates its answers in paragraphs 1-92 above.

10 94. PacifiCorp admits the allegation in paragraph 136 of the Complaint that  
11 PacifiCorp has an obligation to purchase a QF's net output that is directly or indirectly  
12 delivered to PacifiCorp's system under 18 CFR § 292.303(a) and (d), ORS § 758.525(2)(b),  
13 and FERC Order No. 69. PacifiCorp admits that other statutes and regulations, including  
14 ORS § 758.535, OAR 860-0029-0030 and 18 CFR § 292.304 also articulate an obligation to  
15 purchase a QF's net output, generally. However, this Commission has specifically found that  
16 a QF must provide a wheeling agreement to obligate a utility to purchase power from an off-  
17 system QF.<sup>16</sup>

18 95. PacifiCorp denies the allegation in paragraph 137 of the Complaint that  
19 Surprise Valley can make the net output of the Paisley Project "directly and/or indirectly  
20 available to PacifiCorp." In particular, PacifiCorp takes issue with Surprise Valley's use of  
21 the phrase "**and/or**" because it could be read to suggest that a hybrid direct/indirect  
22 interconnection may be a possibility. As this Commission has specifically found, under a  
23 plain reading of 18 CFR § 292.303, a QF may not require one utility to serve as both the

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<sup>16</sup> See, e.g., *OEC at slip copy* p. 6 (1998 WL 412484).

1 direct *and* the indirect purchaser of the QF’s net output.<sup>17</sup> With that clarification in mind,  
2 PacifiCorp admits that the Paisley Project, an off-system QF, could make its net output  
3 indirectly available to PacifiCorp via the requisite transmission/distribution delivery  
4 arrangements—arrangements that serve as a precondition to creating a mandatory purchase  
5 obligation on PacifiCorp.<sup>18</sup> Surprise Valley failed to allege that it has, and in fact has not,  
6 provided PacifiCorp evidence of any such delivery arrangements. As an alternative,  
7 PacifiCorp admits that the Paisley Project could have directly interconnected the Paisley  
8 Project to PacifiCorp’s system, but chose not to.

9           96. PacifiCorp denies the allegations and legal interpretation of FERC Order  
10 No. 69 in paragraph 138 of the Complaint. Power must either flow directly or indirectly via  
11 a transmission arrangement to PacifiCorp. It is not the responsibility of the utility to  
12 determine how an off-system QF will deliver its net output.

13           Furthermore, as discussed above, Surprise Valley’s interpretation of FERC Order  
14 No. 69 is fundamentally flawed. Quoting only a portion of the relevant Order No. 69  
15 discussion, Surprise Valley’s paragraph 138 eliminates necessary context making it clear that  
16 FERC was addressing a potential displacement between only two very specific types of  
17 entities: (1) a transmitting utility; and (2) the transmitting utility’s all-requirements wholesale  
18 *energy supplier*.<sup>19</sup> The full Order No. 69 passage is as follows, with Surprise Valley’s quoted  
19 language underlined:

20                           The electric utility to which the electric energy is transmitted has the  
21                           obligation to purchase the energy at a rate which reflects the costs that

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<sup>17</sup> *Tumbleweed Energy II, LLC v. Idaho Power Co.* (UM 1552) and *Western Desert Energy, LLC v. Idaho Power Co.* (UM 1553), Order No. 12-083 (March 13, 2012)(“...under a plain reading of 18 CFR § 292.303, a [QF] may not require one utility to serve as both the direct and the indirect purchaser of the [QF’s] output.”).

<sup>18</sup> See *OEC*.

<sup>19</sup> The quoted passage also touches on the related issue of the impact of such a displacement on the avoided cost rate, given that the displacement would eliminate the losses normally factored in when energy is actually transmitted across the transmitting utility’s system.

1 it can avoid as a result of making such a purchase. In cases in which  
2 electricity actually travels across the transmitting utility’s system, the  
3 amount of energy delivered will be less than that transmitted, due to  
4 line losses. When this occurs, the rate for purchase can reflect losses.  
5 In other cases, the energy supplied by the qualifying facility will  
6 displace energy that would have been supplied by the purchasing  
7 utility to the transmitting utility. In those cases, a unit of energy  
8 supplied from the qualifying facility may replace a greater amount of  
9 energy from the purchasing utility. In that case, the rate for purchase  
10 should be increased to reflect the net gain. These provisions are also  
11 set forth in paragraph [292.303(d)].

12 As the full passage makes clear, this displacement narrowly applies when the QF  
13 delivers its power to the utility to which it is directly interconnected, or the “transmitting  
14 utility,” and the indirectly interconnected “purchasing utility” uses the QF’s net output to  
15 reduce the purchasing utility’s obligation to sell power to the transmitting utility. This  
16 limited displacement exception does not apply here. Importantly, the indirectly  
17 interconnected purchasing utility—PacifiCorp—is under no existing obligation to sell power  
18 to the directly interconnected transmitting utility—Surprise Valley—so there is nothing  
19 against which to offset the QF power. Rather, the existing transmission agreement between  
20 PacifiCorp and Bonneville obligates PacifiCorp to merely *deliver* Bonneville’s preference  
21 power to Surprise Valley’s loads. Further, as Surprise Valley admits, the relevant all-  
22 requirements power sales contract under which Bonneville supplies this power to Surprise  
23 Valley is between Bonneville and Surprise Valley only.<sup>20</sup> PacifiCorp is not a party to that  
24 sales contract, nor does PacifiCorp take title to the Bonneville power it delivers under the  
25 GTA at any point. ~~Thus, given these contractual arrangements between the relevant entities,~~  
26 ~~under Surprise Valley’s interpretation, the “savings” from offsetting PacifiCorp’s deliveries~~  
27 ~~to Surprise Valley would accrue to Bonneville as the energy supplier to Surprise Valley, and~~  
28 ~~PacifiCorp would remain neutral.~~

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<sup>20</sup> Complaint, ¶ 7.

1           In addition to Surprise Valley’s FERC Order No. 69 theory being flawed, its citations  
2 supporting its claim that displacement is a form of physical delivery are also out of context  
3 and, in fact, do not address energy displacement at all. First, *Federal Power Comm’n v.*  
4 *Florida Power & Light Co.*, 404 U.S. 453, 457-63 (1972) (“*Florida Power*”) addresses  
5 whether the Federal Power Commission, now FERC, had jurisdiction over Florida Power &  
6 Light. The test for jurisdiction under the Federal Power Act articulated in Section 201 is  
7 whether energy was used in interstate commerce.<sup>21</sup> Fundamentally, *Florida Power* addressed  
8 the statutory interpretation of the Federal Power Act, not PURPA. More importantly, the  
9 discussion in *Florida Power* regarding displacement is a discussion of the physical properties  
10 of electricity, not displacement as a form of transmission to deliver a QF’s net output to a  
11 utility.<sup>22</sup>

12           Likewise, Surprise Valley’s citation to *Pacific Power & Light Co.*, 36 FPC 706  
13 (1996) (“*PP&L*”) is flawed because it does not address displacement in the form argued by  
14 Surprise Valley. In *PP&L*, the Federal Power Commission approved a proposed power sale  
15 arrangement where PP&L would sell power to the British Columbia Hydro and Power  
16 Authority through a complex set of energy exchange agreements, again under the Federal  
17 Power Act, not PURPA. The reference to “displacement” merely refers to the execution of  
18 transmission arrangements that would provide energy to fulfill certain contractual obligations

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<sup>21</sup> 16 USC § 824(b)(the Federal Power Act grants FERC jurisdiction over “the transmission of electric energy in interstate commerce and...the sale of electric energy at wholesale in interstate commerce, but ...not [over] any other sale of electric energy...”).

<sup>22</sup> *Florida Power* 404 US 453 at 462 (“Power from any given source will not flow further along the line than loads of wattage cumulatively equal to the wattage of the power source. The distribution of entry lines and wattage loads on the Turner bus is said to demonstrate that all of the Florida Power’s power will be exhausted by Corp’s load lines before the point, further down the line, where Georgia’s load intervenes. When power flows in the opposite directly...again the effect is one of displacement. Georgia’s power goes to Corp’s load lines before the point, further down the line, where Georgia’s load intervenes. When power flows in the opposite direction...again the effect is one of displacement.”).

1 between the parties.<sup>23</sup> Surprise Valley, however, has not alleged, and in fact has not  
2 provided, any transmission arrangements to support its assertion that PacifiCorp has an  
3 obligation to purchase the net output of the Paisley Project.<sup>24</sup>

4 97. PacifiCorp does not have sufficient information to admit or deny the factual  
5 allegation contained in paragraph 139 of the Complaint. Surprise Valley's allegation,  
6 however, is irrelevant to PacifiCorp's legal obligations in Oregon.

7 98. PacifiCorp denies the allegation in paragraph 140 of the Complaint. As  
8 discussed above, the FERC Order No. 69 displacement theory does not apply as between  
9 Surprise Valley and PacifiCorp because there is no existing power sale (much less an all-  
10 requirements contract) from PacifiCorp to Surprise Valley against which the Paisley  
11 Project's net output can be displaced. ~~Displacing electricity merely delivered by PacifiCorp  
12 under its transmission contract with Bonneville would inappropriately force PacifiCorp's  
13 customers to pay avoided costs rates for power PacifiCorp will never receive in any form,  
14 contrary to PURPA, the Commission's rules and policies, FERC's rules and policies, and  
15 Schedule 37.~~<sup>25</sup>

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<sup>23</sup> *PP&L*, 36 FPC 706 (1996) ("Applicant has completed *transmission arrangements* with Utah Power & Light Company and Idaho Power Company for displacement deliveries of any energy generated at Applicant's Wyoming steam-electric generating facilities. Those arrangements are reflected in Utah Power & Light Company's Rate Schedules FPC Nos. 102A and 102B, Idaho Power Company's Rate Schedules FPC Nos. 28 and 46, and Applicant's Rate Schedules FPC Nos. 69A and 69B. Applicant would deliver such energy from the Dave Johnston plant to Utah Power & Light Company which would then credit Idaho Power Company with these deliveries. Idaho Power Company would then deliver energy to Applicant's Oregon system.") (*emphasis added*).

<sup>24</sup> *See OEC*.

<sup>25</sup> ~~One way power could, in theory, become available for PacifiCorp to purchase is if Bonneville over-scheduled its energy deliveries to Surprise Valley. Or, stated another way, if Bonneville ignored the metered load at the points of delivery identified in the GTA and terms of that agreement. However, if Bonneville were to do this, PacifiCorp's customers may end up paying twice for the net output of the Paisley Project: first under the QF PPA with Paisley, and second to compensate Bonneville for certain imbalance (over-delivery) charges incurred under GTA (PacifiCorp, as the "Transferor" under the GTA, supplies the imbalance energy to serve the load in the event of under-deliveries and compensates Bonneville in the event of over-deliveries.). The GTA is a PacifiCorp rate schedule on file with FERC, and PacifiCorp may not deviate from the terms of that agreement.~~

1           99.     PacifiCorp denies the allegation in paragraph 141 of the Complaint. Again,  
2     the net output of the Paisley Project would displace electricity supplied by Bonneville to  
3     Surprise Valley, not PacifiCorp. PacifiCorp admits that Surprise Valley’s proposal to sell to  
4     PacifiCorp creates complexities, and that those complexities have delayed negotiations, but  
5     Surprise Valley has not alleged (nor could it allege) that it is PacifiCorp’s responsibility to  
6     identify the transmission arrangements necessary for an off-system QF to deliver its net  
7     output to PacifiCorp’s system.<sup>26</sup>

8     **Answer to Complainant’s Second Claim for Relief**

9           100.   PacifiCorp incorporates its answers in paragraphs 1-99 above

10          101.   PacifiCorp admits to the allegations in paragraph 143 of the Complaint.

11          102.   PacifiCorp admits to the allegations in paragraph 144 of the Complaint in the  
12     allegation describes the physical nature of electricity.

13          103.   PacifiCorp denies the allegations in paragraph 145 of the Complaint.  
14     Schedule 747 does not articulate a simultaneous purchase and sale purchase. A simultaneous  
15     purchase and sale refers to a retail customer’s ability to sell net output from a QF project to  
16     PacifiCorp, while receiving retail service from PacifiCorp for the entire amount of its station  
17     service or other retail load.<sup>27</sup>

18          104.   PacifiCorp denies the allegations in paragraph 146 of the Complaint as  
19     discussed above.

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<sup>26</sup> See OEC.

<sup>27</sup> See *In re Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 07-360 at 31 (Aug. 20, 2007) (““Simultaneous purchase and sale” assumes that the QF sells to the utility its entire net output, while simultaneously purchasing from the utility its full electrical requirements at tariff rates. One’s reasonable expectation is that the QF would plan to sell its full output to the utility when the avoided cost price is greater than the retail rate, while selling only its surplus energy to the utility when the avoided cost price is lower than the retail rate and serving its on-site requirements with its own generation.”) Here, of course, PacifiCorp is not selling any power to Surprise Valley at all; the example is completely inapposite.

1           105. PacifiCorp denies the allegations in paragraph 147 of the Complaint as  
2 discussed above. It is an unsupported, illogical leap to claim that policies related to on-  
3 system QFs owned by PacifiCorp’s retail customers should be applied to off-system QFs.  
4 Again, Surprise Valley confuses the physical nature of electricity (to serve the nearest load)  
5 with the requirement for commercial arrangements to address delivery of off-system QFs.  
6 Under Surprise Valley’s interpretation, PacifiCorp could be required to purchase power from  
7 a QF anywhere in the Western Interconnection because electrons, by their very nature, would  
8 displace energy provided to PacifiCorp because of the interconnected nature of the electric  
9 system. PURPA, FERC regulations, and the Commission’s policies do not allow this.

10           **Answer to Complainant’s Third Claim for Relief**

11           106. PacifiCorp incorporates its answers in paragraphs 1-105 above

12           107. PacifiCorp admits to the allegations in paragraph 149 of the Complaint in so  
13 much as they discuss the general obligations of PacifiCorp under PURPA.

14           108. PacifiCorp admits to the allegations in paragraph 150 of the Complaint in so  
15 much as they discuss the general obligations of PacifiCorp under PURPA.

16           109. PacifiCorp denies the allegation in paragraph 151 of the Complaint. As  
17 discussed in detail above, the Commission has found that a delivery arrangement is necessary  
18 to obligate a utility to purchase power from an off-system QF.<sup>28</sup> Such an arrangement is  
19 critical for PacifiCorp to be able to verify that it is indeed receiving an off-system QF’s  
20 power on its system. Surprise Valley has yet to make any such delivery arrangements or  
21 ~~otherwise address PacifiCorp’s concern that PacifiCorp would only receive power if the~~  
22 ~~Paisley Project generates more than Surprise Valley’s load due to Surprise Valley’s all~~

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<sup>28</sup> OEC.



1 ~~requirements contract with Bonneville.~~ Accordingly, Surprise Valley has not “unequivocally  
2 committed itself” to sell the net output of the Paisley Project to PacifiCorp.

3 110. PacifiCorp denies the allegation in paragraph 152 of the Complaint for the  
4 reasons stated above.

5 111. PacifiCorp denies the allegation in paragraph 153 of the Complaint for the  
6 reasons stated above.

7 **Answer to Complainant’s Fourth Claim for Relief**

8 112. PacifiCorp incorporates its answers in paragraphs 1-111 above

9 113. PacifiCorp admits to the allegations in paragraphs 155-157 of the Complaint  
10 in that it states currently applicable requirements.

11 114. PacifiCorp denies the allegation in paragraph 158 of the Complaint that it  
12 violated OAR § 860-029-0005(3) or provided information late. Surprise Valley had not  
13 provided status of any requisite transmission arrangements for delivery of the Paisley  
14 Project’s net output to PacifiCorp facilities as required by Section I.B.2 of Schedule 37.

15 115. PacifiCorp denies the allegation in paragraph 159 of the Complaint that it  
16 violated Commission polices and Schedule 37 by not providing specific pricing information.  
17 Surprise Valley had not provided status of any requisite transmission arrangements for  
18 delivery of the Paisley Project’s net output to PacifiCorp facilities as required by Section  
19 I.B.2 of the Schedule 37.

20 116. PacifiCorp denies the allegation in paragraph 160 of the Complaint that it  
21 violated Commission policies and Schedule 37 or provided a project specific draft PPA late.  
22 Surprise Valley had not provided status of any requisite transmission arrangements for

1 delivery of the Paisley Project's net output to PacifiCorp facilities as required by Section  
2 I.B.2 of the Schedule 37.

3 117. PacifiCorp denies the allegation in paragraph 161 of the Complaint that it  
4 violated Commission rules and policies, FERC's rules and policies, and Schedule 37 when it  
5 did not provide a final draft PPA. Surprise Valley had not provided status of any requisite  
6 transmission arrangements for delivery of the Paisley Project's net output to PacifiCorp  
7 facilities as required by Section I.B.2 of the Schedule 37. Without clear transmission  
8 arrangements from an off-system resource, PacifiCorp cannot provide a draft, let alone final,  
9 PPA because the specifics related to delivery cannot be addressed.

10 118. PacifiCorp denies the allegation in paragraph 162 of the Complaint that it  
11 violated Commission rules and policies, FERC's rules and policies, and Schedule 37 or  
12 delayed entering and refused to enter into a PPA because PacifiCorp Transmission had not  
13 approved a transmission service request. As discussed above, the transmission service  
14 request related to transmission service on PacifiCorp's system to serve PacifiCorp load. The  
15 issue between Surprise Valley and PacifiCorp is the deliverability of the net output from the  
16 Paisley Project across Surprise Valley's system to PacifiCorp.

17 119. PacifiCorp denies the allegation in paragraph 163 of the Complaint that it  
18 violated Commission policies and Schedule 37 by including a jury trial waiver provision in a  
19 draft PPA during negotiations with Surprise Valley.

20 120. PacifiCorp denies the allegations in paragraph 164 of the Complaint. As  
21 discussed above, the Commission has found that a wheeling agreement is necessary to  
22 obligate a utility to purchase power from an off-system QF.<sup>29</sup>

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<sup>29</sup> See *OEC*.

1 **Answer to Complainant’s Fifth Claim for Relief**

2 121. PacifiCorp incorporates its answers in paragraphs 1-120 above

3 122. PacifiCorp admits to the allegations in paragraph 166 of the Complaint in that  
4 it states currently applicable requirements.

5 123. PacifiCorp denies the allegation in paragraph 167 of the Complaint for the  
6 reasons discussed above. Surprise Valley had not provided status of any requisite  
7 transmission arrangements for delivery of the Paisley Project’s net output to PacifiCorp  
8 facilities as required by Section I.B.2 of the Schedule 37.

9 124. PacifiCorp denies the allegation in paragraph 168 of the Complaint for the  
10 reasons discussed above. Surprise Valley had not provided status of any requisite  
11 transmission arrangements for delivery of the Paisley Project’s net output to PacifiCorp  
12 facilities as required by Section I.B.2 of the Schedule 37.

13 125. PacifiCorp denies the allegation in paragraph 169 of the Complaint for the  
14 reasons stated above. The transmission service request related to transmission service on  
15 PacifiCorp’s system to serve PacifiCorp load. The issue between Surprise Valley and  
16 PacifiCorp is the deliverability of the net output from the Paisley Project across Surprise  
17 Valley’s system to PacifiCorp.

18 126. PacifiCorp denies the allegation in paragraph 170 of the Complaint for the  
19 reasons stated above.

20 127. PacifiCorp denies the allegation in paragraph 171 of the Complaint for the  
21 reasons stated above, and specifically in response to Surprise Valley’s first claim for relief.

22 128. PacifiCorp denies the allegation in paragraph 172 of the Complaint for the  
23 reasons stated above.

1           129. PacifiCorp denies the allegation in paragraph 173 of the Complaint for the  
2 reasons stated above. These statements were part of ongoing negotiations.

3           130. PacifiCorp denies the allegation in paragraph 174 of the Complaint for the  
4 reasons stated above. Without knowledge of the specific transmission arrangement to deliver  
5 the net output of the Paisley Project to PacifiCorp's system (*e.g.*, firm, non-firm, conditional-  
6 firm, etc.), PacifiCorp cannot sign a PPA.

7           131. PacifiCorp denies the allegation in paragraph 175 of the Complaint. Surprise  
8 Valley's failure to provide details or status of a valid transmission arrangement to deliver the  
9 net output of the Paisley Project to PacifiCorp's system is the cause of the delay in the  
10 contract completion process.

11           132. PacifiCorp denies the allegation in paragraph 176 of the Complaint for the  
12 reasons stated above. The transmission service request related to transmission service on  
13 PacifiCorp's system to serve PacifiCorp load. The issue between Surprise Valley and  
14 PacifiCorp is the deliverability of the net output from the Paisley Project across Surprise  
15 Valley's system to PacifiCorp. It is Surprise Valley's responsibility, not PacifiCorp's, to  
16 secure transmission arrangements to deliver net output from a QF to PacifiCorp's system.<sup>30</sup>

17           133. PacifiCorp denies the allegation in paragraph 177 of the Complaint for the  
18 reasons stated above.

19 **Answer to Complainant's Sixth Claim for Relief**

20           134. PacifiCorp incorporates its answers in paragraphs 1-133 above

21           135. PacifiCorp admits to the allegations in paragraph 178 of the Complaint in that  
22 it states currently applicable requirements.

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<sup>30</sup> See *e.g.* OEC.

1           136. PacifiCorp denies the allegation in paragraph 179 of the Complaint.  
2 PacifiCorp has not acted in bad faith. To the contrary, PacifiCorp has participated in  
3 negotiations despite Surprise Valley’s failure to submit required information critical to  
4 PacifiCorp’s ability to enter into a PPA with an off-system QF. To date, Surprise Valley has  
5 ignored its obligations and the legitimate issues raised by PacifiCorp.

6           137. PacifiCorp denies the allegation in paragraph 180 of the Complaint for the  
7 reasons stated in paragraph 136 to this Answer.

8           138. PacifiCorp denies the allegation in paragraph 181 of the Complaint for the  
9 reasons stated in paragraph 136 to this Answer.

10          139. PacifiCorp denies the allegation in paragraph 182 of the Complaint for the  
11 reasons stated in paragraph 136 to this Answer.

12          140. PacifiCorp denies the allegation in paragraph 183 of the Complaint for the  
13 reasons stated in paragraph 136 to this Answer.

14          141. PacifiCorp does not have sufficient information to admit or deny the factual  
15 allegation contained in paragraph 184 of the Complaint.

16          142. PacifiCorp denies the allegation in paragraph 185 of the Complaint for the  
17 reasons stated in paragraph 136 to this Answer.

18          143. PacifiCorp denies the allegation in paragraph 186 of the Complaint. The  
19 transmission service request related to transmission service on PacifiCorp’s system to serve  
20 PacifiCorp load. The issue between Surprise Valley and PacifiCorp is the deliverability of  
21 the net output from the Paisley Project across Surprise Valley’s system to PacifiCorp. It is

1 Surprise Valley’s responsibility, not PacifiCorp’s, to secure transmission arrangements to  
2 delivery net output from a QF to PacifiCorp’s system.<sup>31</sup>

3 144. PacifiCorp denies the allegation in paragraph 187 of the Complaint for the  
4 reasons stated in paragraph 143 to this Answer.

5 145. PacifiCorp denies the allegation in paragraph 188 of the Complaint for the  
6 reasons stated in paragraph 143 to this Answer.

7 146. PacifiCorp denies the allegation in paragraph 189 of the Complaint for the  
8 reasons stated in paragraph 143 to this Answer.

9 **AFFIRMATIVE DEFENSES**

10 147. Surprise Valley has not alleged, and has not in fact provided, any legitimate  
11 transmission arrangements for transmitting the net output of the Paisley Project to  
12 PacifiCorp, or provided any other verifiable form of delivery.

13 148. Surprise Valley does not provide wholesale transmission service, wholesale  
14 distribution service, or other wheeling to third parties, and does not have an open access  
15 transmission tariff or wholesale distribution service tariff.

16 149. Surprise Valley does not own or operate other generation on its system to  
17 provide ancillary services to support whole transmission or wholesale distribution service to  
18 third parties.<sup>32</sup>

19 150. Surprise Valley cannot rely on negotiations between Surprise Valley and  
20 PacifiCorp to accommodate an off-system resource when Surprise Valley failed to provide  
21 evidence of any transmission arrangements required for delivery.

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<sup>31</sup> See OEC.

<sup>32</sup> See e.g. *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, 81 FERC ¶ 61,248 at page 35 (ancillary services are those services that must be offered with basic transmission service. They are needed to accomplish transmission service while maintaining reliability within the balancing authority area).

1 151. PacifiCorp has repeatedly stated that it only has an obligation to purchase the  
2 net output of the Paisley Project that could be delivered to PacifiCorp's system.

3 152. Surprise Valley's claims contradict Commission policy, generally, and  
4 specifically the policy articulated in *OEC*.

5 153. Surprise Valley's arguments that delivery of net output of the Paisley Project  
6 can displace deliveries of energy from Bonneville would result in the Paisley Project's net  
7 output being used to serve Surprise Valley load under the terms of the requirements contract  
8 between Bonneville and Surprise Valley, ~~unless Bonneville over-schedules its transmission~~  
9 ~~service to Surprise Valley. However, if Bonneville over-schedules its transmission service to~~  
10 ~~Surprise Valley, PacifiCorp's customers would pay twice for the net output of the Paisley~~  
11 ~~Project: first under the QF PPA with Paisley, and second to compensate Bonneville for the~~  
12 ~~over-delivery through imbalance true-ups under the GTA.~~

13 154. Surprise Valley has failed to state a claim upon which relief may be granted.

14 155. PacifiCorp reserves the right to assert additional affirmative defenses, as well  
15 as any necessary counterclaims.

#### 16 PROPOSED SCHEDULE

17 PacifiCorp and Surprise Valley have agreed to the following schedule, and PacifiCorp  
18 respectfully requests that the Commission adopt this schedule to allow for expedited  
19 consideration of Surprise Valley's Complaint:

<b>EVENT</b>	<b>DATE</b>
Parties File Stipulated Facts	August 7, 2015
Simultaneous Opening Briefs	August 26, 2015
Simultaneous Reply Briefs	September 8, 2015
Target Decision Date	September 28, 2015

20 The parties have agreed to file stipulated facts because the fundamental issues in the  
21 proceeding are legal, not factual.

1           WHEREFORE, having fully answered Surprise Valley’s Complaint, PacifiCorp  
2 respectfully requests that the Commission:

3           A.     Dismiss the Complaint;

4           B.     Deny all relief requested by Surprise Valley in the Complaint; and

5           C.     Grant PacifiCorp such other relief as the Commission deems just and  
6 reasonable.

7           D.     Grant the proposed schedule in this proceeding.

8           DATED: July 29, 2015



Matthew D. McVee  
Assistant General Counsel  
PacifiCorp



# **Attachment B**



Pacific Power |  
Rocky Mountain Power  
825 NE Multnomah, Suite 2000  
Portland, Oregon 97232

October 26, 2015

Irion Sanger  
Sanger Law PC  
1117 SE 53rd Ave.  
Portland, OR 97215  
[irion@sanger-law.com](mailto:irion@sanger-law.com)

Brad Kresge  
Surprise Valley Electrification Corp.,  
516 US Hwy 395 E, Alturas, CA 96101  
[bradsvec@frontier.com](mailto:bradsvec@frontier.com)

RE: OR Docket No. UM 1742  
SVEC 1<sup>st</sup> Set Data Request (1-48)

Please find enclosed PacifiCorp's Responses to SVEC 1<sup>st</sup> Set Data Requests 1.1-1.48. Also provided are Attachments SVEC 1.2, 1.3, 1.19, 1.20, 1.23, 1.29, 1.40, 1.41, and 1.48. Provided on the Confidential CD is Confidential Attachment SVEC 1.7. Confidential information is provided per Protective Order No. 15-351.

If you have any questions, please call me at (503) 813-6642.

Sincerely,

Erin Apperson  
Manager, State Regulatory Affairs

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

**SVEC Data Request 1.15**

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

**Response to SVEC Data Request 1.15**

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

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

**SVEC Data Request 1.16**

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

**Response to SVEC Data Request 1.16**

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

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

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

**SVEC Data Request 1.17**

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

**Response to SVEC Data Request 1.17**

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

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

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

**SVEC Data Request 1.18**

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

**Response to SVEC Data Request 1.18**

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

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