

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1742

In the Matter of

SURPRISE VALLEY
ELECTRIFICATION CORP.,

Complainant,

PACIFICORP, dba PACIFIC POWER,

Defendant.

RULING

DISPOSITION: MOTION TO STRIKE OR CLARIFY DENIED

Surprise Valley Electrification Corp. seeks to strike portions of PacifiCorp, dba Pacific Power's answer to the complaint at issue in this proceeding. Specifically, Surprise Valley challenges PacifiCorp's arguments that the general transfer agreement (GTA) between PacifiCorp and Bonneville Power Administration (BPA) limits Surprise Valley's ability to sell the net output of the Paisley geothermal project to PacifiCorp. Alternatively, Surprise Valley requests the scope of this proceeding be clarified.

PacifiCorp responds that Surprise Valley's requests are legally inappropriate and seeks relief based on incorrect assertions about PacifiCorp's statements in its answer. PacifiCorp contends that granting Surprise Valley's motion would prejudice PacifiCorp's ability to fully and fairly respond to the complaint and undermine the company's ability to defend its rights in this docket.

For the reasons provided below, I deny Surprise Valley's motion.

Applicable Law

The Oregon Rules of Civil Procedure govern these proceedings unless inconsistent with Commission rules.¹ ORCP 12A requires that all pleadings be liberally construed with a view of substantial justice between the parties.² With regard to motions to strike, ORCP 21E allows a party to move to strike a pleading within 10 days after the service of that pleading.³ The rule further provides that a motion may seek to strike:

¹ See OAR 860-001-0000(1).

² In the administrative law context, pleadings are so liberally construed and easily amended that one commentator once noted: "The most important characteristic about pleadings in the administrative process is their unimportance." 1 K. Davis, *Administrative Law* 523 (1958).

³ Given my conclusion below, I do not address PacifiCorp's argument that Surprise Valley's motion was untimely.

- (1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing more than one claim or defense not separately stated; or
- (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading.

Ruling

PacifiCorp's reference to the GTA in its answer does not represent a "sham, frivolous, or irrelevant pleading or defense" that is appropriately subject to a motion to strike. Rather, the company's references to the GTA merely provide factual support to its answer and to rebut Surprise Valley's "displacement" theory.

As clarified in its answer to the motion to strike, PacifiCorp does not allege that the GTA is a bar to executing a power purchase agreement. Rather, PacifiCorp discusses the GTA because Surprise Valley is a rural cooperative that is an all-requirements customer of BPA and PacifiCorp delivers BPA power to Surprise Valley under the GTA. This transmission agreement between BPA and PacifiCorp helps explain the context of the parties' dispute.

Moreover, the reference to the GTA helps explain the basis of why PacifiCorp believes Surprise Valley's reliance on FERC Order 69 is misplaced. Instead of wheeling the output from the Paisley project across Surprise Valley's system to PacifiCorp's system, Surprise Valley proposes to deliver the output to PacifiCorp through displacement. PacifiCorp contends that form of delivery does not apply here, because an all-requirements customer like Surprise Valley may only "displace" QF energy that the all-requirements seller would otherwise be obligated to supply. PacifiCorp emphasizes that it is not the all-requirements seller—BPA is. Because PacifiCorp only transmits power on BPA's behalf under the GTA, PacifiCorp claims that FERC Order 69 does not apply.

Accordingly, the motion to strike or clarify is denied.

Dated this 3rd day of December, 2015, at Salem, Oregon.



Michael Grant
Chief Administrative Law Judge