

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1742

SURPRISE VALLEY ELECTRIFICATION
CORP.,

Complainant,

vs.

PACIFICORP, dba PACIFIC POWER,

Defendant.

RULING

**DISPOSITION: MOTION TO SUSPEND PROCEDURAL SCHEDULE AND
 HOLD PROCEEDINGS IN ABEYANCE DENIED**

PacifiCorp, dba Pacific Power, requests that the Commission immediately suspend the procedural schedule to give the Federal Energy Regulatory Commission (FERC) an opportunity to address what it terms as “key threshold issues” in this docket. For reasons cited below, PacifiCorp’s request is denied.

Positions of the Parties

PacifiCorp asserts that Surprise Valley Electrification Corp’s (Surprise Valley) prehearing discovery and written testimony have made clear that the case presents a threshold issue—one that involves the interpretation of the Public Utility Regulatory Policies Act of 1978 (PURPA) and should be resolved by FERC prior to consideration by this Commission. Specifically, PacifiCorp asserts that this complaint hinges on the question of whether Surprise Valley’s power delivery proposal raises any mandatory purchase obligations under PURPA. PacifiCorp asks that this complaint proceeding be suspended, and represents that it will file a request for relief at FERC within sixty days of a ruling granting its motion.

PacifiCorp makes three arguments in support of its motion. First, citing the Commission’s decision in *PaTu Wind Farm v PGE*,¹ PacifiCorp asserts that transmission disputes raised in state qualifying facility (QF) proceedings, which are not contractual in nature, are outside of state jurisdiction and should be addressed by FERC. PacifiCorp explains that, like *PaTu*, this complaint involves the details of a FERC-jurisdictional transmission agreement, and presents a threshold issue that is more appropriately resolved by FERC. Since the transmission issues may

¹ *PaTu Wind Farm, LLC v. Portland General Electric Co.*, Docket No. UM 1566, Order No. 12-316 (Aug 21, 2012).

be dispositive of the case, PacifiCorp argues that these proceedings should be suspended to save the parties and the Commission substantial time and resources.

Second, PacifiCorp contends that Surprise Valley's own pleadings admit that these key transmission-related issues are more properly considered by FERC. PacifiCorp points out that Surprise Valley even moved to strike portions of the company's answer to the complaint on the grounds that any transmission issues must be considered by FERC and not this Commission.

Last, PacifiCorp argues that federal preemption may preclude Commission review of significant portions of the issues in this proceeding. Advancing a number of arguments relative to the interpretation and impact of the Supremacy Clause of the Constitution of the United States, PacifiCorp contends that FERC has primary responsibility for regulating transmission of energy in interstate commerce, and that a Commission order addressing the type of transmission arrangements sufficient under PURPA might be viewed as an obstacle to Congress's purpose in providing FERC with that primary responsibility.

Surprise Valley opposes PacifiCorp's motion and contends that the legal standard of good cause for delay has not been met. Although the transmission issues raised by PacifiCorp are within FERC's jurisdiction, Surprise Valley states that the Commission has the authority to resolve all of its claims for relief without awaiting a FERC decision on those federal issues. Surprise Valley notes that resolution of all transmission issues is not a requisite precondition for execution of QF contracts and that those issues are often addressed after a contract has been signed.

Surprise Valley also contends that PacifiCorp's reliance on *PaTu* is misplaced, because that case supports Commission action now. Surprise Valley states that *PaTu* and this proceeding both present dual state and federal jurisdictional questions, and that the Commission should proceed to address those state jurisdictional issues in the same manner here as in *PaTu*.²

Resolution

This Commission is charged with implementing PURPA and FERC's implementing regulations, and has jurisdiction over complaints by QFs against Oregon electric utilities, including PacifiCorp.³ The Commission's exercise of that jurisdiction is not constrained by the existence of issues related to FERC transmission issues. Indeed, in the *PaTu* case, the Commission reviewed, addressed, and resolved a QF's claims regarding interpretation of its contract and other state jurisdictional issues. I am not convinced that any FERC-related transmission issues raised

² On April 28, 2016, PacifiCorp filed a limited reply to Surprise Valley's response. OAR 860-001-0420(5) provides in pertinent part "The moving party is not permitted to file a reply to a response to a procedural motion unless permitted by the ALJ." PacifiCorp offers no factual or legal rationale—such as newly-discovered evidence or recently issued federal or state decision—that would justify an additional round of argument. Accordingly, the pleading is disregarded.

³ See ORS 758.505 to 758.555; OAR chapter 860, division 029; and *Snow Mt Pine Company v Maudlin*, 84 Or App 590 (1987).

in this proceeding necessarily require a delay of the Commission's consideration of whether PacifiCorp has a mandatory obligation under PURPA to purchase Surprise Valley's output.

PacifiCorp also improperly relies on the principles of preemption in support of its motion. Simply put, the preemption clause's purpose and effect are to preclude enforcement of a state law or policy that contradicts or conflicts with federal statutes and regulations; it is not for the purpose of determining jurisdiction over particular subject matter. This Commission is charged with implementing federal PURPA and FERC regulations. There has been no allegation by PacifiCorp that the Commission would, by its actions, be implementing any policy or action at odds with federal law. It cannot therefore rely on the Supremacy Clause as a reason to suspending the schedule in this docket.

Finally, PacifiCorp is not precluded by our consideration of the instant complaint, from pursuing a ruling on any FERC-related issues at the federal level. In the event that state and federal resolutions of some of the matters relating to this complaint are in conflict, we are confident that the litigants, this Commission and, if necessary, the courts will address them.

The motion to suspend procedural schedule and hold proceeding in abeyance filed by PacifiCorp is denied.

Dated this 29th day of April, 2016, at Salem, Oregon.



Michael Grant
Chief Administrative Law Judge