

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1742

SURPRISE VALLEY ELECTRIFICATION  
CORP.,

Complainant,

vs.

PACIFICORP, dba PACIFIC POWER,

Defendant.

RULING

DISPOSITION: MOTION TO COMPEL GRANTED

Surprise Valley Electrification Corp. (Surprise Valley) requests that PacifiCorp, dba Pacific Power, be ordered to provide full and complete answers to its data request 12.1(c). That request seeks the last-known addresses of former PacifiCorp employees who the company admits have knowledge of the underlying facts of issues in this case. Surprise Valley seeks to depose those former employees.

In its response, PacifiCorp's central argument is that Surprise Valley's proposal to depose the former employees is not allowed because they are not witnesses to the proceeding. PacifiCorp argues that the proper route is for Surprise Valley to depose current employees who will be made available to respond regarding their testimony.

The Commission's rule governing depositions is set forth in OAR 860-001-0520. Section (4) provides: "A party may examine a deponent on any matter not privileged that appears reasonably calculated to lead to the discovery of relevant evidence." Thus, the deponent need not be a witness who has submitted pre-filed testimony or been otherwise offered by a party.<sup>1</sup> The examination of the deponent must only appear reasonably calculated to lead to the discovery of relevant evidence.

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<sup>1</sup>I note that, in Order No. 10-051, the Commission stated that depositions may only be taken of testifying witnesses. That decision relied on language in what is now OAR 860-001-0520(1), which states: "The testimony of any witness may be taken by deposition at any time before the hearing is closed." That provision, interpreted consistent with ORS 756.538(2), clarifies that a party may take *testimony* of a witness through deposition, but does not restrict a party's ability to depose any person for purposes of discovery. To the extent the Commission held otherwise, Order No. 10-051 was in error.

This conclusion is confirmed by ORS 756.538(2), which provides that:

In any proceeding requiring a hearing, the commission or any party to the proceeding may take the testimony of *any person* by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the proceeding, or for both purposes. (Emphasis added.)

Surprise Valley has demonstrated that the examination of the former employees may reasonably lead to the discovery of relevant evidence. Accordingly, Surprise Valley's motion to compel is granted. PacifiCorp shall provide the last known addresses of the identified former employees to Surprise Valley by close of business April 22, 2016.

Dated this 21st day of April, 2016, at Salem, Oregon.



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Michael Grant  
Chief Administrative Law Judge