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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Surprise Valley Electrification Corp.,)	
Complainant,)	DOCKET NO. ____
)	
v.)	COMPLAINT
)	
PacifiCorp, dba Pacific Power,)	EXPEDITED CONSIDERATION
Defendant.)	REQUESTED
)	
_____)	

1

I. INTRODUCTION

2 This is a complaint (“Complaint”) filed by Surprise Valley Electrification Corp.
3 (“Surprise Valley”) with the Oregon Public Utility Commission (the “Commission” or
4 “OPUC”) under Oregon Revised Statute (“ORS”) § 756.500 and Oregon Administrative
5 Rule (“OAR”) § 860-001-0170. PacifiCorp, dba as Pacific Power,¹ has not agreed to
6 purchase the net output from Surprise Valley’s Paisley geothermal qualifying facility
7 (“QF”) (“Paisley Project”) as a mandatory purchase under the Public Utility Regulatory
8 Policies Act of 1978 (“PURPA”). PacifiCorp has failed to comply with its own rate
9 Schedule 37, the Commission’s rules and policies, the Federal Energy Regulatory

¹ This Complaint refers to both Pacific Power and PacifiCorp as PacifiCorp, unless the context requires that the term Pacific Power be used.

1 Commission's ("FERC") rules and policies, and the Oregon and federal PURPA statutes.
2 In addition, PacifiCorp has not always negotiated in good faith and has unreasonably
3 delayed the contract completion process. In the end, PacifiCorp has illegally refused to
4 finalize or execute a power purchase agreement ("PPA") with Surprise Valley.

5 Surprise Valley has been ready, willing, and able to sign a PPA with PacifiCorp
6 since at least May 20, 2014, and has repeatedly unequivocally committed itself to sell the
7 net output of the Paisley Project to PacifiCorp at the Schedule 37 avoided cost rates that
8 were in effect prior to August 20, 2014. Therefore, Surprise Valley respectfully requests
9 that the Commission find that Surprise Valley has a legally enforceable obligation with
10 PacifiCorp, and require PacifiCorp to enter into PPA with Surprise Valley with the rates,
11 terms, and conditions under the Schedule 37 that was in effect prior to August 20, 2014.

12 Surprise Valley first requested a PPA in August 2013, and contract negotiations
13 with PacifiCorp have lasted nearly two years. PacifiCorp did not negotiate in good faith
14 and illegally delayed the negotiation process, and Surprise Valley planned to file a
15 complaint in April 2015. Surprise Valley, however, delayed the filing a complaint in
16 order to conduct settlement negotiations. Surprise Valley and PacifiCorp then spent over
17 two months of extensive and in-depth settlement negotiations, including the exchange of
18 potential contract language.² Despite these discussions, PacifiCorp and Surprise Valley
19 have been unable to reach a settlement, and PacifiCorp has not agreed to execute a PPA
20 with the Schedule 37 rates that were in effect prior to August 20, 2014.

² The Complaint refers to statements and positions made outside of settlement discussions. Positions and statements made or discussed in settlement are not referred to in this Complaint.

1 Surprise Valley is filing the Complaint at this time because: 1) PacifiCorp has
2 refused to commit in writing regarding the avoided cost prices Surprise Valley is legally
3 entitled to; 2) the Paisley Project is expected to become operational in July 2015; and 3)
4 Surprise Valley needs prompt resolution because it may need to shut down the Paisley
5 Project on October 1, 2015, if it does not have a contract to sell the net output.

6 PacifiCorp has refused to agree in writing that Surprise Valley is legally entitled
7 to the avoided cost rates in effect prior to August 20, 2014. Surprise Valley is also
8 concerned that PacifiCorp may assert that Surprise Valley is not legally entitled to the
9 post-August 20, 2014 rates that are currently in effect, and that sales of the net output of
10 the Paisley Project could be under the Schedule 37 avoided cost rates that will become
11 effective later this month.

12 The Paisley Project is expected to be on-line in July 2015. From the on-line date
13 to October 1, 2015, Surprise Valley intends to use the net output to serve load, if it is
14 unable to sell the net output to PacifiCorp.³ On October 1, 2015, however, Surprise
15 Valley will no longer have the contractual right to use the power to serve load without
16 reducing its right to purchase low-cost power from Bonneville Power Administration
17 (“BPA”) and/or violating its take or pay obligations to BPA. To avoid violating its BPA
18 contract or reducing its right to low-cost BPA power, Surprise Valley may need to shut
19 down the Paisley Project on October 1, 2015, absent a PPA to sell the net output or an
20 additional BPA contract amendment.

³ Using the net output of the Paisley Project to serve load is less economic than selling the power to PacifiCorp, but it is currently more economic than not operating the geothermal facility.

1 Surprise Valley requests that the Commission establish a schedule that allows for
2 a final order in this proceeding before October 1, 2015. Expedited consideration is
3 warranted because of the July 2015 expected on-line date, the possibility that the Paisley
4 Project may be shut down on October 1, 2015, the delays caused by PacifiCorp, and
5 Surprise Valley’s nearly two years of good faith efforts to enter into a contract without
6 resorting to litigation.

7 **II. SERVICE**

8 Copies of all pleadings and correspondence should be served on Surprise Valley’s
9 counsel and general manager at the addresses below:

10	Irion Sanger	Bradley Kresge
11	Sanger Law, PC	General Manager
12	1117 SE 53rd Ave.	Surprise Valley Electrification Corp.
13	Portland, Oregon 97215	516 U.S. Highway 395E
14	irion@sanger-law.com	Alturas, California 96101
15		bradsvec@frontier.com
16		

17 In support of this Complaint, Surprise Valley alleges as follows:

18 **III. IDENTITY OF THE PARTIES**

19 1. Pacific Power is the business unit of PacifiCorp that serves customers in
20 Oregon, Washington, and California. PacifiCorp is a wholly-owned subsidiary of
21 Berkshire Hathaway Energy Company, which is a consolidated subsidiary of Berkshire
22 Hathaway. PacifiCorp’s transmission business services (“PacifiCorp Transmission”)
23 markets transmission and interconnection services, and is required to operate
24 independently from PacifiCorp’s energy supply management services (“PacifiCorp
25 Energy”). Pacific Power is headquartered at 825 NE Multnomah Street, Portland,
26 Oregon 97232.

1 2. Surprise Valley is a California non-profit rural cooperative serving
2 customers in California, Nevada, and Oregon. Individuals receiving electric service from
3 Surprise Valley are member owners of the cooperative. Surprise Valley is headquartered
4 at 516 U.S. Highway 395E, Alturas, California 96101.

5 **IV. APPLICABLE STATUTES AND RULES**

6 3. The Oregon statutes expected to be involved in this case include: ORS §§
7 756.040-756.068, ORS §§ 756.500-756.558, ORS § 756.990, and ORS §§ 758.505-
8 758.575. The Oregon rules expected to be involved in this case include: OAR §§ 860-
9 001, and 860-029.

10 4. The federal statute expected to be involved in this case is PURPA, 16
11 United States Code (“USC”) § 824a-3. The federal rules expected to be involved in this
12 case include: 18 Code of Federal Regulations (“CFR”) §§ 292.101-292.602. FERC’s
13 regulations regarding Open Access Transmission Tariffs (“OATT”) may also be
14 involved.

15 **V. JURISDICTION**

16 5. FERC has adopted regulations and policies governing utility purchases
17 from QFs under PURPA. 18 CFR §§ 292.101-292.602. State regulatory agencies are
18 required to implement FERC’s regulations. 16 USC § 824a-3(f); FERC v. Mississippi,
19 456 U.S. 742, 751, 760-61 (1982).

20 6. The Commission is the Oregon state agency that implements PURPA.
21 ORS § 758.505(3); OAR § 860-029-0001; see Snow Mountain Pine Co. v. Maudlin, 734
22 P.2d 1366, 1367, 84 Or. App. 590 (Or. App. 1987). PacifiCorp is subject to the
23 Commission’s power and jurisdiction, and the Commission has the power and

1 jurisdiction to hear complaints by QFs against public utilities, including PacifiCorp. ORS
2 § 756.040, ORS §§ 756.500-756.558, and ORS §§ 758.505-758.555; OAR § 860-001-
3 0010(3), and OAR § 860-029-0030.

4 **VI. FACTUAL BACKGROUND**

5 **Surprise Valley’s Electrical Requirements**

6 7. Surprise Valley purchases electricity to service its total electric load from
7 BPA.

8 8. BPA transmits a portion of the electricity used to meet Surprise Valley’s
9 load directly to Surprise Valley at BPA’s Canby substation in BPA’s balancing authority
10 where BPA’s and Surprise Valley’s facilities are connected.

11 9. BPA transmits the majority of the electricity used to meet Surprise
12 Valley’s load indirectly to Surprise Valley using transmission facilities owned by
13 PacifiCorp. PacifiCorp transmits and delivers the electricity to Surprise Valley at the
14 Alturas, Austin, Cedarville Junction, and Davis Creek substations.

15 **Paisley Project**

16 10. Since 2009, Surprise Valley has been developing the Paisley Project.

17 11. The Paisley Project is a geothermal electric generation facility located in
18 Paisley, Oregon.

19 12. The Paisley Project’s rated output is 3,650 kilowatts (“kW”) with a
20 maximum net output of 2,349 kW.

21 13. The Paisley Project’s expected annual energy output will be
22 approximately 18,285,671 kW hours (“kWh”) and expected average energy output will
23 be approximately 2,087 kW.

1 14. The Paisley Project is interconnected with, and within, the service territory
2 of Surprise Valley.

3 15. The electricity produced by the Paisley Project will be interconnected to
4 the Surprise Valley electric system at Surprise Valley's 69 kilovolt ("kV") transmission
5 line at the Paisley Project's generation substation.

6 16. Surprise Valley is willing and able to transmit the Paisley Project's load to
7 PacifiCorp's transmission facilities.

8 17. The Paisley Project is within the PacifiCorp Balancing Authority.

9 18. Most of the Paisley Project's net output is expected to displace electricity
10 Surprise Valley has purchased from BPA and that PacifiCorp would otherwise transmit to
11 Surprise Valley.

12 19. Surprise Valley has proposed that the Paisley Project's Point of Deliveries
13 are the BPA Meter 41 located near PacifiCorp's Mile Hi Substation where Surprise
14 Valley's electric system interconnects with PacifiCorp Transmission, and the point near
15 structure 47/5 in BPA's La Pine-Chiloquin 230 kV transmission line where the 230 kV
16 facilities of BPA and PacifiCorp are connected.

17 20. PacifiCorp has not proposed other Points of Delivery.

18 21. Surprise Valley self-certified the Paisley Project as QF pursuant to 18
19 CFR § 292.207(a) in FERC docket number QF13-276-000.

20 22. On or about June 9, 2014, the Paisley Project completed start up testing.

21 23. Surprise Valley expects the Paisley Project to be operational, and ready to
22 produce and sell power in July 2015.

23

1 **Transmission service request**

2 24. On August 28, 2012, Power Engineers, Inc. (“PEI”), on behalf of Surprise
3 Valley, informed PacifiCorp Transmission about the Paisley Project and the project
4 details.

5 25. On August 28, 2012, PEI asked PacifiCorp Transmission whether
6 interconnection and/or transmission studies would need to be performed for Surprise
7 Valley to sell the net output of the Paisley Project to PacifiCorp.

8 26. After August 28, 2012, PacifiCorp Transmission stated that PacifiCorp
9 would be an Affected System.

10 27. From September 2012 to February 2013, Surprise Valley, PEI, and BPA
11 communicated with PacifiCorp Transmission about whether an interconnection study
12 would be needed.

13 28. On February 6, 2013, Surprise Valley sent an official Interconnection
14 Notification letter to PacifiCorp Transmission.

15 29. On February 7, 2013, PacifiCorp Transmission confirmed receipt of
16 Interconnection Notification letter.

17 30. Between February 2013 and July 2013, Surprise Valley repeatedly
18 contacted PacifiCorp Transmission regarding the status of its interconnection study.

19 31. On or about March 27, 2013, PacifiCorp Transmission informed Surprise
20 Valley that the interconnection study was never entered into the system.

21 32. Sometime after March 27, 2013, PacifiCorp Transmission entered or re-
22 entered the Surprise Valley interconnection request into the system.

1 33. On or about July 12, 2013, PacifiCorp Transmission provided Surprise
2 Valley a draft Affected System Impact and Facilities Study Agreement.

3 34. On July 25, 2013, Surprise Valley executed the Affected System Impact
4 and Facilities Study Agreement.

5 35. On August 1, 2013, PacifiCorp Transmission executed the Affected
6 System Impact and Facilities Study Agreement.

7 36. On or about October 30, 2013, PacifiCorp Transmission completed an
8 Affected System Impact and Facilities Study Report.

9 37. The Affected System Impact and Facilities Study Report concluded that
10 the Paisley Project would impact PacifiCorp, and that PacifiCorp's Mile Hi substation
11 will need to be updated to reliably accommodate the Paisley Project. The Affected
12 System Impact and Facilities Study Report stated that the upgrades were scheduled for
13 implementation in the first quarter of 2014.

14 38. By April 15, 2014, the upgrades identified in the Affected System Impact
15 and Facilities Study Report were completed. On March 11, 2015, PacifiCorp
16 Transmission informed Surprise Valley that the upgrades identified in the Affected
17 System Impact and Facilities Study were completed.

18 39. On November 5, 2013, PacifiCorp Transmission informed Surprise Valley
19 that an interconnection agreement between PacifiCorp and Surprise Valley was not
20 necessary.

21 40. On January 24, 2014, Surprise Valley contacted PacifiCorp Transmission
22 to determine if additional transmission studies would be needed for Surprise Valley to
23 sell the net output of the Paisley project to PacifiCorp Energy. Surprise Valley also

1 inquired regarding the status of the installation of relay settings, transmission studies
2 timelines, and what actions it should take to resolve any potential transmission issues to
3 be able to sell the Paisley Project's net output to PacifiCorp Energy.

4 41. On or about January 27, 2014, PacifiCorp Transmission informed Surprise
5 Valley that PacifiCorp Energy must submit a transmission services request.

6 42. On January 28, 2014, Surprise Valley contacted PacifiCorp Energy to
7 determine if a transmission service request was required to sell the net output of the
8 Paisley Project under PURPA.

9 43. In January 2014, PacifiCorp Energy submitted a Transmission Service
10 Request for 3.7 megawatts ("MW") of Network Transmission and Designated Network
11 Resource for the Paisley Project.

12 44. On February 10, 2014, PacifiCorp Energy informed Surprise Valley that it
13 would not execute a PURPA PPA for the Paisley Project until PacifiCorp Transmission
14 approved the transmission service request.

15 45. On February 25, 2014, PacifiCorp Energy informed Surprise Valley that
16 the result of a Transmission Service Request would be a System Impact Study that would
17 show the system upgrades required for PacifiCorp to receive the Paisley Project's
18 generation into PacifiCorp's system.

19 46. On May 7, 2014, PacifiCorp Energy informed Surprise Valley that the
20 Transmission Study Request was "pulled" sometime prior to May 7, 2014.

21 47. Sometime on or after May 7, 2014, PacifiCorp Energy requested that the
22 Transmission Service Request be re-started.

1 48. On or about June 26, 2014, PacifiCorp Transmission completed a System
2 Impact Study Report.

3 49. The System Impact Study Report analyzed PacifiCorp's main grid,
4 distribution, and sub-transmission system to identify any system constraints to supply 3.7
5 MWs of the Paisley Project as a network resource for PacifiCorp Energy.

6 50. The System Impact Study Report concluded that metering and
7 communications upgrades would be required at the Paisley Project, BPA's Meter 41
8 substation, and PacifiCorp's Klamath substation, Portland control center, and Salt Lake
9 City control center. The estimate for total expected costs was \$350,000.

10 51. The System Impact Study Report identified no main grid, distribution, or
11 sub-transmission upgrades that would be needed for Surprise Valley to sell the net output
12 of the Paisley Project to PacifiCorp Energy.

13 52. On or about September 26, 2014, PacifiCorp Transmission completed a
14 Facilities Study Report.

15 53. The Facilities Study Report analyzed PacifiCorp's main grid, distribution,
16 and sub-transmission system to identify any system constraints to supply 3.7 MWs of the
17 Paisley Project's capacity as a network resource for PacifiCorp Energy.

18 54. The Facilities Study Report detailed the metering and communications
19 upgrades that will be made at the Paisley Project, BPA's Meter 41 substation, and
20 PacifiCorp's Yreka, Portland, and Medford control stations. The estimate for total
21 expected costs was \$450,000.

22 55. The Facilities Study Report concluded that the upgrades could be
23 completed by September 2015.

1 56. The Facilities Study Report identified no additional main grid,
2 distribution, or sub-transmission upgrades that would be necessary for Surprise Valley to
3 sell the net output of the Paisley Project to PacifiCorp Energy.

4 57. On January 21, 2015, PacifiCorp Transmission provided formal
5 verification that an interconnection agreement is not needed.

6 58. On March 23, 2015, PacifiCorp Transmission informed Surprise Valley
7 that transmission upgrades identified in the Facilities Study may not be completed until
8 January 2016.

9 59. PacifiCorp Transmission has stated that it is attempting to complete most
10 of the transmission upgrades identified in the Facilities Study by October 1, 2015.

11 60. PacifiCorp Transmission has agreed that existing and/or interim metering
12 is sufficient to allow the Paisley Project to generate power until the completion of the
13 transmission upgrades identified in the Facilities Study are completed. Existing and/or
14 interim metering is sufficient to allow Surprise Valley to use the Paisley Project's net
15 output to serve Surprise Valley's retail load, and/or to sell the net output to PacifiCorp.

16 **Power Purchase Agreement**

17 61. On April 2, 2007, the Commission approved standard contract forms for
18 PacifiCorp. Re Investigation Relating to Elec. Util. Purchases from QFs, Docket No. UM
19 1129, Order No. 07-120 at 1-2 (April 2, 2007). The standard contracts approved by the
20 Commission did not include a "Jury Trial Waiver" provision or addendum. The
21 Commission has not subsequently approved any PacifiCorp standard contracts with a
22 "Jury Trial Waiver" provision or addendum.

1 62. On March 2, 2012, PacifiCorp filed a revised Schedule 37. The
2 Commission approved the revised Schedule 37 on March 27, 2012, with an effective date
3 of April 11, 2012 (“Schedule 37”). In the Matter of Pacific Power Request to Revise
4 Standard Rates in Schedule 37 for Avoided Cost Purchases from QFs 10,000 kw or Less,
5 Docket No. UM 1591, Order No. 12-106 at 1 (March 27, 2012). The Schedule 37
6 effective on April 11, 2012 was the Commission-approved rate schedule during most of
7 the negotiations regarding a PURPA PPA for the net output of the Paisley Project.

8 63. On or about August 5, 2013, Surprise Valley contacted PacifiCorp Energy
9 requesting a PPA to sell the net output of the Paisley Project as mandatory sale under
10 PURPA.

11 64. Under OAR § 860-029-0005(3), within thirty days of initial contact by the
12 QF, PacifiCorp Energy is required to provide specific informational documents to the QF.
13 Informational documents that PacifiCorp Energy is required to provide must state its
14 procedural requirements and information needs, that any contract is subject to
15 negotiation, and that avoided costs are subject to change pursuant to OAR § 860-029-
16 0080(3).

17 65. On August 6, 2013, PacifiCorp Energy provided informational documents
18 stating the information that is required under Schedule 37.

19 66. On or about November 6, 2013, PacifiCorp Energy provided a draft PPA
20 for an “off system” QF.

21 67. On November 20, 2013, Surprise Valley contacted PacifiCorp Energy
22 about the possibility of rate changes. PacifiCorp Energy stated that avoided cost rates are
23 subject to change and would go down. PacifiCorp Energy provided this information at

1 least three months after initial contact and only after questioning by Surprise Valley.
2 PacifiCorp Energy has never provided “informational documents” stating that avoided
3 costs are subject to change pursuant to OAR § 860-029-0080(3).

4 68. PacifiCorp Energy has never provided “informational documents” stating
5 that any contract is subject to negotiation.

6 69. On December 3, 2013, PacifiCorp Energy stated that the Paisley Project
7 would not be a QF if Surprise Valley used the net output to offset power purchased from
8 BPA and that is transmitted to Surprise Valley by PacifiCorp. PacifiCorp Energy did not
9 identify any provision of Oregon or FERC law, rules, policies, or Schedule 37 to support
10 its statement.

11 70. On December 30, 2013, PacifiCorp Energy stated that the PPA will not be
12 an “off-system” PPA but will be an “on-system” PPA. The characterization of the
13 Paisley Project as “on-system” or “off-system” has no legal relevance because
14 PacifiCorp’s PURPA purchase obligation is the same for any QF delivering power to
15 PacifiCorp, whether the power is delivered directly or indirectly to PacifiCorp. 18 CFR
16 §§ 292.303(a)&(d). As FERC recently stated, these “regulations require the electric
17 utility’s [PURPA] purchase obligation to be applied to both off-system as well as on-
18 system QFs on a comparable basis.” PáTu Wind Farm, LLC v. Portland General Electric
19 Co., 151 FERC ¶ 61,223 at P. 46 (2015).

20 71. Surprise Valley has not objected to the PPA being an “on-system,” “off-
21 system,” or a combination of “on-system” and “off-system.”

22 72. On January 3, 2014, Surprise Valley requested that negotiations occur so
23 that a final PPA would be executed by the end of February 2014.

1 73. On January 10, 2014, PacifiCorp Energy informed Surprise Valley that it
2 would not be ready to sign a PPA until March 2014 at the earliest.

3 74. Schedule 37 includes a “Process of Completing a Power Purchase
4 Agreement.” Schedule 37 at 8. Section 1.B.2 of Schedule 37 identifies specific
5 information that a QF must provide to PacifiCorp Energy.

6 75. On and before January 9, 2014, Surprise Valley provided PacifiCorp
7 Energy all the specific required information in Section 1.B.2 of Schedule 37.

8 76. Within fifteen business days of receiving all information required in
9 Section 1.B.2. of Schedule 37, PacifiCorp Energy must provide a project specific draft
10 PPA, including current standard avoided cost prices and/or other optional pricing
11 mechanisms.

12 77. On February 10, 2014, PacifiCorp Energy provided a project specific PPA
13 to Surprise Valley. The project specific draft PPA was provided twenty-one business
14 days after Surprise Valley provided all the information required in Section 1.B.2. of
15 Schedule 37.

16 78. On February 10, 2014, PacifiCorp Energy provided an “Addendum A” to
17 the project specific PPA that was a “Jury Trial Waiver.”

18 79. On February 10, 2014, PacifiCorp Energy did not provide the standard
19 avoided cost prices and/or other optional pricing mechanisms. PacifiCorp Energy never
20 provided the standard avoided cost prices and/or other optional pricing mechanisms
21 required in Section 1.B.2. of Schedule 37.

22 80. Sections 1.B.2(j)&(k) of Schedule 37 require a QF to provide the “status
23 or interconnection or transmission arrangements” and the “point of delivery or

1 interconnection.” Schedule 37 at 9. Schedule 37 does not require a QF to complete
2 transmission studies or obtain transmission service before executing a PPA.

3 81. On February 10, 2014, PacifiCorp Energy stated that it will not execute
4 the PPA until PacifiCorp Transmission approved PacifiCorp Energy’s transmission
5 service request. PacifiCorp Energy did not identify any provision of Oregon or FERC
6 law, rules, policies, or Schedule 37 that supported its statement.

7 82. On April 10, 2014, PacifiCorp filed a revised Schedule 37 and standard
8 contracts. The revised Schedule 37 rates were a reduction from the then current Schedule
9 37 rates. The revised standard contracts included a number of contract language changes
10 and new pricing options, and did not include a “Jury Trial Waiver” provision or
11 addendum.

12 83. Section 1.B.2. of Schedule 37 allows PacifiCorp Energy to request
13 additional or clarified information that the company reasonably believes to be necessary
14 for the preparation of a final draft PPA.

15 84. Between January 2014 and May 2014, PacifiCorp Energy requested
16 additional information from Surprise Valley, including but not limited to information
17 regarding the calculation of net output, lists of permits and easements, water rights,
18 ownership of renewable energy certificates, state of incorporation, loss adjustment
19 calculation, facilities descriptions, commercial operation dates, verification of
20 independent engineers, credit worthiness, test generation, transmission, and
21 interconnection.

22 85. Some of the information requested by PacifiCorp Energy was not
23 reasonably necessary for the completion of a PPA.

1 86. On April 23, 2014, PacifiCorp Energy informed Surprise Valley that it
2 may be a while before PacifiCorp Energy is ready to sign a PPA.

3 87. PacifiCorp delayed Surprise Valley's providing complete information and
4 a completed PPA by, among other things: 1) disclaiming any obligation to purchase
5 under PURPA because power produced by the Paisley Project will offset deliveries of
6 BPA power to Surprise Valley rather than flowing directly to PacifiCorp; 2) stating that
7 transmission issues must be resolved prior to execution of a final PPA; 3) failing to
8 timely pursue interconnection and/or transmission studies; 4) repeatedly stating that it
9 would be a while before it was ready to sign a PPA; 5) requesting unreasonable
10 information; 6) failing to provide complete, accurate, and timely information and
11 documents; and 7) including a Jury Trial Waiver provision in the project specific PPA.

12 88. Despite the delays caused by PacifiCorp, Surprise Valley provided all
13 additional reasonable information or explained why the additional information was not
14 necessary by May 20, 2014. This included but was not limited to information regarding
15 the calculation of net output, permits and easements, water rights, ownership of
16 renewable energy certificates, state of incorporation, loss adjustment calculation,
17 facilities descriptions, commercial operation dates, verification of independent engineers,
18 credit worthiness, test generation, transmission, and interconnection.

19 89. PacifiCorp has not publicly objected or asserted that Surprise Valley has
20 not provided all information necessary to obtain a PPA, except for PacifiCorp's
21 statements that Surprise Valley must obtain transmission from PacifiCorp Transmission,
22 and that power from the Paisley Project must be delivered by direct flow to PacifiCorp

1 rather than by offsetting deliveries of BPA power PacifiCorp would otherwise make to
2 Surprise Valley.

3 90. Despite the delays caused by PacifiCorp, Surprise Valley sent PacifiCorp
4 Energy a complete draft PPA with all project specific information included on May 20,
5 2014. Surprise Valley stated that it was prepared to execute the draft PPA, it was
6 concerned about the length of time it has taken to finalize the PPA, and timing was
7 critical.

8 91. On May 20, 2014, Surprise Valley unequivocally committed itself to sell
9 energy and capacity to PacifiCorp Energy at the then current Schedule 37 rates.

10 92. On May 20, 2014, Surprise Valley requested confirmation that it did not
11 need any additional interconnection agreements.

12 93. On May 20, 2014, Surprise Valley requested a final determination that it
13 had satisfied PacifiCorp Energy's creditworthiness requirements.

14 94. Within fifteen business days of receiving all information required in
15 Section 1.B.4. of Schedule 37, PacifiCorp Energy was required to provide Surprise
16 Valley a final draft PPA.

17 95. PacifiCorp Energy did not provide written revisions to Surprise Valley's
18 May 20, 2014 PPA.

19 96. Throughout April, May, June, and July 2014, Surprise Valley requested a
20 final draft PPA from PacifiCorp Energy, that PacifiCorp move forward with a PPA, and a
21 meeting with PacifiCorp Energy to sign and/or resolve any remaining issues related to the
22 PPA.

1 97. On June 6, 2014, Pacific Power’s president met with Surprise Valley’s
2 general manager to discuss, among other things, the Paisley Project. Surprise Valley’s
3 general manager specifically asked about Pacific Power’s position on whether the
4 existing Schedule 37 rates or the newly filed Schedule 37 rates would apply to the Paisley
5 Project PPA. Pacific Power’s president stated that Surprise Valley has been working
6 with PacifiCorp Energy for a long time, that Surprise Valley would be eligible for the
7 then current Schedule 37 rates, and that there was no reason to worry about the rate
8 change.

9 98. On July 11, 2014, Surprise Valley, PacifiCorp Transmission, and
10 PacifiCorp Energy met in Portland, Oregon. PacifiCorp provided non-substantive oral
11 comments on the May 20, 2014 draft PPA.

12 99. On July 11, 2014, Surprise Valley continued to unequivocally commit
13 itself to sell the net output of the Paisley Project at then current Schedule 37 rates.

14 100. On July 11, 2014, PacifiCorp Energy stated for the first time that it could
15 be willing to sign a PPA before PacifiCorp Transmission approved the transmission
16 service request.

17 101. On July 11, 2014, PacifiCorp Energy agreed to review Surprise Valley’s
18 draft PPA.

19 102. On July 11, 2014, PacifiCorp Energy provided Surprise Valley with
20 creditworthiness approval. PacifiCorp Energy internally approved Surprise Valley’s
21 creditworthiness on May 27, 2014. PacifiCorp Energy did not explain the reason for the
22 delay in informing Surprise Valley of the creditworthiness approval.

1 103. On July 22, 2014, Surprise Valley provided PacifiCorp Energy with a
2 draft PPA incorporating the non-substantive changes and recommendations made by
3 PacifiCorp at and after the July 11, 2014 meeting. The July 22, 2014 draft also included
4 non-substantive edits to reflect that two months had passed since Surprise Valley sent the
5 May 20, 2014 draft PPA.

6 104. On July 22, 2014, Surprise Valley continued to unequivocally commit
7 itself to sell the net output of the Paisley Project to PacifiCorp Energy at the then current
8 Schedule 37 rates.

9 105. On July 29, 2014, PacifiCorp Energy promised to review the Surprise
10 Valley July 22, 2014 PPA and provide comments.

11 106. On July 29, 2014, PacifiCorp Energy requested additional information on
12 Surprise Valley's loss calculation.

13 107. On August 4, 2014, Surprise Valley provided the requested additional
14 information regarding the loss calculation.

15 108. On August 4, 2014, Surprise Valley requested a meeting to finalize the
16 PPA.

17 109. PacifiCorp Energy did not agree to a meeting to finalize the PPA.

18 110. PacifiCorp Energy did not propose any comments on or revisions to
19 Surprise Valley's July 22, 2014 draft PPA.

20 111. On August 19, 2014, the Commission approved PacifiCorp's revised
21 Schedule 37, with an August 20, 2014 effective date.

22 112. On August 26, 2014, PacifiCorp Energy informed Surprise Valley that
23 PacifiCorp Energy had not agreed to final commercial terms and conditions regarding

1 metering, power true ups, actual power generation, the applicable rates, or the final form
2 of the PPA.

3 113. On August 26, 2014, PacifiCorp Energy stated that the Paisley Project's
4 generation will not physically reach PacifiCorp's system and does not qualify as a
5 PURPA PPA.

6 114. On August 26, 2014, PacifiCorp Energy stated that it had not yet
7 determined whether the rates effective prior to or after August 20, 2014 would apply to
8 any PPA to purchase the net output of the Paisley Project.

9 115. On September 25, 2014, PacifiCorp Energy informed Surprise Valley that
10 power flow issues were now accounted for. This meant that the issue of physical delivery
11 of power had been resolved because PacifiCorp Transmission worked out the metering
12 issues.

13 116. On September 25, 2014, PacifiCorp Energy informed Surprise Valley that
14 any PPA will have the lower Schedule 37 rates effective on August 20, 2014.

15 117. On September 25, 2014, PacifiCorp Energy stated that it would provide
16 another draft PPA in a couple weeks.

17 118. On September 25, 2014, PacifiCorp Energy informed Surprise Valley that
18 instead of a Schedule 37 sale, that Surprise Valley was eligible to sell the net output as a
19 QF under Schedule 38. The Schedule 38 sale would be a negotiated sale using the lower
20 Schedule 37 rates effective on August 20, 2014.

21 119. On September 25, 2014, PacifiCorp Energy informed Surprise Valley that
22 if it had started the Schedule 38 negotiation process in December 2013, then Surprise
23 Valley could have obtained in higher Schedule 37 rates effective prior to August 20, 2014.

1 120. After September 25, 2014, Surprise Valley has continued to request that
2 PacifiCorp provide a final PPA with Schedule 37 rates effective prior to August 20, 2014.

3 121. On November 6, 2014, Surprise Valley's general manager met with
4 Pacific Power's president regarding a contract for the Paisley project, but failed to reach
5 an agreement.

6 122. On November 24, 2014, Surprise Valley met with PacifiCorp Energy
7 regarding a contract for the Paisley project, and PacifiCorp Energy promised to provide a
8 new draft PPA.

9 123. Outside of the context of settlement negotiations, PacifiCorp has not
10 responded in writing to any of the specific provisions of the May 20, 2014 or July 22,
11 2014 PPAs, provided any comments on the July 22, 2014 PPA, provided another draft
12 PPA, or stated whether the non-pricing provisions of Surprise Valley's final draft PPA
13 are acceptable to PacifiCorp Energy.

14 124. On April 16, 2015, PacifiCorp Energy informed Surprise Valley that
15 PacifiCorp Transmission's completion of the transmission upgrades identified in the
16 Facilities Study will allow Surprise Valley to offset its own load or sell the output to
17 PacifiCorp Energy as an Oregon Schedule 37 QF.

18 125. On April 16, 2015, Surprise Valley requested that PacifiCorp Energy
19 execute a final PPA including Schedule 37 rates in effect prior to August 20, 2014 or
20 Surprise Valley would file a complaint.

21 126. Surprise Valley and PacifiCorp Energy met and/or discussed the PPA
22 during extensive and in-depth confidential settlement negotiations during April, May, and
23 June 2015. Although the details of the negotiations are confidential, PacifiCorp has

1 agreed that Surprise Valley can inform the Commission that draft contract language was
2 exchanged, reviewed, and discussed.

3 127. On May 1, 2015, PacifiCorp filed a revised Schedule 37. The revised
4 Schedule 37 avoided cost rates filed on May 1, 2015 are a reduction from the currently
5 effective Schedule 37 rates. PacifiCorp requested that the rate reduction take effect in
6 thirty days.

7 128. On May 15, 2015, Pacific Power's president and Surprise Valley's general
8 manager discussed the PPA. Pacific Power's president stated that the company will make
9 a path to accommodate this project, and purchase the entire net output at rates effective
10 prior to August 2014.

11 129. The Commission will take up PacifiCorp's May 1, 2015 revised Schedule
12 37 at the June 23, 2015 open meeting. Surprise Valley understands that PacifiCorp is
13 requesting that the lower Schedule 37 rates become effective on June 24, 2015.

14 130. PacifiCorp Energy has refused to provide any written assurances regarding
15 the avoided cost rates that will apply to the sale of the net output of the Paisley Project if
16 Surprise Valley and PacifiCorp Energy fail to mutually agree to a PPA.

17 131. PacifiCorp Energy has not agreed to execute a final PPA for the net output
18 of the Paisley Project at Schedule 37 rates in effect prior to August 20, 2014.

19 132. On June 22, 2015, Surprise Valley executed the July 2014 PPA with
20 Schedule 37 rates in effect prior to August 20, 2014, and tendered PacifiCorp a copy of
21 the executed PPA. Surprise Valley signed the July 2014 draft PPA because it was the last
22 PPA or other contract language exchanged or discussed by the parties outside of
23 confidential settlement discussions. Surprise Valley only modified the text of July 2014

1 PPA to reflect new dates that were required because nearly a year has passed since the
2 last version.

3 133. Surprise Valley is in the final stages of executing an amendment of its
4 power sale agreement with BPA. The contract amendment will allow Surprise Valley to
5 temporarily use the net output of the Paisley Project to serve its retail load without
6 making a dedicated resource election decision or violating certain contract requirements,
7 including Surprise Valley's take or pay obligations. This contract amendment will
8 terminate by October 1, 2015.

9 134. Surprise Valley may shut the Paisley Project down if it is unable to sell the
10 net output to PacifiCorp Energy by October 1, 2015 or obtain an additional contract
11 amendment from BPA.

12 VII. LEGAL CLAIMS

13 Complainant's First Claim for Relief

14 **Surprise Valley is entitled to a PPA with Schedule 37 rates effective prior to August**
15 **20, 2014 because PacifiCorp unreasonably refused to accept the net output of the**
16 **Paisley Project under FERC's policies**

17
18 135. Surprise Valley re-alleges all the preceding paragraphs.

19 136. PacifiCorp has an obligation to purchase a QF's net output that is directly
20 or indirectly made available to it. 18 CFR §§ 292.303(a)&(d), 292.304(d); ORS §§
21 758.525(2)(b), 758.535(2)(a)&3(b); Order No. 69, FERC Stats. & Regs. ¶ 30,128, 45
22 Fed. Reg. 12,214 at 12,219-20 (1980) ("Order No. 69").

23 137. Surprise Valley is making the net output of the Paisley Project directly
24 and/or indirectly available to PacifiCorp.

1 138. PacifiCorp Energy’s claim that it has no obligation under PURPA unless
2 power flows directly from the QF to its system, rather than flowing by displacement, is
3 incorrect. Order No. 69, which established FERC’s rules regarding the mandatory
4 purchase obligations of regulated utilities, is directly on point. A QF can displace energy
5 or capacity that would otherwise be provided to the QF or a transmitting utility. Order
6 No. 69 at 12,219-20. In such a displacement transaction, “the energy supplied by the
7 qualifying facility will displace energy that would have been supplied by the purchasing
8 utility to the transmitting utility. In those cases, a unit of energy supplied from the
9 qualifying facility may replace a greater amount of energy from the purchasing utility.”
10 Order No. 69 at 12,220; see 18 CFR §§ 292.303(d). In fact, delivery of power by
11 displacement has long been recognized as a form of physical delivery of power, including
12 by PacifiCorp. E.g., Federal Power Comm’n v. Florida Power & Light Co., 404 U.S.
13 453, 457-63 (1972); Pacific Power & Light Co., 36 FPC 706 (1966) (approving deliveries
14 of power generated in Utah to Canada through power displacements).

15 139. Other Northwest utilities, including Idaho Power and Avista, have
16 purchased all or part of a QF’s net output that displaced BPA electricity that Idaho
17 Power’s and Avista’s transmission businesses would otherwise have provided to the QF
18 or its transmitting utility.

19 140. PacifiCorp Energy’s refusal to enter into a PPA because most of the net
20 output of the Paisley Project will displace electricity that PacifiCorp would otherwise
21 deliver to Surprise Valley is unreasonable and contrary to PURPA, the Commission’s
22 rules and policies, FERC’s rules and policies, and Schedule 37.

1 141. PacifiCorp's refusal to enter into a PPA because most of the net output of
2 the Paisley Project will displace electricity that PacifiCorp would otherwise provide to
3 Surprise Valley entitles Surprise Valley to a PPA at rates effective prior to August 20,
4 2014.

5 **Complainant's Second Claim for Relief**

6 **Surprise Valley is entitled to a PPA with Schedule 37 rates effective prior to August**
7 **20, 2014 because PacifiCorp unreasonably refused to accept the net output of the**
8 **Paisley Project under the OPUC's and FERC's policies**
9

10 142. Surprise Valley re-alleges all the preceding paragraphs.

11 143. A QF may enter into a "simultaneous purchase and sale" in which the QF
12 sells to the utility its entire net output, while simultaneously purchasing from the utility
13 its full electrical requirements at tariff rates. Re Investigation Relating to Elec. Util.
14 Purchases from QFs, Docket No. UM 1129, Order No. 05-584 at 53-54; Re Investigation
15 Relating to Elec. Util. Purchases from QFs, Docket No. UM 1129, Order No. 07-360 at
16 31-32 (Aug. 20, 2007). The QF's full electrical requirements can be loads unrelated to
17 QF generation operations (e.g., the industrial facilities).

18 144. Under a simultaneous purchase and sale, the QF's net output displaces
19 electricity that the purchasing utility would otherwise supply to the QF.

20 145. Under PacifiCorp's direct access tariffs, the QF can enter into a
21 simultaneous purchase and sale purchase in which the QF purchases its full electrical
22 requirements from a third party electricity service supplier while selling its net output to
23 PacifiCorp. PacifiCorp Oregon Schedule 747.

1 146. The Commission's and FERC's policies recognize that a QF's net output
2 can displace electricity purchased from a third party and that PacifiCorp transmits to the
3 QF.

4 147. PacifiCorp's refusal to enter into a PPA because most of the net output of
5 the Paisley Project will displace deliveries of BPA electricity that is transmitted by
6 PacifiCorp entitles Surprise Valley to a PPA at rates effective prior to August 20, 2014.

7 **Complainant's Third Claim for Relief**

8 **Surprise Valley is entitled to a PPA with Schedule 37 rates effective prior to August**
9 **20, 2014 because Surprise Valley legally obligated itself to sell the net output prior**
10 **to August 20, 2014**

11
12 148. Surprise Valley re-alleges all the preceding paragraphs.

13 149. PacifiCorp has an obligation to purchase the net output of a QF pursuant
14 to a contract or a "legally enforceable obligation." 18 CFR § 292.304(d); Order No. 69 at
15 12,224. A legally enforceable obligation is broader than simply a contract between an
16 electric utility and a QF, and may exist without a contract. Grouse Creek, LLC, 142
17 FERC ¶ 61,187 at P. 38 (2013). Thus, a QF can require a utility to purchase its power
18 even if the utility has refused to enter into a contract. Snow Mountain Pine Co., 734
19 P.2d at 1370-71; Murphy Flat Power, 141 FERC ¶ 61,145 at P. 24 (2012); Grouse Creek,
20 LLC, 142 FERC ¶ 61,187 at P. 38.

21 150. A QF can enter into a legally enforceable obligation by committing itself
22 to sell power to an electric utility. Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 at PP.
23 36, 39 (2011); Snow Mountain Pine Co., 734 P.2d at 1371. A utility cannot refuse to sign
24 a contract "so that a later and lower avoided cost is applicable." Cedar Creek Wind,
25 LLC, 137 FERC ¶ 61,006 at P. 36

1 151. Among other dates, Surprise Valley unequivocally committed itself to sell
2 the net output of the Paisley Project to PacifiCorp Energy at rates in effect prior to
3 August 20, 2014 on: 1) May 20, 2014 when, among other things, it stated it was prepared
4 to sign the draft PPA; 2) June 12, 2014 when, among other things, it requested a meeting
5 to sign the final PPA; 3) July 11, 2014 when, among other things, it meet with PacifiCorp
6 to sign a final PPA; 4) July 22, 2014 when it provided a final draft PPA; 5) August 4,
7 2014 when it requested a meeting to sign a final PPA; 6) April 18, 2015 when it
8 demanded that PacifiCorp sign a PPA; and 7) June 22, 2015 when it signed a PPA.

9 152. Surprise Valley has continued to commit, and is still committing, itself to
10 sell the net output of the Paisley Project to PacifiCorp Energy at rates in effect prior to
11 August 20, 2014.

12 153. Surprise Valley has unequivocally committed itself to sell the net output
13 of the Paisley Project to PacifiCorp that resulted in a legally enforceable obligation prior
14 to August 20, 2014, and obligates PacifiCorp to pay for the Paisley Project's net output at
15 rates in effect prior to August 20, 2014.

16 **Complainant's Fourth Claim for Relief**

17 **Surprise Valley is entitled to a PPA with Schedule 37 rates effective prior to August**
18 **20, 2014 because PacifiCorp failed to abide by OAR § 860-029-0005, the OPUC's**
19 **and FERC's polices, and Schedule 37, and because Surprise Valley legally obligated**
20 **itself to sell the net output prior to August 20, 2014**

21
22 154. Surprise Valley re-alleges all the preceding paragraphs.

23 155. The Commission has established rules, policies, standard contracts, and
24 rate schedules to facilitate and direct the process by which a QF and an Oregon electric
25 utility enter into a contract. Re Investigation Relating to Elec. Util. Purchases from QFs,
26 Docket No. UM 1129, Order No. 05-584 at 6-12, 16 (May 13, 2005). The purpose of the

1 Commission approving standard contracts and schedules for each utility is to pre-establish
2 “rates, terms and conditions that an eligible QF can elect without any negotiation with the
3 purchasing utility” and to “eliminate negotiations . . .” Id. at 12, 16.

4 156. OAR § 860-029-0005(3) and PacifiCorp’s Schedule 37 include timelines
5 and requirements that a utility should follow when entering into a PPA with a QF 10
6 MWs and under.

7 157. PacifiCorp Energy’s failure to abide by the terms of the Oregon rules and
8 policies, FERC’s rules and policies, and/or Schedule 37 can result in the creation of
9 legally enforceable obligation. Snow Mountain Pine Co., 734 P.2d at 1371; International
10 Paper v. PacifiCorp, Docket No. UM 1449, Order No. 09-439 at 6 (Nov 4, 2009).

11 158. PacifiCorp Energy violated OAR § 860-029-0005(3) when it provided
12 information late, including information that PPAs can be negotiated and avoided costs are
13 subject to change.

14 159. PacifiCorp Energy violated the Commission’s polices and Schedule 37
15 when it did not provide specific pricing information.

16 160. PacifiCorp Energy violated the Commission’s polices and Schedule 37
17 when it provided a project specific draft PPA late.

18 161. PacifiCorp Energy violated the Commission’s rules and policies, FERC’s
19 rules and policies, and Schedule 37 when it repeatedly refused to provide a final draft
20 PPA.

21 162. PacifiCorp Energy violated Commission policies, FERC’s policies, and
22 Schedule 37 when it delayed entering and refused to enter into a PURPA PPA because
23 PacifiCorp Transmission had not yet approved a transmission service request.

1 163. PacifiCorp Energy violated Commission policies and Schedule 37 when it
2 included a “Jury Trial Waiver” provision in the draft PPA that is not included in the
3 Commission-approved standard PPA.

4 164. PacifiCorp’s violations of the Commission’s rules and policies, FERC’s
5 rules and policies, and Schedule 37, and Surprise Valley’s willingness to sign a PPA
6 resulted in a legally enforceable obligation prior to August 20, 2014, and obligates
7 PacifiCorp to pay for the Paisley Project’s net output at rates in effect prior to August 20,
8 2014.

9 **Complainant’s Fifth Claim for Relief**

10 **Surprise Valley is entitled to a PPA with Schedule 37 rates effective prior to August**
11 **20, 2014 because PacifiCorp unreasonably delayed the PPA contract completion**
12 **process, and because Surprise Valley legally obligated itself to sell the net output**
13 **prior to August 20, 2014**

14
15 165. Surprise Valley re-alleges all the preceding paragraphs.

16 166. A utility is not permitted to unreasonably delay the contract completion
17 process or refuse to sign a contract. Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 at PP.
18 32, 36; Snow Mountain Pine Co., 734 P.2d at 1371; International Paper, Docket No. UM
19 1449, Order No. 09-439 at 6. The concept of a legally enforceable obligation “is used to
20 prevent an electric utility from avoiding its PURPA obligations by . . . delaying the
21 signing of a contract, so that a later and lower avoided cost is applicable.” Cedar Creek
22 Wind, LLC, 137 FERC ¶ 61,006 at P. 36; Order No. 69 at 12,224. Specifically, a utility
23 should not be permitted “to delay the date to be used to calculate the purchase price
24 simply by refusing to purchase energy” Snow Mountain Pine Co., 734 P.2d at 1371.

1 167. PacifiCorp Energy unreasonably delayed the contract completion process
2 by failing to comply with OAR § 860-029-0005, the Commission’s and FERC’s polices,
3 and Schedule 37.

4 168. PacifiCorp Energy unreasonably delayed the contract completion process
5 by failing to provide required information related to changes in avoided cost rates, failing
6 to state that contracts can be subject to negotiation, failing to provide specific pricing
7 information, requesting unreasonable information, failing to provide comments or
8 revisions to draft PPAs, and failing to provide final draft PPAs.

9 169. PacifiCorp Energy unreasonably delayed the contract completion process
10 by insisting that PacifiCorp Transmission complete a transmission agreement prior to
11 contract completion.

12 170. PacifiCorp Energy unreasonably delayed the contract completion process
13 by pulling the initial Transmission Service Request, and not timely pursuing
14 interconnection, System Impact, and/or Facilities Study agreements and studies.

15 171. PacifiCorp Energy unreasonably delayed the contract completion process
16 by stating that deliveries cannot occur via power displacement.

17 172. PacifiCorp Energy unreasonably delayed the contract completion process
18 by including a “Jury Trial Waiver” provision in the Surprise Valley project specific PPA.

19 173. PacifiCorp Energy unreasonably delayed the contract completion process
20 by assuring Surprise Valley that it did not need to worry about whether the then current
21 Schedule 37 rates in effect prior to August 2014 would apply to any PPA.

22 174. PacifiCorp Energy unreasonably delayed the contract completion process
23 by repeatedly stating that it would not be willing to sign a PPA soon or at all.

1 175. PacifiCorp Energy unreasonably delayed the contract completion process
2 by causing the process to last over a year and half two years.

3 176. PacifiCorp unreasonably delayed the contract completion process by not
4 timely pursuing the interconnection and/or transmission studies and agreements.

5 177. PacifiCorp's unreasonable delays and Surprise Valley's willingness to
6 sign a PPA resulted in the formation of a legally enforceable obligation prior to August
7 20, 2014, and obligates PacifiCorp to pay for the Paisley Project's net output at rates in
8 effect prior to August 20, 2014.

9 **Complainant's Sixth Claim for Relief**

10 **Surprise Valley is entitled to a PPA with Schedule 37 rates effective prior to August**
11 **20, 2014 because PacifiCorp negotiated in bad faith, and because Surprise Valley**
12 **legally obligated itself to sell the net output prior to August 20, 2014**

13
14 178. Surprise Valley re-alleges all the preceding paragraphs.

15 179. A utility is required to negotiate in good faith during the PPA contract
16 completion process. See International Paper, Docket No. UM 1449, Order No. 09-439 at
17 6-9.

18 180. PacifiCorp Energy's failure to comply with OAR § 860-029-0005, the
19 Commission's polices, FERC's policies, and Schedule 37 constitutes bad faith
20 negotiations.

21 181. PacifiCorp Energy's unreasonable delays constitute bad faith negotiations.

22 182. PacifiCorp Energy's inclusion of a "Jury Trial Waiver" provision that was
23 not included in the standard PPA constitutes bad faith negotiations.

1 183. PacifiCorp Energy’s refusal to enter into a PPA because Surprise Valley
2 will deliver most of its net output by power displacement rather than by direct flow of
3 electricity represents bad faith negotiations.

4 184. Surprise Valley relied upon PacifiCorp’s statements that Surprise Valley
5 will be eligible for the then current higher Schedule 37 rates in effect prior to August 20,
6 2014, and not to worry about the pending August 2014 Schedule 37 rate increase.

7 185. PacifiCorp Energy’s refusal to abide by the statements that Surprise
8 Valley would be eligible for the then current higher Schedule 37 rates in effect prior to
9 August 20, 2014, and not to worry about the pending August 2014 Schedule 37 rate
10 decrease represents bad faith negotiations.

11 186. PacifiCorp Energy committed that the transmission service request process
12 would identify all the transmission upgrades necessary to enter into a PURPA PPA.
13 PacifiCorp Transmission identified only metering upgrades for the Paisley Project to be a
14 Network Resource and for Surprise Valley to sell the net output of the Paisley Project to
15 PacifiCorp Energy.

16 187. During the contract completion process, Surprise Valley relied upon
17 PacifiCorp Energy’s commitment that the transmission service request process would
18 identify all the transmission upgrades necessary to enter into a PURPA PPA.

19 188. PacifiCorp Energy’s refusal to enter into a PPA after PacifiCorp
20 Transmission identified only metering upgrades represents bad faith negotiations.

21 189. PacifiCorp’s bad faith negotiations and Surprise Valley’s willingness to
22 sign a PPA resulted in the formation of a legally enforceable obligation prior to August

1 20, 2014, and obligates PacifiCorp to pay for the Paisley Project's net output at rates in
2 effect prior to August 20, 2014.

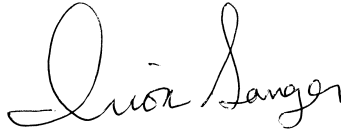
3 **VIII. PRAYER FOR RELIEF**

4 WHEREFORE, Surprise Valley respectfully requests that the Commission issue
5 an order:

- 6 1. Finding PacifiCorp in violation of: 1) the mandatory purchase obligation of the
7 Oregon PURPA; 2) the mandatory purchase obligation of the federal PURPA; 3)
8 FERC's PURPA regulations, policies, and orders; 4) the Commission's PURPA
9 regulations, policies, and orders; and 5) PacifiCorp's Schedule 37;
- 10 2. Requiring PacifiCorp to purchase the net output of the Paisley Project at the
11 Schedule 37 rates in effect prior to August 20, 2014;
- 12 3. Requiring PacifiCorp to enter into a PURPA PPA with Surprise Valley at the
13 Schedule 37 rates in effect prior to August 20, 2014;
- 14 4. Instituting penalties up to \$10,000 under ORS § 756.990 against PacifiCorp and
15 paid by PacifiCorp's shareholders for each violation of ORS § 758.525(2), ORS §
16 758.535(2)(b), 18 CFR § 292.303(a), 18 CFR § 292.304(d), and Commission
17 Order Nos. 05-584 and 12-106.
- 18 5. Granting any other such relief as the Commission deems necessary.

Dated this 22nd day of June, 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.

Irion A. Sanger
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irion@sanger-law.com

Of Attorneys for Surprise Valley Electrification
Corp.

CERTIFICATE OF FILING

I certify that on June 22, 2015, on behalf of Surprise Valley Electrification Corp., I filed the foregoing Complaint with the Oregon Public Utility Commission by electronic communication consistent with OAR § 860-001-0170.

A handwritten signature in cursive script that reads "Irion Sanger". The signature is written in black ink and is positioned above a solid horizontal line.

Irion A. Sanger

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