

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1742

| | | |
|--|---|----------------------------|
| Surprise Valley Electrification Corp., |) | |
| Complainant, |) | MOTION TO COMPEL DISCOVERY |
| |) | |
| v. |) | EXPEDITED CONSIDERATION |
| |) | REQUESTED |
| PacifiCorp, dba Pacific Power, |) | |
| Defendant. |) | |
| |) | |
| _____ |) | |

I. INTRODUCTION

Surprise Valley Electrification Corp. (“Surprise Valley”) files this motion to compel discovery, requesting that the Oregon Public Utility Commission (the “Commission” or “OPUC”) Administrative Law Judge (“ALJ”) Michael Grant require PacifiCorp to provide full and complete answers to Surprise Valley’s discovery requests. Surprise Valley requests expedited consideration of this motion. Surprise Valley has conferred with PacifiCorp, which agrees to a respond to this motion to compel by Wednesday November 4, 2015, assuming it “does not raise any other substantive issues.”

PacifiCorp has refused to provide basic information relevant to Surprise Valley’s complaint and the defenses asserted in PacifiCorp’s answer. Surprise Valley has sought: 1) copies of PacifiCorp’s qualifying facility (“QF”) power purchase agreements (“PPAs”) to determine how PacifiCorp may have treated similarly situated QFs; 2) information regarding other generators within PacifiCorp’s balancing authorities (“BA”) and the conditions regarding PacifiCorp’s acceptance of output from other generators; and 3) the efforts that PacifiCorp Transmission has taken or is willing to take to allow PacifiCorp

Energy Services Management (“ESM”) to accept the net output of the Paisley Project.. These include Surprise Valley data requests 1.7, 1.8, 1.9, 1.24, 1.26, 1.29, 1.31, 1.47, and 1.48(b).¹ PacifiCorp has refused to provide complete answers, and Surprise Valley therefore requests that the ALJ order PacifiCorp to fully respond. Attachment A includes copies of PacifiCorp’s narrative responses listed above.

Pursuant to OAR §§ 860-001-0420 and 860-001-0500, Surprise Valley has made a good faith effort to confer and resolve this discovery dispute. PacifiCorp did not inform Surprise Valley that it would withhold complete responses until the afternoon of October 26, 2015, which was the last day for PacifiCorp to provide the responses under the Commission’s rules. On the morning of October 28, 2015, Surprise Valley requested that PacifiCorp provide complete responses. On October 29, 2015, counsel for Surprise Valley and PacifiCorp conferred via the telephone, and PacifiCorp agreed to provide additional responsive information related to some data requests. Surprise Valley and PacifiCorp, however, were unable to resolve this dispute regarding many of Surprise Valley’s data requests. Attachment B includes copies of electronic communications between counsel attempting to resolve this dispute.

II. 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 PPA or legally enforceable obligation with Surprise Valley to purchase the net output of the

¹ Surprise Valley and PacifiCorp may have other discovery disputes regarding the first set of data requests, but are attempting to resolve those.

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, and ALJ Grant adopted a schedule on August 28, 2015. PacifiCorp's answer alleged, *inter alia*, that Surprise Valley is required to enter into certain transmission arrangements to sell the net output to PacifiCorp, that Surprise Valley has failed to enter into such arrangements, and that Surprise Valley cannot deliver power by displacing electricity otherwise provided by PacifiCorp. Answer at 2-7. PacifiCorp also states that it has been willing to purchase any power that can be verifiably transmitted and delivered to PacifiCorp's system. *Id.* at 4. PacifiCorp has not explained what transmission, metering or other arrangements that Surprise Valley needs to provide, and Surprise Valley has therefore attempted to obtain this information in discovery. It is impossible for Surprise Valley to provide, or to demonstrate that it has provided, sufficient information to trigger PacifiCorp's obligation to accept and purchase the QF's output unless it knows what PacifiCorp requires and what it has required from other similarly situated generators.

III. LEGAL STANDARD

In a proceeding before the Commission, discovery is a matter of right, and the Commission follows the Oregon court rules of discovery, to the extent not inconsistent with the Commission's administrative rules. OAR § 860-001-0000(1); OAR § 860-001-0500; Re Pacific Power & Light, dba PacifiCorp, OPUC Docket No. UE 177, Order No. 08-003 at 2 (2008); Re Portland General Elec. Co., OPUC Docket No. UE 102, Order No. 98-294 at 3 (1998)("[d]iscovery is a right afforded to parties in a legal proceeding by

our rules and by the Oregon Rules of Civil Procedure, which we follow except where our rules differ.”).

Under the Oregon Rules of Civil Procedure (“ORCP”), a party is entitled to discovery of any document that is relevant to a claim or defense. ORCP 36(B). Specifically, “parties may inquire regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party.” Additionally, although not provided for in the ORCP, the Commission’s rules also provide parties with the right to written interrogatories into potentially relevant matters. OAR § 860-001-0540(1). Relevant evidence must: 1) tend to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence; and 2) be of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs. OAR § 860-001-0450.

In addition, “[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence.” ORCP 36(B). The Oregon courts and the Commission have affirmed that the information sought need not be admissible itself, as long as it is reasonably calculated to lead to the discovery of admissible evidence. Baker v. English, 324 Or. 585, 588 n.3 (1997); Re Portland Extended Area Service Region, OPUC Docket No. UM 261, Order No. 91-958 at 5 (July 31, 1991).

A party may move to compel production under ORCP 46 if the opposing party is not responsive to the discovery request. On a motion to compel, “an evasive *or incomplete answer* is to be treated as a failure to answer.” ORCP 46A(3) (emphasis added). The Commission expects parties to err “on the side of producing too much

information . . . rather than too little.” Re Portland General Electric Co., Docket No. UE 196, Order No. 09-046 at 8 (Feb. 5, 2009).

IV. ARGUMENT

PacifiCorp claims that Surprise Valley is not entitled to sell power to the company because Surprise Valley will deliver power through displacement of electricity (i.e., where the delivery flows in the opposite direction of electricity on the grid), and Surprise Valley does not have any method for verifiably transmitting the Paisley Project’s generation to PacifiCorp. PacifiCorp Answer at 3-7. PacifiCorp may be arguing that that PacifiCorp ESM is requiring certain transmission arrangements that Surprise Valley has allegedly not provided. Id. at 3-4 (Surprise Valley’s lack of a transmission agreement with itself or other third parties, including PacifiCorp, is an obstacle to PacifiCorp accepting power deliveries). If so, then the arrangements that PacifiCorp ESM and Transmission have accepted for other generators are relevant to what the company is requiring in this case.

PacifiCorp’s defense also appears to be that PacifiCorp’s transmission function lacks the capability to accept the net output of the Paisely Project so that PacifiCorp ESM may purchase that net output. E.g., PacifiCorp Answer at 3-4 (lack of transmission arrangements), at 6 (PacifiCorp transmission agreement with Bonneville Power Administration (“BPA”) is an obstacle to power deliveries), and at ¶ 60 (PacifiCorp Transmission has not admitted that existing metering is sufficient for PacifiCorp to sell the net output to PacifiCorp). What PacifiCorp Transmission’s requirements are also relevant because PacifiCorp ESM must make reasonable efforts to accept QF power deliveries, including working with its own transmission function. Thus, Surprise Valley

has requested that PacifiCorp provide information and documents regarding PacifiCorp's contractual and delivery arrangements with other similarly situated generators, and other matters related to the defense that PacifiCorp lacks the capability to accept the Paisely Project's output. PacifiCorp must produce this information.

A. PacifiCorp Should Be Required to Provide Information Regarding All of Its QF Contracts and Any QF-related Third Party Transmission Arrangements.

Surprise Valley has specifically requested that PacifiCorp provide complete copies of all PacifiCorp's QF PPAs that are not publically available on the Commission's website. Attachment A (PacifiCorp response to Surprise Valley data request 1.7). The Commission's website only has non-confidential PPAs with Oregon QFs. Surprise Valley also requested that PacifiCorp identify all QFs that have transmitted their net output across a third party's transmission system and information regarding the transmission arrangements. Attachment A (PacifiCorp responses to Surprise Valley data requests 1.8 and 1.9). PacifiCorp responded by providing confidential copies of the Oregon QF PPAs, but refused to provide any non-Oregon QF contracts or to identify the third party transmission arrangements that are used to deliver power.

The requested documents are relevant to PacifiCorp's arguments that it cannot accept Surprise Valley's output through displacement of other electricity flowing towards the QF on the grid. Surprise Valley suspects that PacifiCorp's defense is specious because utilities commonly implementing metering and interconnected operations that allow for contractual deliveries of electricity flowing in the opposite direction of the predominate flow on the grid. Since PacifiCorp has raised this defense, Surprise Valley has a right to investigate whether PacifiCorp has accepted power delivered through displacement with other QFs, or any other generators. If PacifiCorp has accepted such

deliveries, then PacifiCorp would need to explain why it was appropriate for another similarly situated generator but not for the Paisley Project.

The requested documents are also relevant to PacifiCorp's arguments that Surprise Valley has not provided a viable method for transmitting the Paisley Project's net output to PacifiCorp, and that Surprise Valley must acquire the ability to deliver in whole megawatt blocks in order to sell its net output to PacifiCorp. Information regarding the transmission arrangements that PacifiCorp has accepted for other Oregon and non-Oregon QFs is relevant to understanding PacifiCorp's technical capabilities and its treatment of other similarly situated generators. In addition, PacifiCorp did not clearly raise the issue of Surprise Valley lacking adequate transmission arrangements prior to filing its answer in this proceeding, and the requested materials may elucidate what transmission arrangements would satisfy PacifiCorp.

There is also nothing unique about Oregon QFs that justifies withholding information related to PacifiCorp's QF transactions in other states. While the basis for PacifiCorp's defense is far from clear to Surprise Valley, PacifiCorp's refusal to accept power displacements appears to be based on the company's interpretation of the Federal Energy Regulatory Commission's ("FERC") rules, not Oregon law. Similarly, Surprise Valley is entitled to verify the manner by which PacifiCorp accepts power deliveries from all QFs, not just those in Oregon.

B. PacifiCorp Should Be Required to Provide Information Regarding Similarly Situated Generators, including Non-QFs

Surprise Valley requested that PacifiCorp provide information on its transmission arrangements with other generators (QF and non-QF) not directly connected with PacifiCorp, but located in PacifiCorp's BAs. Attachment A (PacifiCorp's response to

Surprise Valley data requests 1.28, 1.29 and 1.48). Through these requests, Surprise Valley seeks to understand the transmission arrangements that have been allowed for generators within PacifiCorp's BA.

The BA is responsible for ensuring that generation and loads will balance within the metered boundaries of the BA. PacifiCorp agrees the Surprise Valley is electrically located in PacifiCorp's BA. But PacifiCorp refused to provide the above listed information regarding treatment of other generators located in PacifiCorp's BA, and only stated that there are no Oregon QFs that are off-system and located within PacifiCorp's BA. PacifiCorp therefore re-wrote the request, which was not limited to Oregon QFs.

As explained above, information regarding generators that are not Oregon QFs is relevant to whether PacifiCorp has accepted power deliveries through displacement and what transmission arrangements the company finds acceptable. In addition, both past and current contracts are also relevant because PacifiCorp may have accepted power displacements or accepted different transmission arrangements in the past from other off-system generators within either of PacifiCorp's BAs.

PacifiCorp's transmission arrangements with all generators in its BA that are not directly interconnected with the company are also relevant because the Paisley Project is located in PacifiCorp's BA, but not directly interconnected to PacifiCorp's system. Surprise Valley should be allowed to investigate what transmission arrangements PacifiCorp has found technically possible and commercially acceptable for these other generators to evaluate PacifiCorp's treatment of the Paisley Project.

C. Surprise Valley Is Entitled to Information Regarding PacifiCorp's Ability to Accept Deliveries of the Paisely Project's Entire Net Output.

As noted above, one of PacifiCorp's defenses appears to be that its transmission function lacks the ability to accept the Paisely Project's entire net output so that PacifiCorp ESM may purchase that output. For example, PacifiCorp asserts, "Without verifiable schedules, PacifiCorp has no way of determining the actual amount of QF energy received from an off-system resource like the Paisely Project." PacifiCorp Answer at 3. PacifiCorp's answer goes on to allege the QFs must submit "e-tags" to sell electricity and even alleges that PacifiCorp's entirely separate transmission arrangements with BPA somehow preclude the ability to separately meter and accept the entire net output of the Paisely Project. *Id.* at 3-4, 7-8. Despite years of discussions between the parties, these defenses were only recently made known to Surprise Valley, some of which for the first time in PacifiCorp's Answer. Thus, Surprise Valley has sought to understand these newfound transmission impediments through discovery.

Surprise Valley asked PacifiCorp to identify the individuals who possess information regarding PacifiCorp's ability to accept the Paisely Project's net output to wheel it to another utility, and whether PacifiCorp possesses the capability to accept output for any purpose without "e-tags" and "schedules." Attachment A (PacifiCorp's responses to Surprise Valley data requests 1.24, 1.26, 1.31, and 1.47). This information sought could demonstrate the requirements necessary for PacifiCorp's transmission personnel to accept the net output and what arrangements PacifiCorp ESM has previously accepted— a matter put in issue as PacifiCorp's defense. Identifying the individuals with this information (Request 1.24) would allow Surprise Valley to pursue further

information from these individuals regarding the alleged limitations on the company's ability to accept the QF's output. Additionally, the interrogatories that ask whether PacifiCorp possesses the capability to accept the entire net output (Requests 1.26, 1.31, and 1.47) are directly relevant to PacifiCorp's defense that its transmission function lacks the capability to accept the entire net output.²

PacifiCorp claims in its objection to responding that this topic is irrelevant because Surprise Valley's "complaint relates to the terms of power purchase agreement," not PacifiCorp's acceptance and transmission of the electricity it must purchase. Attachment A (PacifiCorp's response to Surprise Valley data request 1.47). However, PacifiCorp must respond because PacifiCorp raised its inability to accept the output as its defense. In fact, in Request 1.47, Surprise Valley specifically cited to the portion of PacifiCorp's Answer where PacifiCorp argues it will only accept and purchase QF output that includes "scheduling," "imbalance," and "e-tags." *Id.* (citing PacifiCorp's Answer at 3 n.5). At a minimum, PacifiCorp must respond whether these perceived requirements are being imposed as a technical matter by PacifiCorp's transmission personnel, or whether they are commercial requirements that PacifiCorp ESM prefers. Without such clarification, Surprise Valley cannot respond to PacifiCorp's defense because Surprise Valley cannot ascertain whether it is a defense that implicates matters within FERC's exclusive jurisdiction over acceptance of a transmission delivery from a QF, or this Commission's jurisdiction over the commercial terms of. In addition, if these are

² If instead PacifiCorp's defense is that it believes that the QF must schedule all deliveries in advance in order to be entitled to sell net output, *see* PacifiCorp's Answer at 3 n.5, the defense is foreclosed by FERC's recent ruling that a purchasing utility must purchase both scheduled and unscheduled QF output. *PáTu Wind Farm, LLC v. Portland General Electric Co.*, 151 FERC ¶ 61,223, PP 44, 46 (2015). In any event, a complete response by PacifiCorp will facilitate a complete understanding of its position and lead to an expeditious resolution of the matter before this Commission and any related matters that must be resolved before FERC.

PacifiCorp ESM requirements, then what arrangements the company has arranged for its own or other generation resources are relevant to whether these requirements are reasonable. PacifiCorp should be compelled to respond.


V. CONCLUSION

PacifiCorp's refusal to answer data requests is illustrative of the difficulties Surprise Valley has faced with PacifiCorp over more than two years. PacifiCorp has repeatedly claimed that Surprise Valley has not provided sufficient information on a number of subjects, after the company has itself failed to specify its requirements. If PacifiCorp's position is that Surprise Valley must provide PacifiCorp with specific transmission arrangements, then PacifiCorp must state what those requirements are, whether the requirement derives from a technical limitation of PacifiCorp's transmission function or a commercial preference by PacifiCorp's merchant function, and what PacifiCorp has been willing to accept for other generators. Without complete responses, Surprise Valley cannot respond through testimony, or even ascertain whether the Commission or FERC is the correct forum to obtain redress for PacifiCorp's refusal to accept and purchase the QF's entire net output.

For the reasons discussed above, Surprise Valley respectfully requests that the ALJ require PacifiCorp to provide complete responses to Surprise Valley data requests 1.7, 1.8, 1.9, 1.24, 1.26, 1.29, 1.31, 1.35, 1.47, and 1.48(b).

Dated this 30th day of October, 2015.

Respectfully submitted,

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

Irion A. Sanger
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for Surprise Valley Electrification
Corp.

ATTACHMENT A



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

Brad Kresge
Surprise Valley Electrification Corp.,
516 US Hwy 395 E, Alturas, CA 96101
bradsvec@frontier.com

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

Please find enclosed PacifiCorp's Responses to SVEC 1st 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 1.7

SVEC Data Request 1.7

Please provide complete copies of all PacifiCorp's qualifying facility (QF) purchase power agreements that are not available on the Oregon Public Utility Commission's website, docket no. RE-142.

Response to SVEC Data Request 1.7

PacifiCorp objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it asks for qualifying facility (QF) power purchase agreements (PPA) outside of Oregon. Without waiving its objection, PacifiCorp responds as follows:

All current Oregon Schedule 37 qualifying facility (QF) executed power purchase agreements (PPA) can be accessed from the Public Utility Commission of Oregon's (OPUC) website under Docket RE 142. The Company regularly submits additional executed Oregon QF PPAs, pursuant to Oregon Administrative Rule (OAR) 860-029-0020.

The Company submits to OPUC in Docket RE 142 public, confidential and redacted versions of executed Oregon Schedule 37 QF PPAs. As the OPUC only posts the public and redacted versions to its website, please refer to Confidential Attachment SVEC 1.7, which provides the confidential versions of executed Oregon Schedule 37 QF PPAs, already submitted to OPUC in Docket RE 142.

A link to the OPUC website; specifically Docket RE 142 is provided below:

<http://apps.puc.state.or.us/edockets/docket.asp?DocketID=19097>

Confidential information is provided subject to the Oregon PUC's General Protective Order.

SVEC Data Request 1.8

Please identify all PacifiCorp's QF purchase power agreements in which a portion or all of the net output is transmitted across a third parties' distribution or transmission system. Please identify whether the third party has an open access transmission tariff, wholesale distribution tariff, or other method of tracking and transferring energy across its own distribution or transmission system.

Response to SVEC Data Request 1.8

PacifiCorp objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it asks for qualifying facility (QF) power purchase agreements (PPA) outside of Oregon and/or information that is publically available to Surprise Valley. Without waiving its objection, PacifiCorp responds as follows:

PacifiCorp has off-system QF PPAs with the following QF projects in Oregon:

| QF Project | Transmission Provider |
|-----------------------------------|--|
| Farm Power Misty Meadow | Bonneville Power Administration (BPA) |
| Finley BioEnergy LLC | BPA |
| Mariah Wind | Columbia Basin Electric Cooperative (CBEC) and BPA |
| Middle Fork Irrigation District | BPA |
| Orem Family Wind | CBEC and BPA |
| Three Sisters Irrigation District | Central Electric Cooperative and BPA |
| | |

The PPAs for the above named QFs can be accessed from the Public Utility Commission of Oregon's (OPUC) website under Docket RE 142.

A link to the OPUC website; specifically Docket RE 142, is provided below:

<http://apps.puc.state.or.us/edockets/docket.asp?DocketID=19097>

SVEC Data Request 1.9

For all third parties other than BPA referenced in the last data response, please provide a copy of or a summary of the open access transmission tariff that the QFs' net output is transmitted over. If there is no open access transmission tariff, please provide the third parties' transmission tariffs, wholesale distribution tariffs, or other method of tracking and transferring energy across its own distribution or transmission system, and an explanation of how PacifiCorp determines the actual amount of QF energy received from the off-system QF.

Response to SVEC Data Request 1.9

PacifiCorp objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it asks for information that is publically available to Surprise Valley. Without waiving its objection, PacifiCorp responds as follows:

PacifiCorp receives eTagged hourly schedules for energy delivered to PacifiCorp's system from the qualifying facilities identified in the response to SVEC Data Request 1.8 where the PPA has been designated as a network resource.

UM 1742 / PacifiCorp
October 26, 2015
SVEC Data Request 1.24

SVEC Data Request 1.24

Please explain and identify the representative of PacifiCorp who can available as a witness regarding whether the company possesses the capability to accept the Paisley Project's output and wheel it to a third party purchaser.

Response to SVEC Data Request 1.24

PacifiCorp objects to this request as unclear, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it asks for information unrelated to Surprise Valley's legal claims in the Complaint. Surprise Valley's complaint relates to the terms of power purchase agreement (PPA), not transmission service. Any dispute regarding PacifiCorp's ability to wheel energy for third parties is subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC). Furthermore, PacifiCorp provides open access transmission service to any eligible transmission customer per the terms of PacifiCorp's Open Access Transmission Tariff (OATT).

SVEC Data Request 1.26

Please explain and identify the representative of PacifiCorp who can available as a witness regarding whether PacifiCorp transmission possesses the capability to accept the net output without e-tags and schedules from SVEC. If PacifiCorp transmission does possess the information, please explain whether appropriate metering can be installed to allow this to happen.

Response to SVEC Data Request 1.26

PacifiCorp objects to this request as unclear, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it asks for information unrelated to Surprise Valley's legal claims in the Complaint. Surprise Valley's complaint relates to the terms of power purchase agreement (PPA), not transmission service. Any dispute regarding PacifiCorp's ability to wheel energy for third parties is subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC). Furthermore, PacifiCorp provides open access transmission service to any eligible transmission customer per the terms of PacifiCorp's Open Access Transmission Tariff (OATT).

SVEC Data Request 1.28

Provide a map of PacifiCorp's west BA Area within which Surprise Valley exists, and mark on the map and separately identify and list:

- (a) All generators in the BA.
- (b) All electric utilities with service territory within the BA, and for each such utility list all generators that are interconnected to the utility within PacifiCorp's BA or is transferred to a neighboring BA to ensure such load-resource balance.
- (c) For each generator listed in response to subparts (a) and (b) of this request, please identify the party that is responsible for metering the output of the generator and ensuring that the output will balance with loads with the BA.
- (d) For each generator listed in response to subparts (a) and (b) of this request, please explain whether PacifiCorp possesses the capability to (i) serve load with the PacifiCorp BA with an amount of electrical energy (kWh) equal to the generator's output, and (ii) transfer the output through an interchange transaction to a neighboring BA.

Response to SVEC Data Request 1.28

PacifiCorp objects to this request as not reasonably calculated to lead to the discovery of admissible evidence, and as requiring information not maintained in the ordinary course of business or development of a special study. Without waiving these objections, PacifiCorp responds as follows:

- (a) PacifiCorp does not currently have a map that contains all of the generators that are metered within the boundaries of the PacifiCorp West (PACW) Balancing Authority Area (BAA).
- (b) PacifiCorp does not currently have a map that covers all of the electric utilities with service territory within the metered boundaries of the PACW BAA.
- (c) PacifiCorp does not currently have a map that contains all of the generators that are metered within the boundaries of the PACW BAA.
- (d) PacifiCorp does not currently have a map that contains all of the generators that are metered within the boundaries of the PACW BAA.

SVEC Data Request 1.29

Does PacifiCorp purchase or otherwise serve its own load the output of any generators within either of its Balancing Authorities whose initial point of interconnection is not to PacifiCorp-owned distribution or transmission facilities (including Company owned generation)? If yes:

- (a) Identify the generator.
- (b) Provide the PPA, all applicable interconnection agreements, wheeling agreements, metering agreements and other agreements related to the delivery, acceptance or purchase of the output.
- (c) Please explain in detail how the Company is able to meter the output to ensure that the amount of generation is received for use by PacifiCorp loads.
- (d) Please explain whether the generator or owner of the interconnected distribution or transmission facilities provide PacifiCorp with “schedules” or “e-tags” as those terms are used in the Answer.

Response to SVEC Data Request 1.29

PacifiCorp objects to this request as unclear, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it asks for information related to non-qualifying facility (non-QF) generators outside Oregon and does not relate to Surprise Valley’s legal claims in the Complaint. Without waiving its objection, the Company responds as follows:

Please refer to the Company’s responses to SVEC Data Request 1.8 and SVEC Data Request 1.48. Generation from off-system generators is delivered to PacifiCorp through various transmission arrangements via eTagged hourly schedules.

SVEC Data Request 1.31

Please admit or deny that PacifiCorp transmission agrees that the existing metering at the Paisley Project, the Point of Interconnection between Surprise Valley and PacifiCorp, and any other location is sufficient on at least an interim basis to sell the net output to PacifiCorp, provided that a power purchase agreement is in place with PacifiCorp. If PacifiCorp denies, please explain and provide all documents explaining why PacifiCorp is unable to accept the net output. If PacifiCorp agrees the metering is sufficient on an interim basis, please explain why it is inadequate for a long-term basis.

Response to SVEC Data Request 1.31

PacifiCorp objects to this request as unclear, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it asks for information unrelated to Surprise Valley's legal claims in the Complaint. Surprise Valley's complaint relates to the terms of power purchase agreement (PPA), not transmission service. Without waiving its objection, PacifiCorp responds as follows:

PacifiCorp's transmission function is not party to any wholesale sales of energy and cannot speak to whether the current metering is sufficient to effectuate a sale of the net output of the Paisley Project. The question also requires speculation regarding the terms of any power purchase agreement and delivery to PacifiCorp's electric system.

SVEC Data Request 1.47

Please reference PacifiCorp's OATT at section 30.6, stating,

30.6 Transmission Arrangements for Network Resources Not Physically Interconnected With The Transmission Provider: The Network Customer shall be responsible for any arrangements necessary to deliver capacity and energy from a Network Resource not physically interconnected with the Transmission Provider's Transmission System. The Transmission Provider will undertake reasonable efforts to assist the Network Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other entity pursuant to Good Utility Practice.

- (a) Please describe in detail the "reasonable efforts" PacifiCorp Transmission has taken to assist PacifiCorp Merchant in obtaining the arrangements necessary to accommodate the delivery of the Paisley project's output to the PacifiCorp's system. For each action PacifiCorp Transmission has taken to assist PacifiCorp Merchant, please explain in detail how the applicable requirements of PacifiCorp Transmission were communicated to SVEC, including all supporting documents.
- (b) Is it PacifiCorp Transmission's position that in order to designate the Paisley project as a network resource, SVEC must supply "scheduling," "imbalance," and "eTags" in order for the QF to be designated as a network resource, as alleged in PacifiCorp's Answer at page 3 n. 5. If yes, please identify the provision of PacifiCorp's OATT that allows PacifiCorp Transmission to demand that a generator located within its BA provide these services as a condition to being designated a network resource to serve load within the BA.

Response to SVEC Data Request 1.47

PacifiCorp objects to this request as unclear, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it asks for information unrelated to Surprise Valley's legal claims in the Complaint. Surprise Valley's complaint relates to the terms of power purchase agreement (PPA), not network transmission service under PacifiCorp's Open Access Transmission Tariff (OATT).

SVEC Data Request 1.48

Please reference PacifiCorp Transmission's Business Practice #9, Network Load and Network Resource Additions. Please provide the list of Designated Network Resources referenced on page 3. Please provide the following additional information for each resources listed:

- (a) The utility to which the resource is directly interconnected;
- (b) For each resource that is not directly interconnected to PacifiCorp, but is located in PacifiCorp's BA, explain what transmission arrangements PacifiCorp Transmission required for delivery to PacifiCorp's system prior to designating the resource as a network resource. Provide a copy of all such transmission arrangements or contracts for designated network resources located within PacifiCorp's BA but not directly interconnected to PacifiCorp's system.

Response to SVEC Data Request 1.48

PacifiCorp objects to this request as unclear, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it asks for information related to non-qualifying facility (non-QF) generators outside Oregon and does not relate to Surprise Valley's legal claims in the Complaint. Without waiving its objection, PacifiCorp provides the following response:

- (a) Please refer to Attachment SVEC 1.48.
- (b) No Oregon off-system QF currently selling its net output to PacifiCorp is located within PacifiCorp Balancing Authority Area.

ATTACHMENT B

Irion Sanger

From: Irion Sanger <irion@sanger-law.com>
Sent: Wednesday, October 28, 2015 4:36 PM
To: McVee, Matthew
Cc: Lisa Hardie
Subject: Re: UM 1742 First Set of SVEC DRs

Matt

I am available at 8 am. I may be available later in the day. We plan to file a motion to compel on Friday if the issue is not resolved.

Irion Sanger

Sanger Law PC
1117 SE 53rd Ave
Portland OR 97215

503-756-7533 (tel)
503-334-2235 (fax)
irion@sanger-law.com

This e-mail (including attachments) may be a confidential attorney-client communication or may otherwise be privileged and/or confidential and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you believe that you may have received this e-mail in error, please destroy this message and its attachments, and call or email me immediately.

From: "McVee, Matthew" <Matthew.McVee@pacificorp.com>
Date: Wednesday, October 28, 2015 at 4:21 PM
To: Irion Sanger <irion@sanger-law.com>
Cc: "Hardie, Lisa" <Lisa.Hardie@troutmansanders.com>
Subject: RE: UM 1742 First Set of SVEC DRs

I've been in meetings all day and confirming a couple items related to PacifiCorp's responses. I think we can revise some with clarification of the request, but others are outside the scope of the proceeding. If SVEC still wants to pursue the remaining DRs, we can request a conference with the ALJ. Can we discuss tomorrow morning? I am available at 8am and after 11:30am.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Irion Sanger
Date: 10/28/2015 10:07 AM (GMT-08:00)

To: "McVee, Matthew"
Subject: Re: UM 1742 First Set of SVEC DRs

Matt

Surprise Valley intends to file a motion to compel requesting expedited consideration. Below is partial list of concerns Surprise Valley intends to raise. Please treat this as an attempt to confer, and give me a call as soon as possible to discuss if PacifiCorp is willing to provide additional information. We may file a extension of time to file our testimony based on this discovery dispute.

1.7, 1.8 and 1.48(b). How PacifiCorp has treated other similarly situated QFs in other states is relevant to how PacifiCorp is treating Surprise Valley.

1.9 may be inaccurate. Please verify that PacifiCorp has not agreed to 15 minute scheduling.

1.24, 1.26, 1.31, and 1.47. PacifiCorp merchant is required to work in good faith to obtain transmission service, numerous paragraphs discuss the transmission arraignments, the company denies that PacifiCorp transmission has agreed that existing metering is sufficient, PacifiCorp's answer raises the transmission issue in your answer and what actions SVEC and others they have been involved with (including PacifiCorp transmission) have done is relevant, the complaint alleges transmission has delayed, and the claims for relief apply to the total company.

1.28. If PacifiCorp does not have a map, then it should provide the relevant information in its possession.

1.29. This relevant to whether Paisley is being treated similarly.

1.35 fails to list numerous employees and is not limited to those before the subsequent dispute with Surprise Valley.

1.42 fails to answer the questions.

Irion Sanger

Sanger Law PC
1117 SE 53rd Ave
Portland OR 97215

503-756-7533 (tel)
503-334-2235 (fax)
irion@sanger-law.com

This e-mail (including attachments) may be a confidential attorney-client communication or may otherwise be privileged and/or confidential and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you believe that you may have received this e-mail in error, please destroy this message and its attachments, and call or email me immediately.

From: "McVee, Matthew" <Matthew.McVee@pacificorp.com>

Date: Monday, October 26, 2015 at 1:13 PM

To: Irion Sanger <irion@sanger-law.com>

Subject: UM 1742 First Set of SVEC DRs

Irion – PacifiCorp will be providing responses to SVEC’s first set of DRs today. The response to SVEC 1.7 will include confidential attachments. PacifiCorp is also objecting to the following DRs. Without waiving its objection, PacifiCorp will provide responses to most of the objectionable DR, with the exception of those DRs that entirely relate to transmission service. The OPUC is not the proper forum for questions related to the ability to provide transmission service and SVEC’s complaint does not raise issues regarding transmission service. Additionally, SVEC’s DRs appear to be well beyond the arguments and facts addressed in the complaint, instead touching on topics discussed during recent settlement discussions. Below is a list of the DRs from SVEC’s first set that PacifiCorp objects to:

- 1.2 Objection (response provided)
- 1.3 Objection (response provided)
- 1.6 Objection (response provided)
- 1.7 Objection (response provided)
- 1.8 Objection (response provided)
- 1.9 Objection (response provided)
- 1.12 Objection (response provided)
- 1.16 Objection (response provided)
- 1.17 Objection (response provided)
- 1.18 Objection (response provided)
- 1.19 Objection (response provided)
- 1.22 Objection (response provided)
- 1.24 Objection –outside scope of proceeding
- 1.25 Objection (response provided)
- 1.26 Objection –outside scope of proceeding
- 1.29 Objection (answer provided)
- 1.30 Objection (response provided)
- 1.31 Objection (response provided)
- 1.38 Objection (response provided)
- 1.39 Objection (response provided)
- 1.47 Objection –outside scope of proceeding
- 1.48 Objection (response provided)

Matthew McVee
Assistant General Counsel
PacifiCorp
825 NE Multnomah Street
Suite 1800
Portland, OR 97232
Office: 503-813-5585
Mobile: 503-729-0259
Email: matthew.mcvee@pacificorp.com

THIS COMMUNICATION MAY CONTAIN CONFIDENTIAL INFORMATION AND MAY BE SUBJECT TO ATTORNEY-CLIENT PRIVILEGE, THE ATTORNEY WORK PRODUCT DOCTRINE, THE JOINT DEFENSE PRIVILEGE, AND/OR OTHER PRIVILEGES. If you are not the intended recipient(s), or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any dissemination, distribution or copying of this e-mail message is strictly prohibited. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer